REPORT OF THE
SELECT COMMITTEE ON
PLANNING AND BUILDING CONTROL
(PETITION FOR REDRESS)
2015-16
On 17th November 2015 it was resolved -

That a committee of three Members be appointed with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to Tynwald on the Petition for Redress of Philip Donald and Kirrie Anne Jenkins presented at St John’s on 7th July 2014 in relation to the ambiguity and weaknesses in the practices and laws relating to planning, building control and connected matters.

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

Committee Membership

Mr C C Thomas MHK (Douglas West) (Chairman)

The Hon S C Rodan SHK (Garff)

Mr J Joughin MHK (Douglas East)

Copies of this Report may be obtained from the Tynwald Library, Legislative Buildings, Finch Road, Douglas IM1 3PW (Tel 01624 685520, Fax 01624 685522) or may be consulted at www.tynwald.org.im

All correspondence with regard to this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas IM1 3PW.
IN TYNWALD

7TH July 2014

To the Honourable Members of Tynwald Court

The humble petition of

Mr Philip Donald Jenkins & Mrs Kirrie Anne Jenkins of Ballagreyney, Colby Glen, Colby, Isle of Man IM9 4HJ

Sheweth that

The present planning and building control system is not fit for purpose.

People are not treated equally and it is open to abuse and cronyism and is detrimental to the people of the Isle of Man.

Wherefore your petitioner(s) seek(s) that

A Committee of three Members be appointed with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and report on the ambiguity and weaknesses in the practices and laws relating to planning, building control, and connected matters.

Signed

Mr PD Jenkins   Mrs KA Jenkins
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To: The Hon Clare M Christian, President of Tynwald,  

and the Hon Council and Keys in Tynwald assembled

REPORT OF THE SELECT COMMITTEE ON PLANNING AND BUILDING CONTROL  
(PETITION FOR REDRESS)

I. THE COMMITTEE

1. The Petition for Redress of Mr Philip Donald Jenkins and Mrs Kirrie Anne Jenkins was first noted by Tynwald Court on Wednesday 22nd October 2014 when it was resolved:

That Tynwald takes note of the Petition for Redress of Mr Philip Donald Jenkins and Mrs Kirrie Anne Jenkins presented at St John’s on 7th July 2014 and calls upon the Department of Infrastructure to consider and report to Tynwald by October 2015 on any ambiguity or weaknesses in practices and laws relating to planning, building control, and connected matters.¹

2. On 20th October 2015 the Minister for Infrastructure, Mr Gawne, made a statement to Tynwald in which he announced that the review had been delayed but that a review of the planning system led by the Council of Ministers’ Environment and Infrastructure Committee would now take place. He confirmed, with a view to bringing recommendations to Tynwald in July 2015, that:

_________________________________________________________

The Environment and Infrastructure Committee has agreed terms of reference, including methods of delivery for the cross-Government high-level review of planning being conducted on behalf of the Committee in response to the Jenkins Petition and subsequent motion. There are two main objectives of this review, which are: (1) to review the planning system to ensure it is simpler, more transparent and fit for purpose for the future, whilst endeavouring to streamline planning policy and develop management processes as appropriate; and (2) to consider the concerns of Mr and Mrs Jenkins relating to the ambiguity or weaknesses in practices and laws relating to planning, building control and connected matters.²

3. The Minister went on to say that:

To assist in this review the Department is establishing an advisory forum under section 40 of the Town and Country Planning Act.³ This will assist the Environment and Infrastructure Committee in reviewing planning policy. The forum will include representatives from business, development, local communities and environment groups and will help feed in the views of their sectors to the review process.

4. In the questions following the Minister’s statement Mr Thomas asked:

the Jenkins Petition itself did not only mention the phrases that have been picked up in this review, but also talked about the potential for abuse. It talked about people not feeling they were treated equally and it mentioned that perhaps planning was working to the detriment of real people and even mentioned the word ‘cronyism’. So I want to know if the Minister thought it might perhaps be useful for a select committee to work alongside the Policy Review Committee, to feed into it so that real people could have a chance to put their point of view inside an open forum.

5. The Minister replied:

In relation to the Jenkins Petition, clearly, if a select committee were to be moved that would be a matter for this Hon. Court to decide upon, not for me; although whatever is decided, I am more than happy to try and work with that.

6. This Committee was established by the following resolution of Tynwald on 17th November 2015:

    That a committee of three Members be appointed with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to Tynwald on the Petition for Redress of Philip Donald and Kirrie Anne Jenkins presented at St John’s on 7th July 2014 in relation to the ambiguity and weaknesses in the practices and laws relating to planning, building control and connected matters.\(^4\)

7. The Members elected to the Committee by Tynwald were Mr Joughin, Mr Thomas and Mr Speaker. At our first meeting Mr Thomas was elected chair.

8. We have met on nine occasions 27th November and 17th December 2015, 3rd 25th, 29th February, 10th, 23rd March, 18th and 25th April 2016 and have taken oral evidence on three occasions.

II. THE INVESTIGATION

9. We agreed that our terms of reference would be to examine the prayer and petition of the Jenkins and their grievance and to feed into the planning review led by the Council of Ministers’ Environment and Infrastructure Committee. We would aim to report to Tynwald in a timeframe which would allow that planning review to consider any conclusions and recommendations we made as part of their review.

10. We began our investigation by taking written evidence from Mr and Mrs Jenkins, the petitioners, in order to understand the substance of the matter which had led them to present their Petition for Redress in July 2014.\(^5\) A timeline covering the petitioner’s three planning applications and some other key points may also be found in the Annex.


\(^5\) Appendix 1
11. Having considered the written evidence, on 25th February 2016 we heard oral evidence in public from Mr and Mrs Jenkins. At that meeting the Jenkins provided us with a more detailed evidence file\(^6\).

12. Without making a public call for evidence we were contacted by seven further potential witnesses. We examined the circumstances of each of these cases. Four of the cases were not sufficiently similar to the Jenkins either because they were at a very early stage of the planning process or because the issues raised related to post planning matters.

13. In the other three cases however petitions of doleance had been initiated with respect to the planning process and so we resolved to look at these in more detail. In each case the petition of doleance, or other matters, are now either before the Courts or still within a planning decision making process and so, while we have been able to review the public planning documentation relating to these cases and speak to one of the witnesses in private, it would not be appropriate for us to comment further on any of these cases in public now, although these cases could be considered later, see Recommendation 18.

14. On 23rd March 2016 we heard oral evidence in public from Mrs Diane Brown, Head of Planning Policy; Mr Steve Stanley, Regeneration Manager; Mr Kevin Gillespie, Ministerial Planning Advisor; and Miss Jennifer Chance, Head of Development Management.

15. Miss Chance attended to give oral evidence in the place of Mr Michael Gallagher who had been invited as Director of Planning and Building Control but has now resigned from that post.

III. THE COUNCIL OF MINISTERS’ ENVIRONMENT AND INFRASTRUCTURE COMMITTEE PLANNING REVIEW

16. At an early stage of our investigation we requested a copy of the Terms of Reference for the Council of Ministers’ Environment and Infrastructure Committee planning review which was provided on 10th December 2015.\(^7\) It

\(^6\) Appendix 2
\(^7\) Appendix 3A
was clear that the planned review was in line with the commitment given by Minister Gawne in Tynwald in October 2015. We noted that there were two main objectives for their review:

1) To review the planning system to ensure it is simpler, more transparent and fit for purpose for the future, whilst endeavouring to streamline planning policy and development management processes as appropriate.

2) To consider the concerns of Mr and Mrs Jenkins in relation to the “ambiguity or weaknesses in practices and laws relating to planning, building control, and connected matters.”

17. The project plan appended to the Terms of Reference also included a commitment to a broad stakeholder consultation:

Undertake engagement exercise with steering group / focus groups (including architects & agents; advocates; developers; etc.) / Local Authorities / public incl. online survey to identify what they want / need from the planning system in light of the scoping document and its provisions.

18. An updated copy of the Terms of Reference was provided to us on 17th March 2016.⁸ We noted with concern that this new Terms of Reference did not make any specific mention of the Jenkins’ petition and the broad stakeholder consultation appears to have been replaced by ‘Facilitated Session(s) with Officers and Politicians’.

19. During oral evidence we asked Mr Stanley about these differences, he replied:

I think the terms of reference that you were sent last week are the updated terms of reference following the transfer of function to the Cabinet Office of planning policy. The committee that has been established to oversee that review has looked at what it is looking to achieve and felt that it wanted to take a step back and make sure that that review started at a sufficiently high level, and did not start from a point at which it had already defined certain things. It wanted to take it up a level to make sure that it did not miss out on certain things or did not explore certain things that needed to be explored.⁹

He set out the details in the Terms of Reference and concluded by saying:

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⁸ Appendix 3B
⁹ Q110
the committee intends to report to Tynwald in July this year. That is likely to be, given the timeframe involved, a quite high-level report which sets out the initial findings of the first two stages. I would anticipate that there will be recommendations for further work in certain areas to be done on that because it is quite a limited timeframe that we are working to.\textsuperscript{10}

20. We think it is regrettable that the commitment given to Tynwald, with regard to a review of the planning system, may not now be fulfilled.

\textbf{Recommendation 1}

\textit{That the Council of Ministers’ Environment and Infrastructure Committee planning review revisits the commitment to Tynwald and sets out in its report to Tynwald in July 2016 how it intends to ensure this is met in a subsequent stage of its review.}

\textbf{IV. THE PLANNING SYSTEM AND RELATED MATTERS}

21. During our investigation, in conjunction with the Director of Planning and Building Control and the Head of Planning Policy, we prepared an overview of the planning system in the Isle of Man. This was written to sit alongside a document, authored collaboratively by information and research services in the four UK parliaments, called ‘Comparison of the planning systems in the four UK countries’. A copy of each of these papers is provided, for information, in Appendix 5.

22. Planning comprises a number of functions. Planning and Building Control responsible for development management, planning enforcement, historic buildings registration and conservation, design and building control; Planning Policy, responsible for planning policy and designation of conservation areas; and Mapping.

23. Both these functions were previously co-located, most recently in the Department of Infrastructure, but in June 2015 Planning and Building Control transferred to the Department of Environment, Food and Agriculture and in January 2016 Planning Policy moved to the Cabinet Office.

\textsuperscript{10} Q110
Throughout this report where we refer to ‘the Department’ it should be understood to mean the Department which the function being referred to, was part of at the point, at the point in time being referenced.

The petitioners’ first written submission to this Committee clearly summarised their experience of the planning system and they concluded by listing what they perceived as ‘ambiguities and weaknesses in the present building control and planning systems’:

1. Strategic Policy, framework and timescales, area plans, areas known as “White Land”, “The landscape Character Maps”, “Settlements” “special housing policy”
2. Pre-planning advice, its importance and relevance given our own protracted experience with it.
3. Planning Committee, certain procedures and irregularities.
5. Doleance, the procedures and precedent case law.
6. Cronyism, personal observations and concerns.
7. Ombudsman
8. Building Control, Highway Safety\(^{11}\)

During oral evidence we examined these points to varying degrees with both the petitioners and then the planning officers.

**Pre Planning Advice**

In the Department’s latest ‘Pre application Guidance for Customers’\(^{12}\) it states

1. Pre-application advice is a means by which Planning Officers, where necessary in consultation with other parts of Government, can help guide applicants through the planning application process, whether they are

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\(^{11}\) Appendix 1

householders who wish to carry out modest changes to their home, or developers embarking on a large scale project.

And also:

15. The pre-application advice that Planning Officers give represents their own professional opinion based on the information supplied. Any views or opinions expressed are given without prejudice to the formal consideration of a planning application following statutory public consultation. It is possible that the consultation process will raise new issues that haven’t been identified before. Moreover, not all planning decisions are made in accordance with the Officer’s recommendation with some applications being determined by the Planning Committee or Council of Ministers.

16. Customers should therefore be aware that Officers cannot give guarantees about the final formal decision that will be made on a planning or other type of application. It is not the role of pre-application advice to give guarantees as to the outcome of an application or assurances as to what the Planning Officer’s recommendation will be. Ultimately, the only way to obtain certainty as to the acceptability of a proposal is to formally submit an application as it is the application process itself that is the only means by which the proposal can be fully assessed.

28. The current leaflet which provides this information was first made available to the public in 2014 but it is not clear how this information was made available in 2011 when the petitioners first sought advice.

29. The petitioners explained that they sought pre-planning advice before purchasing ‘Clybane’ on Mount Gawne Road regarding their intention to replace the existing property on the site with a larger one. They were asked:

Was it your understanding of the planning officer’s opinion that he could give no guarantees that this was what was likely to be something that would be viewed favourably by the Planning Committee, but it would ultimately be for the Planning Committee to make the decision and potentially they might disagree with the planning officer? Was that your understanding?13

30. Mrs Jenkins replied that it was but she went on to say:

13 Q7
This is where I think planning falls down, and this is part of the process that needs reviewing, because when you go to speak to a planning officer, by the very nature you are expecting them to be planning, and to find later on in the process that different officers are giving different opinions affects people’s long-term aspirations and everything. We know that there are no cast-iron guarantees, but the whole point of going for planning advice is to get guidance. I think, without doubt, had they turned round to us and said, ‘It is out of the question,’ we would never have gone ahead with the purchase.\textsuperscript{14}

31. Mr Jenkins also mentioned that, at that time, they did not know that it would not be the officer they had met on site for advice who would determine the application.\textsuperscript{15}

32. When asked, Mr Jenkins agreed that they could not have known for certain that their application would not have been referred to the Planning Committee because, for example, there may have been objections to their application once it was submitted\textsuperscript{16}.

33. We asked the planning officers about pre planning advice. Miss Chance said:

\textit{It is to advise people about how we would assess an application; what considerations we take into account; what policies we take into account. Sometimes it is to give a steer as to the likelihood of obtaining planning approval. That is usually only in extreme … So if it is very unlikely, you might be able to indicate that it is very unlikely. But in most instances, it is really towards guiding the people to how we assess an application and what material we would expect as part of an application.}\textsuperscript{17}

She went on to advise:

\textit{The planning officer who goes out and deals with the pre-application advice usually ends up being the case officer when an application is submitted.}\textsuperscript{18}

34. We asked how often cases arise, like the petitioners, where pre-planning advice is favourable but the application is not successful. She said:

\textsuperscript{14}Q7
\textsuperscript{15}Q9
\textsuperscript{16}Q10
\textsuperscript{17}Q122
\textsuperscript{18}Q124
It does happen. It is hard to give a figure on it. A ball-park figure you could say, perhaps, 5%, 10% of cases may not go the same way as an officer might have thought they would. There are lots of reasons for that. It could be that there is a lot more public interest in the application; it might be things that we were unaware of that arise; it may well just be that some developments are more finely balanced than others and the Committee may take a different view to what the planning officer has taken.\(^{19}\)

She went on to say:

We have spent some considerable time over the last few years tailoring our application guidance for customers so that we can more clearly set out the extent to which we can go in giving pre-application advice.

Obviously one of the key problems with any pre-application advice is the level of expectation that might be raised from that pre-application advice. But it is a little bit damned if you do, damned if you do not. So if you said to somebody, ‘I think you are likely to get planning approval’ and they do not, obviously they will be disappointed, but if you said to somebody, ‘You are unlikely to get planning permission’ and somebody else came along and they did, there is that concern either way. So planning officers can just be as honest as they can and give their professional opinion.\(^{20}\)

35. We asked:

given that many decisions are made by officers under delegated authority, do you think there might be an advantage or at least a perception of advantage if the same person makes a decision who has given pre-application advice, or does that never happen?

Miss Chance confirmed:

The person who assesses the planning application is very often the same person who gave the pre-application advice, but to ensure protocols it is always a person who has not had pre-involvement who makes the determination. That is in order to give us that level of detachment and independence that I think is necessary in any decision-making in Government.\(^{21}\)

19 Q127  
20 Q128  
21 Q130
36. We conclude that this separation of roles is desirable but conclude that this is not necessarily clear to applicants.

Recommendation 2

That the ‘Pre application Guidance for Customers’ should be updated to make it clear that the planning officer providing advice at this stage will not be the planning officer who determines the application, in the event that the application does not go to the Planning Committee, and to explain why this is the case.

Deciding Who Determines a Planning Application

37. In the petitioner’s case they were unclear who had determined their first planning application. In emails dated 23rd November 2011 and 20th December 2011, from two separate planning officers, the fact that the Planning Committee would be making the decision was referred to. 22

38. We tried to establish why this would have been the case.

39. We asked Miss Chance how that decision would have been made. She advised:

We have now, as part of the Standing Orders, what we would call a ‘Scheme of Delegation’ which shows when applications will be determined by the Planning Committee and when they would be determined by either the Director of Planning and Building Control, myself or one of the senior planning officers. That is, as I said, set out in the Standing Orders. It is based on the premise that those applications that are more controversial would go to the Planning Committee or those applications that require a deeper level of assessment would go to the Planning Committee. Importantly, any application which would be for development, which could be considered contrary to the development plan, goes before the Planning Committee.23

She listed the following:

Where the planning officer’s recommendation is contrary to written submissions by a number of members of the public, if it is more than five.

22 Appendix 6 p299, p305
23 Q133
Where the officer is recommending approval and the local authority has made written representations objecting to the application on valid planning grounds, except for householder applications.

Where it is recommended that an agreement be entered into under section 13 of the Town and Country Planning Act.

Where an application is recommended for approval and it is contrary to the provisions of the development plan.

Where an application is for an extension to a dwelling, over 50% of the thresholds set out in the development plan.

Where an application would result in a development of eight or more residential units.

Where it would result in development of a floor space of height of 500m² or more of any other type of development.

Where an application relates to a property owned by the Minister, Department Member and anything else where there is a close association with officers of that department –

**The Chairman:** It will be Ministers now, won’t it, with all the Ministers involved and all the departmental Members?

**Miss Chance:** Those cases:

Where there has been an objection from any of the members of that department.

Where the application is required to be accompanied by an environment statement.

Then there are two others which are:

*If a member of the Committee feels it should be determined by them*

But they have to give the reason to us why it needs to be referred to them. Then the last one is:

*If the Director [or myself] or one of the senior planning officers thinks that ought to be determined by Planning Committee.*

That is to cover applications which we feel are matters that are quite large and important to the Island but do not fit into any of the other categories. For instance, the application in Lower Douglas for a very large development did
not actually fall within any of those others but it was something that was quite significant and so it is the kind of thing we would put to Committee.  

40. We have noted that a lot of useful planning information is provided on the Government website but we felt that having the information about when applications may be referred to the Planning Committee in the Standing Orders could make it difficult for the public to find. Miss Chance agreed that most members of the public would not know to look there and that this could be reviewed.

**Recommendation 3**

*That all of the criteria setting out who will determine planning applications should be added to the planning advice section of the Government website in a format which will be easy for the public to find and understand.*

41. Having been apprised of the current criteria for applications to be referred to the Planning Committee we could see that the condition which would have related to the petitioner’s first application was, section 3 (1)(e), which says,

*Where an application for an extension to a dwelling or for a replacement dwelling in the countryside is over the 50% threshold as set out in the Development Plan and which is recommended for approval;*

42. If the recommendation of the planning officer had been to approve their initial application it would have been referred to the Planning Committee.

43. As the application was not supported by the planning officer it was not referred to the Planning Committee but the decision letter was issued by the Deputy Secretary to the Planning Committee which, along with the earlier emails, led the petitioners to think that it had been. They received confirmation recently that this was not the case.

44. Although there was confusion about who determined the initial application the petitioners were correct when they identified that their application was not

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24 Q135 - The list quoted from is set out in Section 3 of the Standing Orders of the Planning Committee (https://www.gov.im/media/1347807/defa-standing-order-0415.pdf )


26 Appendix 6 p297
treated in the same way as a planning application for a property on the opposite side of the road. Mrs Jenkins explained:

Our neighbour’s property on the opposite side of the road was classed as residential. According to the planning officer’s report in respect of his development:

The site lies within an area designated on the Isle of Man Planning Scheme (Development Plan) Order 1982 as residential.

It is important to note that that application was dealt with under delegated powers by a single planning officer and we can only assume that the residential status therefore has a material effect.27

45. We explored how land designation can affect the consideration of a planning application.

Land Classification

46. One factor which can affect who may determine a planning application can be, ‘where an application recommended for approval is contrary to the provisions of the Development Plan’28

47. When the petitioners made their first and second planning applications the Area Plan for the South had not finally been approved. It was approved by Tynwald on 20th February 2013 which was before the Planning Committee made their determination to refuse the petitioners’ second application on 14th March 2013.

48. Mrs Jenkins explained:

the maps attaching to the Southern Area Plan do not cover the entire area of the south. There are areas that fall between the maps – such as map 7, which covers Port Erin and Port St Mary, and map 5, which covers Colby – leaving areas which are commonly referred to as white land;

27 Q12
28 Section 3 (1) (d) of the Standing Orders of the Planning Committee
She went on to say:

we raised concerns about the area of white land with the Director of Planning and Building Control, as we felt that property owners in such areas were disadvantaged by a lack of clear and consistent approach;

and the Director of Planning and Building Control had replied to them stating:

There is no statutory requirement to zone every piece of land for a specific purpose and any new development proposals in this locality are now considered within the context of both the Strategic Plan policies and the Area Plan for the South. In this respect I disagree with your assertion that property landowners are disadvantaged.  

49. They explained that their property, and others, are now situated in this unclassified area but that other planning applications appear to have been treated differently. They referenced an application for the former Motorlands garage site, approved on 9th September 2015 in which ‘white land’ was mentioned. In the planning officer’s report it said:

  4.1 On the Area Plan for the South, the site is within an area of ‘white land’, not zoned for any particular kind of development;  

50. We asked planning officers what the term ‘white land’ meant. Mrs Brown advised:

The term ‘white land’ was used in the 1982 Development Plan Order. The 1982 plan was made up of a very small-scale plan, but it was one large plan which covered the whole of the Island and a supporting written document. In that document reference is made to ‘white land’. In terms of the Area Plan for the south, there was no specific mention to white land. 

51. She went on to say:

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29 Q12
30 Q12 and https://services.gov.im/planningapplication/services/planning/planningapplicationdetails.iom?– Application Reference Number 15/00739/B
32 Q153
There is no specific mention in the Strategic Plan either. White land: I think it is sometimes used but in effect means countryside or open space. So in the development of the Area Plan for the south, there was no need really to refer to a term that has been used in the past but we did not take that term forward.  

52. We asked how planning officer might interpret the term ‘white land’ if it were used. Mrs Brown replied:

   I think planning officers may well use the term ‘white land’. I am not sure if that is being used, but I suspect it is being used, if at all, in the context of open space or countryside.

53. With an apparent inconsistency regarding the use of the term ‘white-land’ we asked whether it would be possible for applications for residential properties on two closely situated plots to be treated differently. Mrs Brown replied:

   Each application is considered on its merits and the development plan, and the zoning on that plan would be part of that consideration. So it is very much dependent on what was being proposed, but one of the considerations an officer would make, if he was look to at that application and make a recommendation, would be what is that land zoned for.

54. The petitioners explained that in not zoning some land in the Area Plan for the South:

   a number of properties in the Shore Road area were effectively declassified as residential, and when properties are reclassified the proposals are not advertised in the same way as a planning application. Property owners and interested parties would have to study the draft area plans in detail to notice the subtle change.

55. We asked the officers how a plot which already contained a house could be reclassified so that it was no longer residential. Mrs Brown explained:

   If we can talk about the Area Plan for the South, when we first started the process there were a number of plans in operation across the south. There


33 Q154
34 Q156
35 Q157
36 Q12
was the 1982 plan, a number of local plans. What we had to do was build up a brand-new mapping system. So we built up the mapping in layers looking at the settlements, and all the elements of the plan were built up gradually.

What we did not do was identify every house in the south as an individual property but it does not take away the residential status of any house that sits in the countryside. It is recognised throughout the plan that there are houses in the countryside, but we do not pick everyone out in a residential zoning.  

56. We asked whether a reclassification was unfair, whether it disadvantaged property owners, potentially devaluing a property through possible restrictions on future development, or whether a previous classification could be persuasive in a future planning application.

57. Mrs Brown replied that she did not think so but went on to explain that:

Whether the site was described as being residential property in the countryside or a residential property within an area zoned for predominantly residential, if the application was to replace that dwelling, the principle would be the same because it had residential status. The judgement would be on the merits of that: the size, design, visual impact, access, all the normal planning considerations. So it may well be I know that many applications are made to replace dwellings in the countryside and many of them do get approved on their merits and some of them are refused because of various issues.

We conclude that having areas on a Development Plan which are not classified, or have been reclassified, particularly those which contain residential or commercial properties, is unhelpful for property owners.

Interpretation of Planning Policy and Planning Policy Statements

58. The Director of Planning and Building Control had advised the petitioners that any new development proposals would be considered within the context of
Strategic Plan policies and the Area Plan for the South and Mrs Brown has confirmed that any judgement would be merit based.

59. We asked the officers how planning policy is interpreted and whether there is flexibility in the system. Mrs Brown agreed that the policies, proposals and development plans are like guidelines and they are used by the officers who look at applications.

60. The petitioners had commented that in their case ‘the thread running through all the refusals has been Housing Policy 14 and Environmental Policies 1 and 2. Those different policies are interpreted differently by different planning officers to different degrees, so the inspector found it failed those policies’. We asked the officers about this.

61. Miss Chance commented, ‘I think most people would agree that housing policy 14 has been difficult to apply.

62. Mrs Jenkins had explained in relation to this policy:

the pre-advice, they will often say, especially with Housing Policy 14, that you need to put something of traditional design, but that interpretation of what is traditional in the Isle of Man has changed significantly. At that point we were given a photograph of a traditional tholtan, which you would often see in the countryside – so, front door, two up, two down. That is not what a modern family home looks like today. I would say that probably the larger housing estates are more what traditional design is on the Isle of Man now;

further that their land was:

at the end of a strip of development with houses of varying sizes from small to large multi-million-pound houses.

63. Mr Jenkins commented that on the basis of pre planning advice referring to a ‘blank canvas’ they had designed a modern, energy efficient building which

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39 Q12
40 Q163
41 Q167
42 Q13
43 Q170
44 Q15
45 Q17
was of similar form to others in the area, ‘So it was quite a surprise when he turned round and showed us a picture and said, ‘This is what we’d like you to build.’’

64. We asked the officers about the advice that the petitioners had received. Mrs Brown advised that before planning policy statements there were planning circulars and the one referred to was the ‘Guide to the Design of Residential Development in the Countryside’. She said that it ‘may well be reissued as a planning policy statement, but that is how we should think of them in terms of application.’

65. We accept what Mrs Brown told us about a residential planning application being judged on its merits but note that the petitioners were initially advised that on the basis of other properties in the area they had a ‘blank canvas’. But when their application has been considered they have consistently experienced challenges with respect to their compliance with Housing Policy 14 and Environmental Policies 1 and 2.

We conclude that whether a residential property already exists on a site the classification of the land is material, in that it changes the policies which may be applied, which will have an effect on what an existing property may be replaced with.

Recommendation 4

That guidance for applicants should include a clear explanation of the significance of land classification and which policies may be considered in relation to the various types.

Recommendation 5

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review should look closely at the process followed during the

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46 Q18
48 Q174
49 See Paragraph 57
50 Q18
51 Q13
preparation of future area plans to ensure that the significance of land classification and re-classification is highlighted.

66. During the course of our investigation we had looked at planning policy statements and noted that only one is in operation, with some others existing in draft or consultation form. Section 3 part (3) of the Town and Country Planning Act 1999 states ‘As soon as may be after issuing a planning policy statement the Cabinet Office shall lay it before Tynwald and publish it.’

67. We noted that one example, the consultation about the Draft Planning Policy Statement Planning & Economy, has been in place since 2012 and in Tynwald in January 2015 the Minister for Economic Development said ‘we have engaged with over 80 projects since 2012 when the planning policy statement for planning of the economy was introduced’, suggesting it is being used in the same way as an approved planning policy statement.

68. Of direct relevance to the petitioners’ case are the Draft Planning Policy Statement The Role of Landscape Character in Development from October 2009 and Draft Planning Policy Statement The Replacement or Extension of Dwellings in the Countryside from late 2011.

69. We asked the officers how draft planning policy statements (PPS) are used. Mrs Brown explained:

there are a number of draft planning policy statements. If I can just refer back to the Act ... In dealing with applications for planning approval it is set out that:

Regard shall be had to the development plan and any relevant statement of planning policy under section 3

–which is basically referring to planning policy statements, so it is one of the considerations. Obviously, a draft is almost like we have draft plans until they

are approved by Tynwald. Generally there is often a description of more weight being applied to something that has gone quite far through the system, but obviously a draft PPS would be considered to have less weight, is generally what might happen.58

70. We asked how much weight would be given to a draft planning policy statement and Mrs Brown said:

_I think we have to, as we are all doing now, look at the terminology that is used. What should not happen is using something like a planning policy statement to get round the zoning in a development plan, for instance. It is important to remember that every planning policy statement – as it is set out in the Act:_

_Shall be in general conformity with the development plan._

So PSSs, as they are often called, are to specify the manner in which applications are to be dealt with. It is not necessarily setting out different policy that is set out in the development plan. So I think perhaps that is why there are a number of draft planning policy statements. We need to be really sure that what comes out in a planning policy statement is not contradicting. That is how it is set out in the Act.59

71. We suggested that drafts which have not been adopted would surely become less credible over time and Mrs Brown said:

_I do agree that the situation that we have now, where we have a number of drafts that have not been withdrawn, there is uncertainty about where they are going. I completely understand that. But a planning policy statement cannot, under the Act as it stands at the moment, change planning policy._60

She went on to say:

_I think it is certainly something that will have to be addressed as part of the review. I think the whole term ‘planning policy statement’ is wrong in itself in some ways, because it gives the impression that it is a policy which would immediately trump the development plan, which it was never set out to do._61
72. Mr Gillespie commented that two points had been raised:

One was looking at the hierarchy of probably plans applying policy statements. The second one was looking at the weight attached to it and emerging policy as opposed to maybe an existing policy which has been in place for a long time. In terms of the 1999 planning Act, in the Isle of Man there is not any, effectively, hierarchy of plans as such. Section 10(4) allows you to consider the development plan, planning policy statements, any other material consideration. They do not rank one above the other. That is maybe different in the UK where the development plan has primacy and so there is a difference of how it is applied in the Island as opposed to in the United Kingdom. In terms of the weight you were asking about, generally speaking the closer a planning policy statement of a guidance note is towards being adopted, then the more weight that should be applied to that. Also, if such statements have been through a public consultation process, generally you would expect that, certainly, inspectors would tend to view that as having more weight than an existing policy which has been in place for a number of years.62

73. Mr Gillespie was asked how his statement about no hierarchy sat alongside section 3(4) of the 1999 Act which says:

Every planning policy statement shall be in general conformity with the development plan; and in case of any inconsistency between a planning policy statement and the provisions of the development plan, those provisions shall prevail.

He replied:

I think it is custom and practice that, if a planning policy statement is not in general conformity with the development plan, actually the provisions of the development plan would prevail.63

We conclude that what the Department should have regard to, as set out in section 10(4) of the 1999 Act, is not straightforward.

74. The Chairman commented that it must put a certain pressure on officers trying to determine applications and perhaps having to rely on draft planning policy

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62 Q184
63 Q185
statements which have been in draft for an extended period. Miss Chance commented that:

when you said that there have been 80 projects that have used the planning policy guidance for the economy, there is an inference there that that made a difference in the determination of the application. (The Chairman: Okay.) It may well have been that those applications would have been determined in the same way. (The Chairman: Okay.) It might have been that the PPS on the economy just assisted in helping people provide the information that was helpful in determining it, but it might not have altered the consideration of that application in any event.64

75. The Chairman commented that there were times, for example in the overturning of Landscape Proposal 21 from the Area Plan for the South, when a political preference may become an issue. In the judgment for that case Deemster Corlett said:

26. The Department frankly accepts that the insertion of LP21 "was largely due to the political members of the Department preferring the views expressed by the Respondents' input after June 2012, rather than continuing to follow the preferred course advised by the Department's planning officers which had founded the pre-Inquiry withdrawal of LP21".65

76. He went on to say that he recalled that the draft planning policy statement relating to the economy being announced in 2012 by a politician66 and commented that it must be difficult for planning officers to make objective decisions in such circumstances.

77. Mrs Brown replied:

It can be. It is not an ideal situation to have draft anything for a considerable amount of time. That is not an ideal situation and I can understand, yes, it can lead to difficulties. But what we do not want to do is to have statements laid before Tynwald that are not quite right and are not going to be helpful or add

64 Q182
65 CHP 2013/41 - https://www.judgments.im/content/J1462.htm
value to the process. That is part of the reasoning why some of them have not been progressed.\textsuperscript{67}

Recommendation 6

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review should look closely at what the Department must have regard to under Section 10 (4) of the 1999 Act, in addition to the development plan, and consider bringing it all together into one series of papers, probably Planning Policy Statements, to improve clarity, with periodic review dates of such papers to confirm continued suitability and relevance.

Recommendation 7

That the Planning Policy Unit in the Cabinet Office give consideration to introducing a mechanism to allow for the adaptation or re-interpretation of policies, such as Housing Policy 14, which may include consultation with a body established under Section 40 of the 1999 Act, where experience shows that professional interpretation is frequently contradictory, without waiting for a full review of Strategic or Development Plans.

Planning Committee Determinations

78. When and how an application is to be determined by the planning committee is set out in the Planning Committee Standing Orders\textsuperscript{68}. The agenda for Planning Committee meetings, which are held in public, is published on the Tuesday afternoon preceding the advertised Monday meeting date\textsuperscript{69}.

79. Each planning application to be considered by the Planning Committee is listed on the agenda with the accompanying planning officer report. The information this must contain is set out in Section 4 (1) of the Standing Orders. The report must contain a recommendation stating whether the application should be approved or refused.

\textsuperscript{67} Q183
\textsuperscript{68} https://www.gov.im/media/1347807/defa-standing-order-0415.pdf
\textsuperscript{69} https://www.gov.im/categories/planning-and-building-control/planning-applications/planning-committee-meetings/
80. Anyone may make written comments on a planning application and the planning officer’s report to the Planning Committee must contain a summary of all such representations. It must also make recommendations about any additional parties who should be afforded Interested Party Status.\(^{70}\)

81. The Planning Committee may hear from parties who have made a written submission with regard to an application and who have registered to speak. A Local Authority representative may also register to speak whether they have made a written submission or not. The Local Authority, objectors (who must elect a spokesperson if there is more than one) and the applicant, or their agent, are each allocated three minutes to speak. Guidance on speaking at a Planning Committee meeting is published by the Department.\(^{71}\)

82. Guidance on material planning considerations is also published by the Department to assist parties, who may wish to object to or support a particular application, in understanding what is relevant.

83. The Planning Committee may make an immediate determination or defer their decision to gather additional information or make a site visit.

84. In the evidence from the petitioners we noted that, in their case, there were some errors made with respect to the details presented to the Planning Committee. Mr Jenkins explained:

> When we had the site visit – that was that site visit on the second planning application – the first thing that was noted was that the committee was given the incorrect plan. It was a hand-drawn plan of the area that was involved and it was actually about 80% larger than what we were asking for, so when the committee turned up on site for a site visit they were immediately thinking it was a much larger project than it actually was

He went on to say:


\(^{72}\) https://www.gov.im/media/172650/material-planning-considerationsv2.pdf
when we had the meeting and I unlocked the house so they could see the inside of the house and the issues that were there, the Planning Committee manager brought the wrong files to the site visit, so I could not prove that what I was saying was correct; and as you are not allowed to actually talk to the committee on a site visit, other than to answer the questions you are asked, you cannot actually put your hand up and say, ‘Sorry, you have got the wrong plans there,’ because you are not allowed to talk. 73

85. The petitioners lodged a complaint about this error on the 25th March 2013 as the planning committee subsequently refused the application and they felt that this error had a material effect on the outcome.

86. We asked the officers why the petitioners may have felt they could not point out the error which was made with regard to the plans at the site visit. Miss Chance replied:

    This is to do with transparency and having everything heard in a public forum and to make sure that ... It is not that you might think the applicants would try to unduly persuade the Planning Committee, it is that other people might not hear what is being said.

    Applicants can speak but they are just not allowed to talk about the merits of the application at the time. So they are allowed to point out various positions, items: ‘There is a road here,’ ‘There is a building there,’ ‘This is where the building would extend to.’ Any factual information, they are allowed to talk about; they are just not allowed to talk about the merits of the scheme. 74

She went on to say:

    I attended that site visit. The plan showing the extent of the site appeared to be wrong. There were two things regarding that because it also related to the Planning Committee agenda where on the Planning Committee agenda there is a site location plan that is intended to pretty much just point out to the Committee where the site is rather than the extent of the site but at the Committee we did walk where the extent of the site was so that was made clear. If you saw the Planning Committee presentation – which is still

73 Q31
74 Q189
available and I have copies of that – it is made very clear what the extent of the site was before the Planning Committee made their decision.75

87. We note that the procedures pertaining to site visits are set out in Section 8 of the Standing Orders and that in (7)(d) and (e) it states:

(d) the applicant and/or agent or any third party may address the Committee only if invited to do so and only to provide factual clarification of any matter relevant to the planning application which is the subject of the site visit;

(e) the members must not discuss the merits of the application, make any determination or make any comment capable of being perceived as a comment on the appropriateness of the proposal during the site visit that being the case only when the item of business is brought back to the Committee meeting for consideration.76

88. We have concluded that the Planning Committee process appears to be fit for purpose excepting cases where an administrative error may have occurred. As the Planning Committee agenda is published online the applicant and/or their agent have the opportunity to check in advance what the Planning Committee has been provided with. We consider that the requirement for parties only to be able to address the Planning Committee at a site visit if invited to do so is unnecessarily restrictive when, in fact, the terms of what may and may not be discussed are also clearly set out in the Standing Orders.

Recommendation 8

That the Department reword Section 8 (7)(d) of the Standing Orders to replace the words ‘only if invited to do so and’ with ‘but’. It will read ‘the applicant and/or agent or any third party may address the Committee but only to provide factual clarification of any matter relevant to the planning application which is the subject of the site visit;’

Appeals and Ministerial Decisions

89. The planning appeals process is the same whether a determination has been made by a planning officer or the Planning Committee. Only the applicant or

75 Q190
those parties who either permanently have or have been afforded interested party status may appeal against a decision made. The policy for assigning interested party status is set down in Government Circular 46/13.77

90. After a planning application has been determined a decision notice is issued and any appeal must be made in writing within 21 days of the date of the Notice. An appeal form is provided.78

91. Planning Appeals administration is governed by Article 8 of the Town and Country Planning (Development Procedure)(No2) Order 201379.

92. A planning appeal may be conducted in writing or by way of a public oral hearing, at which parties have the right to be heard. In either case the appeal is conducted by an independent planning inspector who will write a report with a recommendation for the Department. The final decision is then made by the Minister although this responsibility can be delegated80. Since 2012 a Ministerial Planning Advisor has been available to provide independent planning advice at this point in the process. This final decision cannot be appealed. However, if there is thought to have been an error of process, a judicial review by way of a Petition of Doleance is possible.

93. The petitioners went through the appeals process with each of their three planning applications.

94. They agreed that it was a robust process but with respect to their second application, which had been supported by the planning officer but refused by the Planning Committee, Mrs Jenkins commented:

> the planning officer wrote his report in favour, but because the committee found against it, when we appealed ... You then go to the appeal hearing and the Planning Committee’s officer then argues policy, but your original

planning officer who dealt with your case and who wrote the report in favour does not even attend, so you are left without being able to argue against policy because you have not got the support of your original planning officer.\textsuperscript{81}

She went on to explain that:

the planning officer who supported our application interpreted the policies one way; when we got to the appeal, the committee’s planning officer argued it the opposite way\textsuperscript{82}.

95. We felt this was a clear illustration of inconsistencies in the interpretation of planning policy by officers who, it is fair to say, are probably viewed by the public as a single entity.

96. The difference in interpretation of planning policy by parties involved in a planning application, particularly in a protracted case such as this with multiple applications with similar purpose, has been a significant consideration during our investigation. Apparently opposing opinions can be given at several points during the application and appeal process; during pre-planning and initial application consideration, the first determination by an officer or the planning committee, in an appeal inspector’s report and finally by the ministerial planning advisor and Minister. Examination of other cases suggests that the petitioners’ is not an isolated case.

97. We fully accept that a system of checks and balances is essential for good governance. All applications are considered by an officer who writes the first report and another officer or the planning committee who make the determination. If an appeal occurs an independent planning officer reviews the application and makes a report, with a recommendation, on which the ministerial planning advisor may advise the Minister who will make the final decision. So potentially four planning professionals are involved before a final determination by a Minister or Member.

98. With regard to the Minister’s decision making role, we noted the response to House of Keys Question 1.2 on 3\textsuperscript{rd} November 2015 where Minister Ronan said:

\begin{itemize}
\item \textsuperscript{81} Q25
\item \textsuperscript{82} Q29
\end{itemize}
in accordance with article 8(8) of that 2013 Order\(^\text{83}\), I consider the report of the planning inspector and either allow or dismiss the appeal, or reverse or vary any part of its decision, whether or not the appeal relates to that part.

However, whilst that is what governs the procedural requirements under secondary legislation, there are also requirements under the primary legislation, the Town and Country Planning Act 1999, for the Minister as the decision-maker.

Section 10(4) of the Act states:

(4) In dealing with an application for planning approval or an application under subsection (3), the Department shall have regard to-

(a) the provisions of the development plan, so far as material to the application,
(b) any relevant statement of planning policy under section 3;
(c) such other considerations as may be specified for the purpose of this subsection in a development order, or a development procedure order, so far as material to the application; and
(d) all other material considerations.

99. The Minister was asked whether he thought that:

the public might perceive that it is perverse that the Minister, without the benefit of the site visit, without the benefit of discussion with the interested parties, actually has the final decision, when the independent inspector and the Planning Committee or the planning officers have had the benefit of much more engagement and involvement.

He replied:

in regard to the material based on any planning decision made, reviewing of plans or site visits, I think what it clearly states is that the Minister can look at anything that is reasonable or also has material considerations in respect to that planning decision.\(^\text{84}\)

The Minister also said:


\(^{84}\) http://www.tynwald.org.im/business/OPHansardIndex1416/5278.pdf
The final decision on planning appeals, ..., is down to the Minister, not the inspector; and I think it is important that it remains so, because that is what we are – we are here as decision makers.  

100. We do not concur with the Minister on this point because Article 8 (8) of the Town and Country Planning (Development Procedure) (No 2) Order 2013 says:

*The Department must consider the report of the planning inspector and—
(a) must either allow or dismiss the appeal; and
(b) may in either case reverse or vary any part of its decision, whether or not the appeal relates to that part.*

101. In his decision in respect of Re Manx National Heritage (CP 2006/46) His Honour Deemster Kerruish ruled that the Minister had not followed the correct procedure:

*I find that in this case the Minister, no doubt upon advice, did not follow the then correct procedure under Paragraph 7(4) in that he considered, inter alia, the documentation referred to at paragraph 6 of the Minister’s affidavit, see the above recited paragraph [65]. Thus, the Minister took into account matters which he ought not to have taken into account. In consequence, this court is entitled to interfere with the Minister’s Decision, to quash the same, and to remit the issue whether the Planning Appeal should be allowed or dismissed back to the Minister of DLGE for reconsideration. The Petition succeeds on that ground.*

102. The legislation to which Deemster Kerruish’s referred in his judgement was Paragraph 7(4) as set out in Schedule 1 of the Development Plan Order 1982 it said: ‘The Minister shall consider the report of the appointed person, and may allow or dismiss the appeal, or may reverse or vary any part of the decision of the Planning Committee whether the appeal relates to that part or not.’ This instruction is now found in Article 8(8) of the Town and Country Planning (Development Procedure) (No 2) Order 2013.

103. Political input caused an issue with Landscape Proposal 21 of the approved Area Plan for the South. Following a High Court judgment on 11th February

87 [https://www.judgments.im/content/J290.htm](https://www.judgments.im/content/J290.htm)
2014 that was quashed and in his judgment His Honour Deemster Corlett stated:

26. The Department frankly accepts that the insertion of LP21 “was largely due to the political members of the Department preferring the views expressed by the Respondents’ input after June 2012, rather than continuing to follow the preferred course advised by the Department’s planning officers which had founded the pre-Inquiry withdrawal of LP21”.

We conclude that Ministers should take extreme care when exercising powers to ensure that they are clear on the extent of those powers.

104. We considered whether it is actually necessary for the Minister to be the person who gives the determination in all planning appeals and so looked at whether their involvement at this stage made a difference to the final outcome.

105. Mr Gillespie confirmed during oral evidence that ‘since 2011 there have been 603 planning appeals. In 18 cases only – so that is 2.9% of the total number of appeals – has a Minister gone against an inspector’s recommendation.’ He confirmed later that in only 1 of the 18 cases was the Ministerial decision also against his advice. More detailed information on numbers of appeal decisions and delegations can be found in Appendix 4.

106. Looking back at Re Manx National Heritage (CP 2006/46), which was decided in 2007, it was noted that:

The Minister continued that on average he considered two hundred planning appeals each year. He calculated that in 96% of appeals he would agree with the recommendation of the relevant inspector and in the remaining 4% he reversed the recommendation. As to those appeals in which the Minister adopted an inspector’s recommendation, he stated that in approximately 3% of such appeals he would vary the recommendation with conditions generally of a minor nature.

107. It appears to us that the current decision making framework is excessively complex, with too many stages, because so few of the independent inspector’s

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88 https://www.judgments.im/content/J1462.htm
89 Q212
90 https://www.judgments.im/content/J289.htm - Paragraph 66
decisions have been overturned. In 2007 the Minister said he would agree in 96% of cases and since 2011 only 18 cases have resulted in a different decision. So in the last 5 years the Minister has been required to undertake post appeal reviews in 585 cases where the decision was not been changed.

108. We do not believe it is desirable, or necessary, for the Minister to be the ultimate decision maker in all cases. We feel that the political role should primarily be restricted to matters of policy or national importance, which we touch on later in this report.

109. We would suggest consideration is given to the final determination following appeal being made by the independent inspector, with a right of appeal to the Minister allowed in certain cases e.g. if the independent inspector had reversed the previous decision of the planning officer or planning committee or if some aspect of the application could be shown to have a national interest consideration, which exists but was not thought sufficient for it to be ‘called in’ by the Council of Ministers initially.

Recommendation 9

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review should consider how the planning process at appeal can be streamlined, taking note of the suggestions in this report.

Interested Person Status and Third Parties

110. Anyone may make a comment, including an objection, about a planning application before it is determined.

111. In Article 6 (3) of the Town and Country Planning (Development Procedure) (No 2) Order 2013\(^{91}\) it states that during the determination of a planning application consideration must be given to who ‘should be treated as having sufficient interest in the subject matter of the application to take part in any subsequent proceedings relating to the application.’ This is described as interested person status.

112. Interested persons will be provided with information about the progress of a planning application and have the right to appeal the planning decision.

113. Some parties, set out in Article 6 (4) of the Town and Country Planning (Development Procedure) (No 2) Order 2013\(^\text{92}\), are always considered as interested persons, these include: the applicant or the applicant’s agent, the owner or occupier of any land which is the subject of the application, the Highways Division of the Department of Infrastructure, the local authority and, in certain circumstances, other Government Departments.

114. In addition, interested person status may be granted to anyone making a written submission about an application who meets the criteria for the determination of interested person status set out in the Town and Country Planning (Development Procedure) Order 2013.\(^\text{93}\) These interested persons are commonly described as third parties.

115. One area of the current process which all witnesses agreed did not work well was with respect to the rights afforded to third parties with interested person status. It was noted that, although interested person status is not unique to the Isle of Man, the third party right of appeal after a planning decision has been made is not common in other jurisdictions.

116. In the petitioners’ case their opposite neighbours were afforded interested person status in each of the three applications. Other than requesting interested person status they made no comment on any application until after the permission was granted for the third application when they appealed the decision. As the process currently stands this is permissible. But both the petitioners and the planning officer were surprised.

117. Mrs Jenkins said:

\[\text{it came as a bit of a surprise to us that when the neighbour objected there were 34 pages of objections; and the main issues involved items that had}\]


been covered by the first, second and the third applications, so there had been an opportunity for him to raise his objections on any of those applications.  

118. The petitioners were clear that they did not object at all to the concept of interested person status. They were aware that the third party right of appeal did not exist in other jurisdictions, but said:

I think it is good in a democracy to allow everybody to have an equal point of view, and I am sure that if we were sat on the other side of the fence we would be equally outraged if we had not had an opportunity. But the point is that to lodge an interest and then wait for the decision and then to lodge 34 pages of objections is an abuse of that system, in our view.

119. In her written submission to the planning appeal, Miss Sarah Corlett, Senior Planning Officer wrote:

The request for an appeal comes as somewhat of a surprise as the only correspondence from the appellant is dated 17th January, 2014 and states only that “as owners of Seascape, which is a property opposite to the proposed new dwelling” they “are likely to be affected by any determination relating to the proposed application” and requested interested party status. One may, from that brief communication imagine that these parties have no objection to the application as none is referred to. It is unhelpful to the process if parties have objections or concerns and do make these known when the opportunity arises. The agenda for the Planning Committee is publicly available before the meeting and as such the recommendation for approval will have been known by the appellant before the decision was taken. It is not understood why an objection was not made at the time.

120. We asked the officers for their professional view on objections received at this time in the application process, whether they thought it was a loophole that should be closed. Miss Chance said:

I would agree, I think. The process is there so that the Planning Committee take into account all of the information and all the comments that anybody wants to say at that point. I think not giving really any comments and just

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94 Q39  
95 Q45  
96 Appendix 2 p157
saying, ‘I am interested’ and then waiting until the appeal does not benefit the process at all.\textsuperscript{97}

She went on to say:

\textit{I would welcome an opportunity for it to be amended so that people had to give their views prior to the initial decision being taken.}\textsuperscript{98}

\textbf{Recommendation 10}

\textit{That the Department amend legislation to remove the third party interested person’s right of appeal after determination if they have not made their objections known during the application process, prior to determination.}

\textbf{Recommendation 11}

\textit{That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review consider removing the third party interested person status altogether.}

\textbf{Petitions of Doleance}

121. It was noted above that following a planning appeal decision there is no further appeal. However, if there is thought to have been an error of process, a judicial review, by way of a Petition of Doleance, is possible.

122. A Petition of Doleance is a legal remedy that cannot change the decision but if an error in making the decision is proven then a decision may be quashed and returned to the decision maker for redetermination.

123. In 2010-11 four Petitions of Doleance, relating to planning, were lodged; one was stayed, costs were awarded to the Department in two and against the Department in one. There were no Petitions of Doleance with respect to planning applications in 2012-13. In 2014-15 there have been six. Of these costs have been awarded to the Department in one case and against in three cases, to the total sum of £46,000. Two cases are ongoing.

\textsuperscript{97} Q195
\textsuperscript{98} Q196
124. In four of the six cases, where petitions of doleance have subsequently been lodged since 2014, the decision made by the Minister has not been in agreement with the planning inspector’s recommendation. In three of these cases costs have been awarded against the Department comprising £40,000 of the £46,000 noted above.  

125. In the petitioners’ case the interested party, after losing the appeal, lodged a Petition of Doleance against the Department.

126. A pre-action letter was issued on 4th September 2014, the Department replied on 19th September 2014 advising that they would defend the action. The petitioners, not being named parties in the action, were not aware of this and had begun work on site.

127. The Petition of Doleance was lodged on 20th October 2014 and on 5th November 2014 in a change to their initial response the Department agreed to resolve the matter by consent order and agreed to redetermine the appeal decision. Work stopped on site.

128. In redetermination on 19th March 2015, over 4 months after the consent order, the Department upheld the appeal decision and the petitioners were able to begin work on site again.

129. A further Petition of Doleance was lodged on 18th June 2015. Again the petitioners were not aware initially. On 15th July 2015, again, it was agreed by consent order that the previous decision would be quashed and sent back to Department for redetermination.

130. On this occasion, in redetermination on 17th December 2015, over 5 months after the consent order, the previous decision was reversed and so the petitioners’ planning permission was revoked.

131. Whilst this is clearly very disappointing for the petitioners it is not our role to comment on the decisions which have been made. However there are points where we feel a change to the process would assist people who may find themselves in this position in the future.

Appendix 4

Appendix 2 p199-204 (see also p193-194)
132. We acknowledge that the number of cases, when set against the total number of planning applications received and determined, are a very small proportion but the effects on the parties involved in protracted cases can be very significant and we would wish to recommend any changes which may improve the position.\(^{101}\)

**Recommendation 12**

*That as soon as the Department is made aware that action of any sort may be taken against it with respect to a planning application, the applicants and any interested parties should be notified.*

**Recommendation 13**

*That the Department introduce a target timescale for redetermination decisions to be made, which should be no more than 8 weeks after the date of a judgment or consent order.*

**Alternatives to a Petition of Doleance**

133. We asked the petitioners if they thought that an ombudsman could be used for complaints resolution instead of involving the Courts. Mrs Jenkins replied that:

> Certainly our first doleance case to do with the letter, without a doubt it could have gone to an ombudsman.\(^{102}\)

134. We asked whether it was not right that flaws or irregularities in legal process be referred to the Courts and Mrs Jenkins replied that:

> Yes, in a democracy, of course it is, but it should be open and fair to everybody, no matter your status or your profession.\(^{103}\)

135. Mr and Mrs Jenkins had explained that in relation to the Petitions of Doleance between their neighbour and the Department of Infrastructure, they were

\(^{101}\) Appendix 4  
\(^{102}\) Q79  
\(^{103}\) Q81
interested parties and had been legally advised to ‘maintain a neutral stance’.

Mrs Jenkins said:

As an interested party, the case was not brought against us. However, we could have gone in on the case and given evidence, but had the case gone against us we would have also been liable for costs. I think this is where it relates to the Whittaker Select Committee. I read that in detail and it became very clear that it would be very unwise to go in on a doleance case where there was every chance you would lose.

She went on to say:

I think as an interested party you are put in an extremely difficult position. You have to stay silent on the subject, really, because you are not the one that is being taken to court, and to involve yourself would leave you open to costs. This is exactly what happened with the previous Select Committee.

136. The Select Committee of Tynwald on the Petition for Redress of Grievance of Donald Whittaker explored a planning case with similarities to the petitioners’ where a Petition of Doleance action was taken against the Department where there was an applicant and an interested party involved.

137. That Committee recommended ‘That the Council of Ministers continues to progress the Tynwald Commissioner for Administration Bill’ because although, in that particular case, the interested party was not the applicant and would not therefore have been able to use a Tynwald Commissioner for Administration it would help others.

138. We asked the petitioners whether they had explored the possibility of legal action against the Department for the administrative errors which led to the interested party being in a position to bring the two Petitions of Doleance. Mrs Jenkins confirmed:

There is no other route that we can go down. There is – and I will leave this with the Select Committee to have a look at – in the UK a similar situation in

\[^{104}\] Q66

\[^{105}\] Q66

\[^{106}\] Q82


\[^{108}\] Recommendation 1 of the Select Committee on the Petition of Donald Whittaker
the Town and Country Planning Act and there are the powers to revoke or modify planning permission, and there is a way of compensating people who have had planning removed, but there is nothing in the Isle of Man.\textsuperscript{109}

139. We note that the idea for an ombudsman scheme was proposed in a Council of Ministers Report ‘Review of the Current Standardised Complaints Procedure and Case for the Establishment of an Ombudsman’ which was received and approved by Tynwald in July 2004.

140. The recommendations of the 2004 report were strongly endorsed in the 2006 report ‘A Review of the Scope and Structure of Government in the Isle of Man’.\textsuperscript{110}

141. We note with serious concern that although the Tynwald Commissioner for Administration Act 2011, the purpose of which is to establish an ombudsman, is in force it is in name only and some twelve years after the original proposal was approved by Tynwald there is still no ombudsman.

\textit{Recommendation 14}

\textit{That Tynwald calls on the Council of Ministers to undertake whatever work is necessary to ensure that a Tynwald Commissioner for Administration is appointed without delay.}

Consideration of Planning Applications by the Council of Ministers

142. Consideration of planning applications by the Council of Ministers was not specifically raised by the petitioners in their detailed evidence. The scope of the prayer of the petitioners was sufficiently wide, however, to enable us to include consideration of this other type of planning application process in our investigation.

143. We noted that there are two ways in which a planning application may come to be determined by the Council of Ministers and these are set out in Section 11 of the Town and Country Planning Act 1999.\textsuperscript{111}

\textsuperscript{109} Q89
\textsuperscript{110} A Review of the Scope and Structure of Government in the Isle of Man 2006
(http://www.tynwald.org.im/business/committee/SCR/Public\%20Evidence/200709reviewofscopestructureofiomg.pdf)
Departmental Applications

144. With respect to Departmental planning applications the types to be determined by the Council of Ministers are set out in Section 11 (3), and they are:

(a) an application by the Department for planning approval, and

(b) an application for planning approval for development of land any interest in which is vested in, or which is occupied or controlled by, the Department;

145. In Section 6 (2) the Council of Ministers Act 1990\(^{112}\) it states that:

*The proceedings of the Council of Ministers shall be confidential, and no member thereof, without the leave of the Chief Minister, shall divulge to any unauthorised person any matter or thing said or done therein.*

146. This has prevented the process for Departmental planning applications from being transparent as the whole Council, excepting the Departmental Minister and any other who may have a conflict must make the decision, and this unnecessarily sets such applications apart from others.

147. A recent example of this is with the planning application for the redevelopment of part of Douglas Promenade\(^{113}\) the decision was made by Council of Ministers on 17\(^{th}\) March 2016, announced on 22\(^{nd}\) March 2016, and only after this was the independent inspector’s report, which was sent to the Cabinet Office on 31\(^{st}\) January 2016, made publically available.\(^{114}\)

148. During evidence Miss Chance explained that such applications miss the opportunity to evolve by having input from others and for applications to be amended to be more in line with policy and therefore have a greater chance of success. She said:

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\(^{113}\) Planning Application 15/00594/B  
\(^{114}\) Appendix 7
When an application is considered by the Council of Ministers, the processes is that the appeal inspector is the first person who really looks at the application and they look at it almost as if it was as it was when it was submitted. So you miss out that element of the evolving of the application. Then the planning inspector will look at that application and make a recommendation to the Council of Ministers, which then is not heard ..... Their meetings are not held in public and then there is not an appeal after that\textsuperscript{115}.

149. We feel this issue could be resolved and proposed that applications could be considered in public by three or four Ministers acting in the same way as the Planning Committee, in public. Miss Chance replied:

Any different ways to deal with it would all involve a change of legislation. I think we need to look at the reasons why you would not have a Department determining its own applications, and that is to do with bias. So any way that you could devise a system whereby those people who are making the decision are not connected somehow with the applicants is the way to deal with it.

You could have a completely independent planning authority. You could have an independent Planning Committee that was appointed in a different manner. You could have a Planning Committee that, as you said, are made up of Members of CoMin.\textsuperscript{116}

150. There are a number of things that could be explored.

\textit{Recommendation 15}

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review give consideration to changing the way in which departmental planning applications are decided to ensure parity of transparency with respect to other planning decisions.

\textsuperscript{115} Q242

\textsuperscript{116} Q246
‘Called In’ Applications

151. Applications may be ‘called in’ by the Council of Ministers under Section 11 (1) and (2) of the Town and Country Planning Act 1999\textsuperscript{117}. This says:

\begin{itemize}
    \item[(1)] If it appears to the Council of Ministers that an application made to the Department for planning approval —
    \item[(a)] raises considerations of general importance to the Island, or
    \item[(b)] for some other reason ought not to be determined by the Department,
\end{itemize}

the Council of Ministers may direct that the application shall be referred to and determined by it.

\begin{itemize}
    \item[(2)] Where the Council of Ministers grant planning approval on an application referred to them under subsection (1) —
    \item[(a)] the decision of the Council of Ministers shall be laid before Tynwald, and shall not have effect until the end of the next sitting following that before which the decision is first laid; and
    \item[(b)] Tynwald may, at either of those sittings, resolve that the decision be annulled, whereupon the application shall be deemed to have been refused.
\end{itemize}

152. We had been able to find one example of a planning application which had been called in, PA99/1246 for the construction of a long wave radio transmitter in Bride.\textsuperscript{118} We asked the officers if they knew why this was as we felt that there had been a number of occasions where planning applications were of general importance.

153. Mr Gillespie confirmed in writing after the oral evidence session that they found only two further examples of called in applications; PA08/00230 Point of ...


\textsuperscript{118} Isle of Man Town and Country Planning Acts 1934 – 1999: Report of an inquiry into a planning application for full planning permission for the construction of a long wave transmitter station and associated vehicular access at Ballafayle, Cranstal, Bride; Applicant: Isle of Man International Broadcasting Co Limited Application Ref: PA99/1246; Inquiry Dates 11 - 20 September 2000; inspector: R S Hawthorne BA DipTP FRTPI (RTD); Laid before Tynwald on 21 Feb 2001
Ayre Waste Facility, laid before Tynwald in February 2009 and PA 09/00301/B re Tesco which was not laid before Tynwald as it was refused.

154. When asked during oral evidence the officers said they were not aware of how the decision to call in an application by the Council of Ministers would be made.119

155. With respect to the transparency of the process we felt less concern regarding ‘called-in’ applications as we noted that any Council of Ministers decision on such cases would need to be laid before Tynwald and any decision may be annulled by resolution of Tynwald.

156. We did note however that a number of high profile planning applications for example; Douglas promenade, the extension to the airport runway120, and the replacement of Laxey bridge121, which would appear to raise ‘considerations of general importance to the Island’ had not been called in.

Recommendation 16

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review give consideration to defining criteria for ‘national importance’ as described in the 1999 Act.

V. CHANGES POST PLANNING & ENFORCEMENT

157. In their written submission the petitioners referred to some matters they had noted in relation to the property opposite their site122. In oral evidence Mrs Jenkins said:

I think a certificate of lawfulness, building control, is an issue that we came across by accident. It is a side issue to our case, I suppose. There are some gaps in the current system. I will leave with the Select Committee, I think ... It is quite a lot of detail, but in essence we know, for instance, that there have been 2,289 reported cases of planning breaches and only two have ever gone

References:

119 Q257
120 Planning Application 06/01572/B
121 Planning Application 16/00035/B
122 Appendix 1
to court, and I think that gives the Committee some idea of the size of the problem.\textsuperscript{123}

158. Accepting that this was a side issue we did ask the officers about the apparent disconnect between the number of reported breaches and prosecutions. Miss Chance explained:

\textit{Planning enforcement falls within DEFA. We do have a planning enforcement policy that is published and it is on the website. It has an approach of trying to ensure compliance rather than prosecution in the first instance. What we are trying to do in planning enforcement is resolve issues so that it benefits all rather than use it necessarily as a legal process, so that the long-lasting outcome is the right outcome.}

\textit{We have an element of where we assess enforcement breaches in a bit of a methodical way. Firstly, is it breached at all? We get an awful lot of complaints that are not breaches, but we do need to investigate whether they are a breach of planning in the first place. We then look to see whether that breach is harmful; how severe it is and we will do a bit of an assessment against whether we might have granted planning permission for it in the first place. We look at it in terms of expediency, which is another way of saying, ‘Is it something that is in the public interest to pursue or is it something that is not particularly harmful?’}\textsuperscript{124}

She went on to explain:

\textit{We involve the Attorney General when we get to the point that we think we perhaps want to take more formal action and then the Attorney General’s look at it. They also have to look at it in terms of whether something is in the public interest.}

\textit{We have got a system of prioritisation of looking at enforcement cases. That really relates to the level of harm we think that that breach is or is not necessarily causing.}

\textit{That is the manner really in which we approach our enforcement.}\textsuperscript{125}

159. The officers provided some statistics in relation to the actions and resolutions in relation to the numbers of reported cases from 2011-2015.\textsuperscript{126}

\textsuperscript{123} Q93
\textsuperscript{124} Q258
\textsuperscript{125} Q259
Recommendation 17

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review give consideration to including consideration of enforcement matters in their review.

VI. CRONYISM

160. In their written evidence the petitioners commented that although it is difficult to establish as fact ‘there is a perception among the general public that cronyism exists within planning.’

161. This is a subjective matter which we did not examine as part of our investigation. Whilst we acknowledge that such concerns exist we have focused on a review of process with the aim of ensuring that transparency and accountability exist throughout.

VII. CONCLUSIONS

162. We believe that the petitioners have raised a number of valid points about the current planning application processes and we have therefore made a number of specific procedural recommendations for the Department alongside some broader recommendations for consideration by the officers conducting the planning review led by the Council of Ministers’ Environment and Infrastructure Committee.

163. We have drawn this Committee’s work to a conclusion at this time in order for our Report to be considered by officers conducting the planning review led by the Council of Ministers’ Environment and Infrastructure Committee who have indicated they will make an initial report to Tynwald in July 2016.

164. We are aware that the points raised in this Report and the planning review led by the Council of Ministers’ Environment and Infrastructure Committee will...

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126 Appendix 4
127 Appendix 2 p151-152
require further consideration and therefore make a final recommendation regarding future scrutiny in the area of planning and building control.

Recommendation 18

That the results of the planning review led by the Council of Ministers’ Environment and Infrastructure Committee, the recommendations from this report and the outcome of the cases considered but not reported on here, are referred to the Environment and Infrastructure Policy Review Committee of Tynwald for future scrutiny.

VIII. CONSOLIDATED LIST OF CONCLUSIONS AND RECOMMENDATIONS

Recommendation 1

That the Council of Ministers’ Environment and Infrastructure Committee planning review revisits the commitment to Tynwald and sets out in its report to Tynwald in July 2016 how it intends to ensure this is met in a subsequent stage of its review.

Recommendation 2

That the ‘Pre application Guidance for Customers’ should be updated to make it clear that the planning officer providing advice at this stage will not be the planning officer who determines the application, in the event that the application does not go to the Planning Committee, and to explain why this is the case.

Recommendation 3

That all of the criteria setting out who will determine planning applications should be added to the planning advice section of the Government website in a format which will be easy for the public to find and understand.

We conclude that whether a residential property already exists on a site the classification of the land is material, in that it changes the policies which may be applied, which will have an effect on what an existing property may be replaced with.
Recommendation 4

That guidance for applicants should include a clear explanation of the significance of land classification and which policies may be considered in relation to the various types.

Recommendation 5

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review should look closely at the process followed during the preparation of future area plans to ensure that the significance of land classification and re-classification is highlighted.

We conclude that what the Department should have regard to, as set out in section 10(4) of the 1999 Act, is not straightforward.

Recommendation 6

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review should look closely at what the Department must have regard to under Section 10 (4) of the 1999 Act, in addition to the development plan, and consider bringing it all together into one series of papers, probably Planning Policy Statements, to improve clarity, with periodic review dates of such papers to confirm continued suitability and relevance.

Recommendation 7

That the Planning Policy Unit in the Cabinet Office give consideration to introducing a mechanism to allow for the adaptation or re-interpretation of policies, such as Housing Policy 14, which may include consultation with a body established under Section 40 of the 1999 Act, where experience shows that professional interpretation is frequently contradictory, without waiting for a full review of Strategic or Development Plans.

Recommendation 8

That the Department reword Section 8 (7) (d) of the Standing Orders to replace the words ‘only if invited to do so and’ with ‘but’. It will read ‘the applicant and/or agent or any third party may address the Committee but only to provide factual clarification of any matter relevant to the planning application which is the subject of the site visit;’
We conclude that Ministers should take extreme care when exercising powers to ensure that they are clear on the extent of those powers.

Recommendation 9

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review should consider how the planning process at appeal can be streamlined, taking note of the suggestions in this report.

Recommendation 10

That the Department amend legislation to remove the third party interested person’s right of appeal after determination if they have not made their objections known during the application process, prior to determination.

Recommendation 11

Further that the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review consider removing the third party interested person status altogether.

Recommendation 12

That as soon as the Department is made aware that action of any sort may be taken against it with respect to a planning application, the applicants and any interested parties should be notified.

Recommendation 13

That the Department introduce a target timescale for redetermination decisions to be made, which should be no more than 8 weeks after the date of a judgment or consent order.

Recommendation 14

That Tynwald calls on the Council of Ministers to undertake whatever work is necessary to ensure that a Tynwald Commissioner for Administration is appointed without delay.

Recommendation 15

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review give consideration to changing the way in which
departmental planning applications are decided to ensure parity of transparency with respect to other planning decisions.

**Recommendation 16**

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review give consideration to defining criteria for ‘national importance’ as described in the 1999 Act.

**Recommendation 17**

That the Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review give consideration to including consideration of enforcement matters in their review.

**Recommendation 18**

That the results of the planning review led by the Council of Ministers’ Environment and Infrastructure Committee, the recommendations from this report and the outcome of the cases considered but not reported on here, are referred to the Environment and Infrastructure Policy Review Committee of Tynwald for future scrutiny.

C C Thomas (Chairman)

S C Rodan

J Joughin

May 2016
IX. ANNEX - TIMELINE OF PLANNING APPLICATIONS, APPEALS AND PETITIONS OF DOLEANCE RE CLYBANE, MOUNT GAWNE ROAD

Pre Planning Advice

2011 The petitioners sought pre planning advice before purchasing Clybane on Mount Gawne Road.

2011 Following favourable advice (although understanding very clearly that this was not binding) the petitioners purchased the property.

First Planning Application

12 Jan 2012 First Planning Application (12/00118/B) submitted – This was supported by the local parish commissioners, there were no objections and there was one interested party; the owners of SeaScape, a property opposite Clybane on the other side of Mount Gawne Road.

23 Apr 2012 The planning officer did not support the application and it was refused by the Planning Committee.

14 Aug 2012 The petitioners lodged an appeal which was refused by the Minister following the recommendation of the planning appeal’s inspector.

Second Planning Application

20 Dec 2012 Second Planning Application (12/01683/B) submitted - This was supported by the local parish commissioners, there were no objections and there was one interested party; the owners of SeaScape, a property opposite Clybane on the other side of Mount Gawne Road.

14 Mar 2013 The planning officer supported the application but it was refused by the Planning Committee.

20 Jun 2013 The petitioners lodged an appeal which was refused by the Minister following the recommendation of the planning appeal’s inspector.
**Third Planning Application**

23 Dec 2013  Third Planning Application (13/91532/B) submitted - This was supported by the local parish commissioners, there were no objections and there was one interested party; the owners of SeaScape, a property opposite Clybane on the other side of Mount Gawne Road.

24 Feb 2014  The planning officer supported the application and it was unanimously approved by the Planning Committee.

12 Mar 2014  Within the 21 day period allowed for objections the owners of SeaScape, the property opposite Clybane on the other side of Mount Gawne Road, lodged an objection and the application went to appeal.

The planning decision was reversed at appeal which had the effect that the planning application was then refused.

07 Jul 2014  Presented Tynwald Petition

14 Jul 2014  The petitioners lodged an appeal against the appeal decision. The first appeal was dismissed by the Minister (Mr Robertshaw). The effect of this was to restore the decision originally made about the application, which was that it was approved.

29 Jul 2014  A letter was issued advising that due to a process failure by the Department the reasons for the Minister’s decision had been omitted from the letter of 14 Jul 2014 and these were included.

**First Petition of Doleance**

20 Oct 2014  The owners of SeaScape, the property opposite Clybane on the other side of Mount Gawne Road, lodged a Petition of Doleance CHP14/0085 against the Department (having sent a pre-action letter to the Department on 04 Sep 2014)

05 Nov 2014  The Petition of Doleance was resolved by consent order and both parties (the owners of Seascape and the Department) agreed that the Minister’s decision about the petitioners appeal should be
remitted back to Department for determination. Costs were awarded against the Department.

29 Mar 2015  Mr Robertshaw reaffirmed his position approving the petitioners appeal and their planning application was approved (Mr Robertshaw had resigned as Minister 16 Feb 2015)

**Second Petition of Doleance**

18 Jun 2015  The owners of SeaScape, the property opposite Clybane on the other side of Mount Gawne Road, lodged a second Petition of Doleance CHP15/0077 against the Department (having sent a pre-action letter to the Department on 02 Jun 2015 - which was lost)

15 Jul 2015  The Petition of Doleance was resolved by consent order and both parties (the owners of Seascape and the Department) agreed that Mr Robertshaw’s decision about the petitioners appeal should be remitted back to Department for determination. Costs were awarded against the Department.

17 Dec 2015  The new Minister uphold the appeal of the owners of SeaScape against the planning permission and the decision was therefore reversed and application was refused

10 Jul 2015  The petitioners wrote separately to the Public Accounts Committee asking them to look at public expenditure issues relating to Petitions of Doleance cases.
ORAL EVIDENCE
25th February 2016
Evidence of Philip Donald Jenkins
and Mrs Kirrie Anne Jenkins
Members Present:

Chairman: Mr C C Thomas MHK  
Hon S C Rodan SHK  
Mr J Joughin MHK

Clerk:  
Mrs J Corkish

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Procedural

The Chairman (Mr Thomas): Good morning, Mr and Mrs Jenkins, and welcome to this public meeting of the Select Committee of Tynwald on Planning and Building Control Petition for Redress.

My name is Chris Thomas; I am chairing this Committee. With me are Steve Rodan, the Speaker of the House of Keys; Mr Jon Joughin MHK; and our Clerk, Mrs Jo Corkish.

Can you please ensure that mobiles are switched off or on silent so we do not have any interruptions. For the purposes of Hansard I will be ensuring that we do not have two people speaking at once.

As you know, the Committee was established by Tynwald on 17th November 2015 with a remit to consider and report to Tynwald on the Petition for Redress of Philip Donald and Kirrie Ann Jenkins – your Petition – which was presented at St John’s on 7th July 2014 in relation to the ambiguity and weaknesses in the practices and laws relating to planning, building control and connected matters.

EVIDENCE OF
Mr P D Jenkins and Mrs K A Jenkins

Q1. The Chairman: Mr and Mrs Jenkins, I would like to welcome you here today and start by thanking you for coming along this morning and giving us the opportunity to ask you questions about the concerns you have with the processes that you have been involved with during your planning applications.

Thank you also for your very clear written submission, which we have read carefully and which will be available to the public on the Committee’s website later. We have some questions for you about that, but we would like to start by giving you the opportunity to mention anything else that you did not include in that written submission and also to advise of any further developments since you wrote to us in December. Later on we will be going through questions relating to your submission chronologically, more or less.

Mrs Jenkins: We would like to thank the Members for inviting us to give evidence to this Tynwald Select Committee. We fully understand that the Committee is not here to adjudicate upon a particular case. We will, however, use our own experiences to illustrate what we believe
are ambiguities and weaknesses in the practices and the laws relating to planning and building control matters. We believe these points are a matter of public interest. At the end of the process we hope to have contributed to producing a more effective system that is swift, fair and just to all.

Further to our letter of 8th December 2015, in which we were invited to give a brief overview of the history and background to our Petition, we are happy to answer any questions the Committee may have and have collated submissions in support of our statements, which we would like to leave with the Members to review. (The Chairman: Okay.) If you would like me to run through them, or …

Q2. The Speaker: Through you, Chair, if I could just ask Mrs Jenkins: in your letter of December you said:

It is currently with Minister Ronan for a decision.

– that is the referral back, a decision –

We have been given no timeframe. Work on site has stopped.

Are you able to update us with any information? Have you been given any timeframe for a decision?

Mrs Jenkins: Well, actually, on 17th December, some 22 months after the original Planning Committee’s decision to approve the application, Mr Ronan upheld our neighbour’s appeal and our planning was refused. We have no recourse to recover our costs to date and work on the site has stopped. Minister Ronan has recommended that we submit a fresh planning application and take pre-planning advice from his officers.

Naturally, we are very disappointed that Minister Ronan saw fit to overturn a decision that a senior planning officer, the Planning Committee together with its current Chairman Mr Robertshaw, and the local commissioners had unanimously approved. The ministerial planning officer had also, on two previous occasions, recommended approval. The general public is not privy to this part of the process, so we are not able to compare his report to Mr Robertshaw with his report to Mr Ronan. However, it is to be hoped that Minister Ronan approached his decision making with an open mind and without consideration of the two previous doleance cases.

Q3. The Speaker: Thank you.

Just through you, Chairman, then: Minister Ronan issued a refusal which overturned the earlier approval by Mr Robertshaw, (Mrs Jenkins: Correct.) and he set out reasons clearly for refusal, did he?

Mrs Jenkins: It is not actually part of the process to … If you agree with an inspector, you do not have to set out the reasons. He did, however, point us to a particular paragraph of the inspector’s report and did refer us back to his planning officers.

Q4. The Speaker: So basically he concurred with the inspector’s original recommendation?

Mrs Jenkins: Correct.

The Speaker: Right, thank you.

Q5. The Chairman: Thank you.

We will be pleased to accept those additional documents that you offered to us.
Thank you for that update and for your expression of understanding that in fact ... Please accept our appreciation beyond just recognising your understanding that this is about the public interest; it is not directly about your case, but your case is helping us, as politicians and as a parliament, to understand the planning process better and to make recommendations back to Tynwald following our investigation.

So the first question, if you do not mind taking the chronological approach, is to take you back to your first application, about which you state that pre-planning advice in 2011 was favourable so you proceeded with the purchase. Please can you tell us a bit more about that part of the process – what information was discussed and its importance and relevance in your subsequent experience?

Mrs Jenkins: There is a planning charter, which we obviously read. We are not unfamiliar with planning and we know of the problems that can occur, so we made efforts to discuss proposals to buy a particular property with the planning department before we even signed for the property.

If I could just pass over to Philip.

The Chairman: Okay, thank you.
Mr Jenkins.

Mr Jenkins: Yes, we contacted the planning department and asked at that point ... We made it quite clear we had not purchased this property as yet but we would like to know, if we purchased, would we be able to build a slightly larger family house, which was our intention.

We met on site. I met with Mr Chris Balmer from the planning department and basically he said that it would be quite favourable, that we could get something built there of a larger design and slightly ... because it was all about going back into two areas of land and he thought that it was a ‘blank canvas’ – his exact words – with a multitude of different designs in the area of buildings. It was favourable, so we went ahead with the purchase on that.

Q6. The Chairman: So there was an existing building there and that building was going to be replaced, and also with a larger construct to a different design. This was all considered at that early stage?

Mr Jenkins: Yes, and the building was of poor form. It was considered poor form.

The Chairman: Okay, thank you.

Q7. The Speaker: Thank you, Chairman.
Was it your understanding of the planning officer’s opinion that he could give no guarantees that this was what was likely to be something that would be viewed favourably by the Planning Committee, but it would ultimately be for the Planning Committee to make the decision and potentially they might disagree with the planning officer? Was that your understanding?

Mrs Jenkins: It was. However, this is where I think planning falls down, and this is part of the process that needs reviewing, because when you go to speak to a planning officer, by the very nature you are expecting them to be planning, and to find later on in the process that different officers are giving different opinions affects people’s long-term aspirations and everything. We know that there are no cast-iron guarantees, but the whole point of going for planning advice is to get guidance. I think, without doubt, had they turned round to us and said, ‘It is out of the question,’ we would never have gone ahead with the purchase. That is the point. We know that they were not going to guarantee it, but had they said it was out of the question we would not have gone ahead.
Q8. The Speaker: The planning guidance that was favourable covered planning policy and existing policies, and your application complied with existing planning policies. Ultimately, that is fairly routine and standard in terms of pre-decision advice but it is for the committee to decide, taking into account objections and other considerations, whether it should be approved. So, in other words, there can never be any guarantee, can there, that a planning officer’s advice and guidance will actually translate into a decision in favour of any applicant?

Mrs Jenkins: No, and I think that is where the weakness in the system is. I believe there is a weakness in the system there.

Q9. The Speaker: You think that is a deficiency in the system?

Mrs Jenkins: I do.

The Chairman: Mr Jenkins.

Mr Jenkins: But also you have got the delegated officer powers. At this point, when I met with the adviser from Planning on site, I did not know that it would not be him, on delegated powers, giving me the advice, working on the fact that the neighbouring property, which was much grander in style — a similar sort of small house and a much grander building was put up and that was done on delegated powers by a single officer, so I had no reason to believe that we would be going in front of the committee for any —

Q10. The Speaker: But do you understand that you could not know at that point because you would not know if there would be any objections? If the local authority, (Mr Jenkins: No, exactly.) for example, had objected, it would automatically go to the committee.

Mr Jenkins: Yes, but nobody did object.

Q11. The Speaker: But that was not your understanding at the time?

Mr Jenkins: Yes.

The Speaker: Yes, I see.

Mr Jenkins: Yes, sorry, on ... [Inaudible] yes.

The Speaker: Okay.

Q12. The Chairman: Later on in your written submission you mention that you have some points regarding strategic planning policy issues and area plans, which we have begun to get to. Specifically, you talk about frameworks, timescales, white land, landscape character maps, settlements, special housing policies.

Could you tell us, please, your thoughts on these topics and why you included those in your statement, before we go on through your experience?

Mrs Jenkins: Yes, I am happy to leave this information, because there is obviously quite a lot to take in, but maybe picking up on one point in particular, white land is something that I had not even come across until we got into this process. What we found was that the maps attaching to the Southern Area Plan do not cover the entire area of the south. There are areas that fall between the maps — such as map 7, which covers Port Erin and Port St Mary, and map 5, which covers Colby — leaving areas which are commonly referred to as white land.
There are a number of properties beside our own which fall into this particular area of white land, at the junction of Shore Road and Mount Gawne Road, which have recently been subject to planning applications with varying results. For example, the former Motorlands garage application: the planning officer report states, and I quote:

On the Area Plan for the South the site is within an area of white land not zoned for any particular kind of development. This was approved on 9th September 2015.

There was another example two properties down, where the planning officer’s report states:

The application site is not zoned for development and the creation of an additional dwelling is therefore contrary to both adopted general planning policy within the Isle of Man Strategic Plan and the Area Plan for the South and therefore it was refused on 6th October 2015.

So we raised concerns about the area of white land with the Director of Planning and Building Control, as we felt that property owners in such areas were disadvantaged by a lack of clear and consistent approach. We also raised concerns about the landscape character maps because these show areas shaded as urban but are classed as countryside and are therefore misleading. Mr Gallagher replied to us that:

The Area Plan for the South was approved by Tynwald in February 2013 after following due statutory process for preparation. The Plan comprises a series of proposals which are either site specific or more in the nature of a policy statement for a specific area. There is no statutory requirement to zone every piece of land for a specific purpose and any new development proposals in this locality are now considered within the context of both the Strategic Plan policies and the Area Plan for the South. In this respect I disagree with your assertion that property landowners are disadvantaged.

Not all properties, even those of long standing, are classed as residential, and the significance of this classification does not become clear until a planning application is submitted. To give an example, our property was not classed as residential. Our neighbour’s property on the opposite side of the road was classed as residential. According to the planning officer’s report in respect of his development:

The site lies within an area designated on the Isle of Man Planning Scheme (Development Plan) Order 1982 as residential.

It is important to note that that application was dealt with under delegated powers by a single planning officer and we can only assume that the residential status therefore has a material effect.

With the adoption of the Southern Area Plan a number of properties in the Shore Road area were effectively declassified as residential, and when properties are reclassified the proposals are not advertised in the same way as a planning application. Property owners and interested parties would have to study the draft area plans in detail to notice the subtle change.

I think what I am trying to say there is that these anomalies within the Southern Area Plan do have an effect on a property owner.

Q13. The Chairman: You have made that point very clearly. In fact, it is so clear, your suggestion, that I do not think we need to follow it up so much. I think the learning point is that your suggestion is that it has had an effect on houses in the south that have fallen into these areas, so that should be taken into account in future area plans, but also we have got to consider whether retrospectively it has had an impact in the south, particularly in the cases like your own. Is there anything else my colleagues would like to follow up on that point? Okay.

The first application you made was in 2012, and my understanding is that that was refused and a subsequent appeal was unsuccessful in August 2012. Can you tell us how the reasons for the refusal compared to the pre-planning advice, for the record?
Mrs Jenkins: I think the thread running through all the refusals has been Housing Policy 14 and Environmental Policies 1 and 2. Those different policies are interpreted differently by different planning officers to different degrees, so the inspector found it failed those policies.

Q14. The Chairman: Thank you very much. That is a very short summary. Have you had a past career in planning? Or perhaps you have got a future career in planning, if you know the Strategic Plan that well! (Laughter)

Mrs Jenkins: No, I don’t think so!

The Chairman: That first application, made in January ... Sorry, turning to your second application ... No, that’s it, over.

Q15. The Speaker: Can I just follow up on a previous point. The first application, you went in to see the planning officer and you got pre-planning advice – you have already told us that. You talked it through. In the event, the planning officer did not support the application, notwithstanding your discussion. Why was that? Did it fail to follow the advice of the planning officer? When it came to you making the application, had you missed out some important aspect such that the planning officer was unable to support it? What was your understanding? It must have come as a disappointment that, despite the discussion, the planning officer did not recommend approval when it went to the committee.

Mrs Jenkins: Yes, it was a disappointment and a surprise. I think some of these things are subjective, and I think it is the massing and possibly the size of the encroachment.

Mr Jenkins: We thought we took on board everything, the advice that we were given. This is part of the reason why I would like to see this whole system change so that you do not come into the same issues again. It would be a much easier thing if you could sit down and say, ‘Well, okay, this is exactly what we want to do,’ on pre-planning.

Mrs Jenkins: I think when the planning officer ... the pre-advice, they will often say, especially with Housing Policy 14, that you need to put something of traditional design, but that interpretation of what is traditional in the Isle of Man has changed significantly. At that point we were given a photograph of a traditional tholtan, which you would often see in the countryside – so, front door, two up, two down. That is not what a modern family home looks like today. I would say that probably the larger housing estates are more what traditional design is on the Isle of Man now. So I think the interpretation of ‘traditional’ ...

Q16. The Speaker: Were you advised then to follow the guidance notes for houses in the countryside, which give illustrations and criteria to be followed for houses in the countryside? You refer to a tholtan ... I am not quite familiar with where the site is, but it is a rural site as opposed –

Mrs Jenkins: No.

Mr Jenkins: No.

Q17. The Speaker: It is not a rural site?

Mrs Jenkins: No. It is at the end of a strip of development with houses of varying sizes from small to large multi-million-pound houses.
Q18. The Speaker: So it was the planning officer’s advice to you that you design according to the Department’s guidance for housing in the countryside?

Mr Jenkins: Well, originally, he said to me, ‘It’s a blank canvas.’ That was where we started from: ‘It’s a blank canvas. You can pretty much design where you want to go.’ So we originally came up with a design that was quite modern. It was cuboid, so it was a very square, glass, very modern, very energy-efficient building, which would have looked quite fantastic in that area and it would have been okay with other buildings with all the glass that they have used, the glass atriums that they have used, in the area. You also have, I think, one small tholtan further down the road, but that is the only tholtan in that area. So it would, in a way, have been quite out of place to have put a tholtan there.

So it was quite a surprise when he turned round and showed us a picture and said, ‘This is what we’d like you to build.’ That is not a traditional house anymore, but –

Q19. The Speaker: And that was before you submitted your designs – or was it in discussion afterwards?

Mr Jenkins: That was after the –

Mrs Jenkins: I think it evolved during discussion with the agent and –

Q20. The Speaker: So after that had all happened, you made a second application in December 2012, which was supported by the planning officer. You consciously sat down with the planning officer to ensure that the reasons for refusal the first time would not be repeated, so you changed the design, having taken into account the (Mr Jenkins: Yes.) experience of the first application, (Mrs Jenkins: Correct.) and you followed the advice of the planning officer, and the planning officer clearly supported the application this time.

So you went forward with some confidence, I imagine, to what the Planning Committee’s decision would be, but it was refused. What reason did the Planning Committee give for disagreeing with the planning officer?

Mrs Jenkins: The Planning Committee was split, actually. They did not agree amongst themselves and the Chair of the Planning Committee effectively had the casting vote. His words were that if it was larger he would have seen his way to support it.

Q21. The Speaker: If it was larger?

Mr Jenkins: Yes, that was his … When he had the deciding vote, he just said, ‘If it was larger, I may have been able to see myself to support this.’

Q22. The Speaker: If it was larger?

Mr Jenkins: But then he decided against.

Mrs Jenkins: I think he was referring to the size of the plot –

The Speaker: Oh, I see, yes.

Mrs Jenkins: – as opposed to the size of the house. The size of the house on the plot.

Q23. The Speaker: So it was over-intensive use of the site, essentially?
Mrs Jenkins: No.

Mr Jenkins: No, it wasn’t. No, there was plenty of ... The plot ratio was correct.

Mrs Jenkins: I don’t know – perhaps you could ask him.

Q24. The Speaker: Okay, so that was the reason. And you are clear, are you, why it went to the Planning Committee in the first place and was not determined by the planning officer? Were you clear that it would go to the committee and the decision would not be made by the planning officer?

Mrs Jenkins: Certainly the second time. Once you have had a refusal, it is assumed it will automatically go to the committee.

Q25. The Speaker: It would automatically go to the committee. That’s fine.
In your written submission you say that the planning officer had to argue against a written report at the subsequent appeal. Can you just tell us a bit about that?

Mrs Jenkins: Well, the planning officer wrote his report in favour, but because the committee found against it, when we appealed ... You then go to the appeal hearing and the Planning Committee’s officer then argues policy, but your original planning officer who dealt with your case and who wrote the report in favour does not even attend, so you are left without being able to argue against policy because you have not got the support of your original planning officer.

Q26. The Speaker: It was a different planning officer at appeal who argued the committee’s case?

Mrs Jenkins: Yes.

Q27. The Speaker: You think it shouldn’t have been? You think it should have been the same officer?

Mrs Jenkins: I think the same officer is compromised because they are then having to –

The Speaker: Argue against themselves.

Mrs Jenkins: – argue against themselves, exactly.

Q28. The Speaker: Yes. So it is a professional duty of the planning officer at appeal to make the case on behalf of the Planning Committee. That is what one would expect. That would be better done, would it not, if it was a different planning officer, for the reasons you have just said?

Mrs Jenkins: Yes.

Q29. The Speaker: So why did you say in the letter the planning officer had to argue against their written report?

Mrs Jenkins: Because the planning officer who supported our application interpreted the policies one way; when we got to the appeal, the committee’s planning officer argued it the opposite way.
Q30. The Speaker: Yes, which he would be obliged to do because it was the Planning Committee’s case that he was putting forward. *(Mrs Jenkins: Correct.)*

Do you understand that the planning inspector would nonetheless have access to all the papers and be able to see the first planning officer’s original arguments in favour?

*Mrs Jenkins:* Yes.

Q31. The Speaker: Yes, okay.

Do you have any other thoughts about the Planning Committee and its procedures that you have not mentioned yet? You make a number of very clear points in your letter and we have discussed some of them now. Is there anything else you want to emphasise about the procedures?

*Mrs Jenkins:* About the actual procedures?

*Mr Jenkins:* When we had the site visit – that was that site visit on the second planning application – the first thing that was noted was that the committee was given the incorrect plan. It was a hand-drawn plan of the area that was involved and it was actually about 80% larger than what we were asking for, so when the committee turned up on site for a site visit they were immediately thinking it was a much larger project than it actually was, which was one of the things that I was quite shocked about.

And then when we had the meeting and I unlocked the house so they could see the inside of the house and the issues that were there, the Planning Committee manager brought the wrong files to the site visit, so I could not prove that what I was saying was correct; and as you are not allowed to actually talk to the committee on a site visit, other than to answer the questions you are asked, you cannot actually put your hand up and say, ‘Sorry, you have got the wrong plans there,’ because you are not allowed to talk.

Q32. The Speaker: So at what point was it known that they were looking at the wrong plans? Was that long afterwards?

*Mrs Jenkins:* Well, if I can put Philip’s comments another way, when they turned up on site …

And this goes back to the extension of the curtilage: because we own the fields behind the property, this is one of the fundamental issues, how far the curtilage is to go back. From our first application we had significantly reduced the curtilage on the second application, but the Planning Committee had the curtilage of the original, so the extension to the plot was approximately 80% larger than what our second planning application was actually for. We subsequently sent a complaint to the Department about this on 25th March 2013, as we felt that this had a material effect on the outcome of that decision at that Planning Committee.

Q33. The Chairman: That is bringing us on to another topic we wanted to ask about. Has the complaint process been helpful to you in your process? How does the complaints process interact with the actual application for a planning decision?

*Mrs Jenkins:* Well, if I can go back as far as 1988, Mr Peter Karran tabled a motion to Tynwald that an ombudsman be introduced. This was also one of the recommendations of the Select Committee into the Redress of Grievance of Donald Whittaker. I understand that a Tynwald Commissioner for Administration Bill refers to the appointment of a Commissioner for Administration, but as highlighted in Tynwald late last year, this position has not been filled. So, in effect, there is not a mechanism whereby there is an ombudsman to deal with these sort of issues and we would support that, particularly when we come on to discussing doleance matters.
Q34. The Chairman: Okay, thank you very much – because you do not mention the complaint, I do not believe, in connection with the second petition, but there was a complaint at that stage as well.

Mrs Jenkins: Yes, I will leave all this documentation with you.

Q35. The Chairman: Okay, because I am mindful that a planning applicant who is looking for a positive decision on a planning application might be hesitant, or reluctant even, to make a complaint at that stage of the process. That was in your mind, was it?

Mr Jenkins: Yes.

Q36. The Speaker: Can I just come back to the refusal at appeal of the second application. The inspector recommended refusal and the Minister upheld the inspector’s recommendation. The reasons for refusal – did you accept them; or, following from what you have said about being given inaccurate plans, was there a failure in the process itself to take account of relevant facts; or were the reasons for refusal separate to that?

Mrs Jenkins: Separate to that, yes. That is a side issue. We accept that the appeals process was robust and looked at everything.

The Speaker: Yes, okay, thank you.

The Chairman: Thank you.

Q37. Mr Joughin: And then they would not accept the proper plans before they would give their decision?

Mrs Jenkins: No, I think, from what we have gathered from the Planning Committee process, although applicants give in detailed plans and site plans, the summary that is given to the Planning Committee members are site plans drawn up by the Department, and if there is an error in that there is very little chance for an applicant to point that out to the Planning Committee.

Mr Joughin: And that would be a failing of ...

The Speaker: Noted, that.

Q38. Mr Joughin: Moving on to your third application, made in December 2015, it was supported by the planning officer and approved by the Planning Committee but the one interested party, who had not to your knowledge previously indicated any issues, lodged objections within the allowed 21-day period. Can you explain what happened, particularly at the appeal hearing, after which the application was recommended for refusal?

Mrs Jenkins: Okay. At both the first and the second applications a neighbour had lodged a letter to be noted as an interested party, and that is where it ended. There was no indication either way whether they supported or objected.

The crux of the planning issues is the encroachment. So the first application was for a larger encroachment, the second for a reduced and the third for a negligible encroachment.
Mr Jenkins: Each time, we were trying to pull the building towards the original footprint. We were trying to take it away from the neighbours’ house to make it more balanced and pleasurable to look at. It just looks nicer.

Q39. The Chairman: And out of the agricultural land behind?

Mrs Jenkins: Yes.

Mr Jenkins: Yes.

Mrs Jenkins: So it came as a bit of a surprise to us that when the neighbour objected there were 34 pages of objections; and the main issues involved items that had been covered by the first, second and the third applications, so there had been an opportunity for him to raise his objections on any of those applications.

Mr Jenkins: Also, before the first application, on the advice of our agent, our architect, I took the drawings – we both took the drawings – and met the neighbours and shared the drawings, and we had a conversation and a coffee with them in their house, and at no point did they actually share with us that they would not like it. We were doing that so that we could find out, and if they did not like it we could change the design – because that is how we work. That is how we felt it would be fair, because it is there forever once it is built and we were just trying to keep all the neighbours happy. But no one showed any inkling that they did not like it.

Mrs Jenkins: I think – and this is a failing of the current planning system – that interested parties who wish to object have the opportunity to know what the planning officer’s recommendation is going to be to the Planning Committee. There is an agenda that is published in advance and they have got the opportunity to state their reasons before the decision is made. Those given interested party status who do not lodge objections before the determination afford the applicant no opportunity to have discourse, to amend designs if necessary, and nor does it provide the planning officer or the Planning Committee an opportunity to consider the points. I think this may be used for malicious intent at very little cost to the objector.

Q40. The Chairman: So have you ever thought to remove the third-party right at that stage? Is that what you are suggesting?

Mrs Jenkins: No, that is not what I am suggesting. What I am suggesting is that you should state your objections before it is considered by the Planning Committee.

Mr Jenkins: If you have … In this instance, the neighbour received interested party status, thereby he knew all of the issues, so he was aware of everything.

Mrs Jenkins: By doing that, he has acknowledged that he had seen the plans and therefore it can only be malicious to not put those objections in beforehand.

Q41. The Speaker: So what – there should be no third-party right of appeal, in your view, if that third party has not previously made representations to the Planning Committee?

Mr Jenkins: Yes.

Mrs Jenkins: That they are likely to object.

Q42. The Chairman: Just so that there is parity between both parties.
Q43. Mr Joughin: There is a failing in the system ... [inaudible]

Mrs Jenkins: I think so, yes.

Q44. The Speaker: Are you aware that there is no third-party right of appeal in other jurisdictions in the United Kingdom?

Mrs Jenkins: No, but I would like to hope that the Isle of Man can be a leader in this and not follow what is going on there.

Q45. The Speaker: There is a right of appeal but not by third parties, just the applicant.

Mrs Jenkins: I think it is good in a democracy to allow everybody to have an equal point of view, and I am sure that if we were sat on the other side of the fence we would be equally outraged if we had not had an opportunity. But the point is that to lodge an interest and then wait for the decision and then to lodge 34 pages of objections is an abuse of that system, in our view.

Mr Jenkins: And to wait three months to do it.

Q46. The Speaker: Yes. Through you, Chairman, if the third party had not gone to appeal, the decision would have stood. The fact that it did go to appeal, and without having seen the reasons for refusal, can you just tell us essentially what the reasons for refusal were? Was it flaws in the decision, the thought process of the Planning Committee and the planning officer, or was it new evidence brought up by the third party that influenced the inspector?

Mrs Jenkins: No, it came down to exactly the same issues: Environmental Policies 1 and 2 and Housing Policy 14. If the Committee looks in detail at those policies you will see that they are not black and white. It is open to interpretation, and that is the problem with the system.

The Chairman: Thank you.

The Speaker: Thank you.

Q47. Mr Joughin: Could you explain to me what happened next when the recommendation was passed to the Minister to determine?

Mrs Jenkins: Yes. It went to appeal. The inspector, to our surprise, disagreed with the Planning Committee and the planning officer and recommended it for refusal. However, at the time it was under the DOI and Mr Gawne delegated his responsibility for the decision to Mr Robertshaw. Mr Robertshaw went against the recommendation of the inspector and upheld the Planning Committee’s decision and effectively passed the property.

However, the letter that was issued passing the property was not issued in the correct way – the reasons were not given – and therefore that left the decision open to a doleance.

Q48. Mr Joughin: Right, okay.

I think we have already covered this, actually: do you have any other thoughts about the proceedings relating to objectors and interested parties and appeals?

Mrs Jenkins: Interested-party status we have some views on, not particularly relating to this because there is no doubt that our neighbour had an interest in it, but I have, during my investigations, come across other cases where interested-party status had been given and it
differs with the guidance for interested-party status. So I would like the Committee to review that side of it.

**Q49. The Chairman:** In the case with Mr Robertshaw being the delegated member who received the independent planning inspector’s report, the way that you have described it two issues jump out to me straightaway. The first one is the political Member deciding against the recommendation of the independent planning inspector, and the second one is the procedures to do with that process and the notifications and the decisions. Am I right to see that they are two very important issues – the first question; and the second question is have I missed any issues, are there any other issues?

**Mrs Jenkins:** No, those are the crucial …

**The Chairman:** Those are the crucial ones.

**Q50. The Speaker:** Would you accept that the ability of a politician actually to go against the independent inspector’s recommendation, which in this particular case was to your advantage – another way round you would not have been so happy with the political decision … Does that not illustrate the value of having a political final step in this when the matters are so subjective? As you have described, the planning officer and the Planning Committee formed one viewpoint, the planning inspector formed a different one on the balance – is it not right that there should be a political person to adjudicate as the final step?

**Mrs Jenkins:** Well, we would hope that the process that we are going through now would take views and come to conclusions, and our personal view is that it should not come down to one individual.

We are referring to the Minister taking the decision, but in actual fact the Minister has a ministerial planning adviser. We will come on to this in a minute because we have obviously been through two doleance cases. In the first recommendation we can only assume that the ministerial planning adviser wrote a report for the Minister and recommended that he go against the inspector. When it then went to doleance, again Mr Robertshaw approved it, so that advice must have been the same, but the last doleance case, we can only assume that that report must have reversed the previous two. So you have got the same ministerial planning adviser advising two different Ministers – well, three, but it so happens that the first two are the same – and the result at the end of it was the complete opposite, so the system is not working.

**Q51. The Chairman:** Can I come back to this point, referring you back to something you said earlier … I think earlier on you suggested … I think it was at the pre-application stage … You talked about it being regrettable that certain things were in private and you did not have access to them, and that is a point that has come up again now. Is that something that you are suggesting, that as much as possible the decision process should be open at least to the applicants and the objectors?

**Mrs Jenkins:** Absolutely. We have no idea what that report said from the ministerial planning adviser.

**Q52. The Chairman:** Okay, and then the second point, and it has come up in a few things that you have said … Government policy now, I think, is to concentrate even more on pre-application advice and working for applicants for larger properties and for nationally important projects and nationally important planning exercises. Is what you are saying that we need to think about whether that is fair on smaller people as well?

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**15 PBC**

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Mrs Jenkins: Yes, I would like to highlight a couple of instances, if I might, on this so-called special housing policy.

There is a view, I think, amongst the general public that if a house is large enough and expensive enough you can get it through planning. Personally, I do not agree with that. I think the perception is partly due to this delegated officer route and also ... If I could just cover a couple of cases, there is an application called Spring Waters, where the DED produced a letter in support of that application and it was passed on economic grounds. But similarly there is an application for Corley Farm, where the appellants did not put forward any personal circumstances or financial and functional reasons to justify the erection of a dwelling in the countryside, and despite the inspector recommending its refusal the Minister passed it. So these inconsistencies appear to exist even within the interpretation of the Government’s own economics ground policy, and that is not fair to the general public.

Q53. The Speaker: Would these inconsistencies be removed then if the inspector’s decision was not simply a recommendation but a final decision? Would you have confidence then that there would be consistency applied across the board?

Mr Jenkins: I personally do not believe that one person should have that much power. I think it should go back in front of a committee, as it is heard by a committee. They have heard all of the evidence, they have heard the policy, they have interpreted the policy. Then to get one person to come along from England to interpret that policy the opposite way, whether it is for or against you, but to be completely the opposite and not support the advice that was locally given ...

Q54. The Speaker: Where would it then end if you had –?

Mr Jenkins: Well, I just think it would be better served if the appeal system was a committee –

The Speaker: Oh, rather than an individual.

Mr Jenkins: – rather than one person brought in from England. It just seems –

Q55. The Speaker: An appeal panel, in other words?

Mr Jenkins: Yes. It would just make more sense than –

Q56. The Speaker: So separate from the original Planning Committee, presumably –

Mr Jenkins: Yes.

The Speaker: – an appeal panel.

Mrs Jenkins: There is an important legal matter that needs sorting out on these issues, and it dates back to the Manx National Heritage case and a decision by Deemster Kerruish. He confirmed in that decision that the Minister on a planning appeal is limited to consideration of the planning inspector’s report and that the Minister is unable to consider documents and materials other than that report. However, Minister Ronan, as recently as the House of Keys on 3rd November, said, and I quote:
Certainly in regard to the material based on any planning decision made, reviewing of plans or site visits, I think what it clearly states is that the Minister can look at anything that is reasonable or also has material considerations in respect to that planning decision.

That is not what that ruling by Deemster Kerruish is saying. I am no legal expert, but the Deemster Kerruish ruling is basically amending primary legislation, and so we would hope that the Committee is going to look at that, because I think these doleance issues come back to that one case.

Q57. The Chairman: I will pick you up on that. I think a case amends in itself primary legislation, but certainly it is the role of a parliament to review the extent to which it impacts on it.

Given we are now talking about independent planning inspectors – and earlier on, Mr Jenkins, you described them as ‘coming over’ or ‘foreign’, or something from England (Mr Jenkins: Yes.) – have you anything you want to share with the Committee about views on whether or not they actually know the local situation? Because, conceivably, three or four people who have been doing this job for a long time will actually build up an absolutely substantial and significant knowledge of the communities they are making recommendations about.

Mrs Jenkins: I think it is an important point that the role of the local commissioners … There is a lot of local knowledge which is not being taken into account in planning matters and I think the views of the commissioners are not, quite often, being taken into account.

Q58. The Chairman: Okay, but you did not, yourself, see any evidence that the English people, when they come over, actually do not know the situation?

Mr Jenkins: Yes, one instance in the … I cannot remember which – was it … [inaudible] – said it was a gateway to a settlement. There was some terminology used that was wrong, and it was later proven it is wrong. (The Chairman: Okay.) So there are areas, especially with the other thing, where you have a mixture of land where you do not know whether it is white land or … So, again, it is interpretation.

Q59. The Chairman: Okay, so that is one question, then, but going beyond that, your view is that involving local knowledge through local commissioners would be a way forward – that is what you are suggesting to us. Thank you.

Q60. Mr Joughin: When you began building work on the site in 2014, at the end of October –

Mrs Jenkins: Can I just correct you there? Not building work. We cleared the site; not building work. (Interjection by Mr Jenkins)

Q61. Mr Joughin: But you started work on the site (Laughter) (Mrs Jenkins: My fault!) in 2014 and at the end of October 2014 you were advised that a petition of doleance claim against the Department of Infrastructure had been lodged by your neighbours. Can you advise why you did not know about this sooner, and what happened next?

Mrs Jenkins: The doleance case was brought against the Department, the Minister and the decision maker. Ironically, even though it is our application, we are just an interested party, so any pre-action letters we were not privy to.
Q62. Mr Joughin: Because it was against Infrastructure and not you, so you had no involvement?

Mrs Jenkins: Yes.

Q63. Mr Joughin: To the best of your knowledge, why were your neighbours able to issue a petition of doleance?

Mrs Jenkins: The first petition of doleance was because Mr Robertshaw ... when he issued his decision, the letter did not give the reasons for going against the inspector. That is what meant that that could be challenged.

Mr Jenkins: So it is two ways: if the Minister goes with the appeals inspector’s decision, he does not have to issue reasons; if he goes against the decision, he has to issue reasons and he has to issue reasons immediately with the letter – it cannot be the next day or two hours later, it has to be given at the same time.

Mrs Jenkins: The procedures are laid down in the Town and Country Planning Development Procedure (No. 2) Order 2013, and that states very clearly you must issue reasons. They were issued by the Department two weeks later.

Q64. Mr Joughin: So it was a clerical error again, and that was to get his foot in the door with a petition of doleance?

Mrs Jenkins: Correct.

Q65. The Chairman: And given the experience you have had and the expertise you have built up through that experience, can you confirm that when the independent inspector’s report is used for the decision, the report itself is published and the independent inspector, in your case and in all cases, would give reasons or issues to be taken into account for both sides of the argument? (Mrs Jenkins: Yes.) So it makes it easy for the Minister or the delegated Member to decide either way, despite recommending.

Mrs Jenkins: Yes, I think sometimes some cases are very finely balanced and it is the weight that you give to certain arguments. This is why you get these anomalies in the system.

Q66. The Chairman: There is one very interesting statement in your written submission, especially given that you have linked this to complaints and the ombudsman and the Whittaker recommendations to revisit the doleance process, which is that in November 2014, when the Department agreed to revisit the appeal determination, you were given legal advice by your advocate to maintain a neutral stance. I just wanted to understand that a bit more, given your comments about complaints and the doleance process and the Whittaker recommendations and so on.

Mrs Jenkins: As an interested party, the case was not brought against us. However, we could have gone in on the case and given evidence, but had the case gone against us we would have also been liable for costs. I think this is where it relates to the Whittaker Select Committee. I read that in detail and it became very clear that it would be very unwise to go in on a doleance case where there was every chance you would lose.

Q67. The Chairman: Okay. Did your advocate bring to your attention any more recent cases, or even any cases, where costs have been awarded against an interested party like yourselves?
Mrs Jenkins: Yes, there was one down at Castletown.

Q68. The Chairman: Okay, thank you.
The Minister reaffirmed his decision in March 2015 and you recommenced work on site. When did you learn that the second petition of doleance claim against the Department of Infrastructure had been lodged by your neighbours, and what reason was given this time?

Mrs Jenkins: We only found out about it, of course, when we got served the papers as being an interested party.

Q69. The Chairman: The same as the previous time?

Mrs Jenkins: Yes.

Q71. The Chairman: What reasons were there for the doleance this time?

Mrs Jenkins: On the first case, all parties agreed that the decision would be remitted back to the original decision maker, Mr Robertshaw. On the second doleance, the first part of that doleance was that Mr Robertshaw by that time had resigned as Minister and was now a Member, and therefore the original ... I do not know the wording ... that it was invalid, because he was no longer a Minister.

Q71. The Chairman: Okay. So it was not referred to him because he was (Interjection by Mr Jenkins) Chair of the Planning Committee or anything like that; it was referred to him as the person who had made the previous decision.

Mr Jenkins: And I believe that the neighbour's legal advice actually asked for the same person to rehear it, which was a surprise.

Q72. Mr Joughin: It was deemed invalid then, because he was no longer ...?

Mrs Jenkins: There were other parts of it as well, and the more we delved into it the more we realised that even if the Department had defended that point the case could fall down on other points.

Q73. The Chairman: So, in your view, the way you are presenting now, it seems that the procedures are becoming more and more involved.

Mrs Jenkins: Yes, more and more involved.

Q74. The Chairman: Okay. And you state in your written submission that in July 2015 the Department again agreed to revisit the appeal determination. I just wanted to know when you heard the results of that.

Mrs Jenkins: That was on 17th December, some five months later, when we got Mr Ronan’s –

Q75. The Chairman: So this is the update that you gave us earlier on at the beginning of the hearing.

Mrs Jenkins: Yes.
Q76. The Chairman: Please think carefully about how you reply, because this is, in one sense, the gist of where we are. In your submission you state:

The Doleance process is being abused as a final planning appeals process with weaknesses that can be exploited by deep pocketed individuals with access to a great deal of legal experience.

That is a quote from your submission. Do you feel that this is really on the case where a Department makes a procedural or a process error; or is that always the case, even if the Department did a perfect job in its administration?

Mrs Jenkins: Even if the Department had done a perfect job in the procedures, the Minister had still gone against the inspector and so the doleance would still have gone ahead. (The Chairman: I see.) But the chances of somebody without the wherewithal to take that doleance would have been unlikely, I think. It is not an inexpensive process to go through.

Q77. The Chairman: And as a member of the public do you have a perception, as you have followed planning for four or five years, that petitions of doleance are becoming more common in recent years, or not?

Mrs Jenkins: Certainly as I have started to look into it, yes, I have, and I actually did a Freedom of Information request which bears that out as well.

The Chairman: I see.

Q78. The Speaker: Do you accept that there has to be a system of judicial review over decisions – a recourse to the courts over the validity of decisions?

Mrs Jenkins: I think this comes back to the previous Select Committee, where they recommended an ombudsman, and that ombudsman could take a view, I suppose, on whether some of these doleance cases are frivolous or vexatious.

Q79. The Speaker: Given that there is not an ombudsman, do you think a lot of complaints that go through the doleance process could otherwise go to a separate process of investigation as a complaint without involving going to court?

Mrs Jenkins: Certainly our first doleance case to do with the letter, without a doubt it could have gone to an ombudsman.

Q80. The Speaker: Other places have an ombudsman but they also have a system of judicial review; they have both. You are not suggesting one replaces the other?

Mrs Jenkins: No, but I believe in the UK once you have got planning permission it cannot be taken away – that is the difference.

Q81. The Speaker: If there are flaws in legal process, and in this case there were flaws in the process – the first one, the Minister did not issue the reasons at the time he should have, and the second flaw, or alleged flaw, was that the remission to Mr Robertshaw was in his wrong capacity, it should have been ex officio; these are failures in legal process – it is right, is it not, that whoever raises these objections, whatever their motivation is, forgetting why somebody might be doing it, it is right that any irregularities in process should be examined by the courts? That has got to be right, has it not?
Mrs Jenkins: Yes, in a democracy, of course it is, but it should be open and fair to everybody, no matter your status or your profession.

Q82. The Speaker: In what way is it not open to others? It might be very inconvenient and very upsetting when this happens, but do you feel that you are not being fairly involved in the process of doleance?

Mrs Jenkins: I think as an interested party you are put in an extremely difficult position. You have to stay silent on the subject, really, because you are not the one that is being taken to court, and to involve yourself would leave you open to costs. This is exactly what happened with the previous Select Committee.

Mr Jenkins: We were told at one point that the Government would robustly defend the case against them, and so we did, for a moment, become quite confident and think maybe we could be more than just a party to it; but we were advised, and with previous history, against doing that because it would have then opened us up to paying the legal costs ... splitting.

Mrs Jenkins: And I think it needs to be borne in mind that legal costs cannot be paid twice to parties, if you see what I mean. Unless you are bringing something new to the case, you would not recover your costs and the Government would not get their costs if what you were saying was identical.

Q83. The Speaker: The reason you are in this position and before us today is because you did not get valid planning permission that was capable of withstanding legal challenge mounted on grounds of procedural error by the Department. It was the Department’s mistakes that triggered off the doleance process and did not let your planning permission stand. So your complaint really is against the Department, isn’t it? If you were minded to take action against the Department you would have a good case, would you not?

Mrs Jenkins: No. There is no comeback for cases like that.

Q84. The Speaker: But your grounds for complaint are against the Department – they did not issue the reasons in sufficient time, simultaneously, in the first case; and in the second the decision was remitted inaccurately to Mr Robertshaw.

Mrs Jenkins: But there is no ombudsman you can go to.

Q85. The Speaker: Yes, I appreciate that. I am just making a point that it boils down to the Department getting it wrong in two areas that has left you in this predicament, really.

Mr Jenkins: There is that and the misinterpretation of policy. So we would not be in this situation had, right from day one, the –

Q86. The Speaker: If different decisions had been made.

Mr Jenkins: Yes, if it had all been ... understood the policy the same way. So, right from our advice before we bought the property, if that had been correct we would not have bought it, but it moves along the line all the way.

Q87. The Chairman: I just want to pick up a couple of things, so we are completely clear what you meant.
At one point you said you believed that Government was going to defend its decision robustly – I think those were your words, Mr Jenkins. *(Interjection by Mr Jenkins)* Was that off the record, or was there a letter you can show us to that effect?

*Mrs Jenkins:* In the first doleance case, although we were not privy to the pre-action letter, when we were served the papers three months later the pre-action and the Attorney General’s response to that were on file, and in that first defence the Attorney General said that they were going to robustly defend it.

**Q88. The Chairman:** I see. Okay. So could you share that with us?

*Mrs Jenkins:* Yes.

**Q89. The Chairman:** Thank you.

And the second point is you jump to say that there is no ombudsman so therefore you could not consider action against the Government, against the Department of Infrastructure – and obviously I am a Member of the Department of Infrastructure, so I am being caged, as I should be, but an ombudsman would not be the only route that you could go down. Has your advocate given you any advice about any other routes to go?

*Mrs Jenkins:* There is no other route that we can go down. There is – and I will leave this with the Select Committee to have a look at – in the UK a similar situation in the Town and Country Planning Act and there are the powers to revoke or modify planning permission, and there is a way of compensating people who have had planning removed, but there is nothing in the Isle of Man.

**Q90. The Chairman:** So you are advised by your advocates –?

*Mrs Jenkins:* There is nothing we can do.

**Q91. The Speaker:** Is that under the ombudsman process?

*Mrs Jenkins:* It is under the Town and Country Planning Act.

**Q92. The Speaker:** Oh, yes, I see.

You are making a case for an ombudsman as a channel for complaint and investigation. Do you accept though that an ombudsman cannot re-judge the case; all he can do is reach a conclusion and remit the original decision back for reconsideration, which is no different from what the doleance process does? It does not rehear the facts and come to a different conclusion, so an ombudsman would do nothing different than the doleance process in this case, except that it would not cost legal fees. *(Mrs Jenkins: Right.)* Is that the basis of your complaint?

*Mrs Jenkins:* Yes.

**The Speaker:** Thank you.

**Q93. The Chairman:** Well, we have had you for an hour and a quarter, if you do not mind – it was a long time. You have done very well and been very helpful.

We are mindful of the fact that there are a great number of other things that are covered in your written submission that we have not asked you about. You have written about enforcement, you have written about building regulations, you have written about the certificate of lawfulness. So my question is an open one: is there anything else you want to tell
us about here at this oral hearing, given what I have just said about some other elements that are in your written submission?

_Mrs Jenkins:_ I think a certificate of lawfulness, building control, is an issue that we came across by accident. It is a side issue to our case, I suppose. There are some gaps in the current system. I will leave with the Select Committee, I think ... It is quite a lot of detail, but in essence we know, for instance, that there have been 2,289 reported cases of planning breaches and only two have ever gone to court, and I think that gives the Committee some idea of the size of the problem.

_Q94. The Chairman:_ Okay. That is a very fair summary. Not only should you consider planning as a career – perhaps you should consider writing select committee reports, because you bring things down into the real lessons and so on!

Just as we are coming to the end, we would like to give you a chance to say anything else about anything you would have liked us to have asked you about but we did not.

_Mrs Jenkins:_ No, I think we are happy to leave the fine detail to the Committee to review in their own time.

_The Chairman:_ My colleagues – any more questions?

_Q95. The Speaker:_ Just to thank you very much for the clarity of your evidence. You have been very helpful indeed.

Would I be right in saying that an ombudsman, as a process for investigating complaints or irregularities ... if that was in place it would be something that would have dealt with your case better? Given where planning ultimately ended up, would the ombudsman process have been a better one to engage with?

_Mrs Jenkins:_ I think we probably would have ended up with the same situation we have got today, being realistic. However, we would have felt that we had had our voices heard.

_The Speaker:_ Yes. Thank you.

_Q96. Mr Joughin:_ Just really for the Committee to understand the degree of what you have had to go through over these past few years, what would you summarise as the cost to yourselves of going through this application?

_Mrs Jenkins:_ We have spent a considerable sum, a five-figure sum, on legal advice, architectural advice. The hours that myself and Philip have put into this are incalculable – hundreds, if not thousands, of hours of research. And the stress and the effect on not just our family but our extended family.

_Mr Jenkins:_ Yes, it is something that does not ... When mistakes are made of this sort of magnitude and we are put through the trauma of all this – and we are coming up to the fifth year now, which is ridiculous on such a small thing ... The mistakes were quite small; they just had an amazing effect.

_Mrs Jenkins:_ Yes, the consequences, I think, are underestimated on the wellbeing, and this is why we think it is not just important for our case but for the general public on the Isle of Man – because we know, from talking to lots of other people, that a lot of people have gone through this and are going through this.
Q97. **Mr Joughin:** I understand the emotional bit as well, I really do. Thank you.

**The Chairman:** Thank you very much indeed, both for walking up to Tynwald Hill to put down the Petition for Redress and then working with Government, in the sense that I remember in October 2014 Minister Gawne was able to read out that you would not have your Petition heard at that stage, you would wait for Government to investigate these things; and then for taking the time to present things to us so clearly both in writing and in oral.

Obviously, while our Committee is sitting we will not be drawn on things, because these are important serious matters in themselves and the consequences of being drawn on them are quite exacting. We would encourage you to continue to understand that and that this is a Select Committee that can make recommendations to Tynwald, and that is what we will do as soon as we can.

Thank you very much for attending. It has been very helpful.

**Mr Jenkins:** Thank you very much.

*The Committee adjourned at 11.51 a.m.*
23rd March 2016
Evidence of Mrs Diane Brown, Head of Planning Policy; Mr Steve Stanley, Regeneration Manager; Mr Kevin Gillespie, Ministerial Planning Advisor; and Miss Jennifer Chance, Head of Development Management
SELECT COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT

RECORTYS OIKOIL
BING ER–LHEH TINVAAL

PROCEEDINGS
DAALTYN

PLANNING AND BUILDING CONTROL
(PETITION FOR REDRESS)

HANSARD

Douglas, Wednesday, 23rd March 2016

2016/0056 PBC, No. 2

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Members Present:

Chairman: Mr C C Thomas MHK
Hon S C Rodan SHK
Mr J Joughin MHK

Clerk:
Mr J King

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Select Committee of Tynwald on Planning and Building Control  
(Petition for Redress)

The Committee sat in public at 3.30 p.m.  
in the Legislative Council Chamber,  
Legislative Buildings, Douglas

[MR THOMAS in the Chair]

Procedural

The Chairman (Mr Thomas): Good afternoon. Welcome to this public meeting of the Select Committee of Tynwald on Planning and Building Control, Petition for Redress.  
My name is Chris Thomas; I am chairing this Committee. With me are Mr Steve Rodan, the Speaker of the House of Keys, Mr Jon Joughin MHK and the Deputy Clerk of Legislative Council and Tynwald who is clerking for us today.  
Can you please ensure that your mobiles are switched off or on silent so we do not have any interruptions. For the purpose of Hansard I will be ensuring that we do not have two people speaking at once.  
As you know the Committee was established by Tynwald on Tuesday, 17th November 2015 with a remit to consider and to report to Tynwald on the Petition for Redress of Philip Donald and Kirree Ann Jenkins, presented at St John’s on 7th July 2014 in relation to the ambiguity and weaknesses in the practices and laws relating to planning, building control and connected matters.  
I would like to welcome Mrs Diane Brown, Head of Planning Policy, Miss Jennifer Chance, Deputy Director of Development Management, something like that (Interjection by Miss Chance) Thank you. Mr Steve Stanley, Regeneration Manager, Mr Kevin Gillespie, Ministerial Planning Advisor here today.  
I start by thanking you for coming along this afternoon and giving us the opportunity to ask you questions about the concerns we are investigating with the processes with which we have been involved regarding planning applications.

First of all, we were expecting to see Mr Michael Gallagher, Director of Planning, here today. Is there anything that you can tell us about him not being here?

Miss Chance: He had to go to last minute leave, so he asked me to come in his place.

The Speaker: I am sorry, I cannot quite hear.

Miss Chance: Sorry. He had to have last minute leave, so he is unable to attend. He asked –

The Speaker: Last minute?

Miss Chance: Leave.
The Speaker: Leave!

Miss Chance: Yes.

Mr Gillespie: Leave of absence, sorry.

The Speaker: Leave of absence.

Miss Chance: I do not know the details.

The Speaker: From the Department?

Miss Chance: Yes.

The Chairman: That is disappointing.

EVIDENCE OF
Mrs D Brown, Head of Planning Policy, the Cabinet Office,
Miss J Chance, Head of Development Management, DEFA,
Mr S Stanley, Regeneration Manager, the Cabinet Office and
Mr K Gillespie, Ministerial Planning Advisor

Q98. The Chairman: I have given you introductions by name and title. A few years ago, it might have been that we would just have one officer with the title ‘Director of Planning’ here, but now we have got four people with different titles and even in different Departments. By way of opening remarks, can you explain how Planning is organised, your respective roles and when those roles in the Departments or the Divisions that you represent were actually created? Can you give us an overview of how Planning is currently structured and how it has developed?

Mrs Brown: Good afternoon. I think I will start with that question and then we can move down the line and –

The Speaker: Sorry, I cannot hear you.

Mrs Brown: Right, okay.

In terms of the different functions of Planning, they are split over the Cabinet Office now, since 1st January 2016, and the Department of Environment Food and Agriculture. The development and management side is the function of DEFA and my role as Planning Policy Manager is to look at the strategic planning and the area planning and the policy formulation. The development management side at DEFA is responsible for the planning applications. So we all function under the Town and Country Planning Act, but there are different functions in that Act that are split over the two Departments now.

Q99. The Clerk: Sorry, Mr Thomas, because I am new to this Committee could I just ask very simply, Mrs Brown, which Department are you in?

Mrs Brown: The Cabinet Office.

The Clerk: Thank you.
Q100. The Chairman: And the function was transferred from the Department of Infrastructure, is that correct, on 1st January?

Mrs Brown: That is right.

Q101. The Chairman: And the Department of Infrastructure transferred functions for development management – from memory – in May 2015? Is that about right?

Mrs Brown: Yes.

Mr Gillespie: That is correct.

Q102. The Chairman: Anything you wanted to add, Miss Chance?

Miss Chance: No. Just for clarity, I am Jennifer Chance. I work in the Planning Application Section – is the easier way to describe development management – and we deal with applications, appeals and enforcement, so you could say the implementation side, whereas Mrs Brown deals with the policy-making side.

Q103. The Clerk: Right, so which Department are you in, please?

Miss Chance: I am in DEFA.

The Clerk: Thank you.

Q104. The Chairman: Mr Stanley?

Mr Stanley: Yes, I am not actually in Planning. My role as Regeneration Manager sits within the Cabinet Office and that is probably not the reason that I am here today to speak to this Committee. Since the transfer of function of planning policy to the Cabinet Office, under the Environment and Infrastructure subcommittee looking at planning policy, which intends to carry out a high-level review of the planning system, I was asked to be the officer that leads that project and I think that is why I am here today to give oral evidence.

I am a member of the Royal Town Planning Institute and my background is as a Town Planner.

Q105. The Chairman: And you are in the Cabinet Office?

Mr Stanley: Yes, we will come back to that review in a moment but first of all Mr Gillespie, perhaps you could explain where you are located and what your role is. Where you have been located in the past?

Mr Gillespie: Good afternoon. My name is Kevin Gillespie. I am the Ministerial Planning Advisor. I am currently located at the DEFA building in St John’s. I am responsible for providing independent planning advice to what the Department provides, but I am responsible for providing that directly to the Minister.

When I first joined Government, approximately three or four years ago, the post was positioned within the Department of Infrastructure, so during that time I worked under or with Ministers Skelly, Cretney and Gawne. Since 1st June last year, when Planning was transferred, I am now responsible to Minister Ronan.

Q106. The Chairman: Thank you very much, Mr Gillespie.
Mr Gillespie: I will probably answer the question.

In terms of planning appeals, the independent planning inspector provides his or her recommendation following the hearing of the evidence, and he or she will provide that to the Minister. In this case it is obviously Minister Ronan.

In terms of the Council of Ministers – and I have no involvement with the Council of Ministers or that process – my understanding is that an independent adviser, Mr Ashe, I understand ... His responsibility is essentially to do what I do with Minister Ronan. It is his responsibility to provide independent planning advice to the Council of Ministers in respect of any application that goes before them.

Q107. The Chairman: I must have misheard, but I thought, Mr Gillespie, that you provided advice to the Minister, but then I think I just head that the independent planning advisers provide advice to Ministers. So do they get two different pieces of advice?

Mr Gillespie: No. My responsibility is solely to the Minister of the Department with responsibility for planning. As I say, my role is not to provide advice to the Council of Ministers.

The Chairman: No, in respect of the Minister for DEFA. I thought I heard that the independent planning inspectors provided advice.

Mr Gillespie: Yes, okay. In terms of the process, once a planning appeal has been submitted, the Cabinet Office will appoint a planning inspector. He or she will hear the evidence and then he or she will then report it, provide a recommendation to the Minister. Following the receipt of that recommendation, then that effectively comes to myself and I will then administer that part of the process with Minister Ronan.

Q108. The Chairman: Okay. Just for completeness, the role that has not been described but we think exists is that the independent planning inspectors are administered by somebody. We believe that also to be the Cabinet Office, but that is a different part of the Cabinet Office, isn’t it?

Miss Chance: Yes it is, and it is more of an administrative system rather than an advisory system.

Q109. The Chairman: Okay.

Sorry to ask you for a few introductory statements about things that we got a bit confused with. I have got another one along those lines and you have already hinted at it, Mr Stanley. Originally when we started our work we got one terms of reference for the Government review which was announced in October 2015 to report in July 2016. Then more recently, in fact, I think last week, we got a new terms of reference. Perhaps you could talk us through the original terms of reference; why the change might have come about; the new terms of reference and what it is you are trying to ...? I forget the words you used. Was it, ‘co-ordinate’ or ‘administer’?

Mr Stanley: That is a good way of putting it.

Q110. The Chairman: What is it you are trying to co-ordinate/administer? What is the output? What is the timeframe?
Mr Stanley: I think the terms of reference that you were sent last week are the updated terms of reference following the transfer of function to the Cabinet Office of planning policy. The committee that has been established to oversee that review has looked at what it is looking to achieve and felt that it wanted to take a step back and make sure that that review started at a sufficiently high level, and did not start from a point at which it had already defined certain things. It wanted to take it up a level to make sure that it did not miss out on certain things or did not explore certain things that needed to be explored.

The committee is seeking – perhaps if I read out the overall aim of the review that might be a good starting point:

The overall aim of the review is to identify a planning system which has the ability to respond in a timely manner to the evolving needs of the Island, whilst continuing to provide reassurance that the system is fair, transparent and free from abuse.

That is the overarching aim of the review.

Within the terms of reference that I have sent, there is also a project overview at point four, ‘Project Deliverables’, which breaks down the first three stages of that review. Stage one is to:

Review the Isle of Man planning system and compare it with other systems, both within the British Isles and outside of British Isles.

There is a target date to conclude that by the end of April.

Stage two which would take place concurrently with stage one is to:

Set out and establish the high-level key principles of a planning system and where the planning system that would meet the stated aim would sit on each of those key principles.

Just to go into a little bit more detail on that: one of the key principles, for example, is transparency. If you think of a sliding scale of, say, one to five, with ‘not transparent’ at number one and ‘very, very transparent’ at number five, different systems will sit at different points on that scale. So what we are looking to establish at a very high level is where the system should be on that particular scale to meet that overall aim. But there are other key principles as well such as: the ability for the public to be engaged in the process; the speed of decision-making, for example. So there are a number of key principles that sit around the planning system.

Then finally the committee intends to report to Tynwald in July this year. That is likely to be, given the timeframe involved, a quite high-level report which sets out the initial findings of the first two stages. I would anticipate that there will be recommendations for further work in certain areas to be done on that because it is quite a limited timeframe that we are working to.

The Chairman: Thank you very much for that explanation. Are there are any questions?

Q111. The Speaker: Well, yes I have. I just want to step back a moment.

Following on from Mr Stanley’s reply, this Committee’s report, do you see that as informing your report and, if so, how in view of the timescale? When would you expect this Committee to report?

Mr Stanley: The timeframe that the Environment and Infrastructure Committee are working to is to get a report to July Tynwald. I understand – but correct me if I am wrong – that this Committee is looking to report in May. Is that correct? Is there not currently a –

The Chairman: Our terms of reference and our reporting are for ourselves, but with the administration coming to an end in September, we would like to have our report in principle debated in this administration, which applies before that in fact.
Mr Stanley: Yes.

Q112. The Speaker: Thank you.
Just going back ... We are still at the introduction stage. You are all qualified town and country planners and members of the Institute?

Miss Chance: That is correct.

Q113. The Speaker: That is correct.
My understanding of planning and probably the terminology is now out of date, but there was ‘forward planning’ and ‘development control’. So is forward planning – what you do, Mrs Brown – now in the Cabinet Office, strategic policy-making?

Mrs Brown: Yes.

Q114. The Speaker: And yourself, Mr Stanley, you would be in the forward planning side, would you?

Mr Stanley: Actually, no. I do not sit within Planning at the moment. My role in relation to planning is the project lead for the review that has been overseen by the committee –

Q115. The Speaker: A specific project?

Mr Stanley: Specific to that, yes.

Q116. Mr Speaker: And development control, which is in DEFA ... Miss Chance, are you Deputy Director of Planning, in effect?

Miss Chance: My actual title is Head of Development Management.

The Speaker: Head of Development Management. What –

Miss Chance: That was Head of Development Control.

Q117. The Speaker: Head of Development Control. Right, so it is the same thing, then? And the Director of Planning, who unfortunately is not here, is ultimately responsible for development control/development management?

Miss Chance: That is correct.

Q118. The Speaker: Do all of you have experience in both sides of planning: the development control or management side and the policy-making the forward planning side, in your professional careers?

Mrs Brown: I do. I think we can perhaps all speak for ourselves but, yes, I used to do development control, as it was known then, for the Department of Local Government and the Environment before I moved on to planning policy.

Q119. The Speaker: Were you involved, Mrs Brown, in developing local plans in the Isle of Man?
Mrs Brown: No. I was involved in the Strategic Plan 2007. At that time we were simply one team doing both planning applications and forward planning, if we can call it that, when required really.

Q120. The Speaker: So those functions have been very clearly split now?

Mrs Brown: They have been split, yes.

Q121. The Speaker: But if you were to be asked questions, you would all be qualified to answer questions on both aspects of planning: forward planning and development control? Right? Yes.

Thank you.

Q122. Mr Joughin: Right. Well I think I will start at the beginning and go through the procedures and the various stages of the planning process. We understand that before making a planning application, an applicant may seek pre-planning advice. What is the purpose of the pre-planning advice?

Miss Chance: Shall I ...?

The purpose of pre-planning advice – we do have set out in a leaflet that is available – is to guide applicants towards what kind of information we would be seeking as part of an application. It is to advise people about how we would assess an application; what considerations we take into account; what policies we take into account. Sometimes it is to give a steer as to the likelihood of obtaining planning approval. That is usually only in extreme ... So if it is very unlikely, you might be able to indicate that it is very unlikely. But in most instances, it is really towards guiding the people to how we assess an application and what material we would expect as part of an application.

Q123. Mr Joughin: You would not give any verbal advice, bar giving them a leaflet? Would you give them any verbal advice?

Miss Chance: Sorry, I did not explain myself very well. The leaflet only explains how we do it. We treat each pre-application enquiry separately; we look at each of those separately. We try to do them all in writing to prevent any miscommunication as to what we are advising, which has occurred in the past, many years ago. But we still do advise – on a site visit, for instance – orally to the people who are asking us.

Q124. Mr Joughin: Who generally gives the pre-planning advice?

Miss Chance: Enquiries are directed to what we call the ‘north team’ and the ‘south team’. Then they are allocated to planning officers. The planning officer who goes out and deals with the pre-application advice usually ends up being the case officer when an application is submitted.

Q125. Mr Joughin: Sometimes, would this be duplicated? Would the same person determine the same planning application?

Miss Chance: Not always. It really depends on workload.

Q126. Mr Joughin: In your experience, should seeking planning advice improve the chances of any application being approved?
**Miss Chance:** As a general rule, it would. Of course if a development that is proposed is unlikely to be acceptable in any form, then you can have lots of pre-application discussions and it is still unlikely to be acceptable. However, if an applicant has got an interest in a piece of land and there are various aspects of it ... For instance, it may be in a conservation area, so you could advise on design and that would assist them in speaking with their architects and altering the design such that its chances of getting planning approval are increased.

There are various different circumstances in relation to any planning application, and if we can guide people towards how to tailor their application then that would normally assist, yes.

**Q127. Mr Joughin:** How often do cases like the Jenkins’ arise, where pre-planning advice is sought and then the application is not successful?

**Miss Chance:** It does happen. It is hard to give a figure on it. A ball-park figure you could say, perhaps, 5%, 10% of cases may not go the same way as an officer might have thought they would. There are lots of reasons for that. It could be that there is a lot more public interest in the application; it might be things that we were unaware of that arise; it may well just be that some developments are more finely balanced than others and the Committee may take a different view to what the planning officer has taken.

**Q128. Mr Joughin:** In your view, are there any changes which could be made to the service, to improve its value to the applicants?

**Miss Chance:** Just off the cuff, there is not anything I can think of at the moment. We have spent some considerable time over the last few years tailoring our application guidance for customers so that we can more clearly set out the extent to which we can go in giving pre-application advice.

Obviously one of the key problems with any pre-application advice is the level of expectation that might be raised from that pre-application advice. But it is a little bit damned if you do, damned if you do not. So if you said to somebody, ‘I think you are likely to get planning approval’ and they do not, obviously they will be disappointed, but if you said to somebody, ‘You are unlikely to get planning permission’ and somebody else came along and they did, there is that concern either way. So planning officers can just be as honest as they can and give their professional opinion.

**Q129. Mr Joughin:** Do you regularly review your procedures for applications? Is it every year or biannually that you review it and try and upgrade it?

**Miss Chance:** We regularly review the advice that we give to see if it is still relevant. We look at where things may have gone wrong and where we could perhaps have said something differently and that would not have led to the issue arising. So there is a level of analysis that we do carry out.

**Mr Joughin:** Okay. Thank you.

**Q130. The Chairman:** Thank you very much, Miss Chance.

Just a couple of points that arise from those answers ... The first one is, given that many decisions are made by officers under delegated authority, do you think there might be an advantage or at least a perception of advantage if the same person makes a decision who has given pre-application advice, or does that never happen? How is that reality dealt with?

**Miss Chance:** As I said, the case officers ... The person who assesses the planning application is very often the same person who gave the pre-application advice, but to ensure protocols it is
always a person who has not had pre-involvement who makes the determination. That is in order to give us that level of detachment and independence that I think is necessary in any decision-making in Government.

**Q131. The Chairman:** There is one aspect or one dimension to the planning service that Government provides, I suppose, that we did not cover in our introduction, which is the role that DED provides and their Development Management Team – I forget what it is called now – the team that helps and encourages and assists key people for Government’s planning policies and development policies. How would you deal with a suggestion that conceivably the people who are beneficiaries of that service are actually in a better position than the regular small guy who is just looking for pre-application advice for their own house or their own land?

**Miss Chance:** From my understanding, we would treat each applicant and application on its merits. In Planning, we always look at what is proposed rather than who has proposed it. *(The Chairman: Okay.)* An application that has a greater level of evidence may well have a greater advantage than an application that has not got as much background evidence.

**The Chairman:** Okay.

Mr Gillespie, you are itching to come in.

**Mr Gillespie:** Yes. Right.

In terms of the DED involvement, I think it is colloquially termed as ‘virtual team’. Certainly in the UK for applications which are classed as major – which may be either controversial or complex – a virtual team is put in place within the organisation, the authority or whatever, which essentially draws at a very early stage on the experience of officers, whether it is from Economic Development or maybe from Treasury or from Planning. It is really to work with the developer at a very early stage in the application process to provide the developer with as much information as possible in terms of what his or her policy considerations should be and what are the potential impacts of that or consequences. So it allows the developer to work with the planning authority to try and resolve any of those issues as early as possible in that process.

**Q132. The Chairman:** I thank you for those additional remarks.

And I am right in thinking – for completeness on the record – all of these services: regular pre-application advice and also this DED’s advice, is all provided for free? It is just a service that Government provides? Okay.

**Q133. The Speaker:** Just moving onto the process of considering applications. Once they have been submitted and over which pre-planning advice may or may not have been taken … When a planning application is received how is the decision made as to who will determine the application, Miss Chance?

**Miss Chance:** We have now, as part of the Standing Orders, what we would call a ‘Scheme of Delegation’ which shows when applications will be determined by the Planning Committee and when they would be determined by either the Director of Planning and Building Control, myself or one of the senior planning officers. That is, as I said, set out in the Standing Orders. It is based on the premise that those applications that are more controversial would go to the Planning Committee or those applications that require a deeper level of assessment would go to the Planning Committee. Importantly, any application which would be for development, which could be considered contrary to the development plan, goes before the Planning Committee.

**Q134. The Speaker:** Are there any automatic triggers for going to the Planning Committee rather than being determined by the Director?
First of all, what are the alternatives: the Planning Committee, the Director of Planning, planning officers?

**Miss Chance:** There is some delegation to two of the senior planning officers; there is a delegation to myself as Head of Development Management and there is a delegation to the Director.

The planning officers can deal with all planning applications that are not required to go to the Planning Committee, and I can read out the list in a moment as to what has to go to the Planning Committee.

**Q135. The Speaker:** Yes, if you set out the criteria so we understand.

**Miss Chance:** Okay. I have got them here somewhere. Do you want me to read them out? Just bear with me for a moment.

**The Speaker:** Yes, please.

**Miss Chance:** Okay, so,

Where the planning officer’s recommendation is contrary to written submissions by a number of members of the public, if it is more than five.

Where the officer is recommending approval and the local authority has made written representations objecting to the application on valid planning grounds, except for householder applications.

Where it is recommended that an agreement be entered into under section 13 of the Town and Country Planning Act.

Where an application is recommended for approval and it is contrary to the provisions of the development plan.

Where an application is for an extension to a dwelling, over 50% of the thresholds set out in the development plan.

Where an application would result in a development of eight or more residential units.

Where it would result in development of a floor space of height of 500m² or more of any other type of development.

Where an application relates to a property owned by the Minister, Department Member and anything else where there is a close association with officers of that department –

**The Chairman:** It will be Ministers now, won’t it, with all the Ministers involved and all the departmental Members?

**Miss Chance:** Those cases:

Where there has been an objection from any of the members of that department.

Where the application is required to be accompanied by an environment statement.

Then there are two others which are:

If a member of the Committee feels it should be determined by them.

But they have to give the reason to us why it needs to be referred to them. Then the last one is:

If the Director [or myself] or one of the senior planning officers thinks that ought to be determined by Planning Committee.

That is to cover applications which we feel are matters that are quite large and important to the Island but do not fit into any of the other categories. For instance, the application in Lower Douglas for a very large development did not actually fall within any of those others but it was something that was quite significant and so it is the kind of thing we would put to Committee.

**Q136. The Speaker:** Thank you, that is very helpful.
Overall, what percentage of applications do go to the Planning Committee, after all that process?

Miss Chance: I think it is about 15%, but we might be able to give you a more –

Q137. The Speaker: So 85% are determined by officers or yourself?

Miss Chance: It is. I might have to give you a more accurate figure by relooking at that.

Q138. The Speaker: Yes.

At the pre-planning stage is there any indication given to applicants as to how the application might be dealt with? Obviously you cannot predict who might or might not object, but there might be other criteria which are ...

Miss Chance: Certainly, if the applicant asks whether it will be determined by the Planning Committee, we would look at that list and give them an indication at that point. Sometimes the planning history of the site determines that it ought to go to Committee because it has got a bit of a complicated history, and we would give that indication.

Q139. The Speaker: Yes.

The details of these delegations are set out in secondary legislation, are they?

Miss Chance: That is correct, yes.

Q140. The Speaker: Secondary legislation.

There is a lot of information about planning and appeals on the Government website but details about the delegations and how the application will be dealt with, and how it is determined by the Planning Committee are contained in the secondary legislation. Ought they to be set out more clearly, for avoidance of doubt?

Miss Chance: I think that is fair. They are on the website, but only if you know to look up ‘Planning Committee Standing Orders’, which I would accept most members of the public would not think to look through that route.

Q141. The Speaker: No, so it is not very user-friendly, is it?

Miss Chance: No.

Q142. The Speaker: Could that not be looked at?

Miss Chance: It could.

Q143. The Speaker: Yes.

Quite often planning conditions are attached to approvals. When subsequently there is variation in conditions applied for that come along, how is it determined? Where are they decided ultimately: the Planning Committee or the Director of Planning?

Miss Chance: We would probably follow the same process as is here. If the original application had been to Committee we are likely to take the variation of condition to the Committee.
Q144. The Speaker: And are there not circumstances where the Director of Planning would judge whether the change of condition application could be determined by himself rather than go to the committee?

Miss Chance: I think there is. We do have to make a judgment as to whether it is something that really warrants being considered by a Planning Committee. If a condition, for instance, was to do with obscure glazing of a window, it is really not something that probably merits a committee decision, and we might consider it to be something –

Q145. The Speaker: Are you aware of the recommendations made by the Select Committee on the Poacher’s Pocket a few years ago in respect of applications to vary planning conditions and the fact that while the main decision had been made by the Planning Committee the application to change the conditions were not referred back to the Planning Committee but made by the Director of Planning?

Miss Chance: I am aware of that and I think in that case it was more complex. As far as I can recall in that the variation, sort of, went out with what the original approval granted permission for, so it was quite complicated. I think – and this is based on my recollection – that there were recommendations out of the Poacher’s Pocket report that there be a different method for us.

Q146. The Speaker: That is right and that report was made in 2010. Before 2010, as far as we can see, an independent review of planning in 2010 – we are told – considered whether the recommendation that when the change in conditions was major instead of minor and therefore should go to the Planning Committee. That review said that it was in the judgement of the Director of Planning before whom it came as to what was major and what was minor, and the Director of Planning reported to our recent inquiry that that was the position.

I am asking has the Department considered that in any further depth, or what criteria does it …? It does not seem to have any criteria for judging what are major and what are minor changes in conditions and therefore what should go back to the committee.

Miss Chance: You are correct. It is not formally set out. It is at the consideration of the Director or myself or the officers whether it was something that the Planning Committee ought to see again, taking primarily into account whether that was something that they really considered and looked at at the time that they determined the original application.

Q147. The Chairman: I see. Okay.

Can you talk us through the process a planning officer would follow when considering a planning application? It is obviously assessing the information, making a report. Could you just talk use through the stages of that?

Miss Chance: Yes, I can.

An officer would receive an application. There is, in the Act, set out what planning officers ought to consider when they are looking at a planning application. That is primarily the development plan – and for clarity the development plan comprises two parts. It comprises the Strategic Plan and it comprises an Area Plan that is relevant. We term that, combined, as the ‘development plan’ and that is the primary consideration.

The Act also says that we should look at ‘any other material considerations’ in planning and any other document that would be relevant to the determination of the application. So an officer will have those in his or her mind. They will then also consider any professional consultancy responses and that could be from Highways, for instance, or from Housing or from other parts of DEFA, in respect to trees for instance.
They would also consider any comments from any members of the public who have written in about the application. They would weigh all of those up and make a recommendation.

**Q148. The Speaker:** Yes.
So in the consideration of established planning policy, we understand that this might require a degree of interpretation on the part of the professional officer. How easy is that?

**Miss Chance:** That is a very good question. I think for the most part planning officers are trained. We spend our time when we first start looking at smaller applications and we are mentored by more senior planning officers in how to interpret planning policy.

The planning policy documents do not just have a policy written down, there is usually a justification and an explanation for that policy as a preamble to it. That usually assists in how that policy should be applied. It is just part of our professional learning.

**Q149. The Speaker:** Sure.
Do planning officers ever review each other's reports to consider whether they would have reached the same conclusion?

**Miss Chance:** We do. Certainly with applications that are more finely-balanced; ones that require an assessment in terms of, for instance, what the impact of a building would be in its scale, its proportion. We would often have a discussion amongst ourselves as to whether we are weighing it up right; whether there is a common ground in how we feel the impact of that proposal would be.

**Q150. The Speaker:** Are there any aspects more difficult than others, in your experience?

**Miss Chance:** I think whenever you are talking about what the impact of a building would be in terms of its surroundings, there is always an element of judgement that comes with that.

**Q151. The Speaker:** Yes. Thank you.
Turning to planning policy itself, we are aware, as a Committee, there has been a lot of work done in developing planning policy and strategic plans for the Island.

I wonder if, Mrs Brown, you could outline what has been done and, if possible, tell us what is planned?

**Mrs Brown:** Okay.
Where we are now, we have a Strategic Plan. In Tynwald last week, on 15th March, an update to the Strategic Plan was approved which updated the plan. Sitting under the Strategic Plan is the Area Plan and the local plans and there is a bit of a mix at the moment. In operation in parts of the Island are still the 1982 Development Plan Order, a series of local plans of varying ages and we also have an Area Plan: the Area Plan for the south that was approved in 2012.

In looking ahead, the situation will be to have the Strategic Plan ... And how it is drafted in the Act is, ‘one or more area plans’. At the moment we have one; the intention is to start the Area Plan for the east next. We have given a commitment to go back and look at housing allocations around Castletown, and we will be doing the Area Plans for the north and the west.

Eventually the 1982 plan and the various local plans will be replaced by a smaller number of plans which will make up, as Miss Chance says, the Island development plan. So that is part of the work that we do in planning policy.

**Q152. The Speaker:** And the Area Plans set out in detail the land designations that are recommended in the Strategic Plan? Would that be ...?
Mrs Brown: The Strategic Plan sets out the broad strategic policy guidelines and they are policies. In the Area Plans – and the Area Plan for the south is an example. It is made up of a series of proposals, but, yes, they are in line, in general conformity, with the Strategic Plan. They are more site-specific. It is where you would get details of particular land allocations and sites. It is where you would have development briefs potentially as part of those site allocations and that ground information that is more locally based. The Strategic Plan is not in any way site-specific.

Q153. The Speaker: One of the procedural points raised by Mr and Mrs Jenkins was in relation to the designations of some areas within the southern Area Plan as ‘white land’. Could you please explain what this term means?

Mrs Brown: The term ‘white land’ was used in the 1982 Development Plan Order. The 1982 plan was made up of a very small-scale plan, but it was one large plan which covered the whole of the Island and a supporting written document. In that document reference is made to ‘white land’.

In terms of the Area Plan for the south, there was no specific mention to white land.

Q154. The Speaker: There is no specific mention?

Mrs Brown: No. There is no specific mention in the Strategic Plan either.

White land: I think it is sometimes used but in effect means countryside or open space. So in the development of the Area Plan for the south, there was no need really to refer to a term that has been used in the past but we did not take that term forward.

Q155. The Chairman: Just jumping in there. Mr and Mrs Jenkins explained to us that white land was land that fell between the gaps between maps and that sort of thing in part. Is that the case? Are there maps that do not overlap, so that there are gaps?

Mrs Brown: Well, in terms of the Area Plan for the south, the Area Plan is defined so it covers the six Parishes in the south – if I have got that right – but because it is helpful and really required to do inset maps they have concentrated on the main settlements. For instance, in the south we have a main proposals map which covers the entire Area Plan boundary and a series of inset maps which cover Port Erin, Castletown, the settlements that are often more complicated because that is where all of the focus of development is really. So, yes ...

Q156. The Speaker: How do planning officers interpret white land when that term is used?

Mrs Brown: I think Miss Chance might be able to come in after I have spoken, but I think planning officers may well use the term ‘white land’. I am not sure if that is being used, but I suspect it is being used, if at all, in the context of open space or countryside.

Q157. The Speaker: So given that is not a fixed interpretation, would it be possible for applications for a residential property in respect of two plots classified as white land – or if you are saying there is no such official classification regarded as white land – very close together to be given a different decision depending on the interpretation of the officer? Is that a possibility?

Mrs Brown: Each application is considered on its merits and the development plan, and the zoning on that plan would be part of that consideration. So it is very much dependent on what was being proposed, but one of the considerations an officer would make, if he was look to at that application and make a recommendation would be what is that land zoned for.

Q158. The Speaker: Zoned for or zoned for in the past?
Mrs Brown: Well I suspect one has to look at the relevant development plan for that area at the time.

Q159. The Speaker: In the Jenkins’ case their plot contained a house, but that area on the plan had been reclassified so it was no longer residential. How can land which contains a residential property be changed so it is no longer classified as residential?

Mrs Brown: If we can talk about the Area Plan for the south, when we first started the process there were a number of plans in operation across the south. There was the 1982 plan, a number of local plans. What we had to do was build up a brand-new mapping system. So we built up the mapping in layers looking at the settlements, and all the elements of the plan were built up gradually.

What we did not do was identify every house in the south as an individual property but it does not take away the residential status of any house that sits in the countryside. It is recognised throughout the plan that there are houses in the countryside, but we do not pick everyone out in a residential zoning.

Q160. The Speaker: But how does such a reclassification …? What effect does it have on determining planning applications in the future, given that reclassification?

Mrs Brown: From memory, looking at the area in particular that is behind this meeting today, when you look at the 1982 plan – which was the plan that was relevant in this area – it has often been difficult to look at that plan and be able to easily identify field boundaries and the scale of that. That plan makes it quite tricky. If you were to look at that plan, there are parts up Mount Gawne Road and along the seafront that were in a predominantly residential area that was picked out. When we did the Area Plan for the south, there were a number of areas that did not come through as predominantly residential areas. But what we do try and do, from the very start of the process, through consultation and showing the new maps, is to try and bring to the attention of the public what the new maps are going to look like.

Q161. The Speaker: So is the land or property owner advised of the intent to reclassify the land in question?

Mrs Brown: We do not contact every property owner. What we did do for the south was we did a public leaflet and we did an issues and options document and we did two draft plans and a public inquiry.

If we are going to talk about the particular site, the 1982 plan, I think part of the site was in the predominantly residential area but part of the site was not. So in terms of whether it was in a predominantly residential area or the countryside, in principle the replacement of a dwelling is the same and so ... But, no, we do not contact anybody.

Q162. The Speaker: You do not. Do you not think that if people find that the designation of their land is going to be changed in the plan – that would potentially reclassify negatively in a way that a property owner might expect to develop in future – they ought to be specifically told about it, not rely on a leaflet or a public notice that there is a local plan revision under way; that they should be specifically contacted?

Mrs Brown: I do not think that it is ... From a practical point of view, it would not be ... It would be very difficult to contact every person to say how they might be affected by the development plan.

In this case, what has happened is that there were some areas in the 1982 plan that were identified as predominantly residential but they still – and in the Area Plan for the south – came
through as countryside. But the consideration of an application would depend on what that
application was. It would depend on whether any consideration would be negative. As I
understand it, part of the application site was in the countryside on the 1982 plan.

Q163. The Speaker: Would you not agree, it is unfair where a reclassification impacts
negatively and has the potential to devalue a property in terms of developing that property in
the future? That affects the sales potential and it is quite unfair to the individual landowner?

Mrs Brown: If the property had remained as a predominantly residential zoning, parts of the
site would still have been in the countryside. Whether you are in the countryside or you are
zoned as predominantly residential, an application would still be considered on its merits and so
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Q164. The Speaker: And would one of the merits be to persuade the Committee that,
notwithstanding this new zoning, the previous designation was residential and there would be a
very strong case to approve a development provided it met other criteria that were acceptable;
that that would be a reasonable thing to do? The previous designation would be persuasive
planning material point?

Mrs Brown: I do not think so.

Q165. The Speaker: You do not think so.

Mrs Brown: Whether the site was described as being residential property in the countryside
or a residential property within an area zoned for predominantly residential, if the application
was to replace that dwelling, the principle would be the same because it had residential status.
The judgement would be on the merits of that: the size, design, visual impact, access, all the
normal planning considerations. So it may well be I know that many applications are made to
replace dwellings in the countryside and many of them do get approved on their merits and
some of them are refused because of various issues.

Q166. The Speaker: So a property owner ought not to have any expectation of success simply
because the designation was previously residential but may have changed?

Mrs Brown: That is right. We said there was a paragraph as part of the Area Plan for the
south –

The Chairman: We are listening, carry on.

The Speaker: Sorry.

Mrs Brown: Some areas were picked out as having a predominantly residential character. The
south is quite unusual in that outside of the settlements that were identified there were quite
big pockets of development really that had much more of a residential character and we
identified them on the maps. Now, what we did say was that it does not necessarily mean that
their approval would be granted for additional dwellings or development, it was simply
recognising that character.

It is certainly something we might have to look more closely at as we go forward and do new
Area Plans, but I think the principle is really to make plans as clear as possible and not to have
them too busy. I remember when we first did the draft plan, some of the plans looked very
crowded and it is trying to pull out really what needs to be on plan; where it is necessary to do
allocations. That is one thing where it is necessary just to show that there is countryside and there are properties within the countryside, then that is all recognised.

Q167. The Speaker: Flexibility in planning: it has often been talked about; a phrase used. The planning system is flexible; it is sensible and flexible. Can that still be described, would you say?

Mrs Brown: I think so. Certainly part of writing policy or proposals, there is an art to it. Obviously we set the guidelines almost by having policies or proposals and development plans. They need to be picked up by officers who are looking at applications. There is in the whole drafting – which takes a considerable amount of time to do and is checked on a number of occasions and eventually at a planning inquiry – to the effectiveness of how those policies, proposals are described and worded and how they can be interpreted. Part of that is looking at the flexibility. They need to do the job; they need to be flexible when appropriate.

Q168. The Speaker: So it is quite possible for an applicant, notwithstanding that there might be a contrary land use designation in place which might be seen as a major hurdle notwithstanding that, if the applicant is able to persuade the committee that there are merits in the application such as to overcome that major objection, there is still a chance it could get approved?

Mrs Brown: There is a chance, yes.

Q169. The Speaker: Still the principle –

Mrs Brown: That is part of the assessment process.

The Speaker: Yes, thank you.

Q170. The Chairman: We are going to move round to Mr Gillespie eventually, but not quite. I am going to try and give Mrs Brown a break for a minute with the question.

Taking you back to planning policy, we asked you about whether it is sometimes difficult to interpret when you are making an actual decision. Mr and Mrs Jenkins mentioned to us some housing policies and some environmental policies that they thought were relevant in this case. Are they particularly difficult ones to interpret or are all policies equally difficult?

Miss Chance: I think most people would agree that housing policy 14 has been difficult to apply. There is not much more I can say about that.

Q171. The Chairman: Okay.

I think we wanted to ask you a bit more about this. I think one tool available to officers and to politicians ultimately to help with this case is to put together planning policy statements. So can you help us to understand planning policy statements and also give us some examples, particularly how they apply in relation to Mr and Mr Jenkins’ case?

Mrs Brown: I can start with talking about planning policy statements. It is the responsibility of the Cabinet Office to issue planning policy statements. It is set out in the Town and Country Planning Act that ... Well, I will just read it; it might be easier to do that:

That the Cabinet Office may issue one or more statements of policy (planning policy statements) specifying the manner in which applications under parts 2 or 3 of such descriptions are specified in the statement will be dealt with it.
It is a bit of a mouthful that, but in essence those statements, the aim of those is to help in planning applications and the understanding of how policy that is set out in the Strategic Plan could be ... It is guidance really for applicants but to date we have one planning policy statement in operation and a number of draft planning policy statements in operation.

**Q172. The Speaker:** What is the one that is in operation?

**Mrs Brown:** It is Conservation Areas and Registered Buildings. That was brought into operation I think in 2001. Since then, there have been a number of attempts and there are a number in draft but a number have not been brought forward as yet.

**Q173. The Speaker:** Sorry ... Through you, Chair, what is the status then of the policy for houses in the countryside and the dimensions that are set out? Is that not an adopted planning policy statement?

**Mrs Brown:** That is set out in ... Yes –

**Miss Chance:** Sorry, we think you might be referring to the planning circular that is 391, that gives –

**The Speaker:** The planning circular. Yes, I am, yes.

**Mrs Brown:** It gives advice about design of traditional buildings in Manx terms.

**Q174. The Speaker:** That is not what we are supposed to think of as a planning policy statement? It is a circular of advice and guidance, is it?

**Mrs Brown:** Before, in the olden days, we used to have planning circulars. Everybody understood that a lot easier. There are still planning circulars in operation and certainly I think in the Strategic Plan circular 391 was mentioned. It may well be reissued as a planning policy statement, but that is how we should think of them in terms of application.

**Q175. The Chairman:** It seems to me, Mr Stanley, that we have got planning circulars, we have got one planning policy statement and we have got draft planning policy statements. Is that the sort of thing that you might be looking at in your review, because it seems to me quite hard for the public to understand those differences?

**Mr Stanley:** Quite possibly. As I said earlier on when I was responding to one of your first questions about trying to set the review at a high-level to begin with so that we capture all of the issues that need to be looked at, I think that is quite a detailed issue to look at and will follow on from that first stage of the high-level review.

I think if we were to look at which key principle this issue sits under, it is probably ‘transparency’ potentially. It probably touches on that, but it may be another key principle as well. Yes, I think that would be a legitimate area to look at and try and improve on.

**Q176. The Chairman:** But just to push it, it seems to me you must have a hierarchy between these three alternatives that we have just offered you. There might even be more that we have not as yet identified. What is more important: a planning policy statement, a planning circular from the olden days – as Mrs Brown described it – or a draft planning policy statement that keeps getting mentioned by politicians? For instance, we have got a quote here from the Minister for Economic Development, who says:
We have engaged with over 80 projects since 2012 when the planning policy statement for planning of the economy was introduced.

But we now learn in this meeting that the planning and the economy is not actually a planning policy statement; it is a draft planning policy statement.

*Mrs Brown:* Yes there are a number of draft planning policy statements. If I can just refer back to the Act ... In dealing with applications for planning approval it is set out that:

Regard shall be had to the development plan and any relevant statement of planning policy under section 3 – which is basically referring to planning policy statements, so it is one of the considerations.

Obviously, a draft is almost like we have draft plans until they are approved by Tynwald. Generally there is often a description of more weight being applied to something that has gone quite far through the system, but obviously a draft PPS would be considered to have less weight, is generally what might happen, really.

Q177. *The Speaker:* How much regard then is paid to a draft policy that is intended to supersede an existing adopted policy? The adopted policy is clear for all to see; the draft is only a draft yet regard may be had to it and it may be overturning provisions of the adopted policy.

*Mrs Brown:* I think we have to, as we are all doing now, look at the terminology that is used.

What should not happen is using something like a planning policy statement to get round the zoning in a development plan, for instance. It is important to remember that every planning policy statement – as it is set out in the Act:

Shall be in general conformity with the development plan.

So PSSs, as they are often called, are to specify the manner in which applications are to be dealt with. It is not necessarily setting out different policy that is set out in the development plan. So I think perhaps that is why there are a number of draft planning policy statements. We need to be really sure that what comes out in a planning policy statement is not contradicting. That is how it is set out in the Act.

Q178. *The Speaker:* Because the credibility of a draft and the credence that ought to be attached to it surely diminishes the longer it remains a draft, before it is adopted policy?

*Mrs Brown:* Well, you cannot – yes.

I do agree that the situation that we have now, where we have a number of drafts that have not been withdrawn, there is uncertainty about where they are going. I completely understand that. But a planning policy statement cannot, under the Act as it stands at the moment, change planning policy. There has to be, in general, conformity with –

Q179. *The Speaker:* Sorry. Just through you, Chair.

Finally on that, when an inspector in his report in assessing the evidence, gives perhaps considerable weight to an emerging policy, a draft policy, if it has been in draft form for rather a long time – like the draft planning policies on planning and economy since 2012 – but has been used for 80 projects –

*The Chairman:* Eighty projects in January 2015, so it might have increased by a lot more since then.

Q180. *The Speaker:* Yes, by a lot more.
It opens up possible dispute, does it not, when it comes to, say, a political decision on an inspector’s report – perhaps Mr Gillespie might want to comment later on that – where a Minister is assessing the weight that ought to be attached to a policy that has been heavily relied on by an inspector?

Mrs Brown: I think it is important, when you are talking about relying on a policy, what specifically … The draft PPS on the economy is an overall statement really and at any one time a judgement will have to be made by that person or committee who is looking at that particular application: what evidence is there in support of this application; is there anything in there; is there any reason why we should set aside the development plan?

I think it is certainly something that will have to be addressed as part of the review. I think the whole term ‘planning policy statement’ is wrong in itself in some ways, because it gives the impression that it is a policy which would immediately trump the development plan, which it was never set out to do. (The Speaker: I see.) I think as time goes on there is more realisation of that, really.

Q181. The Speaker: It could be misleading?

Mrs Brown: Yes.

Q182. The Chairman: Just to build on that, as far as I am informed, section 3(3) of the Town and Country Planning Act 1999 states and I quote – and this is where I am covering myself in case the notes here are incorrect:

As soon as may be after issuing a planning policy statement the Cabinet Office shall lay it before Tynwald and publish it.

To me, that puts a lot of pressure on officers, because we have now had a draft planning policy statement that has been hanging around even though it ‘shall be published and laid before Tynwald’ four years ago. So it must put a lot of pressure on officers in that situation: when you are having to make actual application of that policy, when it is dying in one sense because it has not been published and has not been laid before Tynwald.

Miss Chance: I think if I can come back on one of those points … Particularly when you said that there have been 80 projects that have used the planning policy guidance for the economy, there is an inference there that that made a difference in the determination of the application. (The Chairman: Okay.) It may well have been that those applications would have been determined in the same way. (The Chairman: Okay.) It might have been that the PPS on the economy just assisted in helping people provide the information that was helpful in determining it, but it might not have altered the consideration of that application in any event.

Q183. The Chairman: Okay. Thank you very much; that is very helpful.

The other thing that we are mulling over is a phrase, a couple of words used together that was I think first mentioned in the southern Area Plan judgment CHP2013/41 when it was stated that political preference was an issue in the judgment. I am mindful that in 2012 this new planning policy was actually announced by a politician – as far as I remember in a Budget debate. That must make it very hard to understand what weight, as an officer, to give something because politicians come and go; politicians have more or less power at certain times and it must be very hard for an officer making objective planning decisions according to the development plan when politicians are making statements about planning policy like that.

Mrs Brown: I will just finish off.
It can be. It is not an ideal situation to have draft anything for a considerable amount of time. That is not an ideal situation and I can understand, yes, it can lead to difficulties. But what we do not want to do is to have statements laid before Tynwald that are not quite right and are not going to be helpful or add value to the process. That is part of the reasoning why some of them have not been progressed.

Q184. The Chairman: Okay. Thank you. Anybody else want to add anything?

Mr Gillespie: Probably, I have two points, Mr Chairman.

Mr Rodan had made two points, I think. One was looking at the hierarchy of probably plans applying policy statements. The second one was looking at the weight attached to it and emerging policy as opposed to maybe an existing policy which has been in place for a long time. In terms of the 1999 planning Act, in the Isle of Man there is not any, effectively, hierarchy of plans as such. Section 10(4) allows you to consider the development plan, planning policy statements, any other material consideration. They do not rank one above the other. That is maybe different in the UK where the development plan has primacy and so there is a difference of how it is applied in the Island as opposed to in the United Kingdom.

In terms of the weight you were asking about, generally speaking the closer a planning policy statement of a guidance note is towards being adopted, then the more weight that should be applied to that. Also, if such statements have been through a public consultation process, generally you would expect that, certainly, inspectors would tend to view that as having more weight than an existing policy which has been in place for a number of years.

I hope that might have at least assisted in your consideration.

The Speaker: Thank you. Yes.

The Chairman: Is there anything you want to ...?

Mr Joughin: Well –

The Chairman: Just one minute, please Mr Joughin.

Q185. The Clerk: Thank you very much, Mr Chairman.

Just briefly, Mr Gillespie quotes section 10(4) which tells you what you have got to have regard to and there is no hierarchy there. But would you like to reconcile what you just said with section 3(4) which says that:

... in case of any inconsistency between a planning policy statement and the provisions of the development plan, those provisions shall prevail.

Mr Gillespie: It is set out – yes, you are correct – in section 3(4). Generally speaking, I think it is custom and practice that, if a planning policy statement is not in general conformity with the development plan, actually the provisions of the development plan would prevail.

Q186. The Chairman: Okay. So are we getting to the nub of this, which is this is the sort of ambiguity where political preference arises. Because it has been stated to us by our witnesses to date that it is generally accepted that politicians are there to actually put together the Government planning policy and once politicians are involved they make preferences in an easier way than it would be for officers who feel themselves much more constrained by their professional background and their training in exactly what the relative status and the relative importance of things are. Perhaps you could comment, Mr Stanley or Mr Gillespie.
Mr Stanley: I am not a planning officer at the moment, so I am possibly not the best person to answer that.

Mr Gillespie: I suppose all I can add, Mr Chairman, is that generally speaking the majority – or should I say all – of the planning officers are very experienced in assessing matters of policy and policy interpretation and we would rely on either precedent that had been set in previous determinations or in fact in case law in allowing us to apply weight to everything. I think in that regard that is how we as officers would generally assess policies. You are correct; it is very much for the politicians to set policy. It is for officers to then apply that.

Q187. The Chairman: But do politicians come to you when you are giving your advice to them saying, ‘I want to come to this conclusion: justify it!’

Mr Gillespie: If they do, I will give them objective, impartial planning advice based on my own experience and my interpretation and my understanding of the relevant legislation and relevant case law. I would obviously put back to the relevant Minister or Member exactly what my professional opinion is on that and that is for them, for the politician, to take on board and assess and...

The Chairman: Thank you very much. That is helpful.

Mr Joughin: We are going to go onto the Planning Committee appeals now. You did discuss briefly before about your information on the web and what have you. With the advances in technology, has consideration been given for options to increasing transparency. For instance, this Committee is being webcast live –

The Chairman: At least until five o’clock, anyhow!

Q188. Mr Joughin: – and then it will be able to be listened to again at any other time. Have you got any intentions of upgrading your system?

Miss Chance: If I can comment that. Since the IDeA Report that came out in 2008, that made a lot of recommendations regarding the transparency of the Planning Committee. I think at the time the Planning Committee was not even held in public. So first of all it began to be held in public; it is advertised; the agendas are advertised. We have then recently introduced public speaking at the Planning Committee and then minutes of the meeting are usually available on the web a day or so after the committee.

You talk about webcams. We were talking about that in the last fortnight, as to whether that would be feasible. There is a budget issue to a certain extent with providing live, certainly visual, webcams of that, although we know that other planning committees in different jurisdictions do that. We are giving some consideration to having audio of the Planning Committee.

But it is certainly available for any member of the public to come along and it is advertised well in advance.

Q189. Mr Joughin: Okay. That is on your radar, then.

When the Planning Committee make a site visit, why are the applicants not able to speak to them other than to answer a question?

Miss Chance: This is to do with transparency and having everything heard in a public forum and to make sure that... It is not that you might think the applicants would try to unduly persuade the Planning Committee, it is that other people might not hear what is being said.
Applicants can speak but they are just not allowed to talk about the merits of the application at the time. So they are allowed to point out various positions, items: ‘There is a road here,’ ‘There is a building there,’ ‘This is where the building would extend to.’ Any factual information, they are allowed to talk about; they are just not allowed to talk about the merits of the scheme.

Q190. Mr Joughin: Oh! It is quite ironic really, because in the Jenkins’ case they have suggested to the Planning Committee that they have been supplied with the wrong file and one relating to their first application not the second one. What advice would an applicant do in such a situation?

Miss Chance: I attended that site visit. The plan showing the extent of the site appeared to be wrong. There were two things regarding that because it also related to the Planning Committee agenda where on the Planning Committee agenda there is a site location plan that is intended to pretty much just point out to the Committee where the site is rather than the extent of the site but at the Committee we did walk where the extent of the site was so that was made clear. If you saw the Planning Committee presentation – which is still available and I have copies of that – it is made very clear what the extent of the site was before the Planning Committee made their decision.

Q191. Mr Joughin: In your experience, when an application is referred to the Planning Committee, do people with an interest in the application take advantage of the opportunity to speak?

Miss Chance: It is becoming more so; not as much as I was used to when I did work across. There are not as many people who do attend the Planning Committee; there are not as many people who do speak. But we are noticing a gradual increase as presumably it is becoming more apparent to people that it is available to them.

Q192. Mr Joughin: In the Jenkins’ case, the interested party who appealed the decision did not make any submission or speak to the Planning Committee yet the objection was only submitted after the determination. Is this usual?

Miss Chance: No.

Mr Joughin: It is not usual.

Q193. The Chairman: It is allowable, is it?

Mr Gillespie: There is nothing to preclude it. That is correct.

Q194. The Chairman: Is there a time period?

Mr Gillespie: In terms of what the objectors did, yes they have not done anything that is illegal; they have not done anything that certainly is not catered for. It is unusual not to receive them, shall I say. But as I said and I go back to, they have not done anything wrong.

Q195. The Speaker: Excuse me butting in. Notwithstanding that they have done nothing technically illegal, would it be your professional view that the process is undermined to other contented parties if this actually happens? Is this something that should be considered as a loophole that should be closed?
Miss Chance: I would agree, I think. The process is there so that the Planning Committee take into account all of the information and all the comments that anybody wants to say at that point. I think not giving really any comments and just saying, ‘I am interested’ and then waiting until the appeal does not benefit the process at all.

Q196. The Speaker: Should it be stopped?

Miss Chance: In my view, I think I would welcome an opportunity for it to be amended so that people had to give their views prior to the initial decision being taken.

Q197. The Speaker: Is this something that the Government review then will look at? Perfect opportunity to look at it!

Mr Stanley: I think it can do. Again as I set out, we are at a very high-level, at the starting point of the review, but certainly in terms of transparency again that is a topic that I think would fit within that overall key principle.

The Speaker: Thank you.

Mr Gillespie: Sorry, Mr Chairman, can I just add a particular point and I think it might be helpful? A letter was sent from the Department to the planning appeal secretary from the case officer at the point which the Department’s statement of case was submitted. The letter – and I will quote the letter. I think it probably might give you a flavour of maybe what the officers were thinking about in the particular issue you have just raised. It says:

The request for an appeal comes somewhat of a surprise as the only correspondence from the appellant is dated 17th January 2014 and states only that as owners of the [particular property] which is a property opposite to the proposed new dwelling, ‘they are unlikely to be affected by any determination relating to the proposed allocation’ and requested interested party status. One may from that brief communication imagine that these parties have no objection to the application as none is referred to. It is unhelpful to the process if parties have objections or concerns and do not make these known when the opportunity arises. The agenda for the Planning Committee is publicly available before the meeting and as such the recommendation for approval will have been known by the appellant before the decision was taken. It is not understood why an objection was not made at the time.

That, hopefully, might provide you with a flavour of that.

Q198. The Clerk: Has the Committee got that letter? If not, please would you send it in?

Mr Gillespie: I will certainly send that. It is on the public planning file, so yes I ...

The Chairman: Thank you very much, Mr Gillespie. That is helpful.

Q199. Mr Joughin: That is interesting for something we were discussing before about interested party status. Is the fact that they are not objecting because there is a cost involved?

Miss Chance: No. There is no cost to object at all at that stage.

Mr Joughin: Okay, that is something in my own head.

We might be repeating ourselves here. Do you think it would be helpful to make it a condition of a third party appeal that the objections should be raised at the earliest opportunity?

Miss Chance: Yes.
Q200. The Chairman: Even beyond that actually before the decision is made?

Q201. Mr Joughin: If objections have to be raised earlier, would there be any need to have third party appeal option?

Mr Gillespie: I think possibly there is a different argument being made there.

In terms of third party appeals per se the Isle of Man and from my experience the Republic of Ireland are the only two areas within very close proximity to the Island which operate a third party appeal process. There are various views on the merits of having and not having it. The views on the potential merits could be said that it provides a degree of ownership in terms of the residents or neighbours having the ability to have an input into the process. In that regard then it allows to a number of degrees the merits of the application as it would be challenged.

The flip side of that is that there may be concerns that a third party appeal process, may unduly elongate the process and it might impact on the development and the commencement of development.

So there are two different views as to the merits of having third party appeals and not having third party appeals.

Q202. The Speaker: Should the third party have to pay costs in the event that their appeal is unsuccessful, do you think?

Miss Chance: Can I comment?

There has been more recently introduced a fee to make an appeal, and that is returned if your appeal is successful but it is not returned if your appeal is unsuccessful.

There is also provision if a party does not turn up to the appeal at all for there to be costs made.

What we do not have on the Island, that there is in other jurisdictions, is costs for unreasonable behaviour.

The Speaker: Vexatious appeals?

Miss Chance: Yes. Vexatious is always quite hard to prove and determine. Having a fee – and I think the fee at the moment is something like £150 or £160 – I would have thought would have got rid of vexatious appeals to a certain extent. Obviously it depends on how much £160 is to the person who is making it, but –

Q203. The Speaker: Would a potential award of costs not be even more of a deterrent to vexatious appeals or last-minute appeals where you have not bothered to object earlier?

Miss Chance: Certainly in my experience, costs in respect of the process of appeals tend to focus both parties’ minds on providing information in a timely manner, in an appropriate manner. That is the best use of it really: that everybody has all the information well before you get to an appeal so that there is not then even more on costs or surprises.

Q204. The Speaker: Again, finally, will consideration be given to that in the Government review?

Mr Stanley: Potentially, yes. Again, it is quite a detailed measure.

Just to add on to Miss Chance’s comment, there is also a potential downside that having that system may actually put people off who might have a legitimate reason to appeal against the decision but may fear that in doing so they may end up with costs being awarded against them. Whether or not that is correct to have that view, they may do.
The Speaker: But it happens everywhere else.

Mr Stanley: It does happen in other jurisdictions so it is certainly something that is available elsewhere, yes.

The Speaker: Thank you.

Q205. Mr Joughin: Where an appeal takes place, the independent planning inspector makes a report which is published and based on this the Minister makes their determination. What is the role of the ministerial planning adviser?

Mr Gillespie: My role is to provide technical advice for the Minister and to ensure that decisions by the Minister are reasonable and have regard to prevailing legislation and case law.

Q206. Mr Joughin: Okay, one more.

Currently the advice of the ministerial planning adviser to the Minister is not public unless the Minister disagrees with the recommendation of the independent planning inspector. Do you think there would be a benefit in increasing the transparency here?

Mr Gillespie: It is something that I am sure might be an option for the Committee to propose. I do not think as a Department we would see that as being –

Q207. Mr Joughin: You do not see a problem with it? No.

Q208. The Speaker: Can I just come back on the independent planning inspector’s report and your role in assisting the Minister to interpret it? You mentioned technical advice; this is not points of planning law presumably, mainly, is it?

Mr Gillespie: I am not a qualified solicitor. I can interpret policy and I can provide my professional opinion as to case law and legislation. If so required on a technical issue, it is within the ambit of myself to ask the –

Q209. The Speaker: Is your role as adviser routinely sought or is it automatic or is it only on the request of the Minister?

Mr Gillespie: It really depends on the particular Minister and also it depends on the particular application.

As I said at the start, I have served under four or five Ministers and each Minister has approached the issue of planning appeals differently. When an application is potentially finely balanced, shall I say, then they tend to ask certainly for my advice in that instance. The Ministers are very experienced as Ministers and also very experienced in planning matters and depending on the nature of the application and depending on the report and the recommendation, at times the recommendation should be a fairly easy –

Q210. The Speaker: In those cases, you would produce a report recommending adherence or not to the inspector’s recommendation depending on the steer that you had been given by the Minister?

Mr Gillespie: No. Essentially, if I am asked for an opinion on a particular application I will give objective, impartial and professional advice. It is for the Minister then to weigh that in his or her consideration of the appeal.
Q211. The Speaker: Yes.

In the old days, Ministers did not have a planning adviser as such to help them understand the application and would perhaps seek a planning officer who I think would be very careful in what was said to avoid the temptation to rehear the case that might reach a different conclusion from an inspector who had actually heard all the witnesses.

Is that a fair comment?

Mr Gillespie: I think in terms of probably why my role exists, I sit in a different location from the Department so there is a … I sit, as I said, in St John’s and the Department is here in Douglas in Murray’s House. For that reason there is a physical distance between myself and the Department. In that regard, if a Minister was seeking … If there was not a ministerial planning adviser in position and the Minister was seeking advice or technical advice from officers at the Department, it may be that certainly may not provide a transparent process and it might actually prejudice the integrity of the process. That is why I sit where I sit and that is why I provide the advice that I issue.

Q212. The Speaker: A recommendation is just a recommendation but is by a qualified inspector who has heard all the evidence, the witnesses and weighed it up and assessed it. There must be extremely good reason, must there not, for a Minister to go against the inspector's advice in the first place?

Mr Gillespie: Certainly, it is unusual – maybe the Committee do not necessarily believe that at the present time. If I can give you statistics: since 2011 there have been 603 planning appeals. In 18 cases only – so that is 2.9% of the total number of appeals – has a Minister gone against an inspector’s recommendation. That might allay any concerns or fears maybe that the Ministers just do this carte blanche. They actually do not do that carte blanche and the statistics will prove that.

Yes, if a Minister is going against the planning inspector, yes there has to be a robust and evidential –

Q213. The Speaker: And published reasons, of course?

Mr Gillespie: Sorry?

The Speaker: And reasons, published?

Mr Gillespie: Yes, that is correct.

Q214. The Speaker: And issued in a timely manner, as we know. And those reasons, you would have a major role in framing watertight planning reasons for overturning an inspector’s recommendation that would hold water obviously and withstand challenge that the decision might have been made simply because a Minister did not like the decision. I am not trying to put words into your mouth, but might be thought to contrive good planning reasons to overturn a decision they did not like.

Mr Gillespie: Yes, I go back to the point that I have made that I will provide objective, impartial and professional advice to a Minister.

There must be good reasons for the Minister to go against a planning inspector. In the instances where that has happened, yes it is largely my role to provide a reasoned decision letter which supports the reasons for refusal which have been issued.
Q215. The Speaker: I do not want to prolong it; just one last point. When that happens then, has it been in your experience through a process where the Minister has sat down, ‘Right we have got an application ...’ – you say only 2% or so actually end up overturning the decision. Is it that the Minister says, ‘There is something about this application that does not sound right to me and I would like you to help take me through the thought process of the inspector and assess his report and why he has come down the way he has’? Would that typically be the way it happens or would it be that the Minister reads the report and says, ‘Well the inspector has recommended this but I think he could quite easily have gone the other way. Can you find the flaws in the inspector’s reasoning?’

Mr Gillespie: I think in terms of the Minister’s assessment of the recommendations, generally speaking, as I said before, they are very experienced Ministers; they are very well clued-up, for want of a better word, in terms of planning and in terms of their understanding of planning. If they do not necessarily agree with a recommendation, they would have to provide me with the evidential context as to why they believe that is not the case.

At the end of the day, as I have said previously, it is my responsibility to advise the Minister appropriately. If there is a weighting issue then essentially that is a role where I can assist, but apply policy.

Q216. The Speaker: Have there been any occasions where you have talked a Minister out of overturning a decision that he was inclined to make?

Mr Gillespie: With all Ministers we certainly have very full and frank discussions at times, yes. I would revert back to the fact that at the end of the day it is for the Minister to make the final decision. I provide professional, impartial advice and objective advice and it is for the Minister to weigh that up.

Obviously I have to advise the Minister if there are instances where a decision potentially is being made. There may be – repercussions is the wrong word but – impacts arising from that decision. In other words, you may find yourself that there may be a legal challenge or that might be setting a precedent which might take the interpretation of that policy outside of the parameters that it should be.

Q217. The Speaker: And do Ministers invariably take that advice in that situation?

Mr Gillespie: I hope they do, but at the end of the day Ministers are Ministers and they will –

The Speaker: Thanks.

Q218. The Chairman: Thank you very much for preparing those statistics you mentioned. Will you supply them to the Committee as well, please?

Mr Gillespie: Certainly, yes.

Q219. The Chairman: Could you also supply them in terms of percentages or numbers in time periods so that we can understand whether or not there is a trend or whether there is a greater amount more recently or there were more in the past? In other words whether Ministers are learning or whether they are regressing or whatever.

Mr Gillespie: I can tell you those statistics right now if you want. I can certainly provide them, actually my own calculations.

Q220. The Chairman: Just share them with us afterwards.
I just want to unpick a couple of points you said though, just to make sure I understood it correctly. The first one was ... I think you said, ‘It depends on the Minister how the process works.’ Is that clear or am I putting words in your mouth?

Mr Gillespie: No. Certainly each Minister has a different approach to – not necessarily how they go through the process of determining an appeal but – how they use my personal experience. (The Chairman: Okay.) But it is also based on the particular type of the application as well. There may be applications which maybe as officers we would say are generally fairly easy to –

Q221. The Chairman: Okay. And as an incomer into Planning, I was shocked that twice you mentioned that your Ministers were ‘very experienced in planning’. And I am thinking to myself, ‘Who is he talking about?’ He is talking about Minister Ronan, Minister Skelly, Minister Cretney, Minister Gawne, I guess, and I guess departmental Members or other Ministers who have been allocated by a Minister to hear decisions – because you said five or six – so I guess it would be Mrs Beecroft – that is quite a public case – Minister Robertshaw – because that is the Minister we are talking about here. So we have got six already. I just want you to go back and say again ...

How can those people claim to be experienced planning people whose decisions should be in preference over yours as a member of the professional body and with years of professional experience?

Mr Gillespie: Yes, as I say, in terms of Ministers I have served under Minister Gawne, Minister Cretney, Minister Skelly, Minister Ronan – have I said four? Yes, four I think it is

Q222. The Chairman: But we know Minister Robertshaw because he heard the case we are talking now with the Jenkins’ case. We know Mrs Beecroft because we have heard evidence about that case as well – I am going to ask you questions in a minute. So we know of six; there are at least six.

Mr Gillespie: Yes, I have not directly served, shall I say, under those Ministers. Those Members have been delegated to determine particular appeals. (The Chairman: Yes.) So that is how they have been involved in the process.

In terms of their experience, I have not looked into their parliamentary history, but they come across to me as experience politicians.

Q223. The Chairman: Okay, so that is it. So it is experienced politicians. You were not giving them great experience in planning law and planning policy and so on and so on?

Mr Gillespie: No and unless they are chartered town planners by profession, then no I would not. It terms of ... It was an expression in terms –

Q224. The Chairman: Okay and the other thing that perhaps your statistics already show us: is there any correlation between politicians being involved and these decisions not being accepted in the sense that a petition of doleance arises? Because that is something we are testing in this Committee.

Mr Gillespie: Well, I mentioned previously the 18 decisions where Ministers have gone against obviously the inspector’s recommendation. Very briefly, in six cases it was Minister Gawne, in one case it was Minister Skelly, in seven cases it was Minister Cretney and in four cases it was Minister Ronan.

Q225. The Chairman: And how many of those has resulted in petitions of doleance?
Mr Gillespie: There have been five petitions of doleance since 2011. (The Chairman: Okay.) Two of those were under Minister Gawne and we have three under Minister Ronan.

Q226. The Chairman: Please would you correlate them to the 18 and the five? Is there a direct correlation or are some of the petitions of doleance when the Minister did not go against the independent inspector’s decision or whatever?

Mr Gillespie: I can advise.

The Chairman: Thank you very much.

The Speaker: Just one very quick one: elsewhere an independent inspector does not make a recommendation; he actually makes a decision and that is final. There is no ministerial dabbling and requiring advice –

The Chairman: In Ireland and Scotland.

Mr Gillespie: That is correct.

Q227. The Speaker: Would that not be better for all concerned?

Mr Gillespie: Having served in a number of jurisdictions where the inspector has the final decision – obviously there can be legal challenges after that – it really boils down to my understanding of the system here is it is here to provide, shall I say, a local aspect to the decision-making process. The merits of whether an inspector should or should not have the final say, are really probably not for me to –

Q228. The Speaker: No. I just wondered, professionally, with your experience of that … Again, would this be something that the Government review would look at?

Mr Stanley: Yes.

The Speaker: Thank you.

Q229. The Chairman: We have started on petitions of doleance, so we will carry on if that is okay? Political preference is one hypothesis that we have at this stage. Another one is to do with administrative issues in the planning process. We believe we know that several petitions of doleance have been initiated with respect to administrative issues in the planning process. We understand that sometimes these are resolved in court but in some cases an agreement is made that a decision will be re-determined before the case comes to court.

In either instance, can you provide some examples of the administrative issues which led to petitions of doleance and how the Department responded to this or in general responds to this? And how have procedures and processes been reviewed in the light of that?

Mr Gillespie: In terms of the grounds of challenge of petitions of doleance, there are a number of grounds that every claimant makes to the court. For example whether something is Wednesbury unreasonable in their perception or whether a decision has been made maybe notwithstanding all the facts. So it is very difficult to … It probably would not assist the process to particularly say it had one ground. There is never just one ground in the challenge. Yes, there can be administrative grounds or there can be particular legal aspects, so it is more a marrying of the two.
The Chairman: So what administrative issues have been identified in those proceedings and how have they been addressed?

Mr Gillespie: Obviously Mr and Mrs Jenkins had a case where there was a Minister there not providing reasons. That is to do with Mr and Mrs Jenkins.

In terms of other grounds of challenge, there have been grounds of challenge made that ... Particularly in a case where a petition was delegated to ... Or in fact in this one where a petition was delegated to Mr Robertshaw, there were grounds made by the claimant that that was illegal to go back to Mr Robertshaw. Again, that is wholly not the case. The Rules of Court, Rule 14(33) provides that:

The court may:
(a) remit the matter [back] to the decision-maker;

In this case, this was Mr Robertshaw. So particular grounds of challenge have particular ... It is not necessarily said those grounds will be ultimately fine, shall I say.

Q230. The Chairman: Okay, but just for clarity, these challenges were successful in the two cases that you have identified and money was paid out, according to the Freedom of Information disclosure that we have here. Money was paid presumably in light of the fact that these administrative issues are identified and the cases were found, because obviously we can if we want try to get access and we should get access to all the information about the courts, but just to help us with our understanding, we understand the challenge was successful and money was paid to the person who took out the petition of doleance.

Mr Gillespie: I will clarify that for you.

In terms of the money paid out, there is not an award of costs. It effectively is the loser pays principle and it really is just a loser pays in terms of legal costs. If claimant x is successful, they do not get an award of costs of x amount of pounds or whatever. Simply what occurs is that the losing party pays the legal costs of the successful party. (The Chairman: Okay.)

In terms of ... I am trying to recall the other aspect. Can you just remind me the other point that you made and then I will –

The Chairman: It is about the actual administrative issues and how they have been addressed.

Mr Gillespie: Yes, well going back to the other point you made about the decisions. Was it the previous point you made? It must be very clearly stated that decisions that are made by the court are not necessarily to do with the merits of the particular application. They will not engage in whether a decision was right or wrong, shall we say, in planning policy terms. So they are looking purely at the legal aspects. I will recall a very learned barrister from Northern Ireland once telling me that it is like a Heinz Beans advert. There are 57 ways to challenge any particular decision. It is very difficult obviously to defend that.

So the prominence of a petition that has been successful, I would imagine that the majority would certainly be in the first instance to get leave stage or whatever stage it is, they would be successful.

In terms of what the Department has done, the Department certainly has reviewed its processes. Certainly the judgment which you mentioned, which was prior to Mr and Mrs Jenkins’ judgment coming out, was a very helpful judgment for the Department, which has clarified a number of issues –

Q231. The Chairman: This was the southern Area Plan judgment: CHP2013/41?
Mr Gillespie: No this was the judgment for a development in Castletown.

The Chairman: The Callow’s Yard judgment?

Mr Gillespie: That is correct, yes.

Q232. The Chairman: CHP2014/107?

Mr Gillespie: That is probably the reference; I was not aware of the reference.

Certainly that has been very clear in crystallising for the Department how they should – or certainly how the decision-makers should – approach decisions and how they can interpret policy or may not interpret policy; how they can apply weight in an instance like that. That has been very helpful in that regard and certainly since that judgment has been made, the Department has considered that and has taken necessary advice from that.

Q233. The Chairman: Is it true to say that the administrative issues usually arise from politicians making it difficult for officers?

Mr Gillespie: Obviously, I have made reference to the fact that there was administrative error and generally in that particular case that clearly comes down to the Department being responsible for that.

In terms of Ministers making errors or whatever, I do not think there is any … I do not think there really is any correlation to anything like that.

Q234. The Chairman: The total of the expense to Government revealed in the Freedom of Information response which you put together is approaching £100,000. It is not peanuts. It was £70,000 or something when that information was given. Presumably that is quite a lot of money in the Planning budget?

Mr Gillespie: No, no. In terms of the legal costs that have been paid in terms of the planning … And bearing in mind we have –

The Chairman: We have got £28,000 in respect to two doleance actions –

Mr Gillespie: That is correct.

The Chairman: – which were settled prior to a full hearing; we have got £6,000, £22,000 and £15,000, which were paid as legal costs. That is what the Freedom of Information disclosure says, which is £72,000 in total.

Mr Gillespie: Certainly my understanding in terms of what the Departments have paid to date, there is the figure of I think it was approximately £22,000, there is a figure of approximately £6,000 and there was a figure of approximately £15,000.

The Chairman: That is correct.

Mr Gillespie: So that is what my understanding of what either the Department of Infrastructure or the Department of Environment, Food and Agriculture have paid.

Q235. The Chairman: Plus £28,000 in doleance actions which were settled prior to going to court. That is what the Freedom of Information disclosure says. Well, clarify that, because that is
the information that we have and that is public information. I have not revealed anything I should not. I got that off the internet before I was coming here.

Have you ever considered compensating applicants who have incurred costs, for example, starting building work when planning has been approved – this is very close to the case we are actually considering now – whose planning permission has then been revoked as a result of a petition about an administrative failing? Surely that is natural justice in a way.

Mr Gillespie: I will certainly answer. From my experience of certainly working in Northern Ireland, there is a responsibility on the applicant to have regard to petitions of doleance or judicial reviews, as in the UK which can be submitted after three months. Certainly in my experience of being in that position in Northern Ireland, the judge in a particular case said, ‘It really is not for the planning process to award costs in that respect.’

The Chairman: Okay. So it has not been considered formally but that is your view from across?

Mr Gillespie: Yes.

Q236. The Chairman: We have figures about the number of petitions of doleance in the last five or six years but it has come to my attention that apparently this is not the first time when there has been seemingly an increase in the numbers of petitions of doleance. Apparently, there were lots of petitions of doleance to do with planning when the Strategic Plan first came in in 2006-07. It would be helpful to us as a Committee if you would go back and see if your files show that, because we cannot get that information. I have been given anecdotal information that there were a great number of petitions of doleance back in 2006-07 – or it might be that my political informant misremembers.

Mr Gillespie: Chairman, that is certainly before my time, so I assume between –

The Chairman: At the minute we have just got it blacked out and it seems to show an increase, but apparently there was a large number of petitions of doleance around the time when the Strategic Plan was coming in and so on.

Mrs Brown: We can certainly get you some statistics on that.

Q237. The Chairman: Thank you very much. There are a couple of other cases that are still ongoing, so we do not want to ... Although they might have been finished in legal terms, but they are with you as ministerial planning advisor. Would you want to share with us anything about whether the issues of the Jenkins’ case are paralleled in those cases, because we believe they are? For instance, there seems to be a more or less parallel case which has been successful in the court, but it is the other way round for Mr and Mrs Jenkins. This was a case of somebody who was using a petition of doleance to actually stop planning permission. So a small guy was using a planning permission.

Mr Gillespie: As you have said, the cases are currently still under consideration, so it would be inappropriate for me to make any comment on that.

Q238. The Chairman: Okay, because from our point of view, they are no longer sub judice. They are out of the legal system, but the Minister has got to make a decision in terms of what they do next. And that is what I am going onto: is it reasonable for Mr and Mrs Jenkins or for these other people to be waiting for months and months and months to even know where they are in terms of an actual planning application once the petition of doleance has been decided?
Mr Gillespie: Certainly, in terms of timeframe, there are always agents that are appointed by the relevant parties. We would certainly endeavour at times to keep those agents advised and it is also for the agents to ask as well and obviously maybe applicants to ask us what stage it is at. But I take on board what you are saying.

Q239. The Chairman: So do you think we should try to time-constrain that in the high-level review the Government is carrying out?

Mr Gillespie: That is a matter for yourselves as a Committee to obviously make a recommendation.

Q240. The Chairman: Okay. Finally one administrative issue, practical issue that was raised in this case is that the interested parties did not actually get to hear about the petition of doleance when it was first started. So have you considered notifying pre-action letters when petitions of doleance are lodged in relation to planning applications? For instance, conceivably Mr and Mr Jenkins could have started building work in that period when already legal proceedings had been commenced. So in that sense, it could be considered conceivably as negligent or something if they were not informed in a timely basis.

Mr Gillespie: I think it is something, yes, the Department would take on board and would look to obviously address that matter, yes.

Q241. The Chairman: Okay. What about the link with the ombudsman, because something that has been brought to our attention is the recommendation for private parties to take things up with the Department which they perceive as persistent administrative failings. Has the Department considered or has Government considered the use of ombudsmen to actually help us get better in the way that we go about our business in the area of planning?

Mr Gillespie: I can only talk from the experience of working in England where there is a local government ombudsman available. Certainly, yes, they will look at the procedural aspect of whatever matter is before them. It is a political decision for Government as to whether they would like to introduce an ombudsman for that process on the Isle of Man. Again that is maybe something that as a Committee you may want to give thoughts to.

The Chairman: Apologies to have kept anybody. We now get to the meat of our questions. I hope everyone is okay with the fact that we are running way over 5 p.m. Thank you. Please.

Q242. The Speaker: Council of Ministers’ involvement in the planning process: CoMin can call in applications of general importance to the Island or for some other reason that ought not to be decided by the Department and the decision has to be laid before Tynwald. Under section 11(3) applications ‘shall be referred to the Council of Ministers’ when it is ‘an application by the Department’ – currently DEFA – or the land is Department land. In these cases CoMin determines the application as if it was the planning officer or the Planning Committee. The process where some planning applications go to the Council of Ministers: are the Council of Ministers being expected to do anything different in terms of process to a determination by a planning officer or the Planning Committee? How does the process differ?

Miss Chance: Shall I ...?

The Chairman: Yes, Miss Chance.
Miss Chance: I think when an application is submitted and it goes through the normal process, part of what I see as the planning officer’s job or the Planning Department’s job is to give added improvement to whatever that application might be. There is an element of negotiation; there is an element of things that might change, so that something might then become compliant with policy. For instance, you might get an application and the visibility splays may not be correct. There is an opportunity therefore for Highways to comment; for plans to be amended and for a scheme to evolve as part of that. Then only when we feel that an application is ready to be determined, for instance by the Planning Committee, does it get to the Planning Committee. Then, beyond that, there is the chance of an appeal.

When an application is considered by the Council of Ministers, the processes is that the appeal inspector is the first person who really looks at the application and they look at it almost as if it was as it was when it was submitted. So you miss out that element of the evolving of the application. Then the planning inspector will look at that application and make a recommendation to the Council of Ministers, which then is not heard ... Their meetings are not held in public and then there is not an appeal after that.

So the process to a certain extent is really quite different. Of course, if an application goes to a hearing, everybody who wants to speak is entitled to go, so there is an opportunity for lots of comment and debate.

Q243. The Speaker: So to that extent is the right of the public to speak the same given that if they do want to speak it will be before the Planning Committee and if you are an interested party you will be heard? If you do want to speak about a Government application, the fact that you are a party, does that trigger off automatically a right to be called by the inspector – not the Planning Committee but the inspector – at a hearing? You are entitled to have a hearing?

Miss Chance: That is right.

Q244. The Speaker: Yes.

So the deliberations of the Council of Ministers are not in public the way that Planning Committee decisions are in now in public. Ought they to be?

Miss Chance: I think it depends on why it is referred to the Council of Ministers. There are always going to be some very special circumstance where it ought not, but I think for planning applications, the vast majority of them, there is no reason why they should not be heard.

Q245. The Speaker: That would mean a change to legislation. Could you see the role of the Council of Ministers being undertaken a bit differently by, say, a sub-committee of three or four from the Ministers and actually being held in public? Would this be another way of making it as transparent as the other class of applications: the non-Government or the non-special ones?

Miss Chance: I think that is a possibility. I think there are a number of different ways that it could be looked at, that it would be considered.

Q246. The Speaker: What other ways might there be, rather than Council determining these sorts of applications?

How could it be done otherwise? Applications by the Department, for example.

Miss Chance: Any different ways to deal with it would all involve a change of legislation. I think we need to look at the reasons why you would not have a Department determining its own applications, and that is to do with bias. So any way that you could devise a system whereby those people who are making the decision are not connected somehow with the applicants is the way to deal with it.
You could have a completely independent planning authority. You could have an independent Planning Committee that was appointed in a different manner. You could have a Planning Committee that, as you said, are made up of Members of CoMin. There are a number of things that could be explored.

Q247. The Speaker: Under the present system, the inspector makes a recommendation and the Council of Ministers decide and they do so on the basis, nowadays, of having planning advice available to them. I do not know when that came in, but it was not that long ago. It is a different planning adviser than yourself, Mr Gillespie. Is the process more or less the same, to your knowledge? Or Miss Chance?

Miss Chance: We do not know.

The Speaker: You do not know.

Miss Chance: I do not know whether there is a planning adviser in there in all instances either.

Q248. The Speaker: Right. But it is certainly not a transparent process is it: it is done in secret and the decision, if there is an overturning of the decision, we do not necessarily know why, do we?

Mr Gillespie: There is certainly no appeal process for any application that has gone before the Council of Ministers, as there is in an application which has gone before the Minister. That said, I would not know necessarily, in substitution of the Minister, who that appeal could be to. Obviously, there is the availability of petitions of doleance at the end of the day, but there is a fundamental difference –

Q249. The Speaker: The only place they can go after that is a petition of doleance to challenge the way the process has been handled, not to make a case that the decision in planning terms ought to have been different. So is that a major deficiency that as professional planners you identify and something that ought to be addressed?

Apart from the politics of the thing, it is –

The Chairman: An answer could be, ‘It is above my pay grade.’ (Laughter)

Miss Chance: It is something that we think about. I do not think we have actually formulated a conclusion as to whether we do think it is or not.

Q250. The Speaker: Lastly, can I ... I appreciate these are some follow-on points. The provision under section 11(1) of the Act which allows CoMin to call in applications, the process of calling in, rather than go through the Planning Committee process – not Department applications but matters of general importance to the Island – are you aware of any examples of where this has been done in recent times?

Miss Chance: The only one I know of is the Tesco application.

The Speaker: The which?

Miss Chance: Tesco application.
Q251. The Speaker: Tesco. And when would that have been?

Miss Chance: About 2011, I think. (Interjection by Mr Stanley)

Q252. The Chairman: Are we right in thinking that things like airports, harbours and things would be under different regulations so they would not need to be called in? Tesco seems different. It is not a defence issue; it is not a strategic infrastructure issue. Why is it that Tesco is the one that was called in but not some of the major infrastructure projects? Or secret radar stations for the rendition or whatever it would be? Why?

Miss Chance: Did the application for the Airport? It did not, did it?

Mrs Brown: No. But we could find out and –

The Chairman: It seems to us helpful, because we are trying to understand why there has been so little called in.

Miss Chance: I believe that provision of the Act was designed for those types of application. I do believe that whilst the Act makes that provision, the Council of Ministers need to be aware of the application before they call it in. There is not a mechanism that we necessarily make CoMin aware of particular applications. I would presume if an application was of such strategic importance there would be a general awareness of it anyway.

Q253. The Speaker: Shouldn’t the Chief Secretary monitor planning applications in the first instance and say, ‘Here is one that might raise national issues of importance and this could be considered by Council of Ministers’?

Miss Chance: That is certainly a possibility.

Q254. The Chairman: If you do not mind ...

Q255. The Speaker: We are looking at section 11(3) applications and it has been called, to us, ‘a parallel process’ to the Planning Committee, planning application process. So the ones where there is a departmental involvement and that is the reason.

Would one way of characterising what happens be that lots of good things have happened to the regular planning process that most people use: increasing the transparency and making sure that it is equal and fair, for those things have not happened in the section 11(3) process, and it is up to us now to conclude that they should happen now – tardily but they should happen now. How would you react to that interpretation of what has gone on in the last six or seven years?

Miss Chance: You are questioning me?

I see the making of development procedure orders – and Mrs Brown might want to say something on this – as something that is a very useful provision but not necessarily something that you would use on a regular basis.

The Chairman: Okay.

Now, 11(3) is when applications ‘shall be referred to the Council of Ministers’ when it is ‘an application by the department’.

Miss Chance: Sorry, I have been completely in the wrong place.
Q256. The Chairman: That is what has been suggested to us: that basically this process is underdeveloped relative to the way ... So when Mr Speaker was Chair of Planning, the transparency was not there that is there now. But now we have got higher standards of transparency; of perceived fairness; perceived equality through the transparency, and perhaps that is something that is lacking in that section 11(3) process and we need to catch up.

Miss Chance: Sorry for going off on a tangent. Yes I would agree.

The Chairman: Thank you.

Mr Stanley: I think if I just add to that ... I think that particular provision really came to the fore when development management sat within the Department of Infrastructure, because it brought to the fore that issue, because obviously DoI, as a very large landowner within the Government, having all of the Government estate within it, it did create that issue and it brought that to the fore. I think that issue has gone away to a certain extent with the relocation of development management.

The Chairman: I do not think so. Not with the decision on the Promenade, because it is now a very public application of that process.

Mr Stanley: I am going forward.

The Chairman: Now would be the right time, because the public has actually reflected on the planning process much more than it probably normally does.

Mr Stanley: Yes, I would not disagree with that.

The Chairman: Thank you. Do you want to carry on?

Q257. The Speaker: No, no; that is fine. I think you have answered the question of when there ought to be a special public inquiry of calling in. It is certainly surprising to us that this is not done more often when there are arguably projects of public importance – not necessarily Government. If it was a Department, it would be the section 11(3) procedure, but otherwise could well be called in. We just do not know why this is not happening more often. Is it for reasons of administrative convenience or cost? Do we know?

Miss Chance: I do not know. It would be CoMin who I think would answer the question as to why they –

The Speaker: Thank you.

Mr Gillespie: Potentially, you may want to look at ... Across, the provision of calling in was the Secretary of State so it might be that as a Committee you look at maybe the reasons why they call in applications to provide you with some assistance in your thoughts.

The Speaker: Yes.

Q258. The Chairman: It would be helpful if you could share with us the Tesco decision and the Airport and anything you have got in the files about that process in the past. It does seem to us that that is something that will be important for the Government review as well.
Okay we are moving onto the last stage now, which is post planning. There are just three or four issues that came up in Mr and Mrs Jenkins’ petition that we would like to raise, very briefly, if that is all right?

The first one is to do with enforcement and allegations that breaches of conditions were not really followed up and no action was taken. Can you just explain to us in summary whether it is the Department that makes a decision and if so which Department or whether it is the AG that makes the decision? Who practically monitors compliance with conditions from previous permissions? Just talk us through that process and be mindful that we have the actual statistics that Mr and Mrs Jenkins quoted from their Freedom of Information request about the great number of complaints but apparently only two enforcement actions have been taken for breaches of planning conditions.

*Miss Chance:* Okay, if I can take that. Planning enforcement falls within DEFA. We do have a planning enforcement policy that is published and it is on the website. It has an approach of trying to ensure compliance rather than prosecution in the first instance. What we are trying to do in planning enforcement is resolve issues so that it benefits all rather than use it necessarily as a legal process, so that the long-lasting outcome is the right outcome.

We have an element of where we assess enforcement breaches in a bit of a methodical way. Firstly, is it breached at all? We get an awful lot of complaints that are not breaches, but we do need to investigate whether they are a breach of planning in the first place. We then look to see whether that breach is harmful; how severe it is and we will do a bit of an assessment against whether we might have granted planning permission for it in the first place. We look at it in terms of expediency, which is another way of saying, ‘Is it something that is in the public interest to pursue or is it something that is not particularly harmful?’

*Q259. The Chairman:* Who is ‘we’ in that case? Is that you or is that the Department or is that the Attorney General?

*Miss Chance:* In the first instance it is the Department. We involve the Attorney General when we get to the point that we think we perhaps want to take more formal action and then the Attorney General’s look at it. They also have to look at it in terms of whether something is in the public interest.

We have got a system of prioritisation of looking at enforcement cases. That really relates to the level of harm we think that that breach is or is not necessarily causing.

That is the manner really in which we approach our enforcement.

*Q260. The Chairman:* Thank you. Would it be possible for the Committee to have the breakdown of 2,289 in the last decade, in terms of numbers of building control and planning and also in terms of the numbers which were actually identified as being breaches of planning conditions, so we can see that as a percentage? Because it was very helpful to learn more about things in number terms.

*Miss Chance:* I have to say, Chairman, possibly not. We have really only been collating statistics in relation to planning enforcement for the past two to three, four years and they have become more sophisticated over the past two years. We have got a few more for a couple of years before that, but beyond that we cannot delve into it. We can say the amount that we have received each year, but we cannot delve into the reasons for closure that we can over the past two or three years. But we can certainly provide those for you.

*Q261. The Chairman:* Please; we would appreciate that. Because, often understanding the figures helps you understand the issues, and linking it with the policy and the explanation that you have just given.
Moving on, there was also a suggestion inside Mr and Mrs Jenkins’ petition evidence and the written submission that you will have seen on the Internet and so on, that in some sense the certificate of lawfulness which can come in after four years is an issue, as well as much as a perception can develop that nothing is being done in respect of obvious breaches of conditions. Then all of a sudden it is lawful because the four years has lapsed. Any comment on that, in general terms perhaps?

Miss Chance: Yes, in general terms, the reasoning behind having lawfulness for development is presumably if something has been physically stood there for four years and either it has not been noticed or it has not been complained about or no action has been taken, it cannot in itself be unduly harmful. I am saying that is the theory behind it. There are certainly arguments you can make for and against that as a premise.

The 10 years – which is usually for the use of land or the use of a building – again if it has been continuing for that period of time, you have to question the expediency as to how harmful that impact has been because action should have been taken. I suspect there is also a little bit of an element of expectation: that if you have been doing something for 10 years, is there a legitimacy in thinking that you can be able to carry on with that?

Various jurisdictions do it in different ways. Certainly in the UK they have the same in terms of the four years and 10 years. I know in far off places like Australia, they do not have lawfulness at all and so you would always have to apply for your planning approval.

Q262. The Chairman: I am just mindful that we need to establish a process for who monitors compliance with conditions. I have not as yet formed the impression that it is something the Department’s officers do systematically and I am minded that this might be a gap, because conceivably neighbours do not do that either because they might not even be aware of the conditions and then they only come up later when something else happens. So is there a gap in the process in terms of monitoring compliance with conditions?

Miss Chance: A yes and a no. We do have an officer who checks what we call pre-commencement conditions. That is triggered if an application for building control is submitted and those conditions have not been discharged. Then the Department will write to them to remind those people that they need to comply with those pre-commencement conditions.

Conditions on planning approvals can be in relation to a number of long-term things: how something is used; the hours that something can be open for. And you are right in that we do not operate the planning system in that we are proactive in our enforcement or compliance. We are reactive, so we are reactive to people complaining to us rather than having the resources to be able to go out and actively do that.

Q263. The Chairman: Given that in many, many cases the complainant will be a public interest complainant – perhaps not, perhaps it is just a mischiefous neighbour or something but perhaps it is just a public interest complainant … Do you think it is helpful that you do not actually report back – we learn from the evidence submitted to us – to a complainant when they do make a complaint about non-compliance, alleged non-compliance, with conditions?

Miss Chance: I am sorry.

The Chairman: You do not actually report back. If somebody makes a complaint, you do not actually, as far as we understand from the evidence we have received, report back to the complainant what you found about whether there was a breach or what you are going to do about it. It is none of their businesses as far as you are concerned; they have made the complaint and that is it.
**Miss Chance:** We are meant to go back to them. *(The Chairman: Okay.)* Whether we do in all instances, I cannot say, but we endeavour to go back to a complainant.

The policy does indicate that if a matter is resolved and it is something that is obvious, that the person who is complaining will see that it has been resolved. There might be some instances, in extreme examples: the removal of a conservatory or something, that it has gone so we do not need to write to tell them it has.

**Q264. The Chairman:** Finally, it is good to hear that you link in with the building control process. Are there other processes you could link in? For instance, there are now local authority enforcement officers. Conceivably, that could be some way that local authorities, local commissioners, local clerks and things can be involved in the planning process in the future.

**Miss Chance:** That is a good question. I think there are ways in which we could improve links, particularly to gain further information.

I do not know about with local authorities. I do not know that they have specifically got some enforcement officers and, if they do, whether the enforcement officers operate under different powers. We do need to be careful about confidentiality with regard to enforcement complaints. Certainly what I would like to see with certain enforcement investigations is a greater linkup with Government. So, for instance, some parts of Government may hold information that they cannot give us through data protection, but it would help us in our investigation.

**Q265. The Chairman:** Well, thank you very much. Hopefully it has not been too painful. You have been very helpful with us as we have made our enquiries. We thought about this, but as we had so many questions we did not invite you to make any statement at the beginning. Is there anything that you – you prepared lots of information that you wanted us to ask you about. Are there any statements you wanted to make before we do close at 6 p.m. late one evening?

**Mr Gillespie:** I was just wondering, just to provide you with some assistance ... You mentioned pre-application guidance. The Department updated their pre-application guidance in October 2015.

**The Chairman:** We received that, actually. We have actually received all the documents for you. In fact we have got to say all officers have been very helpful as we have gone through our inquiry and we have got mountains and mountains of documents. So I am delighted to learn the timescale to which Mr Stanley is organising the official Government investigation. I think we will take that into account when we are trying to sift through the pages and pages and pages that we have got.

**Mr Gillespie:** There are two minor points, Mr Chairman.

In terms of material planning considerations, these are published on the website and the document is dated May 2015, so they would amplify maybe what Miss Chance said previously.

The final thing was: generally delegations are made under the Government Department Act as I am sure you are aware, but I thought I would put it on the record.

**The Chairman:** All right.

If there are no further questions from my colleagues, that is the end of our sessions, although we will be meeting in private very briefly. Thank you very much for attending this afternoon and this evening. It has been very, very useful and best wishes for the Government inquiry. We will continue our work and we will be reporting back to Tynwald as soon as we can.

*The Committee adjourned at 6.04 p.m.*
WRITTEN EVIDENCE
APPENDIX 1
Mr Philip Donald and
Mrs Kirrie Anne Jenkins
submission received
8th December 2015
Select Committee on
Planning and Building Control (Petition for Redress)
Legislative Building
Douglas
Isle of Man IM1 3PW
British Isles
8th December 2015

Dear Mrs Corkish,

Thank you for your letter dated 27th November 2015, regarding the above.

As requested, the following is an overview of the circumstances which led us to bring the Petition in July 2014. If you require sight of our detailed written evidence and supporting documentation prior to our oral evidence please do not hesitate to contact us.

We would like to make it clear to the Committee that we do not expect the Committee to make judgment on our specific case; our petition was brought on the grounds of public interest and we shall refer to our own experiences for illustrative purposes only.

Background

In 2011 we sought pre-planning advice from the Planning Department with respect to a property called Clybane on Mount Gawne Road, Rushen, which we intended to purchase with the view to building a family home for ourselves and two young children. Kirrie’s family already own all the land surrounding the property and her elderly parents and brother live on the family farm further along Mount Gawne Road. The Planning Officers pre-advice was favourable so we proceeded with the purchase.

We discussed our family requirements with our agent and sought further advice from the Planning Department as we were very flexible with what to do with the site; we also visited the neighbours, including Mr & Mrs Verardi, to discuss our proposals. On the 12/1/2012 we submitted plans ref 12/0118/B. The local Parish Commissioners supported our proposal and there were no objections; with one interested party, Mr. & Mrs. Verardi of Seascape, a large modern property built opposite the proposed site. To our disappointment the Planning Officer did not support our application. It was subsequently refused by the Planning Committee on the 23/4/2012, and by the Minister on 14/8/2012 following the recommendation of the Appeals Inspector.
On 20/12/2012 we submitted new plans ref 12/01683/B having taken further advice from the Planning Department, and this time the Planning Officer did support our application. Again our application was supported by the local Parish Commissioners; there were no objections, and only one interested party Mr. & Mrs. Verardi. However it was subsequently refused by the Planning Committee on 14/3/2013. This meant that the Planning Officer had to argue against their written report at the subsequent appeal. It was refused by the Minister on 20/6/2013 following the recommendations of the Appeal Inspector.

We then held a meeting with the Planning Department and took further advice on board, including a change of Architect, and on 23/12/2013 we submitted new plans ref 13/91532/B. The Planning Officer’s report supported our application. Again the local Parish Commissioners were supportive, as were the adjoining neighbours Mr & Mrs Manton of Seahaven, and there were no objections and only one interested party – Mr. & Mrs. Verardi.

This time the Planning Committee was unanimous in passing the proposal on the 25/2/2014.

On the 12/3/2014 the owners of Seascape, Mr & Mrs Verardi, lodged an objection to take the proposal to Appeal. We were naturally very disappointed by this turn of events as they had not raised any issues with the previous two schemes although they were relying on policies dealt with previously, and no concerns had been raised with us directly. Nor did they avail themselves of the opportunity to make representations to the Planning Committee. Their objections ran to some 34 pages.

This time the Planning Officer was at the Appeal to defend the decision of the Planning Committee, also present was our Architect Mr. Philip Chadwick of Savage & Chadwick. Neither we nor the department had legal representation. Also present was Mr. Verardi, his architect Niall McGarrigle and his counsel Mr. Roger Lancaster – a UK Barrister.

Following the Appeal hearing the application was recommended for refusal by the Inspector.

On the 14 July 2014 Mr. Robertshaw MHK, under delegated powers, disagreed with the Planning Inspector’s recommendation and dismissed the appeal which had the effect of upholding the original Planning Committee’s decision. Unfortunately the correct procedures laid down in the Town and Country Planning (Development Procedure) (No 2) Order 2013 were not followed as the reasons were not issued with his decision. They were issued some 2 weeks later on the 29 July 2014.

Work began on site and a stock proof fence erected by the farm in order to allow plant to be brought in from the farm side without the need to disrupt the roads and to give space to dismantle the building. (Clybane is one of the few remaining Knockaloe Camp huts relocated after WW1 and during the lengthy planning process we have been in discussions with the Knockaloe and Patrick Visitors Centre to recycle the fabric of the building back to its original purpose).
Somewhat reluctantly we also decided to list the site for sale to test the market for two reasons, a) as an alternative, as we had severe reservations about living opposite Mr & Mrs Verardi and b) after nearly 3 years in planning our financing for the build needed to be rethought and approaches made to the bank based on current market value.

On the 20 October 2014, some 3 months after the original determination, Mr. & Mrs. Verardi lodged a claim for Doleance. We then became aware that the Department had been sent a pre-action letter on 4 September 2014 to which we were not privy (as we were not a named defendant only an interested party). Following legal advice from our advocate, Mr Oliver Helfrich of Messrs Long & Humphrey, work on site stopped and the property delisted.

On the 5 November 2014 the department agreed to remit the decision back to Mr. Robertshaw for redetermination. We were given legal advice by our Advocate to maintain a neutral stance.

On the 19 March 2015 Mr. Robertshaw reaffirmed his position and approved our application. Work began again on site.

On 18 June 2015, some 3 months after the redetermination, Mr. & Mrs. Verardi lodged a second claim for Doleance. A preaction letter dated 2 June 2015 had apparently gone astray, but in any event as we were not a named defendant in the case we would not have been privy to it. Mr & Mrs Verardi claimed that Mr Robertshaw’s appointment was ex officio, as he had by that time resigned as a Minister, we found this particularly frustrating as the previous court order, agreed by all parties, referred the matter back to Mr Robertshaw MHK as an individual.

In any event the department agreed to a quashing order on the 15 July 2015 and the decision was remitted back for redetermination for the second time, again our Advocate advised us to maintain a neutral stance.

It is currently with Minister Ronan for a decision. We have been given no timeframe. Work on site has stopped. The house has lain empty for 4 years, the site is partly cleared, no building work can take place, and neither can we list the site with the proceedings hanging over it or rent the property out.

We understand that Doleance is not intended as an appeal where you can reargue the points raised in a Planning Appeal; it is a review of the lawfulness of the Minister’s decision. The Court does not substitute its decision for that of a Minister rather it quashes the original decision and remits the matter back for a redetermination. Which means you can end up with the same decision. Just because you do not like the decision it does not mean it is unreasonable. In both these instances the decision was quashed and so it never got to Court with costs being settled between the Department and Mr. & Mrs. Verardi. As an interested party, we were strongly advised to take a neutral stance or become liable for part of the costs, our own costs are non recoverable.

On the 10 July 2015 we made representations to the Public Accounts Committee regarding the public expenditure issues raised by Doleance cases concerning planning. Mr. Jonathan King, Clerk to the Committee has confirmed that the PAC has decided to investigate.
The Doleance process is being abused as a final planning appeals process with weaknesses that can be exploited by deep pocketed individuals with access to a great deal of legal experience.


The members may also find it useful to refer to The Select Committee on the Poachers Pocket PP18/08 and The Manx National Heritage case in the High Court of Justice of the IOM, Chancery Division, 12 Feb 2007, Case ref year 2006, Case ref number 46, and the recent Callows Yard Case 25 June 2015 case Ref Number 107.

With such a lengthy and protracted planning experience we have encountered what we perceive are a number of ambiguities and weaknesses in the present building control and planning systems which we will cover in our evidence. Our points will touch on:

1. Strategic Policy, framework and timescales, area plans, areas known as “White Land”, “The landscape Character Maps”, “Settlements” “special housing policy”

2. Pre-planning advice, its importance and relevance given our own protracted experience with it.

3. Planning Committee, certain procedures and irregularities.


5. Doleance, the procedures and precedent case law.

6. Cronyism, personal observations and concerns.

7. Ombudsman

The letter sent regarding Mr. Robertshaw’s decision to disregard the recommendation of the Inspector left the decision vulnerable to challenge by way of a claim for Doleance, because of its lack of reasoning.

The legislation is very clear that the Minister when going against the recommendation of a planning inspector must state the reasons for his decision. Clearly a failure on the part of someone in public office has resulted in a protracted case and considerable expense, stress and anxiety. If you refer to the Select Committee report - the Redress of Grievance of Donald Whittaker you will note that an Ombudsman was suggested. The Tynwald Commissioner for Administration Bill, refers to the appointment of the ‘Commissioner for Administration’ and this would have been a route for us to explore however the position has not actually been filled as highlighted in Tynwald recently.

8. Building Control, Highway Safety

As mentioned when Mr. & Mrs. Verardi submitted objections to our Third application we reviewed the points raised with our Agent.
For example, one such comment read “Mr. & Mrs. Veranda’s amenity will be detrimentally impacted by the residents of the new dwelling having to manoeuvre their vehicles, in the public road when going into and out of the forecourt to the proposed garage. This is a matter of Highway Safety, and is a fundamental material planning consideration. Mr. & Mrs. Verardi should not be confronted with vehicles turning in the public road when they wish to enter Seascape.”

Closer inspection of the Seascape Planning Application file ref 06/01361/B revealed that the Highways department had raised concerns about the creation of the entrance to Seascape when the planning was being considered, stating on their report to the Planning Officer that they “do not oppose subject to the imposition of the following conditions: Sight lines of 2 metres by 23 metres shall be provided. The boundary access, and gate pillars fronting the property shall be reduced to no more than 1 metre in height.” Due to its geography a) it would not be possible to achieve those sight lines in the location they have situated their entrance b) the boundary and gate pillars are built considerably higher than 1 metre. If they had complied then their entrance would not have been opposite the one we proposed.

Although the planning application was set a target date of 9/10/2006 the Planning Officer actually signed the application off on the 29/9/2006, 11 days before the target set. The Highways Dept, we presume unaware of this ‘efficiency’ sent in their report on the 2/10/2006, 7 days ahead of the target but 2 days after the actual approval. Even when the report was received it was not acted upon.

Mr Gallagher, Director of Planning & Building Control, advised in correspondence dated 2/7/2014 that “there is no requirement in the Order [Town and Country Planning (Development Procedure) Order 2005] for an organisation to make a representation on a planning application”. The Planning Officer had ignored the Highways report because it had been received 3 days after the application had been determined. One would have assumed, as it was a matter of public safety, that the Highways Department could have lodged an appeal but they did not. Although Mr Gallagher referred to them as an “Organisation” we understand that they are a statutory body. Mr. Gallagher advised that he could find no evidence of negligence by the Department.

Other arguments relating to distances, outlook and so on, relied upon developments that the Head of Development Management, Jennifer Chance confirmed in correspondence dated 17/06/2014 “...does differ from the approved plans…” however they would not act upon it because “the building has been in place for longer than 4 years and is lawful”. Mr. Gallagher’s reply “with only 10 weeks remaining the Department was unlikely to be able to obtain sufficient evidence to determine if there was a breach of planning control”. It was the Departments prevarication that compressed the time for action. Had they acted promptly they would have had 2 ½ months to address the issues. It would therefore appear that once you get past 3 years and 9 months you are home and dry and no enforcement will be taken. In all other aspects of planning the clock “stops”. The Department could have invited a retrospective planning application to regularise the works but to our knowledge they did not.

We have queried the internal procedure for prosecutions and the Acting Attorney General Mr JLM Quinn has advised in correspondence dated 22/10/2015 “Proceedings for an Offence under the Act shall not be instituted except by or with the consent of the Department or the Attorney General”. Mr Jason Singleton Planning Enforcement,
wrote to us by email on the 22/5/2014 that “The decision on whether it is expedient to take formal action through the courts is delegated to the Head of Development Management and also seeking political consent to pursue matters through the courts”. Mr Quinn further advised “If in the unlikely event of a conflict between the Department and Chambers as to whether criminal proceedings should be issued, in my view, my consent would override that of the Department”. It is an important point that we feel the members should clarify as the Law and Government should be independent of each other.

In general planning terms, consent reads “The development hereby permitted shall not be carried out except in full accordance with the following plans – [ref plan numbers.]” Therefore if you don’t build in full accordance to those plans you do not have planning permission. The Issuance of Certificates of Lawfulness (both lawful development and lawful use) bypasses the public realm when the Department decides not to prosecute.

Citing Seascape as an example, the Completion Certificate was issued 25\textsuperscript{th} June 2010. We first lodged our concerns with the Department in March 2014 and after numerous emails and telephone calls a site visit was eventually carried out on 17\textsuperscript{th} June 2014, only for us to be informed “the building has been in place for longer than 4 years and is lawful”, even though it is still within the 4 years from the date of the completion certificate. The 4 years referred to in the Town and Country Planning Act therefore appears to be determined from the date the development was “substantially built” and not the date of the completion certificate. This is open to abuse. There appears little to prevent someone from building a “substantial” part of a development and then just before the 4 years runs out adding something for which they don’t have approval and for which the Department says they do not have the time to investigate.

Our enquiries found that Building Control does not retain building plans for more than 3 years and we find this to be at odds with the 4 years to match the planning control period.

The present Planning Control system favours those that flout the rules and seek permission retrospectively, or those that ignore it altogether.

If you require any further information or clarification of any points please do not hesitate to contact us.

Yours sincerely,

Mr & Mrs P Jenkins
APPENDIX 2

Mr Philip Donald and
Mrs Kirrie Anne Jenkins
detailed submission received
25th February 2016
Redress of Grievance of Philip & Kirrie Jenkins

Evidence to the Select Committee
We would like to thank the members for inviting us to give evidence to this Tynwald Select Committee.

As you know we presented a Petition of Redress of Grievance to Tynwald in July 2014.

We fully understand that the committee is not here to adjudicate upon a particular case. We will however use our own experiences to illustrate what we believe are ambiguities and weaknesses in the practices and laws relating to Planning and Building Control matters.

We believe these points are a matter of public interest and at the end of the process we hope to have contributed to producing a more effective system that is swift, fair and just to all.

Further to our letter of 8th December 2015 in which we were invited to give a brief overview of the history and background to our petition we are happy to answer any questions the Committee may have and have collated submissions in support of our statements which we would like to leave with the Members to review.

1. To summarise the background to our petition:

1.1 In 2011 we sought pre-planning advice from the Planning Department with respect to a property called Clybane on Mount Gawne Road, Rushen, which we intended to purchase with the view to building a family home. Philip met on site with a Planning Officer to discuss our initial thoughts. The advice was favourable with the Planning Officer indicating that because of the various styles and sizes of property in the vicinity that we had a “blank canvass”.

1.2 We discussed our requirements with our agent, and both the agent and ourselves liaised with the Planning Officer before settling on a design. On the 12/1/2012 we submitted a planning application – file ref 12/0118/B.

1.3 The local Parish Commissioners supported our proposal and there were no objections; with one interested party, Mr. & Mrs. Verardi of Seascape. To our disappointment the Planning Officer did not support our application in his report and it was subsequently refused by the Planning Committee on the 23/4/2012, and by the Minister on 14/8/2012 following the recommendation of the Appeals Inspector.

1.4 Having taken further advice from the Planning Officer we submitted a new planning application - file ref 12/01683/B on the 20/12/2012.
Evidence of Philip & Kirrie Jenkins

This time the Planning Officer did support our application. Our application was supported by the local Parish Commissioners; there were no objections, and only one interested party Mr. & Mrs. Verardi of Seascape. However it was subsequently refused by the Planning Committee on 14/3/2013.

1.5 We appealed the decision. The application was refused by the Minister on 20/6/2013 following the recommendations of the Appeal Inspector.

1.6 We then held a meeting with the Planning Department and took further advice on board including a change of Agent from Architectural Technician to Architect. On 23/12/2013 we submitted a planning application - file ref 13/91532/B.

1.7 The Planning Officer’s report supported our application, as did the local Parish Commissioners and the adjoining neighbours Mr & Mrs Manton of Seahaven. There were no objections and only one interested party – Mr. & Mrs. Verardi of Seascape.

1.8 The Planning Committee was unanimous in passing the proposal on the 25/2/2014.

1.9 On the 12/3/2014 the owners of Seascape lodged an Appeal. They had not availed themselves of the opportunity to make representations to the Planning Committee, and their objections ran to some 34 pages.

1.10 The Senior Planning Officer defended the decision of the Planning Committee at the Appeal – see appendix (1). Also present was our Architect Mr. Philip Chadwick of Savage & Chadwick. Neither we nor the department had legal representation. Also present was Mr. Verardi, his architect Niall McGarrigle and his counsel Mr. Roger Lancaster, Planning Barrister Kings Chambers.

1.11 Following the Appeal hearing the application was recommended for refusal by the Inspector.

1.12 The Minister of DOI Mr Gawne delegated the decision to Mr Robertshaw MHK. On the 14 July 2014 Mr. Robertshaw MHK, under his delegated powers, disagreed with the Planning Inspector’s recommendation and dismissed the appeal which had the effect of upholding the original Planning Committees decision – see appendix (2).

1.13 Unfortunately the correct procedures laid down in the Town and Country Planning (Development Procedure) (No 2) Order 2013 were
not followed as the reasons were not issued with his decision. They were issued some 2 weeks later on the 29 July 2014 - see appendix (3)

1.14 On the 20 October 2014, some 3 months after the original determination, Mr. & Mrs. Verardi lodged a claim for Doleance. We then became aware that the Department had been sent a pre-action letter on 4 September 2014 to which we were not privy (as we were not a named defendant only an interested party) and that the Attorneys Chambers had responded on the 19 September 2014.

1.15 On the 5 November 2014 the department agreed to remit the decision back to Mr. Robertshaw for redetermination on the basis that reasons were not given in the original letter. We were given legal advice by our Advocate to maintain a neutral stance. On the 19 March 2015 Mr. Robertshaw reaffirmed his position and approved our application – see appendix (4).

1.16 On 18 June 2015, some 3 months after the redetermination, Mr. & Mrs. Verardi lodged a second claim for Doleance. A preaction letter dated 2 June 2015 had apparently gone astray, but in any event as we were not a named defendant in the case we would not have been privy to it.

1.17 The department agreed to a quashing order on the 15 July 2015 and the decision was remitted back for redetermination for the second time, again our Advocate advised us to maintain a neutral stance. The matter was referred to Minister Ronan DEFA for a decision.

1.18 On the 17th December 2015, some 22 months after the original Planning Committees decision to approve the application, Mr Ronan upheld Mr & Mrs Verardi’s appeal and our planning was refused – see appendix (5)

1.19 We have no recourse to recover our costs to date and work on the site has stopped. Minister Ronan has recommended that we submit a fresh planning application and take pre-planning advice from his officers.

1.20 Naturally we were disappointed that Minister Ronan saw fit to overturn a decision that his Senior Planning Officer, the Planning Committee (together with its current Chairman Mr Robertshaw), and the Local Commissioners had unanimously approved. The Ministerial Planning Officer had also, on 2 previous occasions, recommended approval, the general public is not privy to this part of the process, so we are not able to compare his report to Mr Robertshaw with his report to Mr Ronan. It is to be hoped that Minister Ronan
Evidence of Philip & Kirrie Jenkins

approached his decision making with an open mind and without consideration of the 2 previous Doleance cases.

1.21 During the lengthy process we came across a number of weaknesses and anomalies. Disappointingly some areas which appear to have been covered before by Petitions of Redress but whose recommendations are yet to be fully implemented. We would like to cover some of our concerns as follows and have tried to collate them under various categories for ease of reference.

2. Strategic Policy, framework and timescales, area plans, areas known as “White Land”, “The landscape Character Maps”, “Settlements” “special housing policy”

2.1 The Maps attaching to the Southern Area Plan do not cover the entire area of the South – there are areas that fall between the maps (Map 7 Port Erin /Port St Mary) and (Map 5 Colby) leaving areas which are commonly referred to as “White Land”.

2.2 There are a number of properties besides our own, Clybane, which fall into this particular area of “White land” at the junction of Shore Road and Mount Gawne Road, which have recently been subject to planning applications with varying results. For example, in respect of the Former Motorlands Garage application ref 15/00739/B submitted by Hartford Homes Ltd, the Planning Officers report states “On the Area Plan for the South, the site is within an area of ‘white land’, not zoned for any particular kind of development” approved 9/9/2015. Another example Kilvarock - 15/00909/B, the Planning Officer’s report states “The application site is not zoned for development and the creation of an additional dwelling is therefore contrary to both adopted general planning policy within the Isle of Man Strategic Plan and Area Plan for the South” refused 6/10/15.

2.3 On 20th June 2014 (see Appendix 6) we raised concerns about the area of “white land” with the Director of Planning and Building Control as we felt that property owners in such areas were disadvantaged by a lack of clear and consistent approach. We also raised concerns about the Landscape Character Maps which showed areas shaded as ‘urban’ but are classed as ‘countryside’ and are therefore misleading.

2.4 Mr Gallagher replied on 2nd July 2014 (see Appendix7) that "The Area Plan for the South was approved by Tynwald in February 2013, after following due statutory process for preparation. The plan comprises of a series of “proposals” which are either site specific or more in the nature of a policy statement for a specific area. There is
no statutory requirement to zone every piece of land for a specific purpose. Any new development proposals in this locality are now considered within the context of both the Strategic Plan policies and the Area Plan for the South. In this respect I disagree with your assertion that property/landowners are 'disadvantaged'.”

2.5 The Southern Area Plan is not the only one affected by discrepancies, the Planning Officers report regarding planning application PA15/00775/A highlights anomalies in other Sector plans.

2.6 Not all properties, even those of long standing, are classed as ‘residential’. The significance of this classification does not become clear until a planning application is submitted. To give an example, Clybane was not classed as 'Residential'. Seascape (previous known as Dolphins) - planning application 06/01361/B on the opposite side of Mount Gawne Road was classed as Residential. According to the Planning Officers report re 06/01361/B “The site lies within an area designated on the Isle of Man Planning Scheme (Development Plan) Order 1982 as residential.” It is important to note that the application for Seascape 05/01361/B was a large new build and was dealt with under delegated powers by a single planning officer and not by planning committee, we assume that the residential status has a material effect.

2.7 With the adoption of the Southern Area Plan a number of properties in the Shore Road area were de-classified as Residential. When properties are re-classified the proposals are not advertised in the same way as a planning application, property owners /interested persons would have to study the draft area plans in detail to notice the subtle change.

2.8 The use of ‘personal circumstances’ to override planning policy contributes to a great deal of disquiet amongst the general public. The members may find it useful to refer to planning application 13/00918/A & 15/00785/B Springwaters, as one such example, and, at the other end of the spectrum planning application 14/00761/B & 15/00841/B Alder Oaks. There does not appear to be a “middle ground”.

2.9 In respect of our second application 12/01683/B the Planning Committee were split over their decision, the Chairman remarked that he would have seen fit to support the application “had it been bigger".
3. Pre-planning advice

3.1 Pre-planning is an important element of planning and yet the advice is inconsistent and expectations are raised and considerable costs incurred only to have the advice contradicted by colleagues in the Department or disregarded by the Planning Committee.

3.2 We undertook considerable pre-planning and even “pre-purchase” advice from the Department to ensure that we were purchasing a property that we would be allowed to redevelop. With hindsight this “advice” has been proven to be completely worthless. If you were mis-sold or mislead in financial services or in the retail market you have consumer protection and recourse through the various Financial Ombudsman, OFT etc. Having reviewed the legislation we could find no statutory mechanism for compensation where planning is revoked. The Members may find the extract from the UK’s T&C Planning Act 1990 useful – see appendix 8.

3.3 There is no mechanism to allow for advice from the actual decision makers. This is an area that needs consideration.

3.4 There appears to be no input from DEFA with regards land use or cross referencing to the Countryside Care Scheme. The land should be assessed for its quality and productiveness as it is a limited resource.

4. Planning Committee

4.1 We strongly believe that all members when seeking membership to the Committee should declare their interests. Members have the ability to make life changing decisions effecting people’s homes and wellbeing and the wider landscape of the Island.

4.2 The practice of deciding whether a planning application can be determined under Delegated Powers and what goes to Committee has already been subject to a Petition of Redress the Select Committee on the Poachers Pocket PP18/08. We do not believe that this crucial element of the process has been sufficiently addressed. As recently as 9th February 2016 an amendment to the Town & Country Planning Bill was debated in the House of Keys in which an MHK also raised concerns.

4.3 The members may find useful, as an up to date reference point, to view Planning Application 15/01349/B Ballaglea House. This was for a large replacement house in an area not designated for development. When the members look at this particular case they will see that the previous owner had refusal for an extension
10/01400/B. They subsequently applied for and received approval for an amended extension 11/00043/B, which was not implemented. However, the recent application took into account the lapsed planning approval in order to calculate the percentage increase under Housing Policy 14. This was approved in one month, by a single officer delegation, which sits uncomfortably with what previous Select Committees have concluded.

4.4 In the interests of fairness, good administration and accurate decision making we believe the minutes of the Planning Committee Meetings should be accurately reported rather than summarised.

4.5 The members of the planning Committee should have access to all files, and, if not available during the meeting should adjourn or defer a decision. In our case the Chairman at the opening of the meeting to debate planning application 12/01683/B queried an item (no 32) in the previous Inspectors Report. We disagreed with the Planning Officers memory recall of the item and felt that the committee should have adjourned to be given time to read the comments for themselves and form their own opinion. Although Applicants are allowed to speak for 3 minutes at the start of the Committee meeting it does not allow you to clarify a point made subsequently.

5. **Objectors, Interested Party Status, Appeals, certain procedures and irregularities.**

5.1 Interested Parties who wish to object have the opportunity to know what the Planning Officers recommendation is going to be to the Planning Committee as the agenda is published in advance, and to state their reasons before the decision is made. Those given interested party status who do not lodge objections before the determination afford the applicant no opportunity to have discourse, amend designs if necessary, nor does it provide the Planning Officer or Planning Committee an opportunity to consider points and may be used for malicious intent at very little cost to the objector.

5.2 There are guidelines published on the definitions of Interested Party status, however we are aware of inconsistencies and no obvious appeals process.

5.3 On occasions the Planning Committee decision is deferred until after a site visit. For example, in relation to our second application 12/10683/B a visit was arranged for 4/3/2013 and Philip was asked to be present to open up the property. He was surprised that the secretary had the incorrect planning file and when we attended the second committee meeting on the 11/3/2013 we realized that the site location plan provided by the department to the committee was
Evidence of Philip & Kirrie Jenkins

incorrect and showed a far greater extension to the plot than applied for (approximately 80%). We subsequently sent a complaint to the Department which was minuted on the 25/3/2013, as we felt this may have had a material effect on the outcome of the decision.

5.4 General inaccuracies in documents provided by the department wasted valuable time and added unnecessary legal and architectural costs. In the case of our Planning Appeal 12/01683/B the number of inaccuracies was such that the Inspector directed the Planning Committee’s representative to supply further records and submissions in respect of the information filed.

5.5 When we appealed the decision relating to our second application, the Planning Officer who had dealt with our case was not present at the Appeal. He was replaced by the Planning Committee’s representative. In instances such as this the applicant is left without support of the original Planning Officer. The interpretations of planning policy and the weight attaching to them by different colleagues in the same department are extremely frustrating and we feel goes someway to explaining the perception by the general public of the lack of consistency and contradictions in planning.

5.6 Art 8(9) of the Town and Country Planning (Development Procedure) (No2) Order 2013 states that the Department must give notice of its decision on appeal “as soon as practicable after the determination”, Due to the number of redeterminations we effectively had planning for 22 months. Mr Ronan took 5 months in order to re-determine the final appeal. We feel this is unacceptable.

6. Doleance

6.1 Concerns that the Doleance process is being abused as a final planning appeals process was given in evidence during the 9/2/2009 Petition for Redress of Grievance of Donald Whittaker. We believe this is still the case. As background the members may find it useful to refer to The Select Committee on the Poachers Pocket PP18/08 and The Manx National Heritage (CP2006/46) 12 Feb 2007, and the recent Callows Yard Case 25 June 2015 case Ref Number 107.

6.2 Under the provisions of the Town & Country Planning Act Art 8, the Department must consider the report of the Planning Inspector and (a) allow or dismiss an appeal and (b) either in each case reverse or vary any part of its decision whether or not the appeal; related to that part. Furthermore, in the decision of His Hon Deemster Kerruish in CP2006/46 he confirmed that the Minister on a planning appeal is limited to consideration of the Planning Inspectors Report. The Minister is unable to consider documents and materials that were
before the Inquiry and which form part of the “planning file”. The Minister, therefore cannot refer to plans or go behind the Inspectors report, however there may in limited circumstances, if the Minister considers that the Inspector’s inquiry has failed to address a material matter and in the interest of fairness, the parties to the appeal ought to be afforded the opportunity of making representations and/or adducing such further evidence, then it is within the ministers discretion to refer the matter back to the Inspector. This legal position sits somewhat uncomfortably with the following statement made by Minister Ronan in the House of Keys 03 November 2015 (77 K133, para 270): “certainly in regard to the material based on any planning decision made, reviewing of plan or site visits, I think what it clearly states is that the Minister can look at anything that is reasonable or also has material considerations in respect to that planning decision”.

6.3 Copies of pre-action letters are not disclosed to interested parties to enable them to stop work during that period. There is no recourse to recover these costs.

6.4 On the 10 July 2015 we made representations to the Public Accounts Committee regarding the public expenditure issues raised by Doleance cases. Mr. Jonathan King, Clerk to the Committee has confirmed that the PAC has decided to investigate.

7. Cronyism

7.1 We touch on this subject, albeit a difficult one to establish as fact. There is a perception amongst the general public that cronyism exists within planning. We can only speak of our personal experiences and the interaction we have had with members of the department, committee and others. It is very easy to establish links between individuals in government and the business community, more so on an island with a small population such as ours and with a cross over between government and the private sector legal advice, and so on.

7.2 The Special Housing Policy does nothing to help this widespread belief that you can get anything through planning provided the house is big and expensive enough. With regards to Application 13/00918/A & 15/00785/B Springwaters one committee member was even minuted as saying the applicant was a “Good Manxman” who was returning home. The DED assisted this application by supplying a letter of support. In the case of 13/91094/A Corlea Farm however the appellants did not put forward any personal circumstances or financial and functional reasons to justify the erection of a dwelling in an area not designated for development, but despite the Inspector recommending its refusal the application was approved by the
Minister. Inconsistencies therefore would appear to exist even within the interpretation of the government’s own “economic grounds” policy.

7.3 Our own opinion was formed following various observations; 
(a) With two failed planning applications we met with the planning department on 13th August 2013 and it was made clear to us that our chances of success would be greatly increased by changing from an architectural technician to an architect. Whilst this might have been suggested with good intent it belittles the work of the technicians and disadvantages those without the funds to employ the expense of an architect.
(b) Two of the committee members remarked during the site visit to Clybane on the prominence of Seascapes and the Chairman replied “that’s Nick’s house, Nick Verardi, our children are at school together”.
(c) Over familiarisation - as all parties were going into the 3rd Appeal hearing, the Chief Minister was walking down the corridor towards us and made the remark “Bringing out the big guns today are we” and shook hands with Mr Verardi, in front of the Appeals Inspector. Our party immediately felt disadvantaged. For the record our interpretation of that remark, we believe, refers to Mr Verardi’s previous roles as Chairman & President of the Chamber of Commerce and legal position and Mr Lancaster’s formidable reputation.

8. Ombudsman

8.1 As far back as 1988 The Hon Mr Peter Karran tabled a motion to Tynwald that an ombudsman be introduced. It was also one of the recommendations in the Select Committee report - the Redress of Grievance of Donald Whittaker. The Tynwald Commissioner for Administration Bill, refers to the appointment of the ‘Commissioner for Administration’ however the position has still not been filled as highlighted in Tynwald. We would support having a mechanism whereby an Ombudsman considers referrals for Doleance and decides if they are frivolous or vexatious.

8.2 The legislation is very clear that the Minister when going against the recommendation of a planning inspector must state the reasons for his decision and include those in his letter; there was a failure to do this. We note that Minister Gawne introduced a change early in 2015 to allow for “errors” on notices to be corrected. Whether this would have made a difference to our case in the long run is debatable, but it would have shortened the time scale and cut out at least one of the Doleance claims. We note that the timescale for lodging a Doleance starts from the date of the amended letter, and the implications of this need to be carefully considered.
9. Building Control & Highway safety

9.1 On the 12/3/2014 the owners of Seascape lodged an Appeal. Some of the points raised by Mr. & Mrs. Verardi were reliant on arguments created by their own abuse of the planning system - file ref 06/01361/B. Following advice from the Senior Planning Officer and our Agent, these anomalies were reported to the Department of Planning and Building Control. Our concerns in this area are mainly procedural, and anomalies that we feel need addressing by the Department.

9.2 For example; although the planning application 06/01361/B was, according to the information on file, set a target date of 9/10/2006 the Planning Officer actually signed the application off on the 29/9/2006, 11 days before the target set. The Highways Dept sent in their report on the 2/10/2006, 7 days ahead of the target but 2 days after the actual approval. Even when the report was received it was not acted upon. Mr Gallagher, Director of Planning & Building Control, advised in correspondence dated 2/7/2014 that "there is no requirement in the Order [Town and Country Planning (Development Procedure) Order 2005] for an organisation to make a representation on a planning application". The Planning Officer had ignored the Highways report because it had been received 3 days after the application had been determined. In our opinion the Highways Department is there to provide "checks and balances" on matters of public safety. To disregard their comments was erroneous.

9.3 Other arguments relating to distances, outlook and so on, relied upon developments that the Head of Development Management in her letter dated 17 June 2014 – see appendix 9, confirmed "does differ from the approved plans..." however they would not act upon it because "the building has been in place for longer than 4 years and is lawful". Mr Gallagher’s reply "with only 10 weeks remaining the Department was unlikely to be able to obtain sufficient evidence to determine if there was a breach of planning control". It would therefore appear that once you get past 3 years and 9 months you are home and dry and no enforcement will be taken. In all other aspects of planning the clock "stops". In correspondence with the Acting Attorney General Mr JLM Quinn we were informed that proceedings for an Offence under the Act shall not be instituted except by or with the consent of the Department or the Attorney General. See Appendix 10 - comments in email thread dated 22/5/2014 from (the then) Planning Enforcement officer which implies political consent to any action “The decision on whether it is expedient to take formal action through the courts is delegated to the Head of Development Management and also seeking political
consent to pursue matters through the courts". If the members refer to our Freedom of Information Request - see Appendix 11) they will note that there have been only 2 prosecutions in the last 10 years, and 2289 allegations of planning or building control breaches.

9.4 The Issuance of Certificates of Lawfulness (both lawful development and lawful use) bypasses Interested Parties when the Department decides not to prosecute.

9.5 Citing Seascape as yet a further example, the Completion Certificate was issued 25th June 2010. We first lodged our concerns with the Department in March 2014 and after numerous emails and telephone calls a site visit was eventually carried out on 17th June 2014, only for us to be informed "the building has been in place for longer than 4 years and is lawful", even though it is still within the 4 years from the date of the completion certificate. The 4 years referred to in the Town and Country Planning Act therefore appears to be determined from the date the development was "substantially built" and not the date of the completion certificate. This is open to abuse. There appears little to prevent someone from building a "substantial" part of a development and then just before the 4 years runs out adding something for which they don't have approval and for which the Department says they do not have the time to investigate.

9.6 There needs to be a system of checks and balances to ensure that Building Control is using building plans drawn up to reflect the approved planning permission. The Department accepts that development has been carried out on Seascape which differs from the approved plans and yet a completion certificate was issued by Building Control so it must have been inspected. It is an abuse of the planning process and does not afford neighbours due process to object to development that could affect them. Our enquiries found that Building Control does not retain building plans for more than 3 years and we find this to be at odds with the 4 years to match the planning control period. "Building plans" are not made publically available so the general public is solely reliant on the department to identify differences and protect their interests.

9.7 Despite assurance from the Department we don't believe that procedures are sufficiently robust to avoid this happening again and would highlight Planning Application 15/00739/B Former Motorlands Garage & Nooklands, and the apparent differences between what is currently being built and what has been approved as a case in point. We would also like to raise concerns about whether appropriate planning assessments are being carried out in accordance with The Coastline Management Act 2005 i.e. to "ensure that in respect of
coastline management, decisions about planning policies are taken on an informed basis". (see Appendix 12).

9.8 The present system favours those that flout the rules and seek permission retrospectively, or those that ignore it altogether.

9.9 To quote Mr Verardi’s outgoing Chamber of Commerce speech “Why not start to look at the overall picture in a more active manner be open and honest in deciding how we want our Island to look in the next 5, 10 or even 20 years. For this to happen a single Island wide plan would be an essential requirement where selfish local interests need to be put to one side for the betterment of the Island”.
Dear Mr. Johnstone,

Re: PA 13/91532 – erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access, Clybane, Mount Gawne Road, Port St. Mary

Please find enclosed nine copies of a statement on behalf of Planning and Building Control. The statement takes the form of the planning officer’s report which was presented to and accepted by the Planning Committee in all respects. Also attached are the minutes of that meeting.

The request for an appeal comes as somewhat of a surprise as the only correspondence from the appellant is dated 17th January, 2014 and states only that “as owners of Seascape, which is a property opposite to the proposed new dwelling” they “are likely to be affected by any determination relating to the proposed application” and requested interested party status. One may, from that brief communication imagine that these parties have no objection to the application, as none is referred to. It is unhelpful to the process if parties have objections or concerns and do not make these known when the opportunity arises. The agenda for the Planning Committee is publicly available before the meeting and as such the recommendation for approval will have been known by the appellant before the decision was taken. It is not understood why an objection was not made at that time.

Furthermore, the reasons for requesting the appeal are that “the proposed development is contrary to the policies of the Isle of Man Strategic Plan 2007, inter alia and most specifically Environmental Policy 1 and Housing Policy 14”. It is assumed that the appeal will be restricted to these two policies as if not, the Department, and the applicant are at somewhat of a disadvantage in not knowing which other of the very many Strategic Plan policies are to be referred to and how and whether to respond to these. If the appellant’s statement to the appeal refer to other policies, the Department reserves the right to provide rebuttal statements to this effect without delaying the consideration of the appeal which will disadvantage the applicant through no fault of their own.

In responding to the appeal request, it is relevant to note that in the case of the earlier two applications, PAs 11/01683/B and 12/00118 which involved larger dwellings and
greater encroachments into the surrounding agricultural field, the appellants submitted only initial letters indicating their proximity to the site and requesting party status with again, no indication of any objection to the application. The appellants took no part in the ensuing appeals against the refusals of those applications nor submitted any information or views to these appeals.

In stating that in their view the proposal contravenes Environment Policy 1 and Housing Policy 14, the inspector’s attention is drawn to paragraphs 6.2 to 6.7 of the officer’s report which clarifies how it is considered that the proposal does not contravene these policies having regard to detailed consideration of Housing Policy 14 and consideration of other applications where Environment Policy 1 has been applied to proposals for the extension of residential curtilages.

On the basis of the above the inspector is encouraged to recommend to the Minister that the appeal should be dismissed and the application is approved subject to the conditions imposed initially.

Yours sincerely,

Miss Sarah Corlett
Senior Planning Officer
Appendix 2

Dear Mr & Mrs Jenkins

ON APPEAL
Application No: 13/91532/B
Proposed: Erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access, Clybane, Mount Gawne Road, Port St Mary, IM9 5LX
Applicant: Mr Philip & Mrs Kirrie Jenkins
Appellant: Nr Nick Verardi

I refer to the recent appeal in respect of the above planning application.

In accordance with the provisions of the Town and Country Planning (Development Procedure) (No 2) Order 2013, I am enclosing herewith a copy of the report of the person appointed to consider this appeal.

I am directed to advise you that the Minister for Infrastructure, in pursuance of section 3(2) of the Government Departments Act 1987, has delegated responsibility for the determination of this appeal to the Hon C R Robertshaw MHK. Accordingly, the Hon C R Robertshaw MHK has considered the report of the Planning Inspector but does not support the Inspector’s recommendation that the appeal be allowed. Instead the Hon C R Robertshaw MHK holds that the appeal should be dismissed, the effect of which is that the Planning Committee’s original decision is upheld. Accordingly, he has directed that the Planning Committee’s approval of the application under Article 6 of the Town & Country Planning (Development Procedure) (No2) Order 2013 should be confirmed. Formal notice of this decision is attached.

Yours sincerely

N J Black
Chief Executive

Circulation List
Savage & Chadwick
Mr N Verardi
McGarrigle Architects
Clerk to Rushen Parish Commissioners

Mr G Clark
Mr R Lancaster
Secretary to the Planning Committee

Department of Infrastructure
Sea Terminal Building, Douglas, Isle of Man, IM1 2RF
Dear Mr & Mrs Jenkins

ON APPEAL

Application No: 13/91532/B
Proposal: Erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access, Clybane, Mount Gawne Road, Port St Mary, IM9 5LX

Applicant: Mr Philip & Mrs Kirrie Jenkins
Appellant: Mr Nick Verardi

I refer to the recent appeal in respect of the above planning application and further to the appeal decision letter and notice dated 14 July 2014.

The Department of Infrastructure ("the Department") has recently been informed, quite rightly, that the aforementioned planning appeal decision letter does not detail Minister C Robertshaw's reasons for not following the Planning Inspector's recommendation in respect to the above appeal, as is required by the provisions of the Town and Country Planning (Development Procedure) (No 2) Order 2013. In order to assist all parties, therefore, and on behalf of Minister Robertshaw, I set out below the reasons which informed the Minister's decision in respect of the same.

Having read the report of Ruth MacKenzie (Planning Inspector) dated 6 June 2014, I can inform you that Minister C Robertshaw advised that he found the arguments both against and in support of this proposal made by each party to the Inquiry to be clearly defined. In support of the proposal, the Minister noted that there was generally no disagreement that the existing dwelling was of poor form and as such that there was no objection both in principle and in policy terms to the replacement of the existing dwelling at Clybane per se, notwithstanding that the Inspector at Paragraph 7 of her report states that in the appellant's opinion, any replacement is acceptable only within the existing curtilage. In addition, the Minister also saw no disagreement between the parties that the 'triangle' of additional land which was proposed to be included within the application site boundary was of poor agricultural quality and that its inclusion within same (if the appeal was dismissed and planning approval was granted) would not prevent the remainder of the two fields within which it sits, from being used for future agricultural purposes. Aligned to this, the Minister also noted that the principle of curtilage extensions into the countryside within the general vicinity of the appeal site has been accepted in previous planning approvals, notwithstanding that the Minister noted that a counter-argument presented by the appellant's to the effect that these were not comparable on the grounds that the extensions were not for the building of houses but for gardens. Finally, the Minister noted that in the applicant's opinion, the proposed replacement takes into account the concerns of the previous Planning Inspectors and also there was no

Department of Infrastructure
Sea Terminal Building, Douglas, Isle of Man, IM1 2RF
Standing against the proposal, the Minister notes that the applicants have had two previous planning applications refused on appeal for a replacement dwelling on the current appeal site\(^1\) and at paragraph 3 of Inspector MacKenzie’s report he notes the reasons for refusal of the same. In addition, the Minister notes the appellant’s opinion the proposed dwelling would, ‘...have a huge visual impact, alien to the rural character of this part of Mount Gawne Road’\(^2\), that the proposed development did not meet the tests as applied by draft Planning Policy Statement 2/09 “The Role of Landscape Character in Development” in respect to proposals for development within landscape character areas Type D: Indcised Slopes. Also In the appellant’s opinion that the proposed development is contrary to Housing Policy 14 of the Isle of Man Strategic Plan 2007 because, inter alia, its floor area is approximately 300% larger than that of the existing dwelling\(^3\); that only 12.4% of its footprint would overlap the existing footprint, notwithstanding that the Minister notes that the test applied in Housing Policy 14 is that the footprint of the proposed dwelling should ‘generally’ be sited on the footprint of the dwelling to be replaced\(^4\) and that it would not be of more traditional character and it would not have less visual impact.

In light of the foregoing, the Minister accepted the Planning Inspector’s assessment that the two main issues in respect to the appeal centred upon the effect that the extended curtilage would have on the surrounding landscape and the visual impact the proposed replacement dwelling would have on that part of Mount Gawne Road. In respect of same, the Minister disagrees with the Planning Inspector for the following reasons.

In relation to the first issue, firstly the Minister does not attach any weight to the Inspector’s comments at paragraph 27 of the report that, ‘...a new dwelling could be fitted onto the plot without any encroachment into the adjoining countryside’ and that, ‘there are houses on similarly sized plots in the vicinity’. Be that as it may, and while the Minister notes that each of these statements may, of itself, be accurate, in the Minister’s opinion that is not the proposal which was before the Inspector (or the Minister) for consideration. For this reason, the Minister placed no relevance to those statements in the context of the current application.

Secondly, and while the Minister does not disagree with the statement at paragraph 24 of the Report that, ‘when approaching from the West, the rural setting of this ribbon of development is clear to see’, in the Minister’s opinion, the converse must equally apply in so far as when approaching the site from the east, the context of the site’s setting is clearly ‘urbanised’. In the Minister’s opinion, and contrary to the opinion of both the Planning Inspector and the appellant, the context of the appeal site and its character must be read and applied in the round and not just in respect to the character and pattern of development on only one side of the road. In that regard, the character and pattern and setting of the appeal site is read not just by it adjoining the open countryside to its west but also by the sifting of the existing dwellings to its east on the same side of the road\(^5\) and (my emphasis) by the vacant single-storey garage building and the 5 dwellings further to the west (my emphasis) on the other side of Mount Gawne Road\(^6\). It is in this context that, in the Minister’s opinion, the curtilage extension of 28m must be assessed. Furthermore, and when also set against the context that the agricultural quality of the ‘triangle’ is poor; that the ‘triangle’ forms only a part of two fields and that those fields can still be used for agricultural purposes and that there is no evidence presented in the report that the loss of this land would lead to further losses on the appeal side of Mount Gawne Road taking account of the fact that the appeal site is clearly viewed as the ‘gateway’ site on this side of the road. Having regard to all of the foregoing, therefore, the Minister is not persuaded that an extension of 28m in

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\(^1\) The Planning Inspector reports and the Inspector comments detailed therein in respect to the two previous refusals (PA12/00118/B and PA12/01683/B) are not before the Hon C Robertshaw MHK for his consideration in this appeal

\(^2\) Paragraph 8 of Inspector MacKenzie’s report dated 6 June 2014

\(^3\) Inspector MacKenzie disagrees with the appellant’s quoted figure and instead states it to be 200% at paragraph 31 of her report

\(^4\) Paragraph 14 of Inspector MacKenzie’s report dated 6 June 2014

\(^5\) Paragraph 1 of Inspector MacKenzie’s report dated 6 June 2014

\(^6\) Paragraph 2 of Inspector MacKenzie’s report dated 6 June 2014
regard to all of the foregoing, therefore, the Minister is not persuaded that an extension of 28m in this setting and in this context is harmful to the character, setting and quality of the open countryside/landscape in this part of Mount Gawn Road. As such, the Minister disagrees with the Inspector’s assessment that the proposal is contrary to Environment Policies 1 and 2.

In respect to the second issue – the impact of the proposed replacement dwelling, the Minister having read the report is not persuaded that if the proposed dwelling were to be built, it would change ‘dramatically’ this part of Mount Gawn Road. In support of his opinion, the Minister would refer to his previous statements in respect to the character, pattern and setting of the appeal site and its reading thereof. The Minister would also refer to the Inspector’s description of the appellant’s home, Seascapes, which is in the vicinity of the appeal site on the opposite side of the road. The Inspector states at paragraph 2 of the report that Seascapes is a, ‘large modern house with extensive glazing’. When set and read against this context, and notwithstanding that the Minister does accept that consideration of design is a subjective matter, in the Minister’s opinion, if Seascapes, which is a large and modern property is determined to be acceptable in the setting of the immediate general streetscene in terms of its design, scale, use of materials etc., then the Minister is not persuaded that the context of this part of Mount Gawn Road would change dramatically by the introduction of a replacement dwelling on the appeal site.

In respect to the consideration of Housing Policy 14 as detailed at paragraph 31 of the Inspector’s report, the Minister notes the Inspector’s reasoning as to why the final paragraph of Housing Policy 14 comes into play. However, and in response, the Minister would state that it is somewhat inevitable that when set against the context of the original dwelling on the appeal site, the proposed building will clearly have more (not less) visual impact. Moreover, and while the Minister accepts that the replacement dwelling would not be of more traditional character, the Minister would clearly point towards the surrounding development(s) as detailed in the Inspector’s report and respond by stating that in his opinion, the proposed development is in context to the same.

In light of all the foregoing, therefore, and when set against that context, the Minister disagrees with the Inspector’s conclusions that the proposed replacement dwelling would have an adverse visual impact on this part of Mount Gawn Road.

Taking all of the foregoing into consideration, the Minister has therefore concluded that, on balance, the appeal should be dismissed the effect of which is that the Planning Authority’s original decision is upheld and that the application be approved.

I hope that the foregoing provides you with a detailed explanation of Minister C Robertshaw’s reasoning in respect to his consideration of this appeal and that it is helpful to assist your understanding of the decision reached.

Finally, and on behalf of the Minister, I would like to apologise for this administrative oversight in not providing the reasons in my earlier correspondence and I apologise for any inconvenience this may have caused.

Yours sincerely.

N J Black
Chief Executive

Please see over for circulation list/......

7 Paragraph 30 of Inspector MacKenzie’s report dated 6 June 2014
Appendix 4

Dear Mr & Mrs Jenkins

ON APPEAL
Application No: 13/91532/B
Proposal: Erection of a replacement dwelling, extension of residential curtilage into parts of field 414177 and 414179 and creation of new vehicular access, Clybane, Mount Gawne Road, Port St Mary, IM9 5LX
Applicant: Mr Philip & Kirrie Jenkins
Appellant: Mr Nick Verardi

1) I refer to the appeal in respect of the above planning application.

2) As you may be aware, the original appeal decision dated the 14 July 2014 was quashed by order of the High Court of Justice of the Isle of Man ("High Court") on the 20 November 2014. The High Court in making its order also ordered the above matter be remitted back to Mr C R Robertshaw MHK for redetermination.

Accordingly, Mr C R Robertshaw MHK has reconsidered the report of Ruth MacKenzie BA (Hons) MRTP (Planning Inspector) dated 6 June 2014 but still does not support the Planning Inspector's recommendation that the appeal be allowed and that the application be refused.

4) Mr Robertshaw MHK found the arguments both against and in support of this proposal made by each party to be clearly defined. In support of the proposal, Mr Robertshaw MHK noted that there was generally no disagreement that the existing dwelling was of poor form and as such that there was no objection both in principle and in policy terms to the replacement of the existing dwelling at Clybane per se, notwithstanding the Planning Inspector at paragraph 7 of her report states that in the appellant's opinion, any replacement is acceptable only within the existing curtilage. Mr Robertshaw MHK also noted again that the principle of curtilage extensions into the countryside within the general vicinity of the appeal site has been accepted in previous planning approvals, notwithstanding that Mr Robertshaw MHK noted that a counter-argument presented by the appellants to the effect that these were not comparable on the grounds that the extensions were not for the building of a house but for gardens. Finally, Mr Robertshaw MHK noted that in the applicant's opinion, the proposed replacement takes into account the concerns of the previous Planning Inspectors and also that there was no objection to the proposal from the Highways Division or from Rushen Parish Commissioners.
5) Standing against the proposal, Mr Robertshaw MHK notes that the applicant has had two previous planning applications refused on appeal for a replacement dwelling on the current appeal site and at paragraph 3 of the Planning Inspector’s report he notes the reasons for refusal of the same. In addition, Mr Robertshaw MHK notes the appellant’s opinion the proposed dwelling would ‘... have a huge visual impact, alien to the rural character of this part of Mount Gawne Road’, that the proposed development did not meet the tests as applied by draft Planning Policy Statement 2/09 “The Role of Landscape Character in Development” in respect to proposals for development within landscape character areas Type D: Incised Slopes. Also in the appellant’s opinion that the proposed development is contrary to Housing Policy 14 of the Isle of Man Strategic Plan 2007 because, inter alia, its floor area is approximately 300% larger than that of the existing dwelling; that only 12.4% of its footprint would overlap the existing footprint, notwithstanding that Mr Robertshaw MHK notes that the test applied in Housing Policy 14 is that the footprint of the proposed dwelling should generally be sited on the footprint of the dwelling to be replaced, and the replacement dwelling should have a floor area not more than 50% greater than that of the original building. Mr Robertshaw MHK also notes that Housing Policy 14 allows for consideration of proposals which result in a larger dwelling where this involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design or siting, there would be less visual impact.

6) In light of the foregoing, Mr Robertshaw MHK accepted the Planning Inspector’s assessment that the two main issues in respect to the appeal centred upon the effect that the extended curtilage would have on the surrounding landscape and the visual impact the proposed replacement dwelling would have on that part of Mount Gawne Road. In respect of the same, Mr Robertshaw MHK disagrees with the Planning Inspector for the following reasons.

7) In respect to the first issue, i.e. the extension of the curtilage, Mr Robertshaw MHK acknowledges that, under Environment Policy 1 of the Isle of Man Strategic Plan 2007, the countryside and its ecology will be protected for its own sake, and he acknowledges that the appeal site lies within an area designated as Open Space on the Area Plan for the South 2013, as stated in paragraph 13 of the Inspector’s report. Therefore in assessing the impact of the proposed extension to the residential curtilage, Mr Robertshaw MHK considered, firstly, whether the proposed development, i.e. the extension of the curtilage, would adversely affect the countryside, and secondly, if the extension of the curtilage would adversely affect the countryside, whether there is an over-riding national need in land use planning terms which outweighs the requirement to protect the countryside and for which there is no reasonable and acceptable alternative.

8) In relation to the issue on whether the extension of the residential curtilage would adversely affect the countryside, Mr Robertshaw MHK acknowledges there are differing views on this matter from the Planning Authority, the appellant and the Planning Inspector’s assessment. Based on the material before him, i.e. the Planning Inspector’s report, Mr Robertshaw MHK concluded that the extension of the curtilage would not adversely affect the countryside, as the proposed extension to the curtilage would only catch a small parcel of agricultural land which has no particular use for agricultural purposes due to its confined/inaccessible shape. Furthermore, Mr

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1 The Planning Inspector reports and the Inspector comments detailed therein in respect to the two previous refusals (PA12/00118/B and PA12/01683/B) are not before the Hon C. Robertshaw MHK for his consideration in this appeal.
2 Paragraph 8 of Inspector MacKenzie’s report dated 6 June 2014
3 Inspector Mackenzie disagrees with the appellant’s quoted figure and instead states it to be 200% at paragraph 31 of her report
5 Paragraph 16 of Inspector MacKenzie’s report dated 6 June 2014
6 Paragraphs 9 and 10 of Inspector MacKenzie’s report dated 6 June 2014
7 Paragraphs 24-28 of Inspector MacKenzie’s report dated 6 June 2014
Robertshaw MHK considers a new line from the rear boundary to the corner of the wall, which abuts the public highway of Mount Gawne Road, would create a clean and practical line for a residential curtilage.

9) Mr Robertshaw MHK considers that the second part of the policy test within Environment Policy 1 of the Isle of Man Strategic Plan 2007, i.e. the over-riding national need test and there is no reasonable and acceptable alternative, is not applicable in this case. Mr Robertshaw MHK acknowledges that these tests are only applicable when a development would adversely affect the countryside; in this case, Mr Robertshaw MHK concluded that the proposal would not adversely affect the countryside for the above reasons.

10) Mr Robertshaw MHK also notes that the Planning Inspector has considered Draft PPS 2/09 and Environment Policy 2 of the Isle of Man Strategic Plan 2007. However, in understanding the Planning Inspector’s comments, Mr Robertshaw MHK has firstly considered how Environment Policy 2 is applicable to the proposed development. Mr Robertshaw MHK notes that Environment Policy 2 states that “The present system of landscape classification of Areas of High Landscape or Coastal Value and Scenic Significance (AHLVs) as shown on the 1982 Development Plan and subsequent Local and Area Plans will be used as a basis development control until such time as it is superseded by a landscape classification which will introduce different categories of landscape and policies and guidance for control therein. Within these areas the protection of the character of the landscape will be the most important consideration unless it can be shown that:

(a) the development would not harm the character and quality of the landscape; or
(b) the location for the development is essential.”

11) Mr Robertshaw MHK notes the site does not fall within an Area of High Landscape or Coastal Value and Scenic Significance and that its landscape character is classified as Incised Slopes in the Area Plan for the South 2012. Mr Robertshaw MHK acknowledges that the second part of the Environment Policy 2 is still applicable in the assessment of the appeal and that the protection of the character of the landscape will be the most important consideration unless it can be shown that (a) the development would not harm the character and quality of the landscape; or (b) the location for the development is essential.

12) In assessing whether the proposed development would harm the character and quality of the landscape, Mr Robertshaw MHK acknowledges that the appellant and the Planning Inspector have referred to Draft PPS 2/09 “The Role of Landscape Character in Development” (“Draft PPS”).

13) Firstly, Mr Robertshaw MHK considers it is important to determine how much weight should be attached to the Draft PPS. Mr Robertshaw MHK notes that the Draft PPS went out for public consultation in 2009. The document is still currently a draft policy statement, which has not been approved by the Department or been laid before Tynwald. Therefore, Mr Robertshaw MHK considers limited weight should be attached to the Draft PPS.

14) Notwithstanding the limited weight of the Draft PPS, Mr Robertshaw MHK considers the Planning Inspector has misinterpreted the intention of the Draft PPS. Mr Robertshaw MHK notes the Planning Inspector has stated that:

“Draft PPS 2/09 makes it clear that, in Type D landscapes, gateways to settlements should be enhanced, linear urbanising developments along roads should be avoided, and the loss

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9 Paragraphs 10 and 26 of Inspector MacKenzie’s report dated 6 June 2014
of hedgerows and sod banks should be minimised. To my mind, the current proposal fails to pay heed to these requirements.\textsuperscript{10}

15) However, Mr Robertshaw MHK notes that in paragraph 4.5 of the Draft PPS, which deals with Type D: Incised Slopes, it states that "Key landscape planning considerations in relation to the protection and enhancement of this Landscape Character Type are as follows:-

(c) Approach routes, key views, and gateways to settlements within these landscapes should be enhanced;

(d) Linear development along roads from settlements that extends urbanising influences into the wider countryside should be avoided;

(g) Care should be taken to minimise loss of hedgerows, sod banks, and other distinctive boundary features along road corridors;"

16) Mr Robertshaw MHK considers the Planning Inspector has attached too much weight on these matters by stating these are requirements in her report.\textsuperscript{11} The fact of the matter is that Mr Robertshaw MHK considers these matters to be planning considerations to be taken into account when assessing a proposal. Mr Robertshaw MHK does not consider them to be requirements of a development proposal, as emphasised by the Planning Inspector in her report. Mr Robertshaw MHK considers these matters are desirable within a proposal that is located within a Type D: Incised Slopes landscape character.

17) In considering paragraph 4.5(c) of the Draft PPS, Mr Robertshaw MHK notes that the Planning Inspector in her assessment that she states "The enlargement of the residential curtilage would be at the gateway to an existing ribbon development but the gateway would not be enhanced."\textsuperscript{12} However, Mr Robertshaw MHK notes that the ribbon development to the east of the appeal site is not within a defined settlement, as defined in the Area Plan for the South 2013\textsuperscript{13}. Therefore, Mr Robertshaw MHK considers the Planning Inspector has misinterpreted the draft PPS in this regard, as the paragraph deals with "Approach routes, key views, and gateways to settlements" and therefore paragraph 4.5(c) should not be a consideration in this appeal.

18) In considering paragraph 4.5(d), Mr Robertshaw MHK notes that the Planning Inspector states that "The replacement dwelling would be a linear development extending 28m into the countryside. The dwelling and its forecourt would have an urbanising effect." However, Mr Robertshaw MHK notes from Map 1 (Constraints) of the Area Plan for the South 2013 that Mount Gawne Road is not a road which goes into or out of a defined settlement. Therefore, Mr Robertshaw MHK considers paragraph 4.5(d) should not be applied when assessing the merits of this appeal, as the paragraph deals with linear developments along roads from settlements.

19) In considering paragraph 4.5(g), Mr Robertshaw MHK notes that the Planning Inspector states that "Existing hedges and sod banks would be lost", as part of the proposal. Mr Robertshaw MHK notes that the Draft PPS states that care should be taken to minimise the loss of hedges and sod banks. He also notes that the Draft PPS does not prevent their loss but aims to minimise their loss, which suggests that these features can be removed as part of a development proposal.

\textsuperscript{10} Paragraph 26 of Inspector MacKenzie’s report dated 6 June 2014

\textsuperscript{11} Paragraph 26 of Inspector MacKenzie’s report dated 6 June 2014

\textsuperscript{12} Paragraph 26 of Inspector MacKenzie’s report dated 6 June 2014

\textsuperscript{13} Map 1 (constraints) of the Area Plan for the South 2013
20) In light of the foregoing, Mr Robertshaw MHK considers the proposal should be assessed against Environment Policy 2(a) i.e. would the development harm the character and quality of the landscape. Mr Robertshaw MHK considers this a similar test to Environment Policy 1, which had to consider whether the proposed development would adversely affect the countryside. Mr Robertshaw MHK concluded above that the extension of the curtilage would not adversely affect the countryside, as the proposed extension to the curtilage would only catch a small parcel of agricultural land which has no particular use for agricultural purposes due to its confined/inaccessible shape. Furthermore, Mr Robertshaw MHK concluded a new line from the rear boundary to the corner of the wall, which abuts the public highway of Mount Gawne Road, would create a clean and practical line for a residential curtilage. In conclusion, Mr Robertshaw considers the proposal would not harm the character and quality of the landscape and therefore would not be contrary to Environment Policy 2(a) of the Isle of Man Strategic Plan 2007.

21) In respect of Environment Policy 2(b), Mr Robertshaw MHK notes that none of the parties to the appeal and the Planning Inspector have assessed the development against this part of the policy. Mr Robertshaw MHK does not consider it is necessary to consider Environment Policy 2(b), as the policy test is that either 2(a) or 2(b) of the policy has to be met so as to be compliant with the policy. As stated above, Mr Robertshaw considers the proposed development would not be contrary to Environment Policy 2(a) of the Isle of Man Strategic Plan 2007.

22) In respect to the second issue, the impact of the proposed replacement dwelling, Mr Robertshaw MHK accepts the proposal needs to be tested against Housing Policy 14 of the Isle of Man Strategic Plan 2007. Mr Robertshaw MHK accepts the replacement dwelling would have a floor area of at least 200% and that most of the footprint of the existing and proposed dwellings would not overlap, as advised by the Planning Inspector in paragraph 31 of her report. Mr Robertshaw MHK accepts that the last paragraph of the Housing Policy 14 comes into play i.e. "Consideration may be given to proposals which result in a larger dwelling where this involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design or siting, there would be less visual impact". Mr Robertshaw MHK accepts the dwelling is of poor form and is out of keeping with the surrounding properties. Mr Robertshaw MHK acknowledges in the context of the policy that the existing dwelling could be replaced with a dwelling of more traditional character or with one, by its design or siting, that would have less visual impact. Mr Robertshaw MHK accepts the proposed dwelling is not of traditional character and therefore cannot be granted approval under this exception. In respect of the second exception, Mr Robertshaw MHK considered the proposed replacement dwelling would be more visible than the existing dwelling. However, Mr Robertshaw MHK acknowledges the proposed dwelling will have an increased visual impact but, on balance, Mr Robertshaw MHK considered the replacement dwelling would not adversely affect the visual amenity of the locality when considering the scale and design of the other properties in the surrounding area in particular the appellant’s home, Seascape, which is described as a ‘large modern house with extensive glazing’ and the Planning Authority’s case in which they consider the ‘...increased visual impact would be outweighed by the fact that its appearance and character would be better and more appropriate’.

23) In light of all the foregoing, therefore, and when set against that context, Mr Robertshaw MHK disagrees with the Planning Inspector’s conclusions that the proposed replacement dwelling would have an adverse visual impact on this part of Mount Gawne Road.

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14 Paragraph 2 of Inspector MacKenzie’s report dated 6 June 2014
15 Paragraph 15 of Inspector MacKenzie’s report dated 6 June 2014
24) Instead Mr C R Robertshaw MHK holds that the appeal should be dismissed, the effect of which is that the Planning Committee’s original decision is upheld. Accordingly, he has directed that the Planning Committee’s approval of the application under Article 6 of the Town and Country Planning (Development Procedure) (No2) Order 2013 should be confirmed. Formal notice of this decision is attached. This letter and the attached decision notice form part of the formal notice in writing of the decision of the appeal in accordance with Article 8(9) of the Town and Country Planning (Development Procedure) (No2) Order 2013.

Yours sincerely

N J Black
Chief Executive

Circulation List
Savage & Chadwick
Mr N Verardi
McGarrigle Architects
Clerk to Rushen Parish Commissioners

Mr G Clark
Mr R Lancaster
Secretary to the Planning Committee
Dear Mr & Mrs Jenkins,

ON APPEAL
PA No: 13/91532/B
Address Clybane, Mount Gawne Road, Port St Mary, IM9 5LX
Proposal: Erection of a replacement dwelling, extension of residential curtilage into parts of field 414177 and 414179 and creation of new vehicular access
Appellant: Mr Nick Verardi

I refer to the appeal in respect of the above planning application.

As you will be aware, the decision dated the 10th March 2015 was quashed by order of the High Court of Justice of the Isle of Man on 3 August 2015. The High Court in making its order also ordered the above matter be remitted to the Department of Environment, Food and Agriculture (as successor to the Department of Infrastructure/First Defendant) for redetermination.

In accordance with the provisions of the Town and Country Planning (Development Procedure) (No 2) Order 2013, therefore, I herewith give notice of the appeal decision.

The Minister for Environment, Food and Agriculture, the Hon R A Ronan MHK, has considered the report, concurs with the appointed person’s conclusions, and accepts the recommendation that the appeal should be allowed. Accordingly, he has directed that the application should be Refused. Formal notice of this decision is attached.

While the Minister for Environment, Food and Agriculture, the Hon R A Ronan MHK, accepts that you will be disappointed by this decision, he has asked that I convey to you that if it remains your intention to pursue a new application for a replacement dwelling at some point in the future, that at the outset your consideration of any new replacement dwelling size and layout has regard to and is informed by paragraph 27 of the Planning Inspector's report. Notwithstanding this, the Minister would also suggest that you contact the Planning & Building Control Directorate at Murray House early in the process to discuss with the Planning Officer, on a without prejudice basis, any new proposal and the policy

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1 The original appeal decision dated 14 July 2014 was quashed by order of the High Court of Justice of the Isle of Man on 20 November 2014
2 From 1 June 2015, planning was transferred to the Department of Environment, Food and Agriculture by the Transfer of Planning and Building Control Functions Order 2015. The planning appeal therefore fails to be determined by the Minister for Environment, Food and Agriculture.
justification which is intended to support that new proposal.

Yours faithfully

Mr R C Lole
Chief Executive
Appendix 6

20th June 2014

Director of Planning & Building Control
Mr Michael Gallagher MRTPi
Department of Infrastructure
Murray House
Mount Havelock
Douglas
Isle of Man
IM1 2SF

Dear Mr Gallagher,

RE: a)JC/14/00107/COMP - SEASCAPE MOUNT GAWNE ROAD 06/01361/B
b)CLYBANE MOUNT GAWNE ROAD 13/91532/B

We write further to Miss Chance’s letter of the 17th June 2014 received yesterday afternoon and following our personal experiences with the planning process over the last 2 1/2 years.

Whilst we appreciate the complex and often emotive nature of planning we would like to bring to your attention a number of issues that we feel need addressing by the Department as a matter of urgency.

1. The Southern Area Plan Maps do not cover the entire area of the South – there are areas that fall between the maps leaving property/land owners in those areas disadvantaged, areas of so called “white land”. The Landscape Character Maps are also inaccurate as they show areas shaded as urban but classed as countryside.

2. The Department of Transport and the local authority are, by virtue of Town and Country Planning (Development Procedure) (No2) Order 2013, considered "interested persons" and as such are afforded party status in planning applications. However, as in the example cited above “Seascape”, the Highways report was received too late to be included in the Planning Officers report (although interestingly still within the target date set by the PO) and was therefore disregarded in its entirety despite the Highways officer highlighting issues which pose a potential danger to the public. At the very least a mechanism should be in place that no planning determination should be made without Highways input, and, as in this case, if received after the determination then the case should automatically be entered into appeal so that the matter can be corrected. We feel that there has been negligence on the part of both departments in this instance.

3. There should be a system of checks and balances brought in to ensure that Building Control are using building plans drawn up to reflect the approved planning permission. As in the case of Seascape Miss Chance accepts that development has been carried out which differs from the approved plans and yet a completion certificate was issued by Building Control so it must have been inspected. This is an abuse of the planning system and does not afford neighbours due process to object to development that could effect them.
4. With regards to Miss Chances remark about Google Street View. We have been unable to locate any mention of Google Street View as being a means to test alleged breaches of planning in the Town and Country Planning Act. Does the IOM Government seriously intend to use an American tool to test local planning issues which is several years out of date? What is the point of a completion certificate if a breach is determined 4 years from when a property is "substantially built". This is open to abuse. What is to prevent someone from building a "substantial" part of a development and then just before the 4 years runs out adding something for which they don't have approval. There seems to be a grey area as far as planning approval for loft conversions/internal wall structures etc done at the time of construction or after completion. It makes a mockery of the system. Citing Seascape as an example the Completion Certificate was issued **25th June 2010**. We first lodged our concerns with the Department in March 2014 and after numerous emails and telephone calls a site visit was eventually carried out on 17th June 2014, only for us to be informed "the building has been in place for longer than 4 years and is lawful", even though it is still within the 4 years from the date of the completion certificate.

5. According to advice from your Department, Building Control does not retain building plans for more than 3 years. At the very least they should be retained on file for 4 years to match the planning control period.

6. With respect to planning appeals, we are strongly of the opinion that even those given "Interested Party Status" but who do not lodge objections before the determination should not be able to introduce an objection and new evidence once the application has been determined. It affords the applicant no opportunity to have discourse with the objector, nor does it provide the Planning Officer or Planning Committee an opportunity to consider the points and can be misused for malicious intent at very little cost to the objector.

We believe that the anomalies in the system and what has happened to us illustrates a wider issue which is of public interest and are considering our options with regards to a Petition of Redress to Tynwald.

Yours sincerely

Mr & Mrs PD Jenkins

cc. Miss Jennifer Chance Head of Development Management
Mr Laurence Skelly MHK Minister
Our Ref: MG/VQ

2nd July 2014

Mr & Mrs P D Jenkins

Dear Mr & Mrs Jenkins

14/00107/COMP Seascape, Mount Gawne Road

Thank you for your letter of 20th June 2014. I note the points you have made and would like to make the following comments:

1. The Area Plan for the South was approved by Tynwald in February 2013, after following due statutory process for preparation. The plan comprises of a series of ‘proposals’ which are either site specific or more in the nature of a policy statement for a specific area. There is no statutory requirement to zone every piece of land for a specific purpose.

2. Any new development proposals in this locality are now considered within the context of both the Strategic Plan policies and the Area Plan for the South. In this respect I disagree with your assertion that property/landowners are ‘disadvantaged’.

3. The planning applications for Seascape were determined in 2006 in accordance with the Town and Country Planning (Development Procedure) Order 2005, which was then in operation. There is no requirement in the Order for an organisation to make a representation on a planning application. However Article 6 of the 2005 Order did require the Planning Authority to determine it “as soon as practicable after the relevant date...” (which is...
defined as ‘not being less than 21 days after the publication date’). In addition there was no legal vire for the Department to review a decision after it has been made; so the Highways comments could not have been considered as they were received on 2nd October 2006, 3 days after the Decision Notice had been issued on 29th September 2006. Having reviewed the Planning Application I can find no evidence of negligence by the Department.

4. Planning and Building Control are governed by separate legislation. In response to a number of cases, a couple of years ago the Department introduced an internal process to cross check Building Control plans for sites it was considering as Building Control Authority (i.e.outside of Douglas and Onchan) with plans submitted under planning legislation. However at the time that Seascape was built in 2009 /10, such formal internal checks were not in place and in some instances development was carried out that was different to the planning approval.

5. I note that your multiple requests to investigate suspected breaches of planning were only received by the Department on 14th April 2014, this was 3 years and 42 weeks after Seascape had been completed (according to Building Control records). Under planning legislation, there is a 4 year limit to take planning enforcement action for new development. Having reviewed the files, I agree with Ms Chance’s conclusions in this case. With only 10 weeks remaining, the Department was unlikely to be able to obtain sufficient evidence to determine if there was a breach of planning control, and if so, whether formal enforcement action should be instigated within the statutory time limits.

6. Planning legislation does not specify what can / cannot be used as evidence to inform decisions on planning enforcement matters. I therefore disagree with your view that “Google Street” cannot be used as a source of information.

Finally I note your concerns about the operation of ‘interested party status’ in Planning Appeals. Your concerns are shared by my officers and we will relook at this issue again as part of any future review of legislation.

Yours sincerely

Michael Gallagher, MRTPI
Director of Planning and Building Control
Town and Country Planning Act 1990

Section 97

Power to revoke or modify planning permission.

(1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—
   (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
   (b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority.

Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development—
   (a) consisting of the winning and working of minerals; or
   (b) involving the depositing of refuse or waste materials.

Annotations:

Amendments (Textual)

F1 Words in s. 97(1) inserted (25.9.1990) by Planning and Compensation Act 1990 (c. 34, S.I. 1990/1957, art. 4, sub-f (subject to s. 22).)

F2 S. 97(5) inserted (25.9.1990) by Planning and Compensation Act 1990 (c. 34, S.I. 1990/1957, art. 4 (subject to s. 22).)
Town and Country Planning Act 1990

Section 107

107 Compensation where planning permission revoked or modified.

(1) Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it—

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), no compensation shall be paid under this section in respect—

(a) of any work carried out before the grant of the permission which is revoked or modified, or

(b) of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).

(4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted if—

(a) subject to the condition set out in Schedule 10, for any development of the land of a class specified in paragraph 1 of Schedule 3;

(b) for any development of a class specified in paragraph 2 of Schedule 3.

(5) In this Part any reference to an order under section 97 includes a reference to an order under the provisions of that section as applied by section 102(2) (or, subject to section 116, by paragraph 110(5) of Schedule 9).

Amendments:
P1. S. 107(1)(a) substituted (28.7.1991 with effect as from 16.11.1990) by S.I. 1991/1333, art. 2

C. 107(1)(a) substituted (28.7.1991) by Planning and Compensation Act 1991 (c. 31, s. 133), s. 31(4)(a), Sch. 1, para. 1(c)(ii)

C. 107(1)(b) substituted (28.7.1991) by Planning and Compensation Act 1991 (c. 31, s. 133), s. 31(4)(a), Sch. 1, para. 1(c)(ii)

2. Words in s. 107(3) substituted (28.7.1991) by Planning and Compensation Act 1991 (c. 31, s. 133), s. 21, Sch. 1, para. 1(c)(ii) (with s. 31(4)(a)), S.I. 1991/1333, art. 3 (subject to art. 4)


C. 107(3)(b) applied (with modifications) (16.11.1990) by S.I. 1991/1233, reg. 4, Sch. (with reg. 3) (as amended by S.I. 2002/1071)
Dear Mr and Mrs Jenkins

Re: ALLEGED BREACH OF PLANNING CONTROL
BUILDING NOT IN ACCORDANCE WITH PLANNING APPROVAL
SEASCAPE, MOUNT GAWNE ROAD

Thank you for your enquiry regarding the development of a house at Seascape, not in accordance with planning approval 06/01363/B.

I have visited the site and viewed the property both internally and externally to make a comparison with the approved planning drawings. I will set out my conclusions below.

1. The plans showed hipped roofs whereas gable roofs have been constructed.

   The plans do show the roofs as being gable, it is because the house has a number of oblique angles that the roofs appear to be hipped in some places. There is no breach of planning.

2. i) A terrace has been erected at the gable end above the garage which was not on the approved plans.
   ii) A stairwell has been built to the terrace that is above the sitting room.
   iii) The windows are not in accordance with the approved plans.

   The development carried out does differ from the approved plans in respect of all of the matters above. I note however, looking at Google Street View that the site was photographed in April 2010 and the building was complete at that date. Consequently the building has been in place for longer than 4 years and is lawful.

3. A basement/wine cellar has been included in the development which is not on the approved plans.

   No basement/wine cellar was located when I undertook the site visit. However, I am satisfied that if a wine cellar is on site, it would have been built at the time of
the dwelling and has therefore been there 4 years and is lawful. I note you make reference to a potential drainage issue as the house is built over a drainage culvert from your land. However, this would have been a matter for Building Control and I am unaware of any drainage issues that have arisen since the development was completed. If there is a breach of planning, that breach would now be lawful.

4. The Highway Officer stated that sight lines should be provided and none have.

Despite the comments from the Highways Officer, these were received after the application had been determined and was not a requirement of the approval. There is no breach of Planning.

5. The planting scheme shown on the drawings was not carried out.

From the site visit it was determined that the planting scheme was unlikely to have been implemented. However, I have reviewed the conditions of the approval and no condition was imposed that required the planting to be implemented. There is no breach of planning.

6. The area above the garage is a self-contained flat.

The area above the garage shown to be a games room on the approved drawings is laid out as habitable accommodation. At the current time I am satisfied that this is not used except as ancillary to the use of the rest of the house as a dwelling. It is not let or rented out. There is no breach of planning.

In overall conclusion I am satisfied that the issues you have raised either do not constitute a breach of planning or are now lawful. I therefore intend to close the investigation. Please contact me in the next 14 days if you have any queries.

Yours sincerely,

Miss Jennifer Chance
Head of Development Management
Kirrie Jenkins

From: Kirrie Jenkins
Sent: 29 May 2014 10:32 am
To: 'Singleton, Jason'
Subject: RE: JS/14/00107/COMP

Dear Jason

The reason we are anxious to know the progress over this matter is that we are aware that the completion certificate was issued on the 25th June 2010 and therefore the 4 year deadline is less than a month away. Our understanding is that once this deadline is passed the department loses the opportunity and the unlawful development is immune to enforcement.

The matter is therefore very pressing and we would be grateful for an update at your earliest convenience.

Regards

Philip & Kirrie Jenkins

From: Singleton, Jason
Sent: 22 May 2014 4:23 pm
To: 'Kirrie Jenkins'
Subject: RE: JS/14/00107/COMP

Good afternoon Mr & Mrs Jenkins,

The decision on whether it is expedient to take formal action through the courts is delegated to the Head of Development Management and also seeking political consent to pursue matters through the courts.

Before any formal action is considered, in accordance with our enforcement policy (as attached) a breach of planning control could be rectified through a retrospective planning application.

Only once a thorough investigation and assessment has been undertaken can we advise on the Departments position on this matter.

Kind regards

Jason

From: Kirrie Jenkins
Sent: 22 May 2014 15:01
To: Singleton, Jason
Subject: Re: JS/14/00107/COMP

Dear Mr Singleton,

Thank you for your email.

Regardless of which individual is dealing with the matter we respectfully request confirmation that action is going to be taken before the 4 year deadline in June.

Regards
On 22 May 2014, at 14:20, "Singleton, Jason" wrote:

Good afternoon Mr & Mrs Jenkins,

Thank you for your email 20th May 2014, the content of which has been noted.

As I am not the investigation officer on this case due to work load, the matter was been passed to the Head of Development Management for allocation to another officer. Unfortunately the officer in question is out of the office at present so I am unable to advise on this case.

Once I have had the opportunity to liaise with him direct I will be in a better position to update you.

Kind regards

Jason

From: Kirrie Jenkins
Sent: 20 May 2014 10:21
To: Singleton, Jason
Subject: RE: JS/14/00107/COMP

Dear Jason,

Thank for the update. As the 4 year deadline is rapidly approaching we would be grateful for a further update before Friday. We attach a completed form in respect of the planting scheme in order to complete your file.

Kind regards

Philip & Kirrie Jenkins

From: Singleton, Jason
Sent: 12 May 2014 9:03 am
To: 'Kirrie Jenkins'
Subject: RE: JS/14/00107/COMP

Good morning Mr & Mrs Jenkins,

Thank you for your email 8th May 2014.

A meeting was held with my line manager on 7th May who has taken the matter on board and will be allocating the case to one of the planning officers.

Kind regards

Jason
From: Kirrie Jenkins  
Sent: 08 May 2014 14:24  
To: Singleton, Jason  
Subject: RE: JS/14/00107/COMP

Dear Jason

Please advise if there has been any progress in this matter.

Regards

Philip & Kirrie Jenkins

From: Singleton, Jason  
Sent: 28 April 2014 14:35 pm  
To: 'Kirrie Jenkins'  
Subject: RE: JS/14/00107/COMP

Good afternoon Mr & Mrs Jenkins,

Thank you for your email 28th April 2014, the content of which has been noted. We received 8 separate complaints.

I have provisionally diarised a meeting with the Development Control Manager for the Wednesday 7th May 2014 to discuss this case, from here we will be able to advise on the departments position on this matter.

Kind regards

Jason

From: Kirrie Jenkins  
Sent: 28 April 2014 14:51  
To: Singleton, Jason  
Subject: JS/14/00107/COMP

Dear Mr Singleton

Thank you for your letter dated 23rd April 2014 regarding PA 06/01361/B. Seascape, formerly Dolphins, Mount Gawne Road, Port St Mary.

We appreciate you are investigating the structural deviations however we submitted 9 letters in total and your letter doesn’t confirm that all 9 are being investigated, we would be grateful for your confirmation that this is the case?

We are aware that the 4 year deadline is fast approaching, ie June 2014. Please confirm that action will be taken before this deadline has passed?

Kindly keep us informed.

Regards

Philip & Kirrie Jenkins
Dear Mrs Jenkins,

Request under the Freedom of Information Act 2015

Thank you for your request dated 1 February 2016 under the Freedom of Information Act 2015.

You requested the following information which has been numbered for ease of reference:

1. Please advise how many planning decisions have had doleance proceedings commenced since 12 February 2007.
2. Please advise how many of the proceedings were settled prior to going to court.
3. What percentage of cases that went to court, resulted in the decision being quashed.
4. What number of redetermined cases had the original decision overturned.
5. How many planning decisions had doleance proceedings commenced prior to 12 February 2007.
6. How many cases have had doleance proceedings commenced more than once, and if so, the breakdown of how many times, on a case by case basis.
7. How many cases have had doleance proceedings settled before going to court more than once, and if so, the breakdown of how many times, on a case by case basis.
8. How much has been paid in settlement of doleance cases that went to court since 12 February 2007, and the individual figures on a case by case basis.
9. How much has been paid in settlement of doleance cases that were settled, prior to court, since 12 February 2007, and the individual figures on a case by case basis.
10. Please advise how many cases have been challenged on the grounds the Minister (or delegated person) failed to give reasons.
11. How many prosecutions have there been in respect of planning or building control breaches in the last 10 years.
12. What percentage were successful.
13. How many planning or building control breaches have been reported in the last 10 years.

The attached Appendix provides you with the information you requested and which the Department is able to disclose.
While our aim is to provide information whenever possible, under section 11 of the Freedom of Information Act a public authority is not required to comply with a request for information if the public authority does not hold it. As part of your request is for information created before the 11 October 2011 the Department of Environment, Food and Agriculture does not hold it for the purposes of the Act and therefore this letter serves as a refusal notice in respect of information prior to that date.

Notwithstanding the fact that the Act only concerns the period from 11 October 2011 to date, the Department has provided information voluntarily in response to the question numbered 12 concerning planning breach complaints.

Your right to request a review

If you are unhappy with this response to your Freedom of Information request, you may ask us to carry out an internal review of the response, by completing a complaint form and submitting it electronically or by delivery/post to the sender of this letter at the address above. An electronic version of the relevant complaint form can be found by going to: https://www.gov.im/about-the-government/access-to-government-information/freedom-of-information-complaint/. If you would like a paper version of the complaint form to be sent to you by post, please contact us and we will be happy to arrange for this. Your review request should explain why you are dissatisfied with this response, and should be made as soon as practicable. We will respond as soon as the review has been concluded.

If you are not satisfied with the result of the review, you then have the right to appeal to the Information Commissioner for a decision on;

1. Whether we have responded to your request for information in accordance with Part 2 of the Freedom of Information Act 2015; or
2. Whether we are justified in refusing to give you the information requested.

In response to an application for review, the Information Commissioner may, at any time, attempt to resolve a matter by negotiation, conciliation, mediation or another form of alternative dispute resolution and will have regard to any outcome of this in making any subsequent decision.

More detailed information on your rights to review is on the Information Commissioner’s website at: https://www.infrights.im/

Should you have any queries concerning this letter, please do not hesitate to contact me.

Further information about Freedom of Information requests can be found at: https://www.gov.im/about-the-government/access-to-government-information/#Freedom_of_Information_Act_2015

Yours sincerely

Miss J Skinner
FOI Co-ordinator, Department of Environment, Food and Agriculture
Email:
Telephone: 01624 685841
<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>1. How many of the proceedings were settled prior to going to court?</td>
<td>2 out of 5 proceedings were referred to above were settled prior to a full hearing in court.</td>
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<td>2. What percentage of cases that went to court resulted in the decision being qualified?</td>
<td>100% (the 3 decisions that have led to decisions – either in Court or prior to a full hearing have resulted in the decision being qualified)</td>
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<td>3. What percentage of these matters delivered in respect of these matters?</td>
<td>(Note – proceedings are ongoing in respect of Z cases and no interim judgements have been rendered)</td>
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Comment:

- The Department is advised that court judgements are available online at www.litigationinforcement.gov.on.ca.
- Register of claims as court documents and memos of the public may access these records online.
- There is no record of any other petitions made in the period that falls outside the period in which the petition was commenced on February 2012.
- The Department does not hold any information on doleance issues prior to 2013. It is understood, however, that there was one petition commenced prior to 2011 which was withdrawn.

The Department has been informed that the information in this report was compiled in the following manner:

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<td>4. What number of referred cases had the original decision overturned?</td>
<td>2</td>
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<td>5. How many planning decisions had their decision overturned prior to 12 February 2007?</td>
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**Note:** If a breach of planning has been complicated with, for example, breaching of planning approval or non-compliance with a planning condition, planning compliants can be for an alleged breach of non-compliance with a planning condition.

Building control breaches:

From 1 February 2006 until 1 February 2016 there have been 2289 allegations of planning or building control breaches. 100% of these have been processed successfully.

2 prosecutions have taken place, both of which were for failure to comply with an enforcement notice.

(Note - this challenge contested 1 ground of a number of grounds submitted in support of the claimant's actions.)
Dear Mr and Mrs Jenkins

Shore Road Sea Defences

Thank you for your letter of 18th January 2016.

I can confirm that we are aware of the presence of springs in the area of Motorlands and of the history of the existing sea defence around this location. These matters will be considered in the design of any new works.

The purpose of the works currently being considered to protect against wave overtopping during storms, is to reduce the risk of flooding of property and public infrastructure. One of the objectives is that access along Shore Road should remain practical except in extreme conditions. There are therefore no proposals by the Department to add an access road at the rear of the properties on Shore Road.

The other items in your letter refer to planning issues so I have forwarded a copy to the Planning Division (now part of the Department of Environment, Food and Agriculture).

Yours sincerely

Paul Salmon

Cc Planning, (Technical Support and Customer Services)
Your ref:
Our ref: JQ/MC/DINF.236
Please quote reference on all correspondence

Date: 15 April 2016

By post and e-mail

Mrs Joann Corkish
Third Clerk of Tynwald
Legislative Buildings
Douglas
ISLE OF MAN IM1 3BW

Dear Mrs Corkish

Re: Select Committee/Mr and Mrs Jenkins

Thank you for your e-mail with enclosures of the 13th of April 2016.

The five letters that the Committee may wish to include as part of their report are not "legal advice letters". None of the letters has the benefit of legal privilege.

I would ask you to note that letter 1(a letter from Appleby (Isle of Man) LLC to the Hon Mr C R. Robertshaw MHK dated the 4th September 2014) that you provided to me is in fact incomplete and has pages missing.

I would have no issue with the letters being included by the Committee as part of their report if the Committee wish.

However, in relation to letter 2 (the letter from Chambers to Appleby (Isle of Man) LLC dated the 19th of September 2014), I feel it would be sensible if I indicated the context in which this letter was sent.

This letter was sent by Chambers on behalf of the Department of Infrastructure, as part of the litigation process, in an effort to persuade Appleby/Mr and Mrs Verardi not to continue with their threatened doleance challenge.

Despite the contents of this letter Mr and Mrs Verardi subsequently issued a doleance claim to quash the decision made.

Upon review of the matters raised in the doleance claim the Department decided not to contest the claim. Having very carefully considered the legal authorities in relation to the failure to provide reasons for a decision the Department had no option but to agree to the decision being quashed.
I would be obliged if this letter could be laid before the Committee and exhibited to any report so as to put the letter of the 19th of September 2014 into context.

Yours sincerely

JLM Quinn
Her Majesty's Acting Attorney General
Hon Mr C R Robertshaw MHK
Isle of Man Government
Government Offices
Bucks Road
Douglas
IM1 3PN

DIRECTLY PRIVATE AND CONFIDENTIAL

Dear Sir

Decision of the Hon C R Robertshaw MHK, acting under delegated responsibility from the Minister of Infrastructure, on Planning Application 13/91532/B

We represent Mr and Mrs Verardi of Seascape, Mount Gawne Road, Port St Mary, in relation to the above matter.

Our client proposes to commence doleance proceedings seeking an Order quashing the decision of the Hon C R Robertshaw MHK, acting under delegated responsibility from the Minister for Infrastructure, on Planning Application 13/91532/B, issued on 14 July 2014, with reasons purportedly given retrospectively by letter of 29 July 2014 (the Decision).

This is a letter before action. If a satisfactory response is not received by close of business on Friday 19 September 2014, our client will commence doleance proceedings.

The purpose of this letter is to set out briefly some of the principal reasons why it will be contended that the Decision should be quashed and the matter remitted to the Minister. It is not intended to be an exhaustive list.

1) Contrary to Article 8 Rule (9)(b) of the Town and Country Planning (Development Procedure) (No 2) Order 2013, the decision did not give reasons. What follows is without prejudice to this.

2) The Minister accepted the Planning Inspector’s assessment that the 2 main issues were (a) the effect the extended curtilage would have on the surrounding landscape and (b) the visual impact of the proposed replacement dwelling on that part of Mount Gawne Road. His Decision is flawed in relation to both.

Effect on the surrounding landscape

3) The Minister states that he assessed the context of the appeal site and its character “in the round”, by reference to the siting of houses to the east and on the other side of Mount Gawne Road. This entirely overlooks the fact that the whilst the extended curtilage is designated open space in the Southern Area

4 September 2014

Appleby Ref 208443.0003/CD/0C

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Caron Pegg (née Hyde)

Appleby (Isle of Man) LLC (the 'Legal Practice') is a limited liability company with company number 336844L incorporated in the Isle of Man with its registered office at 33-37 Athol Street, Douglas, Isle of Man. IM1 1LB is registered under the Companies (Isle of Man) Act 2001. Partner is a title referring to a member or employee of the Legal Practice. A list of such persons can be obtained from your relationship partner.
Local Plan 2013, the houses to the east and on the other side of Mount Gawne Road do not lie in the countryside and are urban. As such, there is a presumption against new development under Environment Policy 1, which protects the countryside for its own sake. It is erroneous to suppose, as the Minister has done, that the development of open space is acceptable because of its proximity or relationship to the urban area.

4) The Decision overlooks the requirements of Draft PPS 2/09, which is discussed in paragraph 26 of the Planning Inspector’s report. The Planning Inspector concluded that the proposal failed to pay heed to Draft PPS 2/09, which requires that in Type D landscapes gateways to settlements should be enhanced, linear urbanising developments along roads should be avoided and the loss of hedgerows and sod banks should be minimised, and hence that the proposal fails to protect the quality and character of the landscape in accordance with Environment Policy 2. The Decision makes no mention of these issues at all.

5) The Minister’s assessment of the impact on agricultural quality also fails to consider the issues of the loss of landscape feature and protection of the countryside for its own sake addressed in Environment Policy 1.

**Impact of the proposed replacement dwelling**

6) The Minister’s error of failing to identify the fact that the houses to the east and on the other side of Mount Gawne Road (including Seascape) lie in an urban area, whereas the proposed replacement dwelling lies in open countryside where more restrictive policies apply, likewise undermines his consideration of the impact of the proposed dwelling. No part of Seascape lies in countryside and it is also in a totally different location to the road and other properties.

7) In concluding that the proposed replacement dwelling would not dramatically change this part of Mount Gawne Road, the Minister wholly fails to address the Planning Inspector’s findings and opinion as to the issues of its size, the particular location of the building by the road and its height and design and relationship to other properties.

8) The Minister’s statement that the proposed dwelling would be sited generally on the footprint of the existing dwelling is incompatible with the evidence. The Minister failed to deal with this question adequately.

9) The Decision fails to consider the requirements of Housing Policy 14 adequately or at all and misconstrues and misapplies the same.

a) As the Planning Inspector found, the proposed replacement dwelling does not meet the requirements of the first paragraph of Housing Policy 14, and is not of a more traditional character than the existing dwelling, so
the relevant requirement under Housing Policy 14 is, “Consideration may be given to proposals which result in a larger dwelling ... where, by its design or siting, there would be less visual impact.” The Minister himself accepts that this condition is not met. The Minister then dismisses this by saying that this is inevitable. This is an irrelevant and wholly inadequate response to the proposal’s failure to meet the requirements of Housing Policy 14. The Minister has simply overridden those requirements.

b) The Minister likewise accepts that the proposed replacement dwelling is not of a more traditional character, but comments that notwithstanding that it is in context to the houses to the east and on the other side of Mount Gawne Road. This is irrelevant. There is nothing in Housing Policy 14 which seeks to measure the acceptability of proposals for larger dwellings by comparison with other buildings in the area. The Policy is concerned with the merits or otherwise of replacement buildings.

10) The Minister fails to deal with Housing Policy 14 other than to note the Planning Inspector’s conclusions. He does not reach a conclusion as to whether the proposal is compliant with the Policy or not. The Development Plan requires replacement dwellings to satisfy Housing Policy 14: see General Policy 3(d) of the Strategic Plan.

Previous Planning history

11) The Minister has failed to pay any or any adequate regard for fact that 2 similar planning appeals were refused in August 2012 and 2013, both of them on the basis that the proposals were contrary to Environmental Policies 1 and 2 and Housing Policy 14. This was notwithstanding the fact that Seascape and the other properties referred to by the Minister were equally then present.

12) The previous planning decisions were relevant considerations. Consistency of approach is justified since it secures public confidence in the development control system. The Minister has disregarded this and has failed to give any or any adequate reasons for his departure from the basis for the previous 2 decisions.

Flawed Decision

13) The Decision is fundamentally flawed. In disagreeing with the Planning Inspector that the proposal is contrary to Environment Policies 1 and 2, in making the findings he did as to the impact of the proposed replacement dwelling and in reaching his Decision, the Minister has:

a) misconstrued the relevant provisions of the development plan and statements of planning policy and has failed to have due regard for their
Date: 19 September 2014

BY E-MAIL AND POST:

Appleby (Isle of Man) LLC
33-37 Athol Street
Douglas
ISLE OF MAN
IM1 1LB

Dear Sirs

Re: Decision of the Hon C R Robertshaw MHK acting under delegated responsibility from the Minister of Infrastructure on Planning Application 13/91532/B

The Attorney General's Chambers has been instructed in relation to this matter and to reply substantively to your letter before action of the 4th September 2014.

We note that your client is proposing to commence doleance proceedings seeking an order quashing the decision of the Minister in this case.

This letter will set out briefly some of the principal reasons why the Minister and the Department of Infrastructure consider that the decision should not be quashed and the matter accordingly not remitted back to the Minister.

Adhering to the numbering of the paragraphs of your letter:-

1. The Department has accepted in its letter dated the 29th July 2014 to Mr P and Mrs K Jenkins, the planning applicants in this case, that the Department had omitted to detail the Minister's reasons for not following the recommendation of the Planning Inspector in the original decision notice dated the 14th July 2014. The Department would argue that such omission has not caused your client any substantial prejudice or indeed any prejudice at all.

2. It is accepted that the Minister accepted the two main issues in relation to the appeal were the effect of the extended curtilage would have on the surrounding landscape and the visual impact of the proposed replacement dwelling on that part of Mount Gawne Road. The Department, however, denies that the decision made by the Minister in relation to both of these issues is flawed as alleged.

1. Any legal advice contained in this communication may be subject to Attorney General's privilege, in which case neither the fact of consultation nor the opinion or advice given may be disclosed outside Government without the express consent of the Attorney General.
Effect on the surrounding landscape

3. The Department considers that you have fundamentally misunderstood the planning assessment approach undertaken in respect of all planning applications for approval. The Department would aver that the approach is not to consider the proposal at the planning application site with blinkers on or in isolation. The approach is to have regard not only to the prevailing policy but also to the context of the development and that context must logically include the immediate character, setting and pattern of development in the surrounding area. The Department would indicate that it was on this basis that Minister Robertshaw made his assessment. The Department say that this basis is a material consideration in the determination of any planning application on the Isle of Man.

The Department would aver that the Minister reached the conclusions following the undertaking of such balancing exercise.

In relation to your comments regarding Environment Policy 1 of the Strategic Plan 2007, this Policy is a general policy relating to the protection of the open countryside. It states that the countryside will be protected ‘for its own sake’. The test in policy for the presumption against development is couched in terms that states, “development which would adversely affect the countryside will not be permitted unless (my emphasis added)”. As indicated in the Minister’s decision, he considered the proposed extension of 28 metres when viewed in the round in the context of the countryside per se in the Isle of Man would not adversely affect the integrity of the countryside per se.

In relation to Environment Policy 2, one of the tests within such policy is that the development would not harm the character and quality of the landscape. You will note in the decision letter of the 29th July that reference is made “furthermore, and when also set against the context that the agricultural quality of the ‘triangle’ is poor, that the triangle only forms part of two fields and that those fields can still be used for agricultural purposes and that there is no evidence presented in the report that the loss of this land would lead to further losses on the appeal side of Mount Gawne Road taking into account the fact the appeal side is clearly viewed as the gateway site on this side of the road”. Although not expressly referred to in the decision letter, the Inspector’s Report at paragraph 20, albeit in Mr and Mrs Jenkin’s opinion, that the land was of poor agricultural quality. The Minister assessed the proposal in its local context and having regard to its impact on the countryside. The Department would state that this is clearly and logically detailed in the decision letter. The Minister reached the opinion that the proposed development would not harm the character and quality of the landscape.

4. In relation to paragraph 4, the draft PPS 2/09 is simply that, a draft. To that end, we would argue that its weight as a material consideration is therefore very limited. The purpose of such draft policy is to describe the approach which the Department, as planning authority, may take in certain types of proposed development. It exists to guide planning officers, prospective developers and other interested parties. Its interpretation and weight must be approached on this basis. It should not be regarded in the same way as legislation or the provisions of the development plan. Furthermore, the Department would aver that the tests applied in draft PPS 2/09 appear to form a basis of the test in Environmental Policy 2 in respect to whether the development will harm the character and quality of the

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landscape. As stated in relation to paragraph 3 above, having regard to all material considerations in the Minister’s opinion there was no such harm. Furthermore, the reasons for the Inspector’s decision make no express reference to draft PPS 2/09.

5. It is denied that the Minister’s assessment of the impact of the agricultural quality also failed to consider the issues of loss of landscape feature and protection of the countryside for its own sake as per Environmental Policy 1. The Inspector’s Report is silent in respect of the “loss of landscape feature”. Moreover, your letter does not elaborate on what these landscape features are. As detailed in the Minister’s decision, the Minister considered the material considerations and undertook a balancing exercise and reached the conclusion that the integrity and protection of the countryside for its sake would not be damaged by this development.

Impact of the proposed replacement dwelling

6. We would respectfully suggest that you have fundamentally misunderstood the Minister’s consideration and reference to Seascape. When assessing the context of the application site and its surroundings, the Minister has noted the Inspector’s comments at paragraph 2 where she detailed the local context - “Opposite Clybane... Seascape, a large modern house with extensive glazing”. The second paragraph of the final page of the letter of the 29th July more than adequately sets out with clarity the character of the pattern of development against which the Minister has indicated that he has made his assessment. It cannot be disputed that Seascape is a large modern house with extensive glazing which forms part of the local visual resource and clearly formed part of the Minister’s consideration. The issue of the development in the countryside is dealt with in paragraph 3 above.

7. The Department considers as a matter of planning judgment the Minister is entitled to find that the application proposal will not change this part of Mount Gawne “dramatically”. The Minister has accepted it will change the character as would the introduction of any new building on the site but not dramatically.

8. As indicated in the decision letter of the 29th July, the Minister notes that the test applied in Housing Policy 14 is that the footprint of the proposed dwelling should “generally” be sited on the footprint of the dwelling to be replaced. The use of the word “generally” means there is some discretion that a development could overlap its existing footprint.

9 a) & b) Housing Policy 14 also provides that “Exceptionally, permission may be granted for buildings of innovative, modern design where this is of high quality and would not result in adverse visual impact”. As stated in the fourth paragraph from the end of the letter of the 29th July 2014, the Minister disagreed with the Inspector’s conclusions that the proposed replacement dwelling would have an adverse visual impact on this part of Mount Gawne Road. Whilst the Minister accepted there is clearly an impact as confirmed in his decision letter, the test applied is adverse impact. As indicated in the decision letter, the Minister did not consider that such visual impact would be adverse.

Moreover, the final test in Housing Policy 14 provides that consideration may be given to proposals which result in a larger dwelling where this involves the replacement of an existing dwelling of poor form, which is the case in this

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proposal. The Minister addresses in his decision letter the traditional character point and, as indicated above, the visual impact. However, as stated in the decision letter, the Minister sets out that when set against the context of the surrounding development, the proposal is in context with the same.

10. Please see answer to paragraph 9 above.

It is an established principle that planning policy should not be subject to over rigorous scrutiny. In Re Lisburn Development Consortium’s application [2000] N.I.J.B. 91 at p. 95 the Lord Chief Justice (NI) held:

"The nature of a planning policy is to give guidance to planners as to the general approach to be taken to regularly encountered planning problems..."

"...One should not parse too closely the wording of a particular paragraph of a planning policy statement in an effort to discover whether a planning decision falls four square within it. The purpose of such a statement is to provide general guidance; it is not designed to provide a set of immutable rules."

We consider the above to be extremely important in the determination of this matter.

Previous history

11&12. Under the provisions of the Town and Country Planning (Development Procedure) (No. 2) Order 2013 Article 8, the Department must consider the report of the Planning Inspector and (a) allow or dismiss the appeal and (b) either in each case reverse or vary any part of its decision whether or not the appeal relates to that part. Furthermore, in the decision of His Honour Deemster Kerruish in Re Manx National Heritage (CP 2006/46), he confirmed that the Minister on a planning appeal is limited to consideration of the Planning Inspector’s Report. The Minister is unable to consider documents and materials that were before the Inquiry and which form part of the “planning file”. The Minister, therefore, cannot refer to plans or go behind the Inspector’s report, however there may in limited circumstances, if the Minister considers that the Inspector’s inquiry has failed to address a material matter and in the interests of fairness, the parties to the appeal ought to be afforded the opportunity of making representations and/or adducing such further evidence, then it is within the Minister’s discretion to refer the matter back to the Planning Inspector.

The simple fact of the matter is that the Minister is aware of the two previous planning decisions as confirmed in his letter and he was aware of what they concluded as this was expressly referred to in paragraph 4 of the Inspector’s Report. The previous planning decisions were relevant considerations and the Minister took these into consideration.

Flawed Decision

13. The Department and Minister deny that the decision is fundamentally flawed. The Department specifically denies the matters alleged in paragraph 13 letters a) through to f).

1. Any legal advice contained in this communication may be subject to Attorney General’s privilege, in which case neither the fact of consultation nor the opinion or advice given may be disclosed outside Government without the express consent of the Attorney General.

2. Whilst the legal advice privilege attaching to this communication is always ultimately the privilege of the recipient, the contents are not to be forwarded or quoted in whole or in part without the express consent of the sender.
The Minister did not misconstrue the relevant provisions of the Development Plan and had appropriate regard to the provisions of the Development Plan as far as are material to the application, any relevant statement of planning policy such other considerations as may be specified for the purpose of section 10(4) of the Act and all other material considerations.

As per the decision letter of the 29th July, and for the matters raised in this, the Department avers that the Minister dealt with the substantial points raised and reported by the Planning Inspector. The Minister dealt with the development control aspects of the proposal. The Minister gave clear, proper and adequate reasons for the decision that he made.

The Department denies the decision is irrational, Wednesbury unreasonable and erroneous in law. The Department considers that whilst your client may not like the decision, there is insufficient grounds to argue that the decision is irrational, Wednesbury unreasonable and erroneous in law.

14. The Department would aver that the Minister’s decision does not undermine the provisions of the Development Plan or public confidence in the development control system. The legislation provides that the Minister can go against the decision of the Planning Inspector. The Department would aver that the Minister has weighed all material considerations and exercised his planning judgment, which your client may not like, to reach the conclusion that the proposal is acceptable. Your client has failed to demonstrate in an evidential context how this proposal undermines public confidence in the development control system. Decision making in planning is about the exercise of planning judgment weighed against material considerations. The Minister has exercised such judgment as against such material considerations in making the decision that he has.

Other matters

15. With respect, the Department considers this to be an irrelevant point. The Department can take enforcement action if it is deemed that there has been a breach of development control. We would respectfully suggest that it is somewhat of a leap of faith by your client to equate the Minister’s assessment “in the round” being responsible for creation of a boundary which is not in accordance with the approved drawings.

The Department would state as per Lord Hoffman in Tesco Stores Limited v Secretary of State for the Environment [1995] 2 All ER 636 when he said at page 657:

"If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority of the Secretary of State”.

The Minister in carrying out the balancing exercise that he undertook in making his decision, exercised his planning judgment and concluded that the proposal was acceptable.

We would indicate, therefore, that any doleance application your client sees fit to submit will be defended by the Department.

1. Any legal advice contained in this communication may be subject to Attorney General’s privilege, in which case neither the fact of consultation nor the opinion or advice given may be disclosed outside Government without the express consent of the Attorney General.

2. Whilst the legal advice privilege attaching to this communication is always ultimately the privilege of the recipient, the notes are not to be forwarded or quoted in whole or in part without the express consent of the sender.
We consider, as indicated, whilst your client may not like the decision made, there are insufficient grounds for the decision to be quashed and remitted back to the Minister.

Yours faithfully

Simon Watson
Legal Officer (Litigation)
Dear Mr Davies

Re: Verardi v Department of Infrastructure & others
Interested Parties Jenkins

I refer to the above matter and enclose herewith copy of Acknowledgement of Service that I have been instructed to file by the Defendants in relation to the above matter.

1. Your client’s Doencance application will not be contested by the Defendants. Whilst the Acknowledgement of Service has been submitted on behalf of the three Defendants, strictly speaking the Defendant in this case is the Department of Infrastructure (DOI) which at the time of the decision being made was the Government Department tasked with undertaking the determination of planning applications.

2. I attach hereto Transfer of Functions Order dated the 1st day of June 2015 in which the function for determining planning applications has been transferred from the Department of Infrastructure to the Department of Environment, Food and Agriculture (DEFA). Accordingly, the redetermination of this matter will be by DEFA rather than the DOI.

I will take instructions in due course from DEFA as to who will determine the matter. The determination of a planning appeal can be by the Minister but does not always need to be so. The Minister can delegate this function to another MHK acting under delegation under the Government Departments Act 1987.

3. The First Defendant (DOI) accepts that it will be responsible for the payment of your client’s reasonable legal costs to be assessed in default of agreement.

In relation to costs, I am instructed that your letters before action of the 2nd June 2015 were not received by either Mr Gawne or Mr Robertshaw until you had already filed the Claim due to the addresses on the letters not being specific. Furthermore I am instructed that DOI itself was not written to its place of business, namely Sea Terminal, Douglas.
Accordingly, I would indicate to that had the letters been correctly addressed and
had been received in sufficient time for the Department to consider, it may have
been in a position to have made an earlier concession in relation to this matter
without proceedings being issued.

Subject to confirmation as to whether the interested parties are seeking to defend the
case, I would intend, upon confirmation of their position to submit a draft Order to you for
your consideration in the following terms:-

(1) The decision is quashed.
(2) The matter is remitted to DEFA for redetermination.
(3) The First Defendant (DOI) will pay your client’s reasonable legal costs to be assessed in default of agreement.

I look forward to hearing from you.

Yours sincerely

Simon Watson
Legal Officer (Litigation)

Enc
cc Oliver Helfrich, Long and Humphrey
Mr John Quinn MLC
Acting Attorney General
Attorney General’s Chambers
St Mary’s Court
Douglas
IM1 1EU

Dear Mr Quinn,

I write to seek clarification from the AG’s office on a couple of points regarding planning matters if you are kindly able to do so;

1. I note that DEFA currently has a consultation document on Primary Legislation – the Town and Country Planning (Amendment) Bill 2015 and the Town and Country Planning (Constitution of the Planning Committee) Order 2015, which is seeking to introduce an amendment to the Town & Country Planning Act 1999 to place the statutory footing of the Planning Committee beyond reasonable doubt.

Point 1.5 (Page 5) of the document states “Finally, and for the avoidance of doubt, all decisions which have been and continue to be taken by the Planning Committee until the Bill receives Royal Assent remain lawful unless otherwise challenged in Court.”

Could you please clarify if a historic decision made by the Planning Committee is therefore open to a challenge by way of doleance or other means?

2. My second point relates to matters of procedure.

Can your office please clarify if, in matters of alleged breaches of planning control, the decision to prosecute is delegated to the Director of Planning & Building Control and his officers or is referred to your department along with the evidence?

Thank you for your attention and I look forward to receiving your comments in due course.

Yours sincerely

Mrs K A Jenkins
Dear Mrs Jenkins

Re: Planning

I refer to your letter of the 22nd October 2015. In relation to the two points that you have raised I reply as follows.

1. Under Article 8 of the Town and Country Planning (Development Procedure) (No 2) Order 2013 any decision of the Department which would include a decision of the Planning Committee can be appealed. The appeal would be considered at an inquiry conducted by a planning inspector. After the planning inquiry has concluded, the Department would give notice of the decision made on the appeal.

As there is an appeal mechanism in the said development procedure order is would mitigate strongly against Applications for doleance being considered against the planning committee without such decision having been the subject of an appeal under the said development procedure order.

Therefore the prospect of a successful doleance challenge to the grant of planning permission before an appeal must be tempered by the recognition that there are rights to challenge the decision to grant planning approval or to refuse it in the current procedures available on the Isle of Man without the need to refer the matter to the Court.

In terms of a challenge by way of an Application for doleance I would advise that any challenge made in excess of 3 months from the date of the relevant decision after appeal is unlikely to be entertained by the Court as an application for doleance is required by the Court to be made promptly and in any event within a 3 month period from the date of the relevant decision.

Therefore, in my view, any "historic decisions" outwith the time frames indicated in this paragraph are, in my view, highly unlikely to be susceptible to legal challenge in the Court by way of doleance or other means.
Accordingly, it would be only open to a party to issue doleance proceedings regarding a decision made by the planning committee if such proceedings are brought either promptly or within 3 months from the date of the relevant decision after determination of an appeal.

2. Section 38 of the Town and Country Planning Act 1999 places the following restrictions on enforcement proceedings namely:-

(1) Proceedings for an offence under the Act shall not be instituted except by or with the consent of the Department or the Attorney General.

If the Department seeks advice from my officers as to whether a criminal prosecution should be brought under the Town and Country Planning Act my officers will consider whether there is sufficient evidence that there is a reasonable prospect of a successful prosecution and whether it is in the public interest that any prosecution be brought and will advise the Department accordingly.

If the Department determined that proceedings should be issued it would then be a decision of the Director of the Prosecutions team in Chambers under my guidance whether criminal proceedings should be instituted or not.

If in the unlikely event of a conflict between the Department and Chambers as to whether criminal proceedings should be issued, in my view, my consent would override that of the Department.

Yours sincerely

J L M Quinn
Acting Attorney General
APPENDIX 3A
Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review: Terms of Reference received 10th December 2015
 REVIEW OF THE PLANNING SYSTEM OFFICER’S WORKING GROUP

TERMS OF REFERENCE

BACKGROUND

On the 7th July 2014, Mr and Mrs Jenkins presented a Petition of Redress to Tynwald at St John’s. The petition stated that

“The present planning and building control system is not fit for purpose. People are not treated equally and it is open to abuse and cronyism and is detrimental to the people of the Isle of Man”

On the 22 October 2014, the Hon. Member for Rushen (Mr Gawne) moved the following motion:

That Tynwald take note of the Petition for Redress of Mr Philip Donald Jenkins and Mrs Kirrie Anne Jenkins presented at St John’s on 7th July 2014 and calls upon the Department of Infrastructure to consider and report to Tynwald by October 2015 on any ambiguity or weaknesses in practices and laws relating to planning, building control, and connected matters.

This motion was carried in both branches of Tynwald.

AIMS/OBJECTIVES

The aim is to conduct a review of the practices and laws relating to the planning system with a view to identifying and proposing appropriate changes to legislation and operational practices to provide for simple, efficient and transparent Planning and Building Control Services across Government.

There are two main objectives of this project, which are:

1) To review the planning system to ensure it is simpler, more transparent and fit for purpose for the future, whilst endeavouring to streamline planning policy and development management processes as appropriate.

2) To consider the concerns of Mr and Mrs Jenkins in relation to the “ambiguity or weaknesses in practices and laws relating to planning, building control, and connected matters.”
PROJECT PLAN

A project plan for the review is attached in Appendix A which outlines the steps required to review the planning system.

SCOPE

The review of the planning system will not consider organisational change but the necessity for organisational change may be a by-product of the review, which will need to be addressed as appropriate and potentially as a separate project.

LEAD DEPARTMENT/WORKING MEMBERSHIP

The lead Department for the review will be the Department of Infrastructure.

The Department will set up an officer’s working group comprising officers from other Government Departments and Offices to assist in the review. Officers from the following Departments/Offices will be represented on the working group:

- Department of Infrastructure
- Department of Environment, Food and Agriculture
- Department of Economic Development
- Cabinet Office
- Attorney General’s Chambers

OFFICER WORKING GROUP

The Officer Working Group is chaired by Director of Strategy, Policy and Performance of the Department of Infrastructure. The Officer Group will ensure that the Environment and Infrastructure Committee is provided with regular feedback and opportunity to engage in the review.

The working group should consider if external resource is required to allow sufficient capacity to be available to ensure a rapid, though thorough process is completed.
MEETINGS AND NOTES

The Officer Working Group will meet monthly or more frequently where necessary.

Notes and actions of the Working Groups will be produced by the Planning Policy Team, and circulated to the Officer Group.

WORKING GROUP RECOMMENDATIONS AND REPORTING

Report including recommendations will be submitted to the Environment and Infrastructure Committee, via the Chair of the Officer’s working group, and regular written reports will be submitted.

CONDUCT

Each representative is responsible for contributing positively and professionally to delivery of the agreed objectives of the Working Group. When there is a difference of opinion those involved should look to resolve any disagreement amicably and informally through open dialogue and negotiation.
## Appendix A - Project Actions: Review of the Planning system

### Actions

<table>
<thead>
<tr>
<th>ID</th>
<th>Action Item</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stage 1 - Scoping</strong></td>
<td></td>
</tr>
</tbody>
</table>
| 1 | Undertake the following:  
(a) A review of Planning legislation in other jurisdictions against the current IOM Planning and building control legislation  
(b) Consider issues highlighted by Jenkins Petition  
(c) Consider past Tynwald commitments and outcomes of previous reviews of planning  
(d) Consider other issues that have been identified as needing review by officers and others as a consequence of the operation of current planning and building control system.  
(e) Consider any petitions of redress which have yet to be picked up by a Member of Tynwald |
| 2 | Prepare a scoping document to draw out the ‘headline’ topics/issues/areas and key principles for discussion during engagement phase. |
| 3 | Meet with the Minister; CoMin; identified Government Departments* to identify what they want/need from the planning system in light of the scoping report and its provisions. |
| **Stage 2 – Engagement** | |
| 4 | Revise the scoping document, and prepare for public engagement exercise. |
| 5 | Undertake engagement exercise with steering group/focus groups**/LA’s/public incl. online survey to identify what they want/need from the planning system in light of the scoping document and its provisions. |
| 6 | Review the comments/outputs of the engagement exercise. |
| 7 | Agree conclusions of the engagement phase |
| **Stage 3 – Agree issues identified and identify options** | |
| 8 | Identify options and recommendations |
| 9 | Agree (as a set of recommendations in a report to Tynwald) the way forward with the review based on the conclusions from the engagement phase |
| **Stage 4 – Report to Tynwald, via Council of Ministers** | |
| 10 | Provide a report to Tynwald identifying issues, with recommendations on appropriate changes to legislation and operational practice for Planning and Building Control services across Government, plus other connected matters. |
## Stage 5 – Plan subsequent implementation of recommendations

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Taking account of Tynwald decisions on report recommendations, plan and identify means to implement changes as agreed</td>
</tr>
<tr>
<td>12</td>
<td>Agree programme, mechanisms, resources and timescales for implementation and delivery</td>
</tr>
</tbody>
</table>

## Stage 6 – Legislative process (Dependent on the way forward of the project)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Prepare the CoMin Instruction to Draft and the subsequent drafting instructions to the AG’s legislative drafters. AG’s legislative drafters commence work on the formulation of the new Planning Bill</td>
</tr>
<tr>
<td>14</td>
<td>Assist the AG’s legislative drafters where necessary with the preparation of the draft Bill.</td>
</tr>
<tr>
<td>15</td>
<td>Bill to commence passage through Branches</td>
</tr>
<tr>
<td>16</td>
<td>If Royal Assent is given, Act to come into force on an appointed day</td>
</tr>
<tr>
<td>17</td>
<td>Preparation of secondary legislation to come into operation on the appointed day of the Act</td>
</tr>
</tbody>
</table>

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* Suggested Departments include – DOI; DEFA; DED; Cabinet Office; AG’s

** Focus Groups include architects & agents; advocates; developers; Local Authorities etc.
APPENDIX 3B

Council of Ministers’ Environment and Infrastructure Sub Committee Planning Review: Terms of Reference received 17th March 2016
1.0 Aim

1.1 Government has recently agreed to undertake a high level strategic review of planning. The agreed aim of the review is as follows:

The overall aim of the review is to identify a planning system which has the ability to respond in a timely manner to the evolving needs of the Island whilst continuing to provide reassurance that the system is fair, transparent and free from abuse.

1.2 The Environment and Infrastructure Planning Policy Sub-Committee has agreed the following stages of the review:

- An assessment of the system here and how it compares to neighbouring jurisdictions, including those outside of the United Kingdom;
- One or more facilitated session(s) with officers and politicians to establish the key principles of the system that we want to move towards.
- A report which sets out findings from stages 1 and 2 and provides recommendations on how the system should be changed to meet the overall aim set out above.

2.0 Lead Department/Working Group Membership

2.1 The lead Department for the review will be the Cabinet Office. The Cabinet Office will set up an officer’s working group comprising officers from other Government Departments and Offices to assist in the review. Officers from the following Departments/Offices will be represented on the working group:

- Cabinet Office
- Department of Infrastructure
- Department of Environment, Food and Agriculture

As and when necessary, officers from other departments will be invited to attend officer group meetings.

3.0 Outline Project Plan

3.1 An outline project plan for the work has been produced which has been broken into three distinct stages. Each of these is described below.

Stage 1 – Review of Isle of Man Planning System and Comparison with Other Systems
3.2 This stage will involve a review of the planning system on the Isle of Man and a comparison with other jurisdictions, including those outside of the United Kingdom.

3.3 The required output for this stage is a report which sets out the key features of the Isle of Man Planning System and those of other jurisdictions and a comparison of any notable differences.

**Stage 2 – Facilitated Session(s) with Officer and Politicians**

3.4 This stage will involve sessions with officers and politicians with a consultant providing facilitation and oversight of a process which will allow key principles of the planning system that we wish to move towards being identified.

3.5 The required output for this stage is a report which provides a summary of the session(s) and sets out the key principles of the planning system as agreed by participants.

**Stage 3 – Report on Findings with Recommendations**

3.6 This stage will bring together stages 1 and 2 into a report which sets out the comparison of the Isle of Man Planning System with other systems, a summary of the facilitated sessions and the agreed key principles of the planning system that Government wishes to move towards.

3.7 The report will provide conclusions and recommendations on the necessary changes to the existing system required to reach the system identified as part of stages 1 and 2.

4.0 **Project Deliverables:**

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Review of Isle of Man Planning System and Comparison with Other Systems</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The required output for this stage is a report which sets out the key features of the Isle of Man Planning System and those of other jurisdictions and a comparison of any notable differences.</td>
</tr>
<tr>
<td></td>
<td>The target date for this stage to be concluded is 30 April 2016</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stage 2</th>
<th>Facilitated Session(s) with Officer and Politicians</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The required output for this stage is a report which provides a summary of the session(s) and sets out the key principles of the planning system as agreed by participants.</td>
</tr>
<tr>
<td></td>
<td>The target date for this stage to be concluded is 30 April 2016</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stage 3</th>
<th>Report on Findings with Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The required output for this stage is:</td>
</tr>
<tr>
<td></td>
<td>• A report which sets out the comparison of the Isle of Man Planning System with other systems</td>
</tr>
<tr>
<td></td>
<td>• A report which provides a summary of the facilitated sessions and the agreed key principles of the planning system as identified by participants</td>
</tr>
<tr>
<td></td>
<td>The target date for this stage to be concluded is 30 April 2016</td>
</tr>
<tr>
<td>System with other systems</td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td></td>
</tr>
<tr>
<td>• A summary of the facilitated sessions and the agreed key principles of the planning system that Government wishes to move towards.</td>
<td></td>
</tr>
<tr>
<td>• Conclusions and recommendations on the necessary changes to the existing system required to reach the system identified as part of stages 1 and 2.</td>
<td></td>
</tr>
</tbody>
</table>

The target date for this stage to be concluded is 31 May 2016
APPENDIX 4

Planning Statistics
## MINISTERIAL PLANNING APPEAL DECISIONS
### MADE AGAINST INSPECTOR RECOMMENDATION
#### 2011 - 2015

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Total Planning App’s</th>
<th>Total Approved</th>
<th>Total Refused</th>
<th>Total Officer Decisions</th>
<th>Total Planning Committee Decisions</th>
<th>Total Planning Appeals Submitted</th>
<th>Minister Decisions not agreeing with Inspector</th>
<th>Planning Application Refs</th>
<th>Minister Responsible</th>
<th>Delegated To</th>
<th>Petition of Doleance Case Refs</th>
<th>Cost to IOMG (Figures supplied by Treasury)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>1725</td>
<td>1531</td>
<td>193</td>
<td>1542</td>
<td>89%</td>
<td>183</td>
<td>11%</td>
<td>62</td>
<td>3.6%</td>
<td>2</td>
<td>3.2%</td>
<td>10/01443/B 10/01392/B Gawne Gawne Teare</td>
</tr>
<tr>
<td>2012</td>
<td>1652</td>
<td>1485</td>
<td>164</td>
<td>1416</td>
<td>86%</td>
<td>236</td>
<td>14%</td>
<td>94</td>
<td>5.7%</td>
<td>4</td>
<td>4.2%</td>
<td>12/00298/A 12/00540/B 12/01225/B 12/00947/A Cretney Cretney Cretney Cretney</td>
</tr>
<tr>
<td>2013</td>
<td>1396</td>
<td>1244</td>
<td>152</td>
<td>1150</td>
<td>82%</td>
<td>246</td>
<td>18%</td>
<td>130</td>
<td>9.3%</td>
<td>3</td>
<td>2.3%</td>
<td>13/00075/A 13/00290/B 13/91094/A Cretney Cretney Cretney Crookall</td>
</tr>
<tr>
<td>2014</td>
<td>1470</td>
<td>1323</td>
<td>146</td>
<td>1236</td>
<td>84%</td>
<td>234</td>
<td>16%</td>
<td>151</td>
<td>10.3%</td>
<td>6</td>
<td>3.9%</td>
<td>13/91393/B 13/91532/B Skelly Gawne Gawne Gawne Beecroft Robertshaw Robertshaw Beecroft CHP 14/0085 CHP 15/0077 £14,170 £12,250 £13,385</td>
</tr>
<tr>
<td>2015</td>
<td>1322</td>
<td>1250</td>
<td>72</td>
<td>1101</td>
<td>83%</td>
<td>221</td>
<td>17%</td>
<td>166</td>
<td>12.6%</td>
<td>4</td>
<td>2.4%</td>
<td>14/01282/B 14/01411/B 15/00237/D 14/01308/B Ronan Ronan Ronan Ronan CHP 15/0129 In progress</td>
</tr>
</tbody>
</table>

1. [https://www.judgments.im/content/J1621.htm](https://www.judgments.im/content/J1621.htm)
## PLANNING ENFORCEMENT STATISTICS 2011 - 2015

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases received</td>
<td>299</td>
<td>319</td>
<td>299</td>
<td>314</td>
<td>267</td>
<td>239</td>
</tr>
<tr>
<td>Number of Planning Enforcement Notices served</td>
<td>9</td>
<td>7</td>
<td>31</td>
<td>12</td>
<td>22</td>
<td>16</td>
</tr>
<tr>
<td>Number of Section 25 Notices served</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>15</td>
<td>2</td>
</tr>
<tr>
<td>Percentage of cases closed breached resolved activity ceased</td>
<td>19%</td>
<td>11%</td>
<td>23%</td>
<td>24%</td>
<td>19%</td>
<td>24%</td>
</tr>
<tr>
<td>Percentage of cases closed no further action (not in the public interest to pursue)</td>
<td>25%</td>
<td>5%</td>
<td>12%</td>
<td>19%</td>
<td>27%</td>
<td>21%</td>
</tr>
<tr>
<td>Percentage of cases closed no breach or PDO</td>
<td>31%</td>
<td>16%</td>
<td>32%</td>
<td>29%</td>
<td>31%</td>
<td>43%</td>
</tr>
<tr>
<td>Percentage of cases closed planning approval granted</td>
<td>11%</td>
<td>21%</td>
<td>26%</td>
<td>23%</td>
<td>19%</td>
<td>12%</td>
</tr>
<tr>
<td>Percentage of cases closed justification not recorded</td>
<td>13%</td>
<td>0.3%</td>
<td>6%</td>
<td>0.3%</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td>Percentage of cases closed Enforcement Notice issued</td>
<td></td>
<td></td>
<td></td>
<td>5%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Number of cases closed</td>
<td>194</td>
<td>344</td>
<td>325</td>
<td>309</td>
<td>339</td>
<td>283</td>
</tr>
</tbody>
</table>

*Please note that there is no formal requirement for recording ‘reasons for closure’ in respect of enforcement cases and consequently this has only been carried out properly in the last 3-4 years and is for the Department’s own purposes.*
APPENDIX 5A
Comparison of the planning systems in the four UK countries
House of Commons Library Briefing
Paper - 20 January 2016
Comparison of the planning systems in the four UK countries

Commons Library Briefing Paper 07459
20 January 2016
Contents

Summary
1. The legislative framework
2. National planning policy and guidance
3. Regional planning/strategies
4. Local development plans
5. Neighbourhood / community plans
6. Nationally Significant Infrastructure Projects
7. Neighbourhood development orders/community right to build orders
8. Permitted development rights
9. Use classes
10. Planning conditions
11. Advertisement consent
12. Environmental Impact Assessments
13. Appeals/Planning Inspectorate
14. Enforcement
15. Community Infrastructure Levy/developer contributions
16. Planning advice services
17. Future changes
18. Further information

Contributing Authors: Graham Winter, National Assembly for Wales Research Service; Louise Smith, House of Commons Library; Suzie Cave, Northern Ireland Assembly Research & Information Service; and Alan Rehfisch, Scottish Parliament Information Centre.
Summary

This paper describes and compares aspects of the current land use planning systems operating in the four UK countries. In particular, given the changes introduced by the UK Coalition Government (2010-2015) and by the devolved administrations, it compares the extent to which the four planning systems now differ from each other. It also describes further changes for each country that are in the pipeline. This is an update of a previous version of this paper, of the same title, published in June 2013.

All four countries have a planning system that is ‘plan-led’. ‘Plan-led’ means that national and local planning policy is set out in formal development plans which describe what developments should and should not get planning permission, how land should be protected and seeks to ensure a balance between development and environmental protection in the public interest. Decisions on individual planning applications are made on the basis of the policies in these plans, unless there are other considerations that need to be taken into account. Each country also has definitions of types of development that are permitted without the need for a planning application and defines “use classes” where change of use within a class is normally permitted. An appeal system to review decisions on applications also operates in each country. Each country also has a system in place to enforce breaches of planning consent.

Although the basic structures of the four systems are similar there are differences in the detail and in how each system works. Recent changes introduced by the UK Coalition Government (2010-2015) have seen a greater divergence between the system in England and the other three countries in the last couple of years. England, Scotland, Northern Ireland and Wales now each have their own primary planning legislation. The system in Northern Ireland has been changed significantly recently with passing of planning functions to local Councils. The Planning (Wales) Act 2015 received Royal Assent in July 2015, although not all of its provisions are yet in force.

This paper has been prepared as an initiative of the Inter-Parliamentary Research and Information Network (IPRIN) with contributions from research staff working for each of the four UK legislatures and is being published separately by each organisation.
1. The legislative framework

England

In England, the main Planning Acts currently in force are:

- The Town and Country Planning Act 1990 which consolidated previous town and country planning legislation and sets out how development is regulated.
- The Planning and Compulsory Purchase Act 2004 which made changes to development control, compulsory purchase and application of the Planning Acts to Crown land.
- The Planning Act 2008 which sets out the framework for the planning process for nationally significant infrastructure projects and provided for the community infrastructure levy.
- The Localism Act 2011 which provides the legal framework for the neighbourhood planning powers and the duty to cooperate with neighbouring authorities.

Northern Ireland

Institutional arrangements are different in Northern Ireland compared to other parts of the UK. Ministers within departments are granted full executive authority in their respective areas of responsibility; however, they must achieve broad agreement from the Northern Ireland Executive to ensure cohesion.

On the 1st April 2015 a new two-tier planning system came into force under the Planning Act (Northern Ireland) 2011 (2011 Planning Act), introducing a sharing of planning responsibilities between Councils and the Department of Environment (the Department). This replaced the old system under the Planning (Northern Ireland) Order 1991 where the Department of Environment held responsibilities for planning in Northern Ireland. Under the 2011 Planning Act, each new Council is the Local Planning Authority for its district Council area. The Councils now have responsibility for local development planning; development management and planning enforcement.

However the Department still holds responsibility for regionally significant and ‘called-in’ applications; regional planning policy; planning legislation; oversight and guidance for Councils and performance management.

The 2011 Act is supported by a significant programme of subordinate legislation. Further details of this can be accessed here.

Scotland

There are two pieces of legislation that govern the operation of the Scottish planning system:

- The Town and Country Planning (Scotland) Act 1997 is the basis for the planning system and sets out the roles of the Scottish Ministers and local authorities with regard to development plans, development management and enforcement. This Act was substantially amended by the Planning etc. (Scotland) Act 2006.
- The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is mainly concerned with the designation and protection of listed buildings and conservation.

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1. However, departmental change is expected in 2016 where regional planning could be moved to a new Department of Infrastructure. Until such time, responsibilities will remain with the Department of Environment.
areas. This Act was amended by the Historic Environment (Amendment) Scotland Act 2011 and the Historic Environment (Scotland) Act 2014.

Wales

Most parts of the town and country planning system in Wales are devolved. However the primary legislative framework is broadly the same as in England, although there are some differences in both primary and related subordinate legislation as it applies to Wales. The Planning (Wales) Act 2015 that received Royal Assent in July 2015, once fully in force, will introduce further differences. The system currently operates at two levels:

- Nationally: through the Welsh Government and the Planning Inspectorate; and

- Locally: through Local Planning Authorities.

A third ‘regional’ tier could be introduced by the 2015 Act. Parts of Wales may be identified as Strategic Planning Areas and for these areas Strategic Planning Panels will be established (see section 4 below).

The principal legislative framework for the planning system in Wales is now provided by the:

- Town and Country Planning Act 1990;
- Planning and Compulsory Purchase Act 2004; and
- Planning Act 2008;
- Planning (Wales) Act 2015

The majority of executive functions and secondary legislative powers contained in the first two acts were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. These powers have subsequently been transferred to Welsh Ministers as a result of the Government of Wales Act 2006.

Since 2011 the Assembly has had competence to pass Acts in the general area of Town and Country Planning. The Planning (Wales) Act 2015 is the first such Act.
2. National planning policy and guidance

**England**

The *National Planning Policy Framework* (NPPF) published in March 2012 sets out the UK Government’s planning policies for England and how it expects these to be applied. The NPPF must be taken into account in the preparation of local plans and is a material consideration in planning decisions. Three further documents should be read in conjunction with the NPPF:

- Planning policy for traveller sites, updated August 2015;
- Technical Guidance to the National Planning Policy Framework, March 2012, provides additional guidance to local authorities on development in areas at risk of flooding and in relation to mineral extraction; and

In March 2014 the Government launched its online Planning Practice Guidance (PPG) which is designed to accompany the NPPF. It is the Secretary of State’s view on how the NPPF’s policies should be used in practice and to provide further information. The PPG is actively managed by the Department for Communities and Local Government and is frequently updated.

There are no specific policies for nationally significant infrastructure projects in the NPPF or PPG. The Secretary of State determines these in accordance with the Planning Act 2008 and relevant national policy statements for major infrastructure, which cover the fields of energy, transport, water, waste water and waste.

**Northern Ireland**

Under the *Programme for Government* (PfG), the Northern Ireland Executive maps out goals for Northern Ireland in terms of planning and development with reference to sustainable development. This is carried forward by the departments that have responsibility for developing policy and legislation.

Generally the development of planning policy and guidance in Northern Ireland is the responsibility of the Department and operates on a single regional (i.e.: Northern Ireland) basis. However, Regional Strategic Planning and development policy is the responsibility of the Department of Regional Development (DRD) in the form of the *Regional Development Strategy 2035* (RDS).

The RDS, produced by the DRD, offers a strategic and long-term perspective on the future development of Northern Ireland up to 2035. Its purpose is to deliver the spatial aspects of the PfG and is therefore a framework for regional planning across Northern Ireland. The 2011 Planning Act requires the Department to ensure that any policy it produces is “in general conformity” with the RDS.

The new planning system involves the move away from the existing suite of Planning Policy Statements (PPS) to a single *Strategic Planning Policy Statement (SPPS)*. The SPPS consolidates the suite of PPS into one document and provides the overarching planning principles from which Councils should develop their own planning policies within their new Local Development Plans (LDPs). It will also be material to individual planning decisions and appeals.
However, a transitional period is currently in operation until Councils develop their own planning policies under their LDPs (see section 5.2). This means that during this time the new Councils will apply the policy of some of the old PPS together with the new SPPS when determining planning decisions. However, where there is difference between the two, the SPPS takes precedence. Once Councils have developed and published their own policies, the old PPS will cease to have effect. For more detail on the transition period, refer to the SPPS.

Scotland

The Scottish Government sets out the purpose of the Scottish planning system and its specific land use policies in the Scottish Planning Policy. Spatial aspects of Scottish Government policies are set out in the National Planning Framework for Scotland. Updated versions of both these documents were published in June 2014. More detailed subject specific advice and guidance is set out in a series of Planning Advice Notes, Planning Circulars, Guides and Letters from the Chief Planner.

Wales

Planning Policy Wales (PPW) was originally published by the Welsh Government in 2002 and sets the context for planning in Wales, under which Local Planning Authorities prepare their statutory Development Plans. It is the principal and authoritative source of national planning policy.

Updates to national planning policy are issued for consultation and then incorporated into the latest version of PPW. Planning Policy Wales (Edition 7) is the latest version of PPW, issued as an online document only, in July 2014.

Minerals Planning Policy Wales provides the equivalent planning policy framework for mineral extraction and related development.

Technical Advice Notes (TANs) contain detailed guidance in specific areas. There is an equivalent series for minerals, known as Minerals Technical Advice Notes (MTANs). There are currently 22 topic based TANs and two MTANs.

The Planning (Wales) Act 2015 will introduce a new National Development Framework (NDF) that will set out national spatial planning policies. The NDF replaces the Wales Spatial Plan and will form part of the formal ‘development plan’ for Wales and development plans prepared by other bodies (Strategic and Local) must take the NDF into account. The NDF will also be used to designate Developments of National Significance (see section 7 below).
3. Regional planning/strategies

England
The former UK Coalition Government revoked the former regional spatial strategies, except for a few individual policies from certain regional spatial strategies which remain. Further details about what remains for each strategy is published in a “Post Adoption Statement” for each region.

In Greater London the Mayor’s London Plan remains and continues to provide the strategic context for issues that affect London as a whole.

The UK Government introduced a “duty to cooperate” with neighbouring authorities to replace formal regional planning. This means that public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in the NPPF. This duty must be reflected in any Local Plan.

Section 28 of the Planning and Compulsory Purchase Act 2004 allows local authorities to prepare one or more joint local development documents.

Northern Ireland
See section 2 (Northern Ireland) above.

Scotland
Strategic Development Plans (SDPs) set out a vision for the long term development of Scotland’s four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on issues such as land for housing, major business and retail developments, infrastructure provision and green belts/networks.

SDPs are drafted by Strategic Development Planning Authorities (SDPAs), the membership of which is defined in statutory designation orders. Each SDPA is under a statutory duty to publish and then update its SDP at least once every five years. SDPAs are required to publish and update a development plan scheme which outlines their programme for preparing and reviewing the SDP and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Each SDP must be accompanied by an action programme, which must be updated at least once every two years.

The process for developing and examining a SDP is very similar to that explained in section 5.3 on Local Development Plans below. The key difference is that Scottish Ministers have the final say on modification, adoption or rejection of an SDP.

Wales
There is no statutory regional planning in Wales at present. However the Planning (Wales) Act 2015 includes powers for the Welsh Government to identify Strategic Planning Areas (SPAs) that are larger than individual Local Planning Authorities and for Strategic Planning Panels to be established for these areas. These panels will comprise elected members from the constituent Local Planning Authorities. A panel, if established for an area, will then produce a Strategic Development Plan (SDP) that will form part of the formal planning system.

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2 Department for Communities and Local Government, New step for localism as every regional plan has gone, 27 March 2013
“development plan” for that area. A SDP will cover ‘cross-border’ issues such as housing and transport. A SDP will also need to take account of the NDF (see section 3 above). Local Planning Authorities in a SPA must then have regard to the SDP when developing their Local Development Plans. The Welsh Government has indicated that there may be a need for no more than three SPAs, and these would only cover parts of Wales. The current Welsh Government has also announced proposals to reduce the current number of local authorities in Wales from 22 to only 8 or 9. If this proceeds, the need for SPAs will be less.\(^3\)

4. Local development plans

England

The NPPF (see section 2) directs that each Local Planning Authority should produce a Local Plan for its area. There is no legal requirement however, that a Local Plan must be produced.

According to the NPPF Local Plans should be aspirational but realistic. They should set out the strategic priorities for the area and be drawn up over an “appropriate” time scale, normally a 15 year horizon. The Local Plan should be based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area.

The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the duty to cooperate and other legal requirements. The Secretary of State has powers, under Section 21 of the Planning and Compulsory Purchase Act 2004, to modify a Local Plan at any time before it is officially adopted, if he/she believes that it is “unsatisfactory”. The Secretary of State can also direct that any plan is submitted for approval.

Local Plans can be reviewed in whole or in part to respond flexibly to changing circumstances, but if this happens, must be open again to public consultation and examination if a material change is to be made.

The NPPF directs that decision-takers can also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

In a written statement to Parliament on 21 July 2015 the UK Government said that “in cases where no local plan has been produced by early 2017—five years after the publication of the NPPF—we will intervene to arrange for the plan to be written, in consultation with local people, to accelerate production of a local plan.” Provision to allow for this change and other additional intervention in the local plan making process by the Secretary of State is now contained in the Housing and Planning Bill 2015-16.

For further information see the section on Plan Making in England in the National Planning Policy Framework.

Northern Ireland

The Planning (Northern Ireland) Act 2011 establishes a new system of local development planning in Northern Ireland. Under the new system local Councils are responsible for the
development of Local Development Plans (LDPs) rather than the Department. The new system defines development plans as LDPs and these must be based on consultation with the local community.

The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 set out in more detail that LDPs should provide a 15 year framework on how the Council area should look in the future by deciding what type and scale of development should be encouraged and where it should be located. During its preparation the Council must take into account the newly developed SPPS and also deliver the spatial elements of a Council’s community plan. The LDP will be made up of two documents: the plan strategy and the local policies plan. Under this new plan-led system, the LDP will be the primary consideration in the determination of applications.

Under the LDP process, the Department will have an oversight and scrutiny role to ensure the plan is in line with central government plans, policies and guidance. The local community will also have an important role to play in the plan preparation process. A Council’s Statement of Community Involvement (SCI) will set out the key stages for public engagement and inform the community of how and when they can become involved.

Until the new local Councils develop their own LDPs, the existing development plans made by the Department under the old system will remain in place.

For more information refer to Development Plan Practice Notes produced by the Department

Scotland

Local Development Plans (LDPs) cover the whole of Scotland and identify sites for new developments and set out policies that guide decision making on planning applications. Each Planning Authority is required to publish and then update Local Development Plan(s) covering their area at least once every five years.6

In addition planning authorities must publish, and update, a development plan scheme which outlines its programme for preparing and reviewing LDPs and for engaging the public. The scheme must also contain a participation statement setting out the ways in which local people and other stakeholders will be involved in the preparation of the plan. Prior to producing a LDP, a Planning Authority must first produce a main issues report, which sets out the authority’s general proposals for development of its area and particular proposals as to where development should and should not occur. A main issues report must also contain one or more reasonable alternative sets of proposals. Finally, it must draw attention to the ways in which the favoured and alternative proposals differ from the spatial strategy of the existing adopted LDP (if any). The main issues report is then subject to a period of public consultation.

Having had regard to the representations received to the main issues report, a Planning Authority must publish a proposed plan, which is subject to a minimum of six weeks public consultation. Following the close of public consultation, the Planning Authority may modify the plan in response to representations received. The plan will then be submitted to Scottish Ministers, along with the proposed action programme. If there are any unresolved representations then Scottish Ministers will appoint a Reporter to examine the proposed plan. The reporter will conduct an examination and produce a report with

6 In Scotland the Planning Authorities are local Councils and the National Park Authorities
recommendations for the Planning Authority. A Reporter’s recommendations are generally binding on the Planning Authority. The authority must then modify and re-publish the plan, publicise its intention to adopt the plan and submit it to Scottish Ministers. The Planning Authority can adopt the plan after 28 days, unless directed not to by Scottish Ministers.

Each LDP must be accompanied by an action programme that must be updated at least once every two years.

**Wales**

The *Planning and Compulsory Purchase Act 2004* introduced a statutory requirement for each of the 25 Local Planning Authorities to produce a Local Development Plan (LDP). The LDP sets out proposals and policies for the future use of all local land, and along with the NDF and the SDP, is the formal “development plan” in Wales. The LDP covers a period of ten to fifteen years and should reflect national planning policy in Wales and should also have regard to the NDF when it has been produced and also the SDP, if there is one (see sections 2 and 3 above). Once a SDP is in place, in these areas the Local Planning Authority will only be required to produce a ‘light’ version of an LDP for its area in future.

The Local Planning Authority prepares a deposit plan, which is a full draft of the LDP. This plan represents the preferred strategy for the area. The Planning Inspectorate (on behalf of the Welsh Government) then examines the deposit plan and other related documents. The aim of the public examination is to ensure that the plan is ‘sound’, and that the views of all those who have commented have been considered.

The inspector publishes a report outlining any changes that should be made to the plan, with an explanation of why these changes are needed. The views of the inspector are binding on the Local Planning Authority.

The Welsh Ministers have wide-ranging powers in relation to LDPs including; to call-in a plan for the Welsh Government’s determination; to direct an authority not to adopt the plan where the recommendations of the inspector are considered to be in conflict with national policy and to direct that a plan shall be altered or replaced. It can also direct two or more authorities to work together to produce a joint LDP.

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7 In Wales the Local Planning Authorities are the 22 Unitary Authorities and the three National Park Authorities.
5. Neighbourhood/community plans

England

Under powers provided by the Localism Act 2011, neighbourhood forums and parish councils can establish general planning policies for the development and use of land in a neighbourhood. These are called Neighbourhood Development Plans. Local Planning Authorities continue to produce Local Plans that set the strategic context within which Neighbourhood Development Plans sit. Policies produced in a Neighbourhood Development Plan cannot block development that is already part of the local plan. What they can do, is shape and influence where that development will go and what it will look like.

Neighbourhood Development Plans do not take effect unless there is a majority of support in a referendum of the neighbourhood. They also have to meet a number of conditions to ensure plans are legally compliant and take account of wider policy considerations (e.g. national policy). The conditions are:

- they must have regard to national planning policy;
- they must be in general conformity with strategic policies in the development plan for the local area (i.e. such as in a core strategy); and
- they must be compatible with EU obligations and human rights requirements.

If proposals pass the referendum, the Local Planning Authority is under a legal duty to bring the neighbourhood plan into force. Once it is in force, it becomes part of the legal framework and planning decisions for the area must be taken in accordance with it, as well as the Local Plan for the wider area (see section 4 (England)).

Northern Ireland

The Local Government (Northern Ireland) Act 2014 places a statutory duty on Councils to produce and implement community planning through the production of a Community Plan for their area. The Community Plan is based on engagement with the community and provides the framework within which Councils, departments, statutory partners and other relevant organisations must work together to develop and implement a shared vision. This is a long term vision for promoting the economic, social and environmental well-being of their area through the delivery of better services.

The 2014 Act provides for the production of a list of statutory partners that must participate in and support community planning. Draft legislation has been produced by the Department, the Draft Local Government (Community Planning Partners) Order (Northern Ireland) 2015, and is proposed to be in place by the end of 2015/2016. Also unique to Northern Ireland is the creation of a statutory link between the Community Plan and the development of LDPs under Section 77 of the Local Government Act 2014.

For more information refer to Circular LG 28/15 – Statutory guidance for the operation of community planning produced by the Department.
Scotland

Neighbourhood and community plans are not a formal feature of the Scottish planning system. However a [Community Planning system](#) is in place, with the aim of bringing together public bodies and local communities to improve service delivery.

Wales

There is no equivalent right in Wales to the power introduced by the [Localism Act 2011](#) for communities in England to produce Neighbourhood Development Plans. However the Welsh Government is piloting the production of Place Plans. Place Plans will involve Community and Town Councils working with their Local Planning Authority to identify and take forward Supplementary Planning Guidance for their communities, translating and developing policies and allocations in LDPs for local implementation. These plans however won’t be a part of the formal ‘development plan’.

As in other parts of the UK there is a [Community Planning system](#) in place requiring local authorities to produce a community strategy to improve local service delivery. The [Well-being of Future Generations Act 2015](#) will soon replace this system with the production of Wellbeing Plans by Public Service Boards.
6. Nationally Significant Infrastructure Projects

**England**

The [Planning Act 2008](https://www.gov.uk/government/statutory- Instrument/2008-planning-Act-update) introduced a new development consent process for Nationally Significant Infrastructure Projects (NSIPs). NSIPs are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as “development consent”. An extension of the regime in 2013 now allows certain business and commercial projects to also opt into this process.

Following changes made by the [Localism Act 2011](https://www.gov.uk/government/publications/localism-act-2011), responsibility for decisions on these projects now rests with the relevant Secretary of State in that field. The [National Infrastructure Directorate](https://www.gov.uk/government/organisations/national-infrastructure-directorate) of the Planning Inspectorate will make recommendations to help inform the Secretary of State’s decision. The decisions on these projects should be made in line with the relevant [National Policy Statements](https://www.gov.uk/government/publications/national-policy-statements) (NPS) approved by the UK Parliament.

Any developer wishing to construct a NSIP must first apply to the National Infrastructure Directorate for consent to do so. The process is timetabled to take approximately 12-15 months from the time that the application is officially accepted. The 2008 Act sets out thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent. Minor associated development is also usually dealt with through the same decisionmaking process.

The UK Government [announced an additional change](https://www.gov.uk/government/notifications/announcements/20150520-announcements) to the energy consenting regime in May 2015, to transfer decisions on all applications for onshore wind generation back to the town and country planning regime, to be taken by Local Planning Authorities in England. Provision for this is now part of the [Energy Bill 2015-16](https://www.gov.uk/government/collections/energy-bill-2015-16).

**Northern Ireland**


All local and major developments are to be dealt with by Councils and major developments will be subject to pre-application consultation with the community.

An applicant must give all stakeholders and local communities a chance to discuss and voice their views before a formal application for major development is submitted. The level and extent of pre-application consultation is to be proportionate to the scale and the complexity of the proposed development.

Further details can be found in [Information Leaflet 16: Guidance on Pre-Application Community Consultation](https://www.gov.uk/government/publications/information-leaflet-16-guidance-on-pre-application-community-consultation).

Under the 2011 Planning Act, regionally significant development is any major project deemed to be of regional significance by the Department. Proposals will also be subject to pre-application community consultation and will be determined by the Department. According to Schedule 1 of the 2015 Regulations, any major application of regional significance will include those listed under Column 3 – for example any electricity generating station at or exceeding 30 megawatts or any extraction of unconventional hydrocarbons.
The Department may ask the Planning Appeals Commission to hold a public local inquiry into any application of regional significance. When determining the planning application, the Department must take any report produced from the inquiry into account. However, the Department takes the final decision.

For applications being dealt with by the Councils, the 2011 Planning Act requires Councils to produce a Scheme of Delegation. This provides for the delegation of local applications to officers, with large developments, contentious applications and those that receive a number of objections to go before the planning committee for decision.

For more information see Practice Note 15 on Schemes of Delegation.

Scotland

All proposed developments in Scotland fall within one of the three categories of a statutory hierarchy of developments, which can be described as follows:

- **National developments**: Developments designated as of national significance in the National Planning Framework for Scotland.
- **Major developments**: Nine classes of large scale development are defined as major developments in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.
- **Local Developments**: Any development which is not a national or major development is automatically categorised as a local development.

National developments are designated in the National Planning Framework for Scotland 3, which was considered by the Scottish Parliament to establish the necessity of these developments. Any objection to an application for a national development can only be made on an issue of detail, as its inclusion in the National Planning Framework for Scotland 3 is deemed to have established the need for that development.

Wales

In Wales the development consent process for NSIPs established by the Localism Act 2011 only applies to types of development where responsibility had previously been reserved by the UK Government. These are energy projects of over 50 Megawatts onshore/over 100 Megawatts offshore, major electricity lines, crosscountry pipelines, underground gas storage and some types of harbour development.

In Wales consent for ‘associated development’ (for example an electricity substation associated with a new power station) is dealt with by the Local Planning Authority rather than the Planning Inspectorate, because of the devolution settlement.

The Draft Wales Bill published in October 2015, seeks to devolve to Welsh Ministers the responsibility for energy generating development consents for projects up to 350MW onshore and offshore in Welsh territorial waters. The combined effect of the provisions in the Bill is to dis-apply the Secretary of State’s power under the 2008 Act to grant development consent in relation to electricity generating stations up to 350MW (see section 6 on England). The Bill in effect transfers such projects into the town and country planning system in Wales if they are onshore.

The 350 Megawatts limit was recommended by the Silk Commission on the basis that it would bring most renewable energy schemes within a Welsh system, but larger schemes of ‘strategic importance’ would still be decided by the UK Government.
The UK Government announcement about transferring onshore wind out of the
development consent regime, (see section 6 on England above) will mean that in Wales
decisions on all such applications will in future fall within the town and country planning
regime set by the Welsh Ministers in Wales.8

The Planning (Wales) Act 2015 will introduce a new category of Developments of
National Significance (DNS) in Wales. These are planning applications for some types
of development over certain thresholds that will in future be submitted to the Welsh
Ministers, rather than to Local Planning Authorities. The Welsh Government has consulted
on the likely definition of DNS. The final definition is likely to include energy projects of
between 25 and 50 Megawatts, plus railway and airport-related development. It is not
yet known whether or not the DNS definition will be extended to include onshore energy
projects of up to 350 Megawatts and all onshore wind applications, once these are
devolved. The application process for DNS is expected to be introduced from early in 2016.

8 Gov.uk website The Energy Bill 2015/16 [as downloaded on 11 January 2016]
7. **Neighbourhood development orders/community right to build orders**

**England**

In addition to providing for Neighbourhood Development Plans, the [Localism Act 2011](https://www.gov.uk/government/legislation/localism-act-2011) also allows communities to produce Neighbourhood Development Orders and Community Right to Build Orders. The Local Planning Authority must provide support.

A Neighbourhood Development Order effectively gives communities planning permission for development that complies with the order. It removes the need for a formal planning application to be submitted to the Local Planning Authority. Neighbourhood Development Orders can be used to permit a specific development, or a type of development. They can grant planning permission for things such as, new houses, a new shop or pub, or permit extensions of a certain size or scale across the whole neighbourhood area.

A Community Right to Build Order is a type of Neighbourhood Development Order. It is an order that gives permission for small-scale, site-specific developments by a community group, without the need for planning permission.

Further information about these orders is available from the UK Government’s webpage: [Giving communities more power in planning local development](https://www.gov.uk/government/publications/giving-communities-more-power-in-planning-local-development).

**Northern Ireland**

There is no equivalent to Neighbourhood Development Orders/Community Right to Build Orders in Northern Ireland.

**Scotland**

There is no Scottish equivalent of Neighbourhood Development Orders or Community Right to Build Orders.

**Wales**

There are no equivalent orders in Wales.
8. Permitted development rights

England

Permitted development rights (PD rights) are rights to make certain changes to a building or land without the need to apply for planning permission. These derive from a general planning permission granted by the UK Parliament in the Town and Country Planning (General Permitted Development) Order 2015 (the 2015 Order), rather than from permission granted by the Local Planning Authority. Schedule 2 of the 2015 Order lists separate classes of permitted development.

In some areas, called “designated areas”, PD rights are more restricted. These are generally in conservation areas, a National Park, an Area of Outstanding Natural Beauty (AONB) or the Norfolk or Suffolk Broads. In designated areas planning permission will be needed before changes can be made to a building. Restrictions also apply if the property is a listed building.

In some circumstances Local Planning Authorities can suspend PD rights in their area. They have powers under Article 4 of the 2015 Order to remove PD rights. While Article 4 directions are made by Local Planning Authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most Article 4 directions at any point.

Northern Ireland

Under the 2011 Planning Act, a similar system operates with the Planning (General permitted Development) Order (Northern Ireland) 2015. Subject to exemptions and limitations, this grants planning permission for certain types of permitted development listed in Schedule 1 e.g. alteration/extension/maintenance to a dwelling house, installation of domestic micro-generation equipment such as solar panels and the building, erection and alteration of certain agricultural buildings.

The Department or Council has the power to restrict or remove PD rights, in the interests of local amenity, using directions under Article 4 of the Order. They can also be removed through conditions attached to a planning permission.

The 2015 Order gives Councils the power to remove or limit PD rights in protected or sensitive environments such as conservation areas or AONBs, for mineral exploration and for development where an Environmental Impact Assessment is required.

Scotland

A similar regime operates in Scotland. Certain categories of development, as set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, are automatically deemed to have planning permission. The categories of development that enjoy PD rights were recently amended under the provisions of The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2014. This created new permitted development rights for small extensions or alterations to shops, schools, colleges, universities and hospital and office buildings. Additionally permitted development rights were created for off-street recharging of electric vehicles and disabled access ramps. A further amendment to permitted development rights was introduced by the 2014 Amendment Order which specifically applies to private ways, commonly known as tracks or hill tracks. As in England, PD rights can be removed or amended through Article 4 directions, which are generally made by Planning Authorities. Article 4 directions do not need Scottish Ministerial approval.
Wales

The types of development defined as permitted in Wales are set out in the Town and Country Planning (General Permitted Development) Order 1995 (the 1995 Order). The 1995 Order originally applied to both England and Wales but has now been revoked by the consolidated 2015 Order in England (see section on England above). Many parts of Schedule 2 in the 1995 and 2015 Orders are the same for both England and Wales, but there are an increasing number of differences. Some changes were made to the permitted development rules for household improvements and extensions in 2013 and in 2014 for offices, shops and financial services.

The Welsh Government will consult on any proposed changes to the 1995 Order and does not always introduce the same changes as those introduced by the UK Government for England. For example in England a retail unit (class A1) or a financial/professional services unit (class A2) can be converted into residential use without planning permission, subject to certain conditions. This change has not been made in Wales to date.

Also as in England PD rights are more restricted in “designated areas” and Article 4 Directions can be used to remove PD rights and the Welsh Ministers have similar powers to the Secretary of State in England (see section on England above).

In 2012 the Welsh Government introduced powers for Local Planning Authorities to make Local Development Orders (LDOs) for specified types of development. It is encouraging Local Planning Authorities to use these powers in the Enterprise Zones that have been designated in Wales.
9. Use classes

England

The Town and Country Planning (Use Classes) Order 1987 (1987 Order) puts uses of land and buildings into various categories known as “Use Classes”. The categories give an indication of the types of use which may fall within each use class. There are four main Groups:

- Classes in Group A cover shops and other retail premises such as restaurants and bank branches;
- Classes in Group B cover offices, workshops, factories and warehouses;
- Classes in Group C cover residential uses; and
- Classes in Group D cover non-residential institutions and assembly and leisure uses.

A further category, called ‘sui generis’ ('unique') exists to cover other uses, including betting office and payday loan shops.

Planning permission is not normally required for changes of use within the same classes and for certain changes of use between some of the classes.

Northern Ireland

A similar system of use classes is provided by the Planning (Use Classes) Order (Northern Ireland) 2015. In general planning is not required for a change of use within the same use class, but a change between use classes does require planning permission. That being said, under the Planning (General permitted Development) Order (Northern Ireland) 2015, there are instances listed in Part 4 of the Schedule where it is possible to change between use classes without making a planning application.

Scotland

The Town and Country Planning (Use Classes) (Scotland) Order 1997 sets out 11 broad “uses classes”. Planning permission is not normally required for a development that involves a change that is covered by a single use class.

Wales

The 1987 Order (see section above on England), also applies in Wales. However the Welsh Ministers can make their own modifications to the order and so there are differences.

Some changes have been introduced to the 1987 Order in England that have not to date been introduced in Wales. In particular in Wales, Class A3 in the Use Classes Order is “Food and Drink”. This includes restaurants and cafés, drinking establishments and hot food takeaways. In England, Class A3 ‘Food and drink’ has been split into A3 (Restaurants and cafés), A4 (Drinking establishments), and A5 (Hot food takeaways). This change came into force on 21 April 2005. A building in Wales that currently has a Class A3 use would therefore not require planning permission from the Local Planning Authority to change from a café/restaurant to a hot food take-away, whereas in England such a change would require permission.

The Welsh Government announced in 2013 that it will carry out a review of the Use Classes Order. It will consider the permitted changes between use classes and how the retail
classes are sub-divided, issues surrounding residential uses such as conversion of other uses to housing and the use of agricultural buildings.\textsuperscript{9}

\textsuperscript{9} Welsh Government consultation, \textit{Draft Planning (Wales) Bill and Positive planning: proposals to reform the planning system in Wales}, 4 December 2013
10. Planning conditions

England

Local Planning Authorities have the power to impose planning conditions on planning permission. While the Town and Country Planning Act 1990 enables the Local Planning Authority to impose “such conditions as they think fit”, this must be done in line with the NPPF, which directs that planning conditions should only be imposed where they meet the “six tests” as follows:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

An applicant may appeal against any conditions imposed. Under the 1990 Act, a breach of planning control can include failing to comply with any condition for which planning permission has been granted. Enforcement action may be taken by the Local Planning Authority against a breach of conditions (see section 14 on England).

Northern Ireland

The power for the Department or Council to impose conditions on a planning permission is provided under Part 3 of the 2011 Planning Act. Conditions may be applied to enhance the quality of the development and enable development to proceed where it otherwise would have been refused. For example, they may be used to introduce time limits, restrict use or permitted rights and impose after care conditions.

For conditions to be imposed, they must satisfy a six point test to ensure they are necessary, fair and practicable. The Development Management Practice Note 20 provides more detail. These tests are the same as in England (see section 10 on England above).

Grants of planning permission must impose a time limit of five years from the date of permission within which the development must be started. However, there are exemptions to the five year limit. Conditions may be challenged on appeal in writing to the Planning Appeals Commission.

A Council may issue a “breach of condition notice” where conditions attached to a grant of planning permission have not been complied with.

Scotland

Planning Authorities in Scotland can impose conditions when granting planning permission to enable development to proceed where it may otherwise have been necessary to refuse permission. Circular 4/1998 states that conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
• precise

An addendum to this circular suggests a number of model planning conditions and lists satisfactory and unsatisfactory reasons for imposing conditions on an award of planning permission.

Applicants can seek an appeal, or review, of a decision to impose conditions on the grant of planning permission.

Planning Authorities can enforce conditions, either by issuing an enforcement notice, or a breach of condition notice. There is a right of appeal to the Scottish Ministers against these notices.

**Wales**

Local Planning Authorities can impose conditions when granting planning permission. The same tests that apply in England also apply in Wales (see section 10 on England above).

A Circular issued by the Welsh Government in October 2014 gives further details of how to interpret the six tests. It also includes a list of ‘model’ conditions for Local Planning Authorities to use.

Decision notices should state clearly and precisely the full reasons to be given for conditions, and to specify all relevant development plan policies and proposals. Detailed planning permissions should include a condition specifying that development should commence within a period of five years from the date of the permission.

Local Planning Authorities may enforce conditions, either by issuing an enforcement notice, or a breach of condition notice. There is a right of appeal to the Welsh Government against these notices (see also section 14 (Wales)).
11. Advertisement consent

England

Local Planning Authorities are responsible for the day-to-day operation of the advertisement control system and for deciding whether a particular advertisement should be permitted or not. The rules are set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Separate planning permission is not required in addition to advertisement consent.

There are three categories of advertisement consent:

- Those permitted without requiring either deemed or express consent from the Local Planning Authority;
- Those which have deemed consent;
- Those which require the express consent of the Local Planning Authority.

It is a criminal offence to display an advertisement without consent, including the consent of the landowner of the site.

Further information about how Local Planning Authorities should consider applications for advertisement consent is set out on the advertisements pages of the UK Government’s Planning Practice Guidance.

Northern Ireland

The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015, issued under the 2011 Act, include provisions to allow Councils to restrict and regulate the display of advertisements in the interest of amenity and public safety.

A consent to display must be applied for to the Council, however there are a number of exemptions to this control listed in Schedule 2 of the Regulations (e.g. advertisements on enclosed land). Certain cases may be classed as “deemed consent” under Schedule 3 (e.g. advertisements by departments or Councils).

Further information is provided in the Department’s Development Management Practice Note 7.

Scotland

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, as amended, regulate the display of most outdoor advertisements in Scotland. These Regulations split adverts into three classes:

- Excepted: adverts which are not subject to control, e.g. adverts within buildings, displayed on vehicles or balloons.
- Deemed consent: adverts that are automatically deemed to have consent. This class includes statutory notices, direction and warning signs, certain temporary signs, adverts on business premises. There are a number of other conditions regarding placement on a building, duration and height of display also set out in the Regulations if an advert is to qualify for deemed consent.
- Express consent: Adverts that do not fall within the above classes, which require the explicit grant of consent from the Planning Authority before they can be displayed.
There are restrictions on the display of adverts in conservation areas and “areas of special control”, which are areas designated by a Planning Authority which have enhanced controls over the display of adverts. However, these restrictions do not apply to certain specified classes of advert.

Applicants have a right of appeal to Scottish Ministers against a decision to refuse permission for an advert, or where conditions have been imposed on any grant of permission. Planning Authorities have powers to enforce advertisement controls, principally the power to issue an enforcement notice where an advert has been displayed without consent or in breach of conditions attached to any consent.

Wales

The [Town and Country Planning (Control of Advertisements) Regulations 1992](https://www.legislation.gov.uk/uk规/1992/2965) (as amended) regulate outdoor advertisements in Wales. These regulations enable Local Planning Authorities to control outdoor advertisements in the name of amenity and public safety. Some types of advertisement are exempted (generally those smaller than 0.3 square metres) and some advertisements qualify for deemed consent. Others require express consent from the Local Planning Authority. There is a right of appeal to the Welsh Government for a refusal of advertising consent.

12. Environmental Impact Assessments

Environmental assessment is a procedure that ensures that the environmental implications of decisions are taken into account before those decisions are made. Assessments for individual development proposals are known as Environmental Impact Assessments (EIAs). EIAs assess the possible impact – positive and negative – that a proposed project may have on the environment and human health and this information is submitted to the Local Planning Authority or the relevant decision maker in the form of an Environmental Statement (ES) in order for it to be considered alongside a planning application.

The requirement to carry out an EIA of certain planning proposals comes from European legislation (Directive 2011/92/EU of the European Parliament and of the Council). Regulations exist for each of the four UK countries to transpose the Directive’s requirements. Further changes will need to be made to reflect a revised European Directive on EIA that was adopted in 2014.

Whether or not an EIA is required for a particular development depends on the nature of the development. An EIA is compulsory for some major types of development listed in the regulations (Schedule 1 developments), such as a waste disposal installation.

Other developments only require an EIA when certain thresholds and criteria are met and whenever they are likely to have significant effects on the environment (Schedule 2 developments). Examples are a wind turbine installation of more than 2 turbines.

For some developments a “scoping opinion” will first need to be sought from the relevant Local Planning Authority as to whether or not an EIA will be required.

A determination of whether or not EIA is required must be made for all projects of a type listed in Schedule 2. This is called the “screening opinion”. In making this determination the authority must take into account the relevant selection criteria in Schedule 3 to the Regulations. The authority must make all screening opinions and directions available for public inspection.

The Local Planning Authority has 16 weeks from the date of receipt of the ES to determine the planning application, instead of the normal 8 weeks from the receipt of a planning application. It must seek the views of the consultation bodies listed in the Regulations. The authority must take account of the ES, together with any other information, comments and representations made on it, in deciding whether or not to give permission for the development. Where an ES reveals that a development would have an adverse impact on the environment, it does not automatically follow that planning permission will be refused. If permission is granted, conditions may be attached that include mitigation measures that can be based on the ES.

England

The Directive is enacted in England through the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The threshold for some housing and industrial projects requiring EIA was increased in England in April 2015.

Northern Ireland

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 transpose the requirements of the EIA Directive to reflect the new planning system under
the 2011 Planning Act. They provide a statutory framework for both the Department and Councils when fulfilling their planning responsibilities.

As in England, the regulations list Schedule 1 and Schedule 2 projects.

**Scotland**

The [Environmental Impact Assessment (Scotland) Regulations 2011](#) transpose the EIA Directive, as amended, into the Scottish planning system. As in England, the Regulations list Schedule 1 and Schedule 2 projects.

Detailed guidance on EIA in the Scottish planning system can be found in [Planning Circular 3/2011: The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011](#).

**Wales**

The Directive in Wales is enacted through the [Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999/293](#). As in England, the Regulations list Schedule 1 and Schedule 2 projects. These regulations have been superseded in England and now only apply (as amended by later legislation) to Wales.

As noted in section 12 on England above, the threshold for some projects requiring EIA was increased in England in April 2015, but has not to date been increased in Wales.
13. Appeals/Planning Inspectorate

England

The Planning Inspectorate is a joint Executive Agency of the Department for Communities and Local Government (DCLG) and the Welsh Government.

Where an application has been rejected by a Local Planning Authority, the applicant has the right of appeal to the Secretary of State. In practice, the normal procedure is for the appeal to be decided by a planning inspector in the name of the Secretary of State, either after considering written representations, holding an informal hearing or holding a full inquiry. The choice of procedure will depend upon the complexity of the case and will be determined by the planning inspector.

The Secretary of State also has powers to “recover” an appeal, to take the decision himself. There is no third party right of appeal, nor any further right of appeal beyond a decision by the Secretary of State (even if taken in his name by a planning inspector). In particular cases it may be possible to bring a judicial review of a local authority’s decision or a statutory review of the Secretary of State’s or planning inspector’s decision. The Planning Court, established in the High Court under a separate list under the supervision of a specialist judge, deals with all judicial reviews and statutory challenges involving planning matters in accordance with Civil Procedure Rule 54.21 and Practice Direction 54E. Planning Court challenges cannot be about the merits of the planning application or appeal decision itself, it is about the lawfulness of the way in which the decision was taken.

The Planning Inspectorate also examines Local Plans (see section 4 (England)).

Northern Ireland

Appeals on decisions may be made by or on behalf of the applicant to the Planning Appeals Commission (PAC). There is no ‘third party’ right of appeal against a planning decision. However, when an application is appealed, objectors or anyone with an interest in the proposal may make a response to the PAC.

The Planning Appeals Commission (PAC) is an independent appeals body which operates under the 2011 Planning Act. Its operation falls into the following two categories:

- Decisions on Appeals – the commission makes decisions on all appeals against Departmental and Council decisions on a wide range of planning and environmental matters. However, this does not apply to any application called-in by the Department.
- Hearing and Reporting on Public Inquiries/Hearings – the commission makes recommendations on a wide range of cases referred to it by the Department. The final decision on these matters is taken by the relevant Department.

Decisions are transferred out from political decision, unlike elsewhere in the UK where the appeal bodies make decisions in the name of the relevant Ministers. In Northern Ireland the PAC must reach its decision on the basis of the reports made by the Commissioners. Commission decisions are final, however they are open to challenge by application to the High Court for judicial review.
Scotland

There are two planning appeal/review systems in operation in Scotland, these are:

- **Local Review Body**: Every Planning Authority is required to produce a “scheme of delegation” which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee. If a planning decision was taken by a planning officer under a scheme of delegation then any appeal will be made to the Council’s Local Review Body and not Scottish Ministers. A local review body is made up of at least three elected members who were not involved in the original decision.

- **Scottish Ministers**: If a planning decision was taken by Councillors then any appeal against that decision will be made to Scottish Ministers. Planning appeals made to Scottish Ministers are considered by a Reporter appointed by the **Directorate for Planning and Environmental Appeals** (DPEA). In most instances the appeal decision is made by the Reporter on behalf of the Scottish Ministers. However, in a small number of cases the Reporter does not issue the decision, but submits a report with a recommendation to the Scottish Ministers, who make the final decision. Most appeals are decided by means of written submissions.

Scottish Ministers also appoint DPEA Reporters to hold Development Plan examinations into objections to development plans (see sections 3 and 4 on Scotland).

Wales

As outlined in the section on England above, the Planning Inspectorate is an Executive Agency of both the UK Government and the Welsh Government. The inspectorate as it operates in Wales is effectively a branch of the Executive Agency as a whole. There is an agreement between the Welsh and UK Governments on the inspectorate’s work programme.

In Wales the Planning Inspectorate duties include responsibility for the processing of planning and enforcement appeals, holding public examinations into LDPs and reporting on planning applications called in for decision by the Welsh Ministers. It also now considers certain NSIPs in Wales (see section 7 on England and Wales). The Inspectorate will in future be considering DNS planning applications on behalf of the Welsh Ministers (see section 7 above).

The procedures for deciding an appeal in Wales are similar to those in England (see section 13 (England)). As in England and Scotland most decisions on planning appeals are made by the inspectorate on behalf of the Welsh Ministers. However a few appeals are ‘recovered’ and the decision is made by the Minister, who considers a recommendation from the Planning Inspectorate.
14. Enforcement

England

Carrying out development without planning consent or breaching a condition of a planning consent is generally not a criminal offence (unless in relation to making changes to listed buildings and advertisements that operate under separate regimes).

Failure to comply with an enforcement notice however, is a criminal offence. An enforcement notice is a notice requiring compliance with planning consent. If the notice is upheld, the penalty for failure to comply is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment. Other types of enforcement action include a Breach of Conditions Notice, a Stop Notice, a Temporary Stop Notice or an Injunction to restrain a serious breach of planning control. Further information about all of these powers is provided on the Ensuring effective enforcement pages of the Planning Practice Guidance.

Enforcement action is discretionary and Local Planning Authorities are directed to act proportionally in responding to suspected breaches of planning control. Some authorities will look at the amount of harm caused by the suspected breach and examine whether it justifies taking action. Sometimes no action will be taken if the authority believes that planning permission is likely to have been given. If someone believes that there has been a significant breach of planning control in their area, where there has been serious harm to public amenity and believes that the Local Planning Authority has not acted as it should, then a complaint may be possible to the Local Government Ombudsman (LGO). More information about this process is available from the Local Government Ombudsman website.

There are two time limits for enforcement action laid down in the Town and Country Planning Act 1990. Four years is the time allowed to an authority to take enforcement action where the breach comprises either operational development (the carrying out of unauthorised building, engineering, mining or other operations) or change of use to use as a single dwelling. Ten years is the time allowed for all other breaches of planning control. In both cases, enforcement action can be completed after that date provided that it was started before it.

Northern Ireland

Under the 2011 Planning Act, one of the functions transferring to local Councils is planning enforcement; however, the Department has powers to take enforcement measures where it believes a Council failed to take action.

Similar to other UK jurisdictions, the power to take enforcement action is left up to the discretion of the Council or the Department. It is not necessarily an offence to undertake development without planning consent; in some cases, if it is agreed that the development is in keeping with the LDP and material considerations, retrospective planning consent may be simply required.

However, should the breach be considered extensive, the decision may be made to issue an enforcement notice to bring the unauthorised development under control. Failure to comply with an enforcement notice is an offence liable to a fine of up to £100,000 on summary conviction, or an unlimited fine on indictment.

10 Department for Communities and Local Government, National Planning Policy Framework, March 2012, p47
Under the 2011 Act, enforcement action must be taken within five years of completion for breaches of operational development (building, engineering, mining or other operations in, on, over or under land) and five years from the start of the breach for any change of use to a dwelling house.

An appeal against an enforcement notice may be made, by the person served with the notice, to the Planning Appeals Commission (PAC). The PAC must publically provide details of the appeal, so that anyone with an objection or interest can become involved in the process.

For more information on the range of enforcement powers given to local Councils and the Department, refer to Part 5 of the 2011 Planning Act.

Scotland

The planning enforcement system in Scotland is broadly similar to that in England and Wales. Enforcement action is carried out at the discretion of the Planning Authority, which will generally only act if it is in the public interest. Planning authorities have a number of enforcement options they can pursue, which are briefly summarised below:

Planning Contravention Notice: A Planning Authority can issue a Planning Contravention Notice (to anyone with an interest in land) to obtain information on whether activities on that land constitute a breach of planning control.

Enforcement Notice: A Planning Authority can issue an Enforcement Notice when it considers that a breach of planning control has occurred. As in England, a failure to comply can lead to a fine not exceeding £20,000, or on conviction on indictment to an unlimited fine. There is a right of appeal to Scottish Ministers against the issue of an enforcement notice.

Breach of Condition Notice: This can be used as an alternative to an Enforcement Notice, and is used to enforce the conditions of a planning permission.

Stop Notice: Where a Planning Authority considers that a breach of planning control must be dealt with as a matter of urgency it may issue a stop notice.

Temporary Stop Notice: A temporary stop notice is similar to a stop notice but takes immediate effect.

Fixed Penalty Notices: A Planning Authority also has the power to issue a Fixed Penalty Notice for a failure to comply with an Enforcement Notice or a Breach of Condition Notice.

Interdict: Although not a specific planning power, a Planning Authority can apply to the sheriff court or Court of Session for an interdict where they consider a breach of planning control has occurred, or is about to occur.

Every Planning Authority is required to produce an enforcement charter, updated every two years, which sets out how the enforcement system works, the role of the Planning Authority in enforcement and its service standards.

More information on these enforcement options is set out in Circular 10/2009: Planning Enforcement.

Wales

Enforcement of planning operates in a similar way in Wales as it does in England (see section 14 (England)). A breach of planning control is not in itself a criminal offence and Local Planning Authorities have discretion over taking enforcement action. According
to Planning Policy Wales, “the decisive issue for the authority is whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.”

The options for taking enforcement action include Enforcement Notice; as in England, failure to comply is a criminal offence and can lead to a fine of up to £20,000; a Breach of Condition Notice; a Stop Notice and in serious cases an Injunction. These options are set out in more detail in a Planning Quick Guide on enforcement. The Welsh Government has also recently introduced Temporary Stop Notices in Wales.

In cases where there has been a breach of planning control and a person considers that the Local Planning Authority has not acted as it should, then a complaint may be possible to the Public Services Ombudsman for Wales.

The time limits for taking enforcement action are also the same as in England.
15. Community Infrastructure Levy/developer contributions

England

Community Infrastructure Levy (CIL)

The CIL is a levy that local authorities in England and Wales can choose to charge on new developments in their area. It is charge on new buildings and extensions to help pay for supporting infrastructure. In areas where a CIL is in force, land owners and developers must pay the levy to the local authority. The money raised from the levy can be used to support development by funding infrastructure.

The CIL charges are set by the local authority, based on the size and type of the new development. It is payable on most developments over 100 square metres or where a new dwelling is created. The local authority can set different rates for different geographical zones in their area and for different intended uses of development. This is a local decision based on economic viability and the infrastructure needed. There is no requirement for a local authority to charge the CIL if it does not want to. Structures which are not buildings, such as pylons and wind turbines, are not liable to pay the levy. Relief from the CIL is also available for development which relates to social housing and development by charities for charitable purposes. There are also exemptions from CIL for certain residential extensions and self build homes.

Section 106 agreements

Section 106 agreements, sometimes known as “planning obligations” or “planning gain” stem from agreements made under section 106 of the Town and Country Planning Act 1990, as amended. They are agreements negotiated between the developer and the Local Planning Authority to meet concerns that an authority may have about meeting the cost of providing new infrastructure. Section 106 agreements are legally binding, and the obligations may be either in cash or kind, to undertake works, provide affordable housing or provide additional funding for services.

Planning obligations to support new development must help meet the objectives of the Local Plans and Neighbourhood Development Plans for a particular area. Three legal tests must be met before a planning obligation can be used. They are set out in part 11 of the Community Infrastructure Levy Regulations 2010, as follows:

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

Many Local Planning Authorities issue their own Planning Obligations Supplementary Planning Document. These documents explain further an authority’s approach to planning obligations and when they may be sought.

The Government’s Planning Practice Guidance on the Community Infrastructure Levy clarifies the relationship between the CIL and section 106 agreements. The basic premise
is that there should be no double charging to developers of the CIL and section 106 agreements for the same purpose.

From 6 April 2015, the use of ‘pooled’ planning obligations toward infrastructure projects has been restricted. Previously, Local Planning Authorities had been able to combine planning obligation contributions towards a single item or infrastructure ‘pot’. However, under the 2010 CIL Regulations, authorities can no longer pool more than five planning obligations together if they were entered into since 6 April 2010, and if it is for a type of infrastructure that is capable of being funded by the CIL. These restrictions apply even where an authority does not yet have a CIL charging schedule in place.

**Northern Ireland**

Developer contributions can be secured as a condition to planning permission or by a planning agreement under section 76 of the 2011 Planning Act. This enables the Department or Council (whichever is the relevant Planning Authority) to enter into Planning Agreements for the purpose of facilitating, regulating or restricting the development or use of the land. This may include the setup of contributions to be paid by the developer to the relevant authority, or any Northern Ireland department, to offset the impact of the proposed development, in conjunction with granting planning permission.

According to the [Spatial Planning Policy Statement (SPPS)](https://www.nidirect.gov.uk/publications-and-guidance/spp) developer contributions can be used:

- where a proposed development requires the provision or improvement of infrastructural works over and above those programmed in a LDP;
- where earlier than planned implementation of a programmed scheme is required;
- where a proposed development is dependent upon the carrying out of works outside the site; and
- where archaeological investigation or mitigation is required.

Planning agreements under the new system could support the delivery of developer contributions for social/affordable housing. A [joint consultation](https://www.dsdni.gov.uk) was issued in 2014 by the Department for Social Development (DSD) and the Department of the Environment on the possible introduction of a Developer Contributions Scheme for social and affordable housing in Northern Ireland. In response to suggestions from respondents about the need for further economic research on the issue, DSD has commissioned this research and is still awaiting the outcomes.

Another mechanism is [Article 122 of the Roads (Northern Ireland) Order 1993](https://www.dsdni.gov.uk) in terms of infrastructure works.

Developers may decide to offer community benefits to communities likely to be affected by their development. This may involve payments to the community, in-kind benefits and shared ownership arrangements. However, community benefits are voluntary and are not legislated for in the same way as planning agreements/developer contributions. For this reason, community benefits are not material considerations in the determination of planning applications.

**Scotland**

Developer contributions in Scotland are normally secured under the provisions of section 75 of the [Town and Country Planning (Scotland) Act 1997](https://www.legislation.gov.uk), commonly known as “section
75 agreements”. In essence, a section 75 agreement is a contract between the Planning Authority and the landowner (and possibly future landowners, depending on the terms of the agreement) which requires the landowner to restrict or regulate the use of their proposed development or mitigate against any potential negative impacts of that development through means set out in the agreement. This can include making a payment to the Planning Authority towards the development of associated infrastructure, e.g. expanding a school or improving a road. The issues covered by a section 75 agreement are normally matters that cannot be enforced through a condition attached to planning permission.

There is no equivalent of the England and Wales Community Infrastructure Levy in Scotland.

Wales

Section 15 (England) explains that the CIL applies in both England and Wales. Although most aspects of the planning system are devolved, the CIL is seen as a tax and is currently a reserved matter. The Welsh Government has however called for the CIL to be devolved as it closely related to the planning system. It has issued its own CIL guidance to the production of a charging schedule saying that it expects that the evidence base supporting a charging schedule will include an up to date development plan. Local authorities in Wales are required to use ‘appropriate available evidence’ to inform their charging schedules.

Local Planning Authorities can also enter into section 106 agreements with developers as in England.

Local Planning Authorities in Wales have been slower than some in England to adopt the CIL – however a small number of Welsh authorities have now produced charging schedules and others are working alone or in collaboration to produce one. This is partly because of the further restriction on the use of section 106 agreements now that the transitional period has finished (see section 15 (England)).
16. Planning advice services

England

The Planning Advisory Service is funded directly by the Department for Communities and Local Government. It provides a range of support and online resources to local authorities to help them deliver an effective planning service.

The Government's Planning Portal provides information, interactive guides and other resources about how to use the planning system in practice.

Planning Aid England, run by the Royal Town Planning Institute, supports communities and individuals with planning issues in England.

Northern Ireland

Northern Ireland does not have an advice service similar to England. The Department advises that the majority of queries relating to the planning process, planning applications and fees should be directed to the local area planning offices. Each new Council area will have its own local planning office.

The Department, through its Planning Portal provides online information and advice on legislation, regional policy, planning applications and the planning system.

Community Places is an independent charity with full-time staff offering advice on planning issues, training and project support for groups meeting Community Places eligibility criteria. It also independently facilitates public and community consultation on planning and public service issues.

Scotland

Planning Aid for Scotland, an independent charity, provides professional planning advice, support and training to individuals and community groups across Scotland.

Wales

The Welsh Government set up a national Planning Advisory and Improvement Service (PAIS) in May 2015 that it will host. The service will operate on an interim basis in the first year. The group appointed by the Welsh Government to operate the service will also provide advice on how the PAIS should operate effectively in the longer term.

Planning Aid Wales is an independent charity providing advice on all aspects of land use planning in Wales.
17. Future changes

England

The Housing and Planning Bill 2015-16 was introduced to Parliament on 13 October 2015. Many of its provisions are focused on speeding up the planning system with the aim of delivering more housing. Some of the main planning provisions include:

- putting a general duty on all planning authorities to promote the supply of Starter Homes, and providing a specific duty, which will be set out in later regulations, to require a certain number or proportion of Starter Homes on site;
- requiring local authorities to grant “sufficient suitable development permission” of serviced plots of land to meet the demand based on the self-build and custom housebuilding register;
- intervention by the Secretary of State over the production of local plans where local authorities are judged to be too slow;
- creating a zonal system for brownfield land creating automatic planning permission in principle for housing;
- allowing Nationally Significant Infrastructure Projects with “an element” of housing to be considered as part of the Planning Act 2008 development consent regime;
- making changes to the compulsory purchase process both in England and Wales.

For more detailed information and reaction to these changes see the House of Commons Library briefing paper, Housing and Planning Bill.

As well as some measures now contained in the Bill, the Government’s July 2015 Productivity Plan, Fixing the Foundations: Creating a more prosperous nation, and the November 2015 Autumn Statement also announced some further changes including:

- “significantly” tightening the “planning guarantee” (the time that planning applications spend in total with decision makers), for minor planning applications;
- strengthening guidance to improve the use of the duty to cooperate on strategic matters between local authorities; and
- introducing a delivery test on local authorities, to ensure delivery against the homes set out in local plans within a reasonable timeframe.

The UK Government’s August 2015 rural productivity plan, Towards a one nation economy: A 10-point plan for boosting productivity in rural areas, also announced some changes, designed to make the planning process easier in rural areas including the introduction of new and revised permitted development rights.

The UK Government has also confirmed that it will put on a permanent basis the current temporary permitted development right allowing offices to change to residential use, in some circumstances, without the need for planning permission. There are also proposals to increase permitted development rights in relation to shale gas exploration.

Northern Ireland

The 2011 Planning Act, which took effect in April 2015, brought a complete reform of the planning system in Northern Ireland by returning certain planning functions to local Councils. While regional planning, (and other functions detailed in section 1 (Northern Ireland) remains with the Department of Environment, proposals to restructure other
departments in 2016 may result in the amalgamation of these functions and those
currently performed by the DRD, (as detailed in section 2 (Northern Ireland)) under a
new Department of Infrastructure. The Act effectively sees a shift from a land-use based
planning system to one operating on the concept of spatial planning.

Currently development plans produced by the Department under the old planning system
are being used by the newly formed councils. This is an interim measure until the new
Councils develop their own LDPs.

The current Environment Minister has announced the need for the creation of an
independent environment protection agency in line with departmental restructuring in
May 2016. Such a change would bring Northern Ireland into line with the rest of the UK.
Currently the Northern Ireland Environment Agency (NIEA) is a governmental agency
of the Department of Environment; it is a statutory consultee in determining planning
applications, offers advice on applications requiring an EIA and issues the necessary
environmental permits required for a project.

Scotland

The Scottish planning system was substantially amended by the Planning etc. (Scotland)
Act 2006, with enactment of the main provisions of that Act taking place up until 2010.
The Scottish Government’s Programme for Scotland 2015-16 states that the Scottish
Government will review the planning system with a focus on delivering “a quicker, more
accessible and efficient planning process, in particular increasing delivery of high quality
housing developments”.

In September 2015, Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and
Pensioners’ Rights announced the appointment of an independent panel to undertake a
review of the Scottish planning system.

The independent panel issued a call for written evidence on 19 October 2015, which posed
a series of questions on the issues of development planning, housing delivery, planning
for infrastructure, development management, leadership/resourcing/skills and community
engagement. The call for evidence closed on 1 December 2015.

The independent panel is due to produce its report in May 2016. Scottish Ministers will
then respond to its recommendations with a programme of work to take forward changes
to the planning system.

Further information on the review is available on the Scottish Government’s website.

Wales

Following Royal Assent of the Planning (Wales) Act 2015, the Welsh Government has a
programme of secondary legislation to bring forward to implement the changes to the
planning system introduced by the Act.

The Welsh Government has also asked the Law Commission to consider the need for a
Planning Consolidation Act for Wales, to create simplified primary planning legislation for
development management in Wales. The commission is due to report with a draft bill in
the summer of 2017.

The new National Development Framework to be developed under the 2015 Act is
expected to be adopted in 2019.
18. Further information

England
- House of Commons Library Briefing Papers are available online.
- The Planning Portal also provides information about the planning system in England (select England in the top right corner of the home page).
- HM Government, Plain English guide to the planning system, 5 January 2015

Northern Ireland
Useful Documents and links:
- Planning Act 2011
- Subordinate legislation to Planning Act 2011.
- Old Planning Policy Statements.

Further advice on the planning system in NI is available from the Planning Portal NI. Of particular use are the Practice Notes. These provide advice for homeowners, business, developers and practitioners in relation to:
- Development Plan Practice Notes
- Development Management Practice Notes

Northern Ireland Assembly Research & Information Service briefings are available.

Scotland
Scottish Parliament Information Centre briefings are available.

Wales
National Assembly for Wales Research Service briefings are available.

We have published a series of Planning Quick Guides on different aspects of the planning system in Wales.

This Research Service blog post includes links to key planning-related publications and other resources.

The Planning Portal also provides information about the planning system in Wales (select the Welsh Site from the top right corner of the home page).
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APPENDIX 5B

The Isle of Man planning system
# THE ISLE OF MAN PLANNING SYSTEM – COMPARISON TO UK

The Select Committee on Planning and Building Control requested that information on the Isle of Man planning system be prepared in relation to each of the sections in this report:

**Comparison of the planning systems in the four UK countries: 2016 update**

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1. LEGISLATIVE FRAMEWORK

The Town and Country Planning Act 1999 (“the 1999 Act”) is the primary legislation.

This is an act to make 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.

Secondary legislation is made under the authority of the primary legislation and includes such documents as the Isle of Man Strategic Plan, the Area Plans, Planning Policy Statements, Development Orders and Development Procedure Orders. These are statutory documents and are approved by Tynwald following the process set out in the 1999 Act.

Planning applications are considered in processes set out in the 1999 Act or in Development Procedure Orders made under the 1999 Act.

Functional delegations in respect of planning decisions are made using Government Departments Act 1987 delegations.

The primary legislation under which all Building Regulations applications are considered is the Building Control Act 1991. This provides the framework on which all policies, regulations and procedures have been built. Its secondary legislation details the requirements of building regulations and codes of practice that are applicable on the Island, as well as procedures for related decisions.

A complete list of Planning & Building Control legislation is available in Appendix 1.

2. NATIONAL PLANNING POLICY AND GUIDANCE

There is a statutory obligation to prepare an Island Development Plan under Part 1 Section 2 of the 1999 Act. The procedure for doing this is set out in Schedule 1 of the 1999 Act. This is referred to as ‘the development plan’. The development plan consists of a Strategic Plan and one or more Local and Area Plans.

Such Local and Area Plans as well as: the Strategic Plan, other statements of planning policy, development orders or development procedure orders and any other material considerations represent the policy framework against which planning applications are determined.

The Isle of Man Strategic Plan 2016 covers the whole of the Island and provides a comprehensive planning framework setting out a broad long term vision for development. It sets out the general policies for the development of and use of land across the Island. It
contains 12 Strategic Policies and 5 Detailed Policies. It was approved by Tynwald on 15th March 2016 and came into operation on 1st April 2016.

Review of the Isle of Man Strategic Plan

In December 2013, the Department of Infrastructure (DoI) had announced its intention to review the ‘Isle of Man Strategic Plan 2007 – Towards a Sustainable Island.’ The ‘preliminary publicity’ identified the matters that were to be dealt with; which related only to the broad housing figures, the impact of such figures on the strategic highway network and the plan period.

The proposed amendments were based on the findings of the 2011 Census and the Isle of Man Population Projections which have flowed from it. These revised population projections have allowed the anticipated increase in household numbers to be planned for and consequently the housing opportunities that are needed to meet the projected growth in the Island’s population to be broadly identified.

Part of this procedure involves a Public Inquiry. When required, a Planning Inspector is appointed by His Excellency Lieutenant Governor to conduct an independent examination of the development plan in question at Inquiry.

Representations were invited and following the Public Inquiry which took place in September 2015, the Inspector’s Report of the Public Inquiry into the Draft Isle of Man Strategic Plan was published on 25th November 2015 and, taking account of the recommendations made, indicated an intention to adopt the plan ‘with modifications’ in December 2015.

The Draft Isle of Man Strategic Plan 2015 with Modifications sought further representations on the modifications. and, having considered those representations, the Draft Isle of Man Strategic Plan 2015 was published on 16th January 2015 in accordance with Paragraph 3 of Schedule 1 to the 1999 Act.

Planning Policy Statements (PPS)

There are occasions where statements of policy specifying the manner in which planning applications will be dealt with are issued. Such statements are referred to as Planning Policy Statements (PPS). The procedure for issuing and using them is set out in Section 3 of the 1999 Act.

Planning Policy Statements are finalised when they are approved by Tynwald.

At present there is one PPS in operation: Conservation of the Historic Environment of the Isle of Man (PPS 1/01).
There are also a number of other PPSs which are in draft form and these can be downloaded from the Planning Policy Statement webpage.

Section 3 (4) of the 1999 Act states ‘Every planning policy statement shall be in general conformity with the development plan; and in case of any inconsistency between a planning policy statement and the provisions of the development plan, those provisions shall prevail.’

3. REGIONAL PLANNING/STRATEGIES

The Isle of Man Strategic Plan covers the whole of the Island in the form of general written policies only and aims to give a comprehensive planning framework setting out a broad long term vision for development. There are no ‘regional plans’ but Housing Policy 3 does set out how housing need should be spatially distributed across the North, South, East and West.¹

4. LOCAL DEVELOPMENT PLANS

A series of site specific proposals are currently set out in a mix of Local and Area Plans.

Many of the Local Plans date back to the 1990's and work is underway to replace them with Area Plans.

Area Plans

It has been envisaged that four Area Plans will be produced:

**North** - Covering Andreas, Ballaugh, Bride, Jurby, Lezayre, Maughold and Ramsey. Work has not started on this plan.

**East** - Covering Braddan, Douglas, Laxey, Lonan, Marown, Onchan and Santon. Work will be starting on this plan soon.

**South** - Covering Arbory, Castletown, Malew, Rushen, Port Erin and Port St Mary. The Area Plan for the South has been adopted by the Department of Infrastructure and was approved by Tynwald on 20 February 2013.

**West** - Covering German, Michael, Patrick and Peel. Work has not started on this plan.

¹ Housing Policy 3 has been updated in the Draft Isle of Man Strategic Plan 2015
Local Plans

Until the Area Plans achieve full coverage of the Island, the existing approved Local Plans and the remaining parts of the 1982 Order, (which have effect as an Area Plan) shall remain in force.

Links to all of the local plans can be found on the Local Plans webpage

<table>
<thead>
<tr>
<th>Area</th>
<th>Date approved</th>
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<tbody>
<tr>
<td>Peel</td>
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<td>Braddan</td>
<td>1991</td>
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<tr>
<td>Kirk Michael</td>
<td>1994</td>
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<td>Douglas</td>
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<td>Ramsey</td>
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<td>Foxdale</td>
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<td>Sulby</td>
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<td>Onchan</td>
<td>2000</td>
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<tr>
<td>Laxey and Lonan</td>
<td>2005</td>
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</tbody>
</table>

Development Orders

Government may determine that there is a need to release land for development ahead of the preparation of an Area Plan. In order to do this a Development Order can be prepared - Current Development Orders.

Other Planning Policy Documents

A range of other planning policy documents exist in the form of Interim Planning Guidance, Development Briefs and Planning Circulars.

The non-statutory Central Douglas Masterplan was prepared and approved in Tynwald to facilitate long term development in the area. It provides a general framework/strategy for the development of central Douglas but it is not a statutory document. It is to be taken into account as a material consideration when applications are being determined. It will also inform the Area Plan for the East.

The development of a Ronaldsway Master Plan is also underway.
5. NEIGHBOURHOOD/COMMUNITY PLANS

There is no equivalent to Neighbourhood / Community Plans in Isle of Man planning legislation.

Leave to introduce was given recently to allow an MHK to prepare and introduce a bill which if passed might introduce such a regime.

6. NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

There is no specific legislation or policy which refers to ‘Nationally Significant Infrastructure Projects’.

However Section 11 of the 1999 Act states:

(1) If it appears to the Council of Ministers that an application made to the Department for planning approval —

(a) raises considerations of general importance to the Island, or

(b) for some other reason ought not to be determined by the Department,

the Council of Ministers may direct that the application shall be referred to and determined by it.

The Department only recalls this happening on two occasions and application for a tipping facility at the Point of Ayre and the initial planning application for the site of a major supermarket.

Large scale developments in the Isle of Man prompt extensive media coverage and parliamentary debates on such schemes are common. For example:

- the IRIS waste water scheme
- Energy from Waste plant
- the Manx Electricity Authority Pulrose power station natural gas turbine upgrade
- Peel marina
- the airport runway extensions
- The Nunnery
- Douglas Promenade reconfiguration
- Telecommunications masts
- Laxey Bridge replacement
However rarely do such schemes fall within the remit of Section 11(1) of the Town and Country Planning Act 1999

7. NEIGHBOURHOOD DEVELOPMENT ORDERS/COMMUNITY RIGHT TO BUILD ORDERS

There is no equivalent to neighbourhood development orders or community right to build orders in the Isle of Man.

8. PERMITTED DEVELOPMENT RIGHTS

All development\(^2\) on the Isle of Man requires planning permission with exception of those works specifically excluded by legislation. Development which may be carried out without need for submitting a formal planning application is referred to as ‘permitted development’. The extents of permitted development are set down in the various Permitted Development Orders\(^3\), several of which have been issued in recent years

All the criteria set out in the various Permitted Development Orders must be met before commencing any works. Failure to comply in all aspects will result in a breach of planning control and enforcement action may be initiated.

The Department has provided guidance on the Government website\(^4\) to assist applicants in determining the levels of permitted development. There is also an interactive house to assist users.

Demolition

In accordance with Section 6(2)(e) of the Act, demolition of part of a building where ‘part’ is to be retained is defined as development and will require planning approval. Where a building is registered or situated within a conservation area, registered building consent and planning permission may also be required prior to any proposed demolition.

\(^2\) Development is defined within the Town and Country Planning Act 1999 Section 6.


9. USE CLASSES

Planning legislation controls the use of land and buildings as well as its appearance. The Town and Country Planning (Permitted Development) Order 2012 puts uses of land and buildings into various categories known as “Use Classes”.

There are currently 8 use classes defined within the Order, which are as follows:

- Class 1 Shops
- Class 2 Financial and professional services
- Class 3 Food and drink
- Class 4 Offices
- Class 5 Research and development, light industry
- Class 6 Storage or distribution
- Class 7 Hotels and hostels
- Class 8 Hospitals, nursing homes and residential institutions

In 2014 the Government issued a consultation on the revision of the use classes and associated permitted changes of use. It wanted to streamline the planning legislation to cut bureaucracy, and to provide greater clarity to the public and businesses alike. The Consultation on the revision of the use classes and associated permitted changes of use - consultation document set out proposals for a revised set of use classes and a revised set of permitted development rights (allowing certain changes of use to occur without the need to obtain planning approval). The consultation period was 28th November 2014 – 9th January 2015.

The drafting of the revised Use Classes and Permitted Development Orders is currently being progressed.

10. PLANNING CONDITIONS

A Planning application will either be approved with appropriate conditions if necessary, or refused. In either circumstance reasons for the decision will be given and based on relevant planning issues and policy.

Planning conditions are usually recommended by the planning officer who assesses the application. The decision on whether or not to approve an application will either be made by a planning officer in accordance with the delegation scheme, by the Planning Committee or, if it is a Departmental Planning application, by the Council of Ministers. The criteria for the level of determination are explained in the Standing Orders of the Planning Committee.
11. ADVERTISEMENT CONSENT

Applications for adverts follow a similar process to planning applications and are determined in the same way as planning applications.

12. ENVIRONMENTAL IMPACT ASSESSMENTS

Environmental Impact Assessment (EIA) describes a procedure which systematically draws together the assessments of the likely environmental effects of a project. This procedure has become a familiar part of the planning process where significant projects or particularly sensitive sites are involved.

In the Strategic Plan 2007, there was a specific requirement for EIA for the first time. The principles to be followed, which are essentially the same as those in operation in other administrations, are set out in Environment Policy 24\(^5\) and explained further in Appendix 5.

There is a long term aspiration to issue a Planning Policy Statement, specifying the manner in which it is intended to deal with planning applications which should be subject to EIA, this has yet to be published however the interim measures identified in the Strategic Plan have been consistently applied.

13. APPEALS/PLANNING INSPECTORATE

Planning Appeals administration in the Isle of Man is governed by Article 8 of the Town and Country Planning (Development Procedure)(No2) Order 2013 and appeals are managed by the Cabinet Office.

Once a planning application has been determined a formal notice of the decision will be issued as soon as is practical after the decision has been made. The notice will include the conditions of any approval or the reasons for refusal. The decision issued will only become final as soon as the time for requesting an appeal has expired or any appeal has been determined, whichever is later.

\(^5\) This policy remains unchanged in the Strategic Plan 2016
A decision notice is issued to the applicant or their agent and a letter sent to all other parties who contributed to the consideration of the application. Guidance is included in the decision notice and letter advising the recipient 1) whether they have been accorded powers to appeal the decision should they wish to, and 2) how to lodge an appeal.

In the case of a refusal the decision notice to the applicant or their agent will be accompanied by a copy the officer’s report.

Unlike UK jurisdictions, the Isle of Man has a third party right of appeal against planning approvals or refusals by parties whom have been afforded interested party status. The policy for assigning party status is set down in Government Circular 46/13.

Only the applicant or those with interested party status may appeal against a decision made.

An appeal must be in writing to the Department, signed by the Appellant, and submitted within 21 days of the date of the Notice. A fee is payable to submit a Planning Appeal.

Appeals can be determined based upon written statements or at a public hearing which applicants and interested parties can attend.

Unlike some UK jurisdictions planning inspectors do not determine planning appeals. All Planning Appeal decisions are made by the Minister of the Department responsible for Planning after the independent planning inspector report with recommendations has been reviewed.

A schedule of planning appeals is published online.  

14. ENFORCEMENT

Whilst there is provision for prosecuting for ‘development’ without planning approval, the main purpose of planning enforcement is seen as resolving the breach using a policy which can be summed up as 'meet, talk, explain and persuade'. It is the cessation of the breach that is important, and an amicable solution is the best solution.

In almost all cases, the submission of a retrospective application seeking to regularise the breach is allowed. Only after the planning process has been exhausted will formal

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enforcement procedures, by the serving of an Enforcement Notice or the initiation of Legal Proceedings, usually be considered.

It should be remembered that, in almost every breach, there are two or more parties, the offender and the person(s) being affected by the breach. It is unlikely that, when a matter is resolved, all parties will be satisfied with the outcome.

Should an offender fail to respond by compliance with, or appeal against, the requirements set down by the issue of a Requisition of Information, Enforcement or Stop Notice, within the period set by that Notice, they will be deemed to be guilty of an offence. Accordingly, the case can be referred immediately to the courts for prosecution and the person may be liable on summary conviction to a fine not exceeding £20,000.

In determining the amount and imposition of any fine the Court shall have particular regard to any financial benefit which may have accrued or appears likely to have accrued by the consequence of the offence.

15. COMMUNITY INFRASTRUCTURE LEVY/DEVELOPER CONTRIBUTIONS

There is no equivalent to the Community Infrastructure Levy in the Isle of Man, which is a general levy on all development.

However in certain circumstances Section 13 Agreements are the equivalent of Section 106 Agreements in England. Section 13 in the 1999 Act includes a power for the Department to enter into an agreement to regulate the development of land and this may include ‘provisions of a financial character’.

Legal agreements under Section 13 of the Town and Country Planning Act 1999 have been required for securing an obligation for the provision of:

- Affordable housing
- public open space: or
- an obligation based upon and unusual to the merits of the application as presented.

16. PLANNING ADVICE SERVICES

Government intends that any general planning enquiry can be satisfied by use of the comprehensive website. Contact can also be made directly with the relevant Department of Government:

Department of Environment Food & Agriculture for:
• Development Management
• Planning Enforcement
• Conservation & Design
• Building Control

Cabinet Office for:

• Planning policy
• Designation of conservation areas

Department of Infrastructure for:

• Mapping

Planning Policy

Planning Policy advice is available from officers either verbally by phone or in person by appointment and documents are available documents on the planning and building control webpage.

All Local and Area Plan maps are published on the planning webpage and this includes any draft maps.

Development Management (Planning Applications)

A comprehensive set of planning advice leaflets is available from the Government website.7

An interactive online service allows the general public to explore the planning and building control regulations and requirements with respect to a domestic house.8

17. FUTURE CHANGES

The draft Isle of Man Strategic Plan 2015 and the pending area plans in the North, East and West are awaited. The pending area plans will supersede the local plan written statements and maps within the 1982 Development Plan. The pending revised use classes will be progressed by the Department of Environment Food and Agriculture.

8 http://www.myhouse.im/
A review of the planning system is in its early stages and is being led by the Environment and Infrastructure Committee of the Council of Ministers. It is intended that any recommendations from the review will be brought to Tynwald for debate in July 2016.

18. FURTHER INFORMATION

Further information is published on the Planning and Building Control webpage\(^9\) of the Government website.

APPENDIX 1 PLANNING & BUILDING CONTROL LEGISLATION (INCLUDING PLANNING POLICY)

Planning

Primary legislation:

The Town & Country Planning Act 1999

Subordinate supporting planning legislation:

Town and Country Planning (Development Procedure)(No 2) Order 2013
Town and Country Planning (Permitted Development) (Temporary Use or Development) Order 2015
Transfer of Planning and Building Control Functions Order 2015
Town and Country Planning (Development Procedure) Order 2005
Town and Country Planning (Development Procedure) Order (No.2) 2013
Town and Country (Permitted Development Order) 2012
The Control of Advertisements Regulations 2005
Town and Country Planning (Control of Advertisements) Regulations 2013
Town and Country Planning (Registers) Regulations 2005
The Town and Country Planning (Certificates of Lawful Use or Development) Regulations 2005
The Town and Country Planning (Certs of Lawful Use or Development)(Amendment) Regs 2005
Planning and Waste Disposal (Concurrent Proceedings) Regulations 2005
The Town and Country Planning (Freeport Development) Order 2005
Town and Country Planning (Permitted Development) (Telecommunications) Order 2013
Town and Country Planning (Registered Buildings) Regulations 2013
Cabinet Office (Creation of New Department and Transfer of Planning Policy Function) Order 2015
Town and Country Planning (Application and Appeal Fees) (No.2) Order 2015
Town and Country Planning (Ballakilley, Bride) Development Order 2012
The Town and Country Planning (Island Planning Forum) Regulations 2006
The Town and Country Planning (Isle of Man Strategic Plan) Order 2007
Town and Country Planning (Area Plan for the South) Order 2012
The Laxey and Lonan Area Plan Order 2005

Delegations
05-15 Minister to Director of P&BC
06-15 Minister to Head of BC
07-15 Minister to Head of Devt Management
09-15 Minister to Chair of Planning Committee
10-15 Minister to Ministerial Planning Advisor
11-15 Minister to Senior Planning Officers
12-15 Minister to Building Control Officers
13-15 Director of P & BC in absentia
19-15 Minister to Planning Committee

Please note also, that there are 2 sets of Certificates of Lawful Use or Development Regulations; the Regulations approved by Tynwald in May 2005 and the Regulations, containing a minor amendment, approved by Tynwald in October 2005.

Where legislation from 2005 has been replaced by legislation in 2013, both instruments will remain valid whilst applications continue to be processed in compliance with the version of the Order or Regulation under which they were submitted.

Government Circular - Determination of interested person status
DEFA Standing Orders 04/2015 (Planning Committee)
Building Control

Primary Legislation

Building Regulations 2007
Building Regulations 2014
The Building Control (Approved Documents) Order 2007
Building Control Act 1991

Secondary Legislation

Building Regulations 2014
The Building Control (Approved Documents) Order 2014

Downloadable Approved Documents

Approved Document A – 2004
Approved Document B – 2000 with 2002 amendments
Approved Document C – 2004
Approved Document D
Approved Document E – 2003
Approved Document F – 2010
Approved Document G – 2010
Approved Document J – 2010
Approved Document K – 1998
Approved Document L1A – 2010
Approved Document L1B – 2010
Approved Document L2A – 2010
Approved Document L2B – 2010
Approved Document M – 2004
Approved Document N – 1998
Approved Document P – 2006
Approved Document 7
BRE 262 – Thermal Insulation – Avoiding Risks
Domestic Building Compliance Guide – 2010
Non-Domestic Building Compliance Guide – 2010
Water Efficiency Calculator for New Buildings (pdf)
Main Changes in Building Regulations 2014

Fees Order
Building (Fees) Amendment Regulations 2013

Exempt Buildings and Work
Guidance for replacement windows, doors, roof lights and roof windows

Demolitions
A Guide to Demolitions (Building Control Act 1991)
APPENDIX 6

Mr Philip Donald and
Mrs Kirrie Anne Jenkins
additional material received
20th April 2016
18th April 2016

Mrs J Corkish

Select Committee on
Planning & Building Control (Petition for Redress)
Legislative Building
Douglas
IOM IM1 3PW

British Isles

Dear Mrs Corkish,

Further to your email request of the 11th April, please find enclosed copies of correspondence in relation to pre-planning advice, along with the planning officers reports etc.

For ease I have bundled them to distinguish between the three separate planning applications.

In respect of our first planning application 12/00118/B (and associated 12/00119/B) I have discovered this morning that despite Mr Chris Balmer confirming to our agent on 20 December 2011 that the Planning Committee would make the final decision it appears from Ms Dawn Foster’s email 18 April 2016 that this was not the case. The letter of refusal was signed by Mrs C Dudley, Deputy Secretary to the Planning Committee, so we had missed the remark that the decision was made by a Senior Planning Officer. We apologise for any confusion this may have caused, we were not as familiar with procedures 5 years ago as we are now!

If you require anything further please do not hesitate to contact us.

Yours sincerely

Mr & Mrs Jenkins
Dear Kirrie

Thank you for your email. Unfortunately the two planning application numbers you mention were not referred to Planning Committee in 2012.

Thank you and kind regards

Dawn Foster

Mrs Dawn Foster  
Technical Officer  
Planning & Building Control Directorate  
Department of Environment, Food & Agriculture (DEFA)  
Murray House  
Mount Havelock  
Douglas  
Isle of Man  
IM1 2SF

Tel: (01624) 685919 

Any views expressed in this email are those of the officer only and are without prejudice to any formal decision made under the provisions of the Town and Country Planning Act 1999 and any relevant secondary legislation.

Please don't print this email unless you really need to

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From: Kirrie Jenkins  
Sent: 15 April 2016 16:36  
To: DEFA, Planning  
Subject: RE: Planning committee minutes

Thank you, could you also please send me the copy for app ref 12/00118/B and 12/00119/B

Regards

Kirrie
Kirrie Jenkins

From: Corlett, Sarah
Sent: 23 November 2011 11:53 am
To: FW: Clybane Mount Gawne Road PSM
   Clybane proposals.docx

Dear Kirrie and Philip,

Chris is off sick at the moment so I'll try to help. I am familiar with the site.

I think the change of use of the land to the rear would be less contentious if the line went straight across to the west rather than stepping out into the field which would effectively take the curtilage further back than that of the property alongside which could lead to unneighbourliness. The Planning Committee will require justification for the extension of the residential curtilage into the open space land and if this is likely to result in unneighbourliness this may not be considered favourably.

I don't know whether Chris explained the policy background to you but the policy which will be applied to your proposal is as follows:

Housing Policy 14: "Where a replacement dwelling is permitted, it must not be substantially different to the existing in terms of siting and size, unless changes of siting or size would result in an overall environmental improvement; the new building should therefore generally be sited on the "footprint" of the existing, and should have a floor area which is not more than 50% greater than that of the original building (floor areas should be measured externally and should not include attic space or outbuildings). Generally the design of the new building should be in accordance with Policies 2-7 of the present Planning Circular 3/91 (which will be revised and issued as a Planning Policy Statement). Exceptionally, permission may be granted for buildings of innovative, modern design where this is of high quality and would not result in adverse visual impact; designs should incorporate the re-use of such stone and slate as are still in place on the site, and in generally, new fabric should be finished to match the materials of the original building.

Consideration may be given to proposals which result in a larger dwelling where which involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design and or siting, there would be less visual impact."

In this case there is potential for flexibility on size and location in that the existing property is not attractive and is very close to the one alongside. You will need to provide information on the existing floor area measured externally in square metres and that of the proposed dwelling measured similarly and the Planning Committee will make a judgement on whether any increase is justified by improved design or less impact. Without this information it's a little difficult to make any comments on the proposal as shown.

Perhaps you could provide some additional information and I will get back to you.

Sarah

From: Connan, Marie On Behalf Of Balmer, Chris
Sent: 23 November 2011 11:38
To: Corlett, Sarah; Holmes, Anthony
Subject: FW: Clybane Mount Gawne Road PSM

Hi Guys,

Another one in Chris' emails, this is the call Angela spoke to Sarah about. Can you respond or ask someone else to?

Thank you and Kind Regards
Marie Conlan

Miss Marie Conlan
Senior Secretary
Department of Infrastructure
Planning and Building Control Division
Murray House
Mount Havelock
Douglas
Isle of Man
IM1 2SF

Contact:
Tel: 01624 685920
E-mail:

Please consider the environment and only print this email if you really need it.

Kirrie Jenkins

From: Kirrie Jenkins
Sent: 10 November 2011 15:06
To: Balmer, Chris
Subject: Clybame Mount Gawne Road PSM

Dear Mr Balmer

Further to our telephone conversation some 3 weeks ago I am pleased to say we have completed on the purchase of Clybame, Mount Gawne Road and would appreciate being able to chat through our proposals when convenient. In the meantime, as I am sure you are very busy we attach a rough outline which shows the area of the proposed new boundary walls (white line) and the proposed footprint of the new dwelling (red).

Before we go to the expense of engaging an architect and applying for change of use from agricultural land to residential we would welcome your views as we are flexible and open to suggestions.

Many thanks,

Yours sincerely

Philip and Kirrie Jenkins
Hi Philip & Kirrie, further to our meeting yesterday & brief chat, you will no doubt have received by email the amended drawings, that have also been sent to Chris Balmer.

As suggested I have attached my account to date.

On receipt of any further comment from Chris, I will update you.

May I take this opportunity to thank you for choosing my practice to assist you with this project & assure you of our prompt attention at all times.

With best wishes for Christmas & the New Year

Martyn Hobson - Director

ArchTec

The Architectural Studio, 2nd Floor, 20 Duke Street, Douglas, Isle of Man, IM1 2AY
T: 01624 622122
M: 07624 498099
E: archtec@wm.im

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Hi Martyn,

Further to our telephone conversation, I can confirm the site (area) is not zoned as being residential either in the 1982 Development Plan or the Modified Draft Area Plan for the South. Consequently, Housing Policy 14 would be required to be considered which states:-

"Housing Policy 14: Where a replacement dwelling is permitted, it must not be substantially different to the existing in terms of siting and size, unless changes of siting or size would result in an overall environmental improvement; the new building should therefore generally be sited on the "footprint" of the existing, and should have a floor area\(^{(1)}\), which is not more than 50% greater than that of the original building (floor areas should be measured externally and should not include attic space or outbuildings). Generally, the design of the new building should be in accordance with Policies 2-7 of the present Planning Circular 3/91, (which will be revised and issued as a Planning Policy Statement). Exceptionally, permission may be granted for buildings of innovative, modern design where this is of high quality and would not result in adverse visual impact; designs should incorporate the re-use of such stone and slate as are still in place on the site, and in general, new fabric should be finished to match the materials of the original building.

Consideration may be given to proposals which result in a larger dwelling where this involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design or siting, there would be less visual impact."

I have not calculated the percentage increase, but I suspect the proposal is above 100% increase? As indicated by the policy, dwellings larger than 50% can be allowed if the existing dwelling is of poor form being replaced by a more traditional property, i.e. as you are proposing. I cannot give you a percentage increase that would be allowed, especially as the Planning Committee would make the final decision in this case and are very keen on applying HP 14, strictly.

I would strongly suggest that you try keep the main aspect of the dwelling within the existing curtilage. You can also argue that the new access gate is to provide a better visibility and therefore the new drive/hardstanding/garage requires to be where you are proposing.

The attic space as proposed (usable living accommodation) would also be calculated in the new floor area. I would also suggest you detached the garage from the dwelling as the attached garage floor area would be calculated in the floor area (detached garage wouldn’t be).

You should submitted a statement why you believe a larger dwelling complies with Housing Policy 14. On main point I would suggest to help your case is that the dwelling is read as being part of a existing group of dwellings, some of which are very large. The property is not within the open countryside where a enlarged dwelling can be very apparent.

05/01/2012
Arch-Tec (IOM) Ltd
The Architectural Studio
2nd Floor
20 Duke Street
Douglas
IM1 2AY

In pursuance of powers granted under the above Act and Order the Department of Infrastructure does hereby REFUSE the following application made on behalf of:

Name: Mr Philip & Mrs Kirrie Jenkins
Proposal: Erection of a replacement dwelling, extension of residential curtilage into part of fields 414177 and 414179 and creation of new vehicular access from existing field access
at: Clybane
Mount Gawne Road
Port St. Mary
Isle Of Man
IM9 5LX

which was considered on 23rd April 2012, for the reasons set out below.

Date of Issue: 23rd April 2012

Murray House
Mount Havelock
Douglas

Mrs C Dudley
Deputy Secretary to the Planning Committee

REASON(S) FOR REFUSAL:

1. The proposed dwelling would result in a substantial increase over the floor area of the existing dwelling and would represent a much larger, taller building, with a substantial residential curtilage resulting in a dwelling which is significantly more prominent within the landscape. As such the proposal fails to comply with the provisions of Housing Policy 14 of the Isle of Man Strategic Plan and would be significantly detrimental to the visual amenities of the area.

2. The size of the proposed dwelling would result in an increase in the existing residential curtilage which would represent an unwarranted encroachment into the countryside, to the detriment of the character of the landscape contrary to Environmental Policy 1 and 2.

This decision was made by a Senior Planning Officer in accordance with the authority delegated to them under Article 3(13) of the Town and Country (Development Procedure) Order 2005.
PLANNING REPORT AND RECOMMENDATIONS

Application No. : 12/00118/B
Applicant : Mr Philip & Mrs Kirrie Jenkins
Proposal : Erection of a replacement dwelling, extension of residential curtilage into part of fields 414177 and 414179 and creation of new vehicular access from existing field access
Site Address :
Cybane
Mount Gawne Road
Port St. Mary
Isle Of Man
IM9 5LX

Case Officer : Mr Chris Balmer
Photo Taken : 15.02.2012
Site Visit : 15.02.2012
Expected Decision Level : Officer Delegation

Officer's Report

1.0 THE SITE
1.1 The site represents part the residential curtilage Cybane, Mount Gawne Road, Port St. Mary and part of fields 414179 & 414177 all of which is located on the northern side of Mount Gawne Road and north of Gansey Promenade.

1.2 The existing dwelling Cybane is a single storey ‘L-shaped’ property which includes a single storey timber outbuilding to the west of the dwelling. To the rear of the site is open agricultural land. To the east is Seahaven another detached property, albeit two storey, and to the south on the opposite side of Mount Gawne Road is the recently completed property Seascape which is a large two storey detached property.

1.3 Field 414179 which is to the northwest of the site also fronts onto Mount Gawne Road. This is a parcel of land which currently does not appear to be used for agricultural purposes (i.e. keeping of animals/crops). Currently, it has an access track running through the field from the existing field gate (accessed from Mount Gawne Road) to the field to the north of the application site Field 414177, which also forms part of the proposed domestic curtilage of the replacement dwelling.

2.0 PROPOSAL
2.1 The application seeks approval for the erection of a replacement dwelling. The proposed dwelling has the proportion and form of a Manx Traditional Farmhouse design, albeit projecting gable end walls to the front and rear elevations, which would have large amounts of glazing which would give the dwelling a more contemporary design.

2.2 The two storey dwelling would have a width of 12.2 metres, a depth of 16.5 metres (includes the front and rear gable end projections) and a ridge height of 8.8 metres. Furthermore, the main two storey aspect of the dwelling would be flanked with single storey wings which would give the overall width of the entire dwelling of 23.4 metres.

2.3 The proposal would be sited to the northwest of the existing dwelling footprint with only a small part of the eastern side single storey links being on part of the existing footprint.
2.4 The proposal also includes the alteration of the existing field gate which currently serves fields 414179 & 414177, as this is proposed to become the new access for the proposed dwelling. The existing access is to be blocked up.

2.5 The existing residential curtilage has an approximate area of 355 square metres. To incorporate the new dwelling, driveway and garden areas this results in a change of use of field 414179 and a section of field 414177 (approx 25 metres in depth with a width of 17 metres) both to residential use, resulting in a new curtilage of approximately 1421 square metres (i.e. 1066 square metres increase).

3.0 PLANNING STATUS
3.1 The application site is within an area recognised as being an area of 'White Land', under the Isle of Man Development Plan Order 1982. The site is not within an Conservation Area but is recognised as being within an area zoned as High Landscape or Coastal Value and Scenic Significance.

3.2 Due to the zoning of the site, and the nature of the proposed development, the following Planning Policies are relevant in the consideration of the application:-

"Housing Policy 14: Where a replacement dwelling is permitted, it must not be substantially different to the existing in terms of siting and size, unless changes of siting or size would result in an overall environmental improvement; the new building should therefore generally be sited on the "footprint" of the existing, and should have a floor area(1), which is not more than 50% greater than that of the original building (floor areas should be measured externally and should not include attic space or outbuildings). Generally, the design of the new building should be in accordance with Policies 2-7 of the present Planning Circular 3/91, (which will be revised and issued as a Planning Policy Statement). Exceptionally, permission may be granted for buildings of innovative, modern design where this is of high quality, and would not result in adverse visual impact; designs should incorporate the re-use of such stone and slate as are still in place on the site, and in general, new fabric should be finished to match the materials of the original building.

Consideration may be given to proposals which result in a larger dwelling where this involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design or siting, there would be less visual impact."

"Environment Policy 1: The countryside and its ecology will be protected for its own sake. For the purposes of this policy, the countryside comprises all land which is outside the settlements defined in Appendix 3 at A.3.6 or which is not designated for future development on an Area Plan. Development which would adversely affect the countryside will not be permitted unless there is an over-riding national need in land use planning terms which outweighs the requirement to protect these areas and for which there is no reasonable and acceptable alternative."

"Environment Policy 2: The present system of landscape classification of Areas of High Landscape or Coastal Value and Scenic Significance (AHLV's) as shown on the 1982 Development Plan and subsequent Local and Area Plans will be used as a basis for development control until such time as it is superseded by a landscape classification which will introduce different categories of landscape and policies and guidance for control therein. Within these areas the protection of the character of the landscape will be the most important consideration unless it can be shown that:

(a) the development would not harm the character and quality of the landscape; or
(b) the location for the development is essential."

4.0 PLANNING HISTORY
4.1 The following planning applications are considered relevant in the assessment and
determination of this application:

4.2 Re-location of field access - 12/00244/B – PENDING CONSIDERATION

4.3 Erection of a detached garage and stable - 12/00119/B – PENDING CONSIDERATION

5.0 REPRESENTATIONS
5.1 Rushen Commissioners have no objection to the application but make the following
comments:–

"However, although it is not a planning consideration, the Commissioners would like it pointed
out to the developers that it would be considerate to those using this very narrow road and
especially to the neighbours, if off road parking could be found for at least some of the
construction vehicles. When the replacement dwelling was built at the Dolphins plot opposite,
the whole of the road from the corner almost to the junction was full of builders vans and
lorries. Sometimes the neighbours couldn’t get in and out of their driveways."

5.2 The Department of Transport Highway Division do not oppose the application.

5.3 The Manx Electricity Authority and the Isle of Man Water and Sewerage Authority have
made no comments to the merits of the application but ask for an informative note is attached
to any approval.

5.4 The owners/occupiers of Seascape, Mount Gawne Road, Port St Mary have made no
comment to the application but ask they be given party status given their property is directly
adjacent to the application site.

6.0 ASSESSMENT
6.1 The property lies within an area not designated for development and thus, the
provisions of Housing Policy 14 of the Strategic Plan should be applied, which requires that
replacement dwellings should not exceed an additional 50% of the existing floor area and that
the new dwelling should generally be of a traditional design in line with Planning Circular 3/91.

6.2 The existing dwelling has a footprint of approximately 73.9 square metres, and the
proposed dwelling would have a total footprint of approximately 337.2 square metres. This
equals to a total increase of approximately 356% over the original building. Additionally, the
proposal would not be on the existing footprint, but located to the northwest of the existing
dwelling, a maximum distance away of 20 metres.

6.3 It should be noted that the existing timber outbuilding/shed (approximately 20 sqm)
has not been included in the calculation as the building is regarded as an outbuilding and
Housing Policy 14 is very clear that outbuildings should not be measured in the calculation.

6.4 For these reasons the proposal would clearly not comply with the first paragraph of
Housing Policy 14 in terms of the percentage increase or the siting of the dwelling.

6.5 However, the second paragraph of Housing Policy 14 does allow for exception. The
exception allows for larger dwellings where this involves the replacement of a dwelling of poor
form with one of more traditional character; or where its siting and design there would be less
visual impact.

6.6 The existing dwelling is a single storey property with a shallow roof and clad with white
uPVC panelling. There are two small flat roof extension (porch & lounge) undertaken in the
past which do not improve the visual appearance of the property. The windows are of a
modern design (top/side hung casements windows). Overall, it is considered the dwelling has

19 April 2012  12/00118/B  Page 3 of 7
no architectural merit either in appearance or construction and is not of a traditional character. Therefore it is a dwelling which could be considered to be of poor form.

6.7 No argument is made by the applicant why such a larger dwelling should be permitted. Given the significant size increase in terms of footprint and height it cannot be argued that the proposal would have less visual impact. Therefore the only other aspect of Housing Policy 14 which the proposal might comply with is because it is replacing an existing dwelling of poor form with one of a more traditional character.

6.8 As indicated previously it is consider the existing to be of poor form and the proposal in terms of form could be considered to be of a traditional nature. However, given the projecting two storey glazed gable ends (especially to the front elevation which is most noticeable) the proposal would not be considered to be entirely traditional as indicated within Planning Circular 3/91.

6.9 At this stage it is perhaps important to note the context of the existing streetscape which the proposal would form part of. The site is located at one end of existing built development which runs along the northern side of Mount Gawne Road and continues along Shore Road to the east.

6.10 The properties in this area of made up of varies designs, styles and sizes ranging from large detached two and single storey properties, a two storey apartment block, to dormer bungalow properties.

6.11 It is also important to note the properties along the southern side of Mount Gawne Road. Directly opposite the application site is the property ‘Seascape’ which is large two storey property which has been recently constructed. The proposal follows similar lines to this property in terms of a tradition form, but with the use of large expanses of glazing and glazed gable ends. To the south of ‘Seascape’ is the former Motorlands Garage Site along Shore Road which has recently been granted approval in principle for three detached properties. To the west of ‘Seascape’ is the property ‘The Mount’ which is a large two storey traditional property set in large grounds. It should be noted that the properties on the southern side of Mount Gawne Road are recognised as being ‘existing residential use’ and therefore Housing Policy 14 is/was not required to be considered.

6.12 The main views of the proposed dwelling would be from Mount Gawne Road ranging from close views to the east and more distance views across the fields from the northwest of the site. Views obtained from the northwestern of the site would be of the proposed dwelling, but also the extended curtilage into the open fields to the rear of the site. It is worth highlighting that a number of properties along Shore Road have benefited from planning approval to modestly increase their rear gardens into the previous agricultural fields. This has resulted in a continuous straight line of domestic curtilages.

6.13 There is concern with the proposal that this would significant break this existing domestic curtilage line, as the proposal would project approximately 20 metres beyond this greatest point (Newhaven) of the existing curtilage line of the properties along Shore Road. In terms of the directly adjacent property ‘Seahaven’ to the east of the site, the proposed domestic curtilage would project 23 metres past the neighbouring rear curtilage. It is also important to note that the proposed domestic curtilage would also increase in a westerly direction approximately 35 metres at its furthest point from the western boundary of the existing curtilage. The majority of this area would accommodate the new access, driveway/turning area. There is also the proposed garage/stable, but this forms a separate planning application currently under consideration.

6.14 A further concern is that the proposed domestic curtilage projecting substantial further than the neighbouring properties but also increasing in a western direction, directly adjacent to
the public highway would not replicate the existing straight, continuous line as found to the
properties to the east. Consequently, the proposed curtilage would appear significantly
noticeable from various locations along Mount Gawne Road, projecting into the open
countryside. This would increase development into the countryside through the dwelling,
artefacts associated with day to day living, and/or a double garage/stable as proposed within
the currently application (12/00119/B). All of which would further increase the impact of the
dwelling within the landscape and would represent an significant unwarranted encroachment
into the countryside, to the detriment of the character of the landscape and street scene
contrary to planning policy.

6.15 An argument could be made that given the site forms part of the residential built
development along Mount Gawne Road and Shore Road that perhaps Housing Policy 14 is
perhaps not as relevant compared to an isolated dwelling in the open countryside.

6.16 However, whilst it is considered there is perhaps some scope for a larger dwelling and a
modest increase in curtilage, given the existing dwelling is of poor form and also given the size
of properties within the vicinity. However, it is considered the proposed significant increase in
size over the existing dwelling and significant increase in domestic curtilage, all would have a
significant impact upon the visual amenities of the area, significant increasing built
development into the countryside all of which is contrary to Housing Policy 14 of the Isle of
Man Strategic Plan.

6.17 It is also perhaps important to consider the implications of approving such an increase
of the domestic curtilage as proposed. This could set an unfortunate example, leading to
potential further applications from residents along Mount Gawne Road and Shore Road wanting
to increase their domestic curtilages by a similar amount, to the detriment of the visual
amenities and encroachment of development/domestic artefacts into the countryside.

6.18 In terms of potential impacts upon neighbouring amenities (loss of light; overbearing
impact and/or loss of light), the two properties which would be most affected by the
development would be 'Seascape' to the southwest and 'Seahaven' to the east of the site. It is
given the proposed dwellings position, orientation, height and distance from these
two properties, the proposal would have no significant impacts upon the residential amenities
to warrant a refusal.

7.0 RECOMMENDATION
7.1 In conclusion, the proposal would result in a substantially larger dwelling (approx 356% increase) both in terms of footprint but also massing given the proposal would be two storeys
and therefore taller than the existing single storey property. Furthermore, the design and
siting would result in the introduction of substantial larger dwelling in an increased prominent
position within the countryside and street scene. Under these circumstances, it is an
unacceptable form of development, and could therefore result in a significant impact upon the
visual appearance of the countryside contrary to Housing Policy 14 of the Isle of Man Strategic
Plan.

7.2 The residential curtilage as proposed, would also increase development into the
countryside through built development/artefacts associated with day to day living, furthering
the impact of the dwelling within the landscape and would represent an unwarranted encroachment into the countryside, to the detriment of the character of the landscape contrary
to Environmental Policy 1 & 2 of the Isle of Man Strategic Plan.

7.3 For these reasons set out in this report, it is considered the proposal would contravene
the relevant policies as indicated within the Isle of Man Strategic Plan and therefore it is
recommended that the application be refused.
8.0 PARTY STATUS
8.1 It is considered that the following meet the criteria of Town and Country Planning (Development Procedure) Order 2005, paragraph 6 (5) (d) and should be afforded interested party status:

Rushen Commissioners
The owners/occupiers of Seascape, Mount Gawne Road, Port St Mary

8.2 The Department of Transport Highways and Traffic Division is now part of the Department of Infrastructure of which the planning authority is part. As such, the Highways and Traffic Division cannot be afforded party status in this instance.

8.3 It is considered that the following do not meet the criteria of Town and Country Planning (Development Procedure) Order 2005, paragraph 6 (5) (d) and should not be afforded interested party status:

The Manx Electricity Authority
Isle of Man Water and Sewerage Authority

Recommendation

Recommended Decision: Refused

Date of Recommendation: 19.04.2012

Conditions and Notes for Approval / Reasons and Notes for Refusal

C : Conditions for approval
N : Notes attached to conditions
R : Reasons for refusal
O : Notes attached to refusals

R 1.
The proposed dwelling would result in a substantial increase over the floor area of the existing dwelling and would represent a much larger, taller building, with a substantial residential curtilage resulting in a dwelling which is significantly more prominent within the landscape. As such the proposal fails to comply with the provisions of Housing Policy 14 of the Isle of Man Strategic Plan and would be significantly detrimental to the visual amenities of the area.

R 2.
The size of the proposed dwelling would result in an increase in the existing residential curtilage which would represent an unwarranted encroachment into the countryside, to the detriment of the character of the landscape contrary to Environmental Policy 1 and 2.
I confirm that this decision accords with the appropriate Government Circular delegating functions to Director of Planning and Building Control / Development Control Manager/ Senior Planning Officer.

Decision Made: Refused

Date: 23/4/12

Determining officer (delete as appropriate)

Signed: Anthony Holmes
Senior Planning Officer

Signed: Sarah Corlett
Senior Planning Officer

Signed: Michael Gallagher
Director of Planning and Building Control

Signed: Jennifer Chance
Development Control Manager
Dear Mr and Mrs Jenkins,

I am happy to meet to discuss. My next availability to meet at the planning office is next Tuesday (11th) or Wednesday (12th) between 9.30am and 4pm?

Regards

Chris

---

From: Kirrie Jenkins  
Sent: 03 September 2012 12:02  
To: Balmer, Chris  
Subject: application no 12/00118/B Clybane

Dear Chris

With reference to our proposed development of the Clybane site which has been turned down at appeal.

We would like to meet with you to progress the project, please let us know when would be convenient.

Regards

Philip & Kirrie Jenkins

---

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RAAE2: S'preevaaddieb ynh chaghteraight post4 shie channelhe's caodanyt erthae curit marish as te shie coaidid ec y leigh. Che nhedin diu coipel ny cur eh dis postagh erick alley ny ymmydey ynh chiodid fyn er aghte erthae dyb lled leayt weth'n choyrlagh. Mannagh nee shie ynh ennysaagh faarli jeel'n phos4 sheet, doli-shu magh eh, my saittiu, as cur-shi fys da'n choyrlagh cha leah as oddy shiu.
Sent from my iPhone

Begin forwarded message:

From: "ArchTec IOM Ltd." <archtec@archtec.im>
Date: 14 September 2012 11:21:57 GMT+1
To: Kirrie Jenkins
Subject: Fwd: Clybane, Mount Gawne Road, Port St. Mary

Hi Martyn,

It was felt this site would not be suited for a very modern dwelling given the surrounding properties are hipped/gable ond properties. I would therefóre recommend either continue on the previous lines but smaller, or a dwelling with hipped roof (Similar to Dolphins) potential larger expanses of glazing etc, but again smaller.

It was considered a fully traditional Manx farmhouse would be inappropriate and out of keeping with this site and its surroundings.

If you do some sketches and send them to me I am happy to comment.

Regards

Chris

From: ArchTec IOM Ltd. <archtec@archtec.im>
Sent: 14 September 2012 11:02
To: Balmer, Chris;
Subject: Re: Clybane, Mount Gawne Road, Port St. Mary

Hi Chris, thanks for taking the time to meet & comment, now we have something to work with. Was there any discussion as to what may be acceptable design wise for the dwelling?

Regards

Martyn

From: ArchTec IOM Ltd. <archtec@archtec.im>
Sent: Friday, September 14, 2012 10:58 AM
To: Kirrie Jenkins
Subject: Clybane, Mount Gawne Road, Port St. Mary
Dear Martyn,

Please find attached a alternative curtilage extension as we discussed. This was agreed in consultation with the planning officers as being a reasonable extension of the existing curtilage, which would run parallel with Mount Gawne Road.

Regards

Chris

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Morning Chris – Please find attached our amended site plan drawing following approx the extent of the site suggested & a reduced building footprint that sits comfortably on the site. In positioning I have tried to be respectful to neighbouring properties & believe we need to use the site re-development constructively to improve the poor amenity & dramatic overlooking of the current dwelling.

I look forward to receiving your comments

With best regards

Martyn
Kirrie Jenkins

From: ArchTec IOM Ltd. [archtec@wm.im]
Sent: 17 October 2012 11:50 am
To: Chris Balmer; Kirrie Jenkins
Subject: Clybane

Morning Chris, I emailed you our suggested site plan for the new application....have you had the opportunity to peruse & make comment?
We look forward to hearing from you
Regards
Martyn
Dear Martyn,

Sorry for the delay in responding this is due to current workloads (colleagues leaving).

I think the positing of the dwelling is more acceptable, as is the curtilage proposed. My only suggestion is whether the curtilage to the northwest of the garage could be brought in further. It is perhaps worth you submitting a sketch of the dwelling to see how the scale and size of the property fits the site.

Regards

Chris

Chris Balmer MA (hons), MTCP, RTPI
Planning Officer
Isle of Man Government
Department of Infrastructure
Planning & Building Control Division
Murray House
Mount Havelock
Douglas
ISLE OF MAN
IM1 2SF

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Fax: 44+ (0) 1624 - 686443

Web: http://www.gov.im/transport/planning/plan/introduction.xml

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Kirrie Jenkins

From: ArchTec IOM Ltd. [archtec@wm.im]
Sent: 20 November 2012 10:12 am
To: Kirrie Jenkins
Subject: Fw: Clybene

Hi Phil & Kirrie, sorry for the short message, I am just running out for a day of site visits — Chris’s reply for your perusal, I will call you tomorrow, when I have a little more time 😊

regards
Martyn

From: Salmer, Chris
Sent: Tuesday, November 20, 2012 9:58 AM
To: ArchTec IOM Ltd.
Subject: Clybene

Hi Martyn,

I discussed the proposal with my colleagues. It was felt that the sun room should be removed and the whole dwelling moved in a southeast direction i.e. the main dwelling would be more on the existing footprint in compliance with Housing Policy 14.

Regards

Chris

Chris Balmer MA (hons), MTCP, RTPI
Planning Officer

Isle of Man Government
Department of Infrastructure
Planning & Building Control Division
Murray House
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RAAUJE: S’preesvaadajgh yn phaghtaranjht post-f shoh chammah’s coadanyn erbee curril marish as la shoh coadil ec y leigh. Cha nggin diu colpal ny cur eh
Kirrie Jenkins

From: ArchTec IOM Ltd. [archtec@wm.im]
Sent: 21 November 2012 1:25 pm
To: Kirrie Jenkins
Subject: Fw. Clybane Proposal

Hi Guys, thanks for taking the time to pop in, see below my email sent to Chris. I will revert on receipt of a reply !!!!
Regards
Martyn

From: ArchTec IOM Ltd.
Sent: Wednesday, November 21, 2012 1:23 PM
To: Chris Balmer
Subject: Clybane Proposal

Hi Chris, thanks for your email & comments. Further to, I have met with Phil & Kirrie to discuss further. Whilst it would appear we are all happy with the plot size & general dwelling design, most of the ideas we can work with, however we still have major reservations about moving the house down the site & over the existing built footprint. I must stress there is a broader picture here than purely building a new dwelling in a field. The closer we build to the existing dwelling footprint seriously effects the privacy & outlook from the proposed dwelling & we believe adversely impacts on the neighbouring properties, due to constraints of the plot & position / design of immediate properties.
I wonder at this stage if it would be prudent to meet on site again with you, Sarah & Jennifer, to try & explain our concerns & try to find some common ground in an attempt to proceed further?
Please can you suggest a convenient time for us all to meet, although Phil & Kirrie are usually on the school run mid afternoon !!!
I look forward to hearing from you
With kind regards
Martyn
Sent from my iPhone

Begin forwarded message:

From: "Cooil, Susie" <>
Date: 14 December 2012 09:33:12 GMT
To: "Balmer, Chris" <>
Cc: 
Subject: Pre advice & drawings Clybane Mount Gawne Road

Dear Chris

Mr Phil Jenkins called at 9.30am today as a follow up to pre app advice and drawings submitted by Martin Hobson with regard to Clybane Mount Gawne Road. Please email him (his address is copied in to this mail) when you get a chance to look over them and let him know your thoughts.

Thank you

Susie

Susie Cooil
Administration Officer - Planning and Building Control
Department of Infrastructure, Murray House, Mount Havelock, Douglas, IM1 2SF

Tel: (01624) 685902
Fax: 686449

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Cara: Ciochadh eis gan do chuid bhratail a chur i bhfuil eolas ar leith ar an obair a chuid, ní féidir leat eile dearcadh a mhíniú. Thosaigh do bhaint as an obair atá ann leat a dhéanamh.

Oideachtachtaidh an teaghlaich a dhuine a bhfuil eolas ar leith ar an obair a chuid, ní féidir leat eile dearcadh a mhíniú. Thosaigh do bhaint as an obair atá ann leat a dhéanamh.
Sent from my iPhone

Begin forwarded message:

From: "ArchTec IOM Ltd." <name@domain.com>
Date: 14 December 2012 10:00:41 GMT
To: <recipient@domain.com>
Subject: Fw: Clybane Drawing adjustments

Hi Phil, thanks for taking the time to contact the planners....we seem to be getting closer !!! I shall adjust the drawing as suggested within my last mail & develop a side elevation. I will try & get on with this over the weekend & have it back to him on Monday !!!

Regards

M

From:  <name@domain.com>
Sent: Friday, December 14, 2012 9:55 AM
To: <recipient@domain.com>
Subject: RE: Clybane Drawing adjustments

Hi Martyn,

Whilst I accept the point that positional the dwelling over the existing footprint brings the dwelling closer to the road, this what makes the site difficult. Overcoming one issue raise others. I personally believe for the best chance of success, that the existing dwelling should be on the existing footprint (i.e. Housing Policy 14) and should limit the amount of the extension of the residential curtilage. In terms of siting, I believe what you have shown in your last drawing would be acceptable, subject to the alterations to the rear sunroom. However, If you could please provide a side elevation when viewing from the west of the site, that would help advise further on the potential massing impact.

The Planning Committee do generally have concerns of curtilages being increase, so you will need to support your proposal with a statement indicated why this proposal is acceptable (i.e. land isn't use/suitable for agricultural, but is used as a access/ given the size of the existing dwelling and plot any re-development would likely require a curtilage extension etc).

In terms of finishes, I consider the proposals indicated in principle are appropriate.

Regards

Chris

From: ArchTec IOM Ltd. <name@domain.com>
Sent: 11 December 2012 08:31
To: Balmer, Chris
Subject: Fw: Clybane Drawing adjustments
Morning Chris, further to my last email could you let me have your comments.
Many thanks
Martyn

From: ArchTec IOM Ltd.
Sent: Friday, December 07, 2012 2:38 PM
To: Balmer, Chris
Subject: Re: Clybane Drawing adjustments

Hi Chris, thanks for your comments, I have spoken to the applicants, yes - we could reduce the sunroom projection from 4.8 metres as shown to say 3.5 metres, then the building could be moved back in to the site by 1.3 metres or so. I must add, that in positioning the building over the existing footprint, regardless of the design we are working within the narrowest part of the site & forcing the building closer to the road.
With regard to finishes, I would suggest smooth rendered walls with dark grey raised render reveals, with the introduction of cedar vertical boarding panels, white upvc windows / doors & a dark grey plain concrete roof tile, not dissimilar to the neighbouring dwelling.
Regards
Martyn

From: Balmer, Chris
Sent: Friday, December 07, 2012 2:14 PM
To: ArchTec IOM Ltd.
Subject: RE: Clybane Drawing adjustments

Hi Martyn,

It is better, although because the sun room is attached to the rear, the two storey building is close to the road, and I am unsure of the impact of the massing when viewing from the road. Could the sun room be removed, or could it run along the majority of the rear elevation and therefore reduce the depth (i.e. rectangle in shape rather than square). This would enable the dwelling to be pushed back into the site, reducing the impact?

Do you have an information regarding the proposed finishes?

Regards

Chris

From: ArchTec IOM Ltd. [mailto:archtec@iom.int]
Sent: 07 December 2012 13:57
To: Balmer, Chris
Subject: Fw: Clybane Drawing adjustments

Hello Chris, did you get the opportunity to look over this one again ?
Cheers
Martyn

From: ArchTec IOM Ltd.
Sent: Friday, November 30, 2012 10:29 AM
To: Chris Balmer
Subject: Fw: Clybane Drawing adjustments
Dear Chris, further to your previous mail please find attached the amended drawings, for your perusal & comment, I have moved the position of the dwelling closer to the existing footprint, as suggested the proposal is within approx 6 metres of Seahaven & loosely accords with your suggestion. you will note the sun lounge footprint has been relocated off the rear elevation, without any windows facing Seahaven. I look forward to receiving your comments

With kind regards

Martyn

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Sent from Philip's iPhone

Begin forwarded message:

From: "ArchTec IOM Ltd." <archtec@wm.iom>
Date: 6 February 2013 at 14:28:38 GMT
To: "Balmer, Chris" <>, <>
Subject: Re: 12/01683/B - Clybane, Mount Gawne Road

Hi Chris, all good thanks, similarly I hope this mail finds you well !!!
Thanks for your mail, we are delighted that the design seems to accord with your approval.
With regard to the window finish I had suggested a dark colour ( probably grey ) upvc unit –
which could be produced in a slender section, however we could use aluminium as another
option ?
I am not sure if timber will be practical in such an exposed area, however Philip suggests
they will go along with whatever you prefer, which could be conditioned as part of the
approval ?
I hope this helps
With kind regards
Martyn

From: Balmer, Chris
Sent: Wednesday, February 06, 2013 1:54 PM
To: ArchTec IOM Ltd.
Subject: 12/01683/B - Clybane, Mount Gawne Road

Hi Martyn,

Hope you are well?

I am just finalising my report ( Recommending an approval ) for the above application to go
to the next available Planning Committee Meeting on the 25th February. The only issue I
could do with more information about is the window designs/materials. I have a bit of
concern that having normal uPVC windows would detract from the appearance of the
property and wondered if uPVC was proposed or whether your clients would be open to
have alternatives?

Regards

Chris
Chris Balmer MA (hons), MTCP, RTPI
Planning Officer

Isle of Man Government
Department of Infrastructure
Planning & Building Control Division
Murray House
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Douglas
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Web: http://www.gov.im/transport/planning/plan/introduction.xml

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Wedi'i mewnfudo'n ymestyn nhw'n ôl i'w chorffo'n lwm a'u rhaglen nhw'n ôl i'w ddylnot nhw'r cyntaf, mae'n rhaid eu ddweud at y rhai'n eu llenwi'n unigwyr a'u llenwi'n gynnwyr. 

Wedi'i mewnfudo'n ymestyn nhw'n ôl i'w chorffo'n lwm a'u rhaglen nhw'n ôl i'w ddylnot nhw'r cyntaf, mae'n rhaid eu ddweud at y rhai'n eu llenwi'n unigwyr a'u llenwi'n gynnwyr.
Dear Mr & Mrs Jenkins,

Yes the application was deferred for a site visit. I don’t think so. They want to view the site/area, given the site is usual being zoned as open space, but obviously part of an existing built settlement.

I would advise, if you haven’t already, to read through my report and if you wish make any comments/highlight any points. I have argued that given the size reduction of both the house and curtilage from the last application the proposal would fit within the street scene/surrounding properties, albeit perhaps contrary to Housing Policy 14. A full explanation is in my report.

Regards

Chris

From: Kirrie Jenkins
Sent: 25 February 2013 15:30
To: Balmer, Chris
Subject: Clybene proposal Mount Gawne Road
Importance: High

Dear Chris

We understand that the application has been deferred pending a site visit, could you please let us know what the issues are and if there is anything further we can do to help.

Regards

Philip & Kirrie Jenkins

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RAAE: S’preusaidh ym châlgothmigt post-I shoch chamngh’s coadyn rhewr avert manish as ia shioch coeddit ec y leigh, Cha nhegin diur coipal ny cur agh da peagh erbee aley ny ymmyldio ym choid blyyn er agh rhewr dy n kied leasr veth’n choyrthagh. Mannaith nee shiu ym enmyssagh kierit jev’n phosol shioch, dîl-sheu magh eith, my sâllia, as cur-shiu fy sâl choyrthagh cha leath as oddy’s shiu.

Cha nev kied curtir da felwyddad ag ym jantag yvon oonser y ynooar rhewr peagh ny possan erbee leas post-I er son Rheynn ny Boaeyd Slatyssagh erbee jev Reiylis Elfan Vannin dyn co-niarlagheu scrut leasr veth Reiroyder y Rheynn ny Boaeyd Slatyssagh t’eh bentyn rhewr.
Dear Mrs Jenkins

Thank you for your email which I have copied to your application file and conveyed to the planning officer who will be accompanying the members at the site visit and be in a position to relay your points below.

It is intended to include consideration of your application on the next meeting agenda, set for March 11th at which point having visited the site the Members will be better placed to determine your application.

Kind regards

Jo Callow

Dear Ms Callow

Further to your telephone call this morning we confirm permission to enter the property known as Clybane on Monday 4th March. We also give permission for the committee to enter fields numbered 414177 and 414179 and will leave the gate open for the committee along with the door unlocked of the property itself.

Although we are aware that the committee are primarily concerned with familiarizing themselves with the street scene we would be grateful if you would pass on to the committee our wish for them to enter the property and view the impact of “Seascape” on the lounge of Clybane. It is for this reason that we have applied to move the footprint of the development and turned the property so that its main outlook is across the fields to the rear, thus affording both properties privacy. We would be obliged if the committee were reminded that Seascape is a recently built property, the previous dwelling was a single story bungalow situated on “The Mount” side of their plot and was not previously seen by Clybane, the glass gable end that now dominates the area is visible from the street affording no privacy. Likewise the property known as Seahaven adjoining the site was extended up to the boundary wall and the window permitted in the western elevation a long time after Clybane was built.

We would also like to point out that the MEA and Manx Telecom have recently been working in the area and have caused the collapse of the field boundary wall, which will be dealt with at a later date.

Kirrie & Philip Jenkins
PLANNING AUTHORITY AGENDA FOR 25th February 2013

Item 8
Proposal: Erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access from existing field access

Site Address: Clybane
Mount Gawne Road
Port St. Mary
Isle of Man
IM9 5LX

Applicant: Mr Philip & Mrs Kirrie Jenkins
Application No.: 12/01683/B
Case Officer: Mr Chris Balmer

RECOMMENDATION: To APPROVE the application

Planning Officer’s Report

THE APPLICATION IS BEFORE THE PLANNING COMMITTEE AS THE PROPOSED REPLACEMENT DWELLING WOULD BE ABOVE THE 50% THRESHOLD AND IS RECOMMENDED FOR APPROVAL.

THE SITE
1. The site represents part the residential curtilage Clybane, Mount Gawne Road, Port St. Mary and part of fields 414179 & 414177 all of which is located on the northern side of Mount Gawne Road and north of Gansey Promenade.

2. The existing dwelling Clybane is a single storey ‘L-shaped’ property which includes a single storey timber outbuilding to the west of the dwelling. To the rear of the site is open agricultural land. The east is Seahaven another detached property, albeit two storey, and to the south on the opposite side of Mount Gawne Road is the recently completed property Seascape which is a large two storey detached property.

3. Field 414179 which is to the northwest of the site also fronts onto Mount Gawne Road. This is a parcel of land which currently does not appear to be used for agricultural purposes (i.e. keeping of animals/crops), as it has an access track running through the field from the existing field gate (accessed from Mount Gawne Road) to the field to the north of the application site Field 414177 which also forms a small part of the propose curtilage of the replacement dwelling.

PROPOSAL
4. The application seeks approval for the erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access from existing field access.

5. The proposed dwelling would have an overall width (including garage) of 13.1 metres, a maximum depth of 13.9 metres and a maximum ridge height of 7.2 metres. The proposal elevations would be finished with a mixture of painted render and cedar boarding and with a dark coloured roof finish.

6. The proposal would be sited on part of the existing footprint and access to the site would be provided via an improved existing field access to field 414179. The existing access to the dwelling would be blocked up. The proposal to accommodate the new dwelling, access and turning provision and garden area would result in the extension of the residential curtilage into fields 414177 and 414179.

PC Agenda 25/2/13

57

343
PLANNING STATUS
7. The application site is within an area recognised as being an area of Open Space of 'High Landscape or Coastal Value and Scenic Significance', under the Isle of Man Development Plan Order 1982. The site is not within a Conservation Area.

8. Under the Modified Draft Area Plan for the South the site is designated as being 'Open Space'. This Plan has been adopted by the Department, but has not been adopted by Tynwald at the time of writing this report (due to be considered later in February, 2013 with effect, if approved, from 1st March, 2013).

9. Due to the zoning of the site, and the nature of the proposed development, the following planning policies are relevant in the consideration of the application:-

10. "General Policy 3 states: Development will not be permitted outside of those areas which are zoned for development on the appropriate Area Plan with the exception of:
(a) essential housing for agricultural workers who have to live close to their place of work; (Housing Policies 7, 8, 9 and 10);
(b) conversion of redundant rural buildings which are of architectural, historic, or social value and interest; (Housing Policy 11);
(c) previously developed land(1) which contains a significant amount of building; where the continued use is redundant; where redevelopment would reduce the impact of the current situation on the landscape or the wider environment; and where the development proposed would result in improvements to the landscape or wider environment;
(d) the replacement of existing rural dwellings; (Housing Policies 12, 13 and 14);
(e) location-dependent development in connection with the working of minerals or the provision of necessary services;
(f) building and engineering operations which are essential for the conduct of agriculture or forestry;
(g) development recognised to be of overriding national need in land use planning terms and for which there is no reasonable and acceptable alternative; and
(h) buildings or works required for interpretation of the countryside, its wildlife or heritage."

11. "Environment Policy 1 states: The countryside and its ecology will be protected for its own sake. For the purposes of this policy, the countryside comprises all land which is outside the settlements defined in Appendix 3 at A.3.6 or which is not designated for future development on an Area Plan. Development which would adversely affect the countryside will not be permitted unless there is an over-riding national need in land use planning terms which outweighs the requirement to protect these areas and for which there is no reasonable and acceptable alternative."

12. "Environment Policy 2 states: The present system of landscape classification of Areas of High Landscape or Coastal Value and Scenic Significance (AHLV's) as shown on the 1982 Development Plan and subsequent Local and Area Plans will be used as a basis for development control until such time as it is superseded by a landscape classification which will introduce different categories of landscape and policies and guidance for control therein. Within these areas the protection of the character of the landscape will be the most important consideration unless it can be shown that:

(a) the development would not harm the character and quality of the landscape; or
(b) the location for the development is essential."

PLANNING HISTORY
13. The following planning applications are considered relevant in the assessment and determination of this application:-
14. Re-location of field access - 12/00244/B – REFUSED

15. Erection of a replacement dwelling, extension of residential curtilage into part of fields 414177 and 414179 and creation of new vehicular access from existing field access - 12/00118/B – REFUSED at appeal on the following grounds:

"R 1. The proposal is contrary to Environment Policy 1 and Environment Policy 2 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would represent an unwarranted encouragement into the countryside to the detriment of the character of the landscape.

R 2. The proposal is contrary to Housing Policy 14 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would be detrimental to the visual amenity of the area by reason of its scale, massing and design."

16. Erection of a detached garage and stable - 12/00119/B – REFUSED on the following ground:

"R 1. Until such time as a scheme for the redevelopment of the site has been approved, it is premature to consider this application given the access, driveway, positioning of the dwelling and extension of the domestic curtilage are all interlinked with the scheme for the proposed garage and stable block."

REPRESENTATIONS
17. Rushen Commissioners have no objection to the application.

18. The Department of Infrastructure Highway Division does not oppose the application.

19. The Isle of Man Water and Sewerage Authority have made no comments to the merits of the application but ask for an informative note to be attached to any approval.

20. The owners/occupiers of Seascape, Mount Gawne Road, Port St Mary have made no comment to the application but ask they be given party status given their property is directly adjacent to the application site.

ASSESSMENT
21. The starting point when determining any application for a replacement dwelling is Housing Policy 14 of the Isle of Man Strategic Plan. This policy states that a replacement should generally be on the same footprint and should not be greater than 50% greater than that of the original building.

22. In this case the existing dwelling has a floor area of approximately 74.5 square metres, whereas the proposal would have a floor area of 313 square metres which equates to a 320% increase in floor area over the existing property. Not including the garage the proposal would have a floor area of 268.4 square metres which equates to a 260% increase in floor area over the existing property. However, this is not automatic reason for refusal of the planning application as Housing Policy 14 goes onto to state that consideration may be given to larger dwellings where this involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design or siting, there would be less visual impact.

23. It should be noted that the existing timber outbuilding/shed (approx 20sqm) has not been included in the calculation as the building is regarded as an outbuilding and Housing Policy 14 is very clear that outbuildings should not be measured in the calculation.

24. The existing dwelling is a single storey property with a shallow roof and clad with white uPVC panelling. There are two small flat roof extensions (porch & lounge) undertaken in the past which do not improve the visual appearance of the property. The windows are of
a modern design (top/side hung casements windows). Overall, it is considered the dwelling has no architectural merit wether in appearance or construction and is not of a traditional character. Therefore is it considered the existing dwelling can be considered to be of poor form.

25. At this stage it is perhaps important to note the context of the existing streetscape of which the proposal would form part. The site is located at one end of existing built development which runs along the northern side of Mount Gawne Road and continuous along Shore Road to the east. The property is not an Isolated property in the open countryside and as such the impact of the replacement should be judged accordingly.

26. The properties in this area are of various designs, styles and sizes ranging from very large detached two and single storey properties, a two storey apartment block, to dormer bungalow properties.

27. It is also important to note the properties along the southern side of Mount Gawne Road. Directly opposite the application site is the property ‘Seascape’ which is large two storey property which has been recently constructed. The proposal follows similar lines to this property in terms of a traditional form and hipped roof design, but with the use of larger expanses of glazing. To the south of ‘Seascape’ is the former Motorlands Garage site along Shore Road which has recently been granted approval in principle for three large detached properties. To the west of ‘Seascape’ is the property ‘the Mount’ which is a very large two storey traditional property set in large grounds. It should be noted that the properties on the southern side of Mount Gawne Road are recognised as being ‘existing residential use’ and therefore Housing Policy 14 is/was not required to be considered, despite only being across the road from the application site where HP14 is applicable. However, this area under the Modified Draft Area Plan for the south re-zones this area from ‘residential’ to ‘open space’.

28. The main views of the proposed dwelling would be from Mount Gawne Road ranging from close views to the east and more distance views across the fields from the northwest of the site. Views obtained from the northwest of the site would be of the proposed dwelling, but also the extended curtilage into the fields to the rear of the site. It is worth highlighting that a number of properties along Shore Road have benefited from planning approval to increase their rear gardens into the agricultural fields. This has resulted in a fairly continuous straight line of domestic curtilages.

29. Previously, there was concern with the proposal that this would significant break this existing domestic curtilage line of properties along Shore Road. This new submission has significantly reduced the proposed curtilage extension and although the curtilage would still extend into fields 414179 & 414177, the curtilage would run parallel with Mount Gawne Road, unlike the previous application which would have stepped out into the field to the rear. This extension of the curtilage would also appear as a continuation of the existing curtilages in the area and would not appear as an awkward intrusion into the rear open fields as the previous scheme appeared.

30. The applicants argue that in terms of use, Field 414179 (west of dwelling) is a small triangular parcel of land that has never been used for agricultural use (i.e. growing of crops or keeping of cattle etc). Currently, part of the area provides an access from Mount Gawne Road to field 414177, but a large part of the site is scrubland with little agricultural merit. The applicants indicate that a letter from DEFA confirms that for many years this parcel of land had a dwelling on the site, which was connected to the brewing operations in the area. The applicants indicate that following substantial research at the Marx Museum, the site formed part of ‘the Mount Estate’ (dwelling still remains along Mount Gawne Road) which included a number of workers cottages and stabling, before the site was sold to the Gansey Brewery which operated until the 1850's.
31. Studying the Department's historical mapping, there is clearly a square structure within part of field 414179, although it is not obvious what the structure was, whether as indicated by the applicants a dwelling or perhaps a small reservoir perhaps used in connection with the Brewery. Either way, the structure is not apparent from public view now.

32. In the previous appeal decision, it was indicated that there is perhaps some scope for a larger dwelling and a modest increase in curtilage, given the existing dwelling is of poor form and also given the size of properties within the vicinity. Essentially, the last application submitted was considered to be unacceptable as the dwelling proposed was too large and the curtilage extension was too great.

33. It is perhaps important to note that this site is unique: the site forms part of the residential development built development along Mount Gawne Road and Shore Road and as such, perhaps Housing Policy 14 is not as relevant compared to an isolated dwelling in the open countryside. Whilst the submission is substantially larger than the existing dwelling, the dwelling now proposed in terms of design, scale and massing would be far more in keeping with the properties along Shore Road and Mount Gawne Road resulting in a property which would sit well within the street scene. Furthermore, given the design of the property and massing, the main view of the site from the northwest, along Mount Gawne Road, would not be a prominent view, given the backdrop of this site is of existing large detached dwellings and once built the dwelling would not be read as a isolated dwelling but form part of the substantial built development along Mount Gawne Road and Shore Road. Furthermore, the Mount and ‘Seascape’ would still remain the most prominent properties in the streetscenes as viewed both from Mount Gawne Road and Shore Road.

34. In terms of potential impacts upon neighbouring amenities (loss of light, overbearing impact and/or loss of light), the two properties which would be most affected by the development would be ‘Seascape’ to the southwest and ‘Seahaven’ to the east of the site.

35. In terms of the impact upon the occupants of ‘Seahaven’, it is likely only a single dormer window within the western elevation, facing towards the application site would potential be affected by the development. This dormer window serves a lounge; however, the lounge also benefits from two larger windows to the front and rear elevations which afford the majority of light and outlook for this room. Therefore, whilst the proposal will reduce outlook and light to this dormer window, given the main sources of light and outlook are from the two windows to the front and rear elevations, it is considered this impact would be acceptable.

36. Regarding to the impacts upon ‘Seascape’ the main issue arising from the proposed development upon the occupants of the neighbouring property would be through loss of privacy. ‘Seascape’ has a large first floor glazed gable end which faces in a north-easterly direction. The proposed dwelling does face towards ‘Seascape’, albeit would not have direct views. The proposed dwelling would also be positioned at least 22 metres away from ‘Seascape’. The Planning Authority’s guidelines for directly facing windows are that a 20 metre gap should be retained to maintain adequate levels of privacy. It should be noted that this distance is usually applicable across private land, not across a public highway where people using the highway can already, to a degree, see into the property. Therefore it is considered whilst there would be the potential for more overlooking than the existing situation, it is considered given the distance and orientation of the two properties this impact would not be significant and would have result in a substantial loss of privacy. The relocation of the property would also offer increased privacy and amenity to the occupants of Seahaven to the east.

37. Overall, it is also considered given the position and height of the proposed dwelling and distance from these two properties, the proposal would have no significant impacts upon the residential amenities to warrant a refusal.
RECOMMENDATION

38. In conclusion, the proposal would result in a larger building, both in terms of footprint but also massing given the proposal would be two storeys and therefore taller than the existing single storey property. Furthermore, the design and siting would result in the introduction of a larger dwelling within the street scene. However, unlike the previous application it is considered this new submission would result in a dwelling in keeping with nearby properties within the street scene whilst having an acceptable impact upon the countryside. For these reasons set out in this report, it is considered the proposal would be acceptable and therefore it is recommended that the application be approved.

PARTY STATUS

39. It is considered that the following meet the criteria of Town and Country Planning (Development Procedure) Order 2005, paragraph 6 (5) (d) and should be afforded interested party status:

Rushen Commissioners

The owners/occupiers of Seascape, Mount Gawne Road, Port St Mary

40. The Department of Transport Highways and Traffic Division is now part of the Department of Infrastructure of which the planning authority is part. As such, the Highways and Traffic Division cannot be afforded party status in this instance.

41. It is considered that the following do not meet the criteria of Town and Country Planning (Development Procedure) Order 2005, paragraph 6 (5) (d) and should not be afforded interested party status:

Isle of Man Water and Sewerage Authority

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Recommended Conditions and Notes for Approval

C : Conditions for approval
N : Notes (if any) attached to the conditions

C 1. The development hereby permitted shall commence before the expiration of four years from the date of this notice.

C 2. This approval relates to the erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of vehicular access from existing field access as proposed in the submitted documents and drawings 1130.2, 1130.20, 1130.21, 1130.22, 1130.23 and 1130.24 all received on 20th December 2012.

C 3. Notwithstanding the provisions of the Town and Country Planning (Permitted Development) Order 2012 (or any Order revoking or re-enacting that Order) no extensions, greenhouses, polytunnels, garden sheds, walling, fencing, summerhouses, garages or car ports shall be erected (other than those expressly authorised by this approval) without the prior written permission of the Planning Authority.

C 4. Prior to the occupation of the dwelling hereby approved, a post and panel timber fence or a post and wire fence should be erected along the northeast and north-western boundaries of the site to a height of no more than 1.2 metres.

C 5. Prior to the occupation of the dwelling hereby approved the new access is to be completed and the hardstanding/driveway completed as shown on drawing AT 1130.24. The
PA12/01683/B

Erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access from existing field access

The Committee, with the exception of Mr Evans and Mr Kermode, declined the recommendation of the case officer and the application was refused subject to the following conditions.

R1. The proposal is contrary to Environment Policy 1 and Environment Policy 2 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would represent an unwarranted encroachment into the countryside to the detriment of the character of the landscape.

R2. The proposal is contrary to Housing Policy 14 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would be detrimental to the visual amenity of the area by reason of its scale, massing and design.

CB
13/03/13
PLANNING OFFICER REPORT AND RECOMMENDATIONS

Application No. : 12/01683/B
Applicant : Mr Philip & Mrs Kirrie Jenkins
Proposal : Erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access from existing field access
Site Address : Clybane
Mount Gawne Road
Port St. Mary
Isle Of Man
IM9 5LX

Case Officer : Mr Chris Balmer
Photo Taken : 08.01.2013
Site Visit : 08.01.2013
Expected Decision Level : Planning Committee

Officer's Report

THE APPLICATION IS BEFORE THE PLANNING COMMITTEE AS THE PROPOSED REPLACEMENT DWELLING WOULD BE ABOVE THE 50% THRESHOLD AND IS RECOMMENDED FOR APPROVAL.

THE SITE
1. The site represents part the residential curtilage Clybane, Mount Gawne Road, Port St. Mary and part of fields 414179 & 414177 all of which is located on the northern side of Mount Gawne Road and north of Gansey Promenade.

2. The existing dwelling Clybane is a single storey 'L-shaped' property which includes a single storey timber outbuilding to the west of the dwelling. To the rear of the site is open agricultural land. The east is Seahaven another detached property, albeit two storey, and to the south on the opposite side of Mount Gawne Road is the recently completed property Seascape which is a large two storey detached property.

3. Field 414179 which is to the northwest of the site also fronts onto Mount Gawne Road. This is a parcel of land which currently does not appear to be used for agricultural purposes (i.e. keeping of animals/crops), as it has an access track running through the field from the existing field gate (accessed from Mount Gawne Road) to the field to the north of the application site Field 414177 which also forms a small part of the propose curtilage of the replacement dwelling.

PROPOSAL
4. The application seeks approval for the erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access from existing field access.

5. The proposed dwelling would have an overall width (including garage) of 13.1 metres, a maximum depth of 13.9 metres and a maximum ridge height of 7.2 metres. The proposal elevations would be finished with a mixture of painted render and cedar boarding and with a dark coloured roof finish.

6. The proposal would be sited on part of the existing footprint and access to the site would be provided via an improved existing field access to field 414179. The existing access

15 February 2013
to the dwelling would be blocked up. The proposal to accommodate the new dwelling, access and turning provision and garden area would result in the extension of the residential curtilage into fields 414177 and 414179.

PLANNING STATUS
7. The application site is within an area recognised as being an area of Open Space of 'High Landscape or Coastal Value and Scenic Significance', under the Isle of Man Development Plan Order 1982. The site is not within a Conservation Area.

8. Under the Modified Draft Area Plan for the South the site is designated as being 'Open Space'. This Plan has been adopted by the Department, but has not been adopted by Tynwald at the time of writing this report (due to be considered later in February, 2013 with effect, if approved, from 1st March, 2013).

9. Due to the zoning of the site, and the nature of the proposed development, the following planning policies are relevant in the consideration of the application:-

10. "General Policy 3 states: Development will not be permitted outside of those areas which are zoned for development on the appropriate Area Plan with the exception of:
(a) essential housing for agricultural workers who have to live close to their place of work; (Housing Policies 7, 8, 9 and 10);
(b) conversion of redundant rural buildings which are of architectural, historic, or social value and interest; (Housing Policy 11);
(c) previously developed land(1) which contains a significant amount of building; where the continued use is redundant; where redevelopment would reduce the impact of the current situation on the landscape or the wider environment; and where the development proposed would result in improvements to the landscape or wider environment;
(d) the replacement of existing rural dwellings; (Housing Policies 12, 13 and 14);
(e) location-dependent development in connection with the working of minerals or the provision of necessary services;
(f) building and engineering operations which are essential for the conduct of agriculture or forestry;
(g) development recognised to be of overriding national need in land use planning terms and for which there is no reasonable and acceptable alternative; and
(h) buildings or works required for interpretation of the countryside, its wildlife or heritage.

11. "Environment Policy 1 states: The countryside and its ecology will be protected for its own sake. For the purposes of this policy, the countryside comprises all land which is outside the settlements defined in Appendix 3 at A.3.6 or which is not designated for future development on an Area Plan. Development which would adversely affect the countryside will not be permitted unless there is an over-riding national need in land use planning terms which outweighs the requirement to protect these areas and for which there is no reasonable and acceptable alternative."

12. "Environment Policy 2 states: The present system of landscape classification of Areas of High Landscape or Coastal Value and Scenic Significance (AHLV's) as shown on the 1982 Development Plan and subsequent Local and Area Plans will be used as a basis for development control until such time as it is superseded by a landscape classification which will introduce different categories of landscape and policies and guidance for control therein. Within these areas the protection of the character of the landscape will be the most important consideration unless it can be shown that:

(a) the development would not harm the character and quality of the landscape; or
(b) the location for the development is essential."
PLANNING HISTORY

13. The following planning applications are considered relevant in the assessment and determination of this application:-

14. Re-location of field access - 12/00244/B – REFUSED

15. Erection of a replacement dwelling, extension of residential curtilage into part of fields 414717 and 414719 and creation of new vehicular access from existing field access - 12/00118/B – REFUSED at appeal on the following grounds:
"R 1. The proposal is contrary to Environment Policy 1 and Environment Policy 2 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would represent an unwarranted encouragement into the countryside to the detriment of the character of the landscape.

R 2. The proposal is contrary to Housing Policy 14 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would be detrimental to the visual amenity of the area by reason of its scale, massing and design."

16. Erection of a detached garage and stable - 12/00119/B – REFUSED on the following ground:
"R 1. Until such time as a scheme for the redevelopment of the site has been approved, it is premature to consider this application given the access, roadway, positioning of the dwelling and extension of the domestic curtilage are all interlinked with the scheme for the proposed garage and stable block."

REPRESENTATIONS

17. Rushen Commissioners have no objection to the application.

18. The Department of Infrastructure Highway Division does not oppose the application.

19. The Isle of Man Water and Sewerage Authority have made no comments to the merits of the application but ask for an informative note to be attached to any approval.

20. The owners/occupiers of Seascape, Mount Gawne Road, Port St Mary have made no comment to the application but ask they be given party status given their property is directly adjacent to the application site.

ASSESSMENT

21. The starting point when determining any application for a replacement dwelling is Housing Policy 14 of the Isle of Man Strategic Plan. This policy states that a replacement should generally be on the same footprint and should not be greater than 50% greater than that of the original building.

22. In this case the existing dwelling has a floor area of approximately 74.5 square metres, whereas the proposal would have a floor area of 313 square metres which equates to a 320% increase in floor area over the existing property. Not including the garage the proposal would have a floor area of 268.4 square metres which equates to a 260% increase in floor area over the existing property. However, this is not automatic reason for refusal of the planning application as Housing Policy 14 goes onto to state that consideration may be given to larger dwellings where this involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design or siting, there would be less visual impact.

23. It should be noted that the existing timber outbuilding/shed (approx 20sqm) has not been included in the calculation as the building is regarded as an outbuilding and Housing Policy 14 is very clear that outbuildings should not be measured in the calculation.
24. The existing dwelling is a single storey property with a shallow roof and clad with white uPVC panelling. There are two small flat roof extensions (porch & lounge) undertaken in the past which do not improve the visual appearance of the property. The windows are of a modern design (top/side hung casements windows). Overall, it is considered the dwelling has no architectural merit with in appearance or construction and is not of a traditional character. Therefore it is considered the existing dwelling can be considered to be of poor form.

25. At this stage it is perhaps important to note the context of the existing streetscape of which the proposal would form part. The site is located at one end of existing built development which runs along the northern side of Mount Gawne Road and continuous along Shore Road to the east. The property is not an isolated property in the open countryside and as such the impact of the replacement should be judged accordingly.

26. The properties in this area are of various designs, styles and sizes ranging from very large detached two and single storey properties, a two storey apartment block, to dormer bungalow properties.

27. It is also important to note the properties along the southern side of Mount Gawne Road. Directly opposite the application site is the property ‘Seascape’ which is large two storey property which has been recently constructed. The proposal follows similar lines to this property in terms of a traditional form and hipped roof design, but with the use of larger expanses of glazing. To the south of ‘Seascape’ is the former Motorlands Garage site along Shore Road which has recently been granted approval in principle for three large detached properties. To the west of ‘Seascape’ is the property ‘the Mount’ which is a very large two storey traditional property set in large grounds. It should be noted that the properties on the southern side of Mount Gawne Road are recognised as being ‘existing residential use’ and therefore Housing Policy 14 is/was not required to be considered, despite only being across the road from the application site where HP14 is applicable. However, this area under the Modified Draft Area Plan for the south re-zones this area from ‘residential’ to ‘open space’.

28. The main views of the proposed dwelling would be from Mount Gawne Road ranging from close views to the east and more distance views across the fields from the northwest of the site. Views obtained from the northwest of the site would be of the proposed dwelling, but also the extended curtilage into the fields to the rear of the site. It is worth highlighting that a number of properties along Shore Road have benefited from planning approval to increase their rear gardens into the agricultural fields. This has resulted in a fairly continuous straight line of domestic curtilages.

29. Previously, there was concern with the proposal that this would significant break this existing domestic curtilage line of properties along Shore Road. This new submission has significantly reduced the proposed curtilage extension and although the curtilage would still extend into fields 414179 & 414177, the curtilage would run parallel with Mount Gawne Road, unlike the previous application which would have stepped out into the field to the rear. This extension of the curtilage would also appear as a continuation of the existing curtilages in the area and would not appear as an awkward intrusion into the rear open fields as the previous schemed appeared.

30. The applicants argue that in terms of use, Field 414179 (west of dwelling) is a small triangular parcel of land that has never been used for agricultural use (i.e. growing of crops or keeping of cattle etc). Currently, part of the area provides an access from Mount Gawne Road to field 414177, but a large part of the site is scrubland with little agricultural merit. The applicants indicate that a letter from DEFA confirms that for many years this parcel of land had a dwelling on the site, which was connected to the brewing operations in the area. The applicants indicate that following substantial research at the Manx Museum, the site
formed part of ‘the Mount Estate’ (dwelling still remains along Mount Gawne Road) which included a number of workers cottages and stabling, before the site was sold to the Gansey Brewery which operated until the 1850’s.

31. Studying the Department’s historical mapping, there is clearly a square structure within part of field 414179, although it is not obvious what the structure was, whether as indicated by the applicants a dwelling or perhaps a small reservoir perhaps used in connection with the Brewery. Either way, the structure is not apparent from public view now.

32. In the previous appeal decision, it was indicated that there is perhaps some scope for a larger dwelling and a modest increase in curtilage, given the existing dwelling is of poor form and also given the size of properties within the vicinity. Essentially, the last application submitted was considered to be unacceptable as the dwelling proposed was too large and the curtilage extension was too great.

33. It is perhaps important to note that this site is unique: the site forms part of the residential development built development along Mount Gawne Road and Shore Road and as such, perhaps Housing Policy 14 is not as relevant compared to an isolated dwelling in the open countryside. Whilst the submission is substantially larger than the existing dwelling, the dwelling now proposed in terms of design, scale and massing would be far more in keeping with the properties along Shore Road and Mount Gawne Road resulting in a property which would sit well within the street scene. Furthermore, given the design of the property and massing, the main view of the site from the northwest, along Mount Gawne Road, would not be a prominent view, given the backdrop of this site is of existing large detached dwellings and once built the dwelling would not be read as an isolated dwelling but form part of the substantial built development along Mount Gawne Road and Shore Road. Furthermore, the Mount and ‘Seascape’ would still remain the most prominent properties in the streetscene as viewed both from Mount Gawne Road and Shore Road.

34. In terms of potential impacts upon neighbouring amenities (loss of light, overbearing impact and/or loss of light), the two properties which would be most affected by the development would be ‘Seascape’ to the southwest and ‘Seahaven’ to the east of the site.

35. In terms of the impact upon the occupants of ‘Seahaven’, it is likely only a single dormer window within the western elevation, facing towards the application site would potential be affected by the development. This dormer window serves a lounge; however, the lounge also benefits from two larger windows to the front and rear elevations which afford the majority of light and outlook for this room. Therefore, whilst the proposal will reduce outlook and light to this dormer window, given the main sources of light and outlook are from the two windows to the front and rear elevations, it is considered this impact would be acceptable.

36. Regarding to the impacts upon ‘Seascape’ the main issue arising from the proposed development upon the occupants of the neighbouring property would be through loss of privacy. ‘Seascape’ has a large first floor glazed gable end which faces in a north-easterly direction. The proposed dwelling does face towards ‘Seascape’, albeit would not have direct views. The proposed dwelling would also be positioned at least 22 metres away from ‘Seascape’. The Planning Authority’s guidelines for directly facing windows are that a 20 metre gap should be retained to maintain adequate levels of privacy. It should be noted that this distance is usually applicable across private land, not across a public highway where people using the highway can already, to a degree, see into the property. Therefore it is considered whilst there would be the potential for more overlooking than the existing situation, it is considered given the distance and orientation of the two properties this impact would not be significant and would have result in a substantial loss of privacy. The relocation of the property would also offer increased privacy and amenity to the occupants of Seahaven to the east.
37. Overall, it is also considered given the position and height of the proposed dwelling and distance from these two properties, the proposal would have no significant impacts upon the residential amenities to warrant a refusal.

RECOMMENDATION

38. In conclusion, the proposal would result in a larger building, both in terms of footprint but also massing given the proposal would be two storeys and therefore taller than the existing single storey property. Furthermore, the design and siting would result in the introduction of a larger dwelling within the street scene. However, unlike the previous application it is considered this new submission would result in a dwelling in keeping with nearby properties within the street scene whilst having an acceptable impact upon the countryside. For these reasons set out in this report, it is considered the proposal would be acceptable and therefore it is recommended that the application be approved.

PARTY STATUS

39. It is considered that the following meet the criteria of Town and Country Planning (Development Procedure) Order 2005, paragraph 6 (5) (d) and should be afforded interested party status:

Rushen Commissioners

The owners/occupiers of Seascape, Mount Gawne Road, Port St Mary

40. The Department of Transport Highways and Traffic Division is now part of the Department of Infrastructure of which the planning authority is part. As such, the Highways and Traffic Division cannot be afforded party status in this instance.

41. It is considered that the following do not meet the criteria of Town and Country Planning (Development Procedure) Order 2005, paragraph 6 (5) (d) and should not be afforded interested party status:

Isle of Man Water and Sewerage Authority

Recommendation

Recommended Decision: Permitted

Date of Recommendation: 08.02.2013

Conditions and Notes for Approval / Reasons and Notes for Refusal

C : Conditions for approval
N : Notes attached to conditions
R : Reasons for refusal
O : Notes attached to refusals

C 1.
The development hereby permitted shall commence before the expiration of four years from the date of this notice.
C 2.
This approval relates to the erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of vehicular access from existing field access as proposed in the submitted documents and drawings 1130.2, 1130.20, 1130.1, 1130.2, 1130.3 and 1130.4 all received on 20th December 2012.

C 3.
Notwithstanding the provisions of the Town and Country Planning (Permitted Development) Order 2012 (or any Order revoking or re-enacting that Order) no extensions, greenhouses, polytunnels, garden sheds, walling, fencing, summerhouses, garages or car ports shall be erected (other than those expressly authorised by this approval) without the prior written permission of the Planning Authority.

C 4.
Prior to the occupation of the dwelling hereby approved, a post and panel timber fence or a post and wire fence should be erected along the northeast and north-western boundaries of the site to a height of no more than 1.2 metres.

C 5.
Prior to the occupation of the dwelling hereby approved the new access is to be completed and the hardstanding/driveway completed as shown on drawing AT 1130.24. The existing access should be blocked up within one month of the occupation of the approved dwelling as shown on drawing AT 1130.24.

C 6.
Prior to the commencement of any building operations, there must be submitted to and approved by the Planning Authority a sample of the external window detail and colour. The development must be implemented in accordance with this approval.

I confirm that this decision has been made by the Planning Committee in accordance with the authority afforded to it under the Town and Country (Development Procedure) 2005

Decision Made: .......................................................... Committee Meeting Date: 1/3/13

Signed: .................................................................
Presenting Officer

Further to the decision of the Committee an additional report/condition reason is required. Signing Officer to delete as appropriate

YES/NO

GP3, GP1, HP14
Arch-Tec (IOM) Ltd
The Architectural Studio
2nd Floor
20 Duke Street
Douglas
IM1 2AY

Town and Country Planning Act 1999
----------------------------------------
The Town and Country Planning (Development Procedure) Order 2005

On 11th March 2013, and in pursuance of powers granted under the above Act and Order, the Department of Infrastructure determined to REFUSE planning application 12/01683/8 by Mr Philip & Mrs Kirrie Jenkins for the Erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access from existing field access at Clybane Mount Gawne Road Port St. Mary Isle of Man IM9 5LX for the following reason(s):

1. The proposal is contrary to Environment Policy 1 and Environment Policy 2 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would represent an unwarranted encroachment into the countryside to the detriment of the character of the landscape.

2. The proposal is contrary to Housing Policy 14 of the Isle of Man Strategic Plan 2007 in that the proposed development, if approved, would be detrimental to the visual amenity of the area by reason of its scale, massing and design.

Date of Issue:
14th March 2013

Director of Planning and
Building Control

Guidance Note

This decision was made by the Planning Committee in accordance with the authority delegated to it.

Any appeal against this decision must be in writing and must be received by this Department within 21 days of the date of this notice.

Continued overleaf
An appeal form and guidance notes are available from either the Planning Office, Tel 685950, or to download from the Department’s website www.gov.im/transport/planning/plan/applications决策.xml

Please note that a copy of the Officer’s report which led to the decision (copy enclosed), together with correspondence relative to the application, are available for inspection at the Department.

If no appeal is lodged within 21 days of the date of issue overleaf, and this decision becomes final, the Department’s public reference copy (counter copy) of the planning application may be collected by the applicant or their agent from Murray House.

*Please note that if the counter copy of the application is not collected within THIRTY DAYS following the last date on which a planning appeal can be made it will be destroyed without further notice.*

Department of Infrastructure, Murray House, Mount Havelock, Douglas, Isle of Man, IM1 2SF
Tel (01624 685950) email: planning@gov.im

12/01683/B
Dear Both

I still haven’t received a copy of the decision from the appeals admin. Fortunately, Martyn has kindly provided me with a copy of the decision and the report. The decision is massively disappointing but given that the substance of the Inspector’s recommendation is based on the application of his subjective judgment I cannot see that a challenge by way of dœlance would succeed. As you know dœlance is the only available means to challenge the Minister’s decision; however, it is not an appeal where you can reargue the points raised before the Inspector, it is a review of the lawfulness of the Minister’s decision, and the application of the planning inspector’s subjective judgment will only result in the decision being quashed if it was so manifestly unreasonable that no reasonable planning inspector would have arrived at the conclusions that he did. Also on a dœlance claim the court does not substitute its decision for that of the Minister on a finding of unlawfulness rather it quashes the original decision and remits the matter back to the decision maker for a redetermination which means that you can end up with the same decision (i.e. refusal) but on different grounds. A claim by way of dœlance needs to be made promptly and in any event no later than 3 months from the date of the challenged decision / act etc failing the court is unlikely to entertain the claim.

I still find it incredible that your resubmitted proposal could have enjoyed such positive support from Chris Balmer and yet have been refused; whilst I acknowledge that guidance from a planning officer is not binding on the committee / Minister I think that the way this has panned out does not cover the planning department / its procedures or its officers in any glory and this may be something that you may wish to take up with the Director of Planning / the CEO or the Minister.

Happy to discuss.

Kind regards Oliver

Oliver Helfrich
Advocate and Solicitor*
Long & Humphrey
Advocates and Notaries Public
The Old Court House
Athol Street
Douglas
Isle of Man IM1 1LD

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w: www.longandhumphrey.com

Partners: Robert Long and Mark Humphrey

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(* Solicitor (England and Wales) non-practising)
Notes from meeting at planning Department Thursday 15th August 2013

Present: Chris Balmer & Jennifer Chance, Phil I & Kirrie Jenkins

Main points from the rejection of our appeal:

1. Employ an architect rather than an architectural technician who can help design a house using best use of light and form that will give the Committee the Wow factor. Do not get hung up on floor percentages.

2. Must recede into the street scene – including from further afield even Sloc

3. No plot ratios but preferably 1 metre back from neighbour and must have amenity space which could take the form of terraces/balcony

4. Must be no closer to the window gable end of seascape than 21 metre square on.

5. Improve internal space – if we wish to maintain a four bedroom house then have “Jack’n Jill” bathrooms, loose hallways/landings/large utility

6. No to traditional farmhouse design/white render etc

7. Samples of preferred finishes provided – not to be taken as design, be careful of using too much glass which can be reflective and seen from a long distance, prefer local stone/wood

8. Willing to support our application if we follow the existing curtilge line as drawn

9. Would like to see some landscaping but undecided re fencing/stone wall – suggest mixture with shrubs etc

10. Able to landscape the rough triangle of land alongside upto ½ hectare of trees can be planted without approval, however as trees would be unnatural in that landscape it should be measured and appropriate.
Sent from my iPhone

Begin forwarded message:

From: Phil Chadwick <j>
Date: 25 September 2013 09:14:44 BST
To: "
Subject: FW: Update

Dear Phil / Kirrie,

Half finished, very much work in progress, windows missing, ground missing etc. As you can tell there is little detail available yet on the rear elevation. I'm sure all sorts of details will be incorrect but as a work in progress gives you an idea – it will be set into a digital photo before discussion with the Planners.

Regards,

Phil

Ps will send plans update with things we discussed in due course.
Sent from my iPhone

Begin forwarded message:

From: Phil Chadwick <p chadwick@savagechadwick.com>
Date: 2 October 2013 17:28:32 GMT+1
To: Kirrie Jenkins
Subject: CLYBANE

Hi Phil — I would like to show these to Planning together with the Plans that I will forward to you if that’s ok. The materials palette is white render, gull grey cedar cladding, glass and roofing slate.

Regards

Phil

Phil Chadwick

for

Savage & Chadwick Architects : Chartered Practice

Isle of Man Office: ARMITAGE HOUSE, LORD STREET, DOUGLAS, ISLE OF MAN, IM1 1LE

Kendal Office: SHAP ROAD, KENDAL, CUMBRIA, LA9 6BZ

Tel: IOM 01624 672050, Fax: 01624 615341, KENDAL 01539 729094 Fax: 01539 725298;

Mobile: 07624 453241

Web: www.savagechadwick.com

ISLAND OF CULTURE

"look after my partner - 'near the other side"
Sent from my iPhone

Begin forwarded message:

From: Mike Norrey ·
Date: 22 January 2014 17:19:48 GMT
To: "Kirrie Jenkins"
Cc: Phil Chadwick <>
Subject: RE: Pa 13/91532 - Clybane, Mount Gawne Road DRAFT

Good Afternoon Philip and Kirrie
Further to the Planning Submission, Sarah Corlett has now emailed requesting additional information, as outlined below, as she now prepares her Report
Before we submit a full response, we attach our initial DRAFT response for your consideration and any further comment or input which you may also feel is necessary.

Also attached is a site plan identifying the overall site and existing/proposed areas.

Would you kindly review and we await your further response.

Regards
Mike

Associate
For
Savage + Chadwick Architects
Armitage House
Lord Street
DOUGLAS
Isle of Man
IM1 1LE

T 01624 672050  F 01624 629237  Mob 07624 430047  www.savagechadwick.com
Also at: Savage + Chadwick Architects, First Floor, Webbs, Snap Road, Kendal, LA9 6BZ

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On 18 Jan 2014, at 14:55, "Corlett, Sarah" wrote:

Dear Phil,

I am preparing my report on the above application and note the design statement which has been provided. I cannot, however find any information on how you feel the scheme responds to the previous reasons for refusal (in fact these aren't referred to at all in the statement) and particularly how it complies with Housing Policy 14. Importantly, there is no information on existing and proposed floor areas, which is a key element of HP 14. It would also be useful to have a comparison of the existing and proposed site area as the Planning Committee is bound to ask for that.

If you could provide the missing information, that would be very helpful.

Sarah

Miss Sarah Corlett
Senior Planning Officer,
Planning and Building Control Division,
Department of Infrastructure,
Murray House,
Mount Havelock,
Douglas,
Isle of Man IM1 2SF.

Telephone: (01624) 685906
Fax: (01624) 686443

Any views expressed in this email are those of the officer only and are without prejudice to any formal decision made under the provisions of the Town and Country Planning Act 1999 and any relevant secondary legislation

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RAAEU: S'pe遵循eaghaq ny chaighearragh post-lo shoh chammah's cooanyn erbee curii marish as te shoh coodit ac y leigh. Cha nhegin dia cipal ny cuh eh de palaagh erbee iley ny ymmeydy as choor! Tynn er agh! erbee dyn kieed leay! weh'n choytagh. Monnaghh nie shu ym emmeytagh kiant jeh's phosti-shoh, doli-shu magh eh, my saalih, as cu-shu y fyes da'n choytagh cha leah as oddys shu.

Cha nte kied curii da failleydagh ny jiantagh erbee coneal y yarncn roh palaagh ny possan erbee leah post-i er son Rhyewn ny Boayrd Statiysaggh erbee jeh Reiylays Ellen Varnin dyen co-nilartagnay sruitt leay vah Releyrder y Rhyewn ny Boayrd Statiysaggh t'eh bentyn rish.
Phil / Kirrie

Please find attached pdf copy of email response to Sarah Corlett’s previous request for additional supporting information.

This was emailed to Sarah on Friday.

We also understand that she is currently on leave and not back in her office until tomorrow.

Regards

Mike
1. INTRODUCTION

Further to an email of 18th January 2014 from Ms Sarah Corlett of DoI Planning seeking clarification, the following is a response to the four key points raised.

2. POINTS

1) Information on how you feel the scheme responds to the previous reasons for refusal.
2) How it complies with Housing Policy 14.
3) Information on existing and proposed floor areas, which is a key element of HP 14.
4) A comparison of the existing and proposed site area.

We would respond as follows:

1) Following consultation by the Applicant with DoI Planning Officers and encouragement to seek an alternative architectural solution, and in response to the Inspector’s comments at Appeal for the previous submission, we would respond as follows.

The Inspector, in his report, noted that there were two main issues with the previous submission –

a. The proposal would represent unwarranted encroachment to the countryside,

and

b. (detriment) to the effect of the proposal on the rural amenity of the area.

The following explains how we believe these concerns are addressed:

1. We believe we have created a much improved contemporary architectural approach that has been achieved by still using indigenous and localised materials (in line with Strategic Policy 1) with a distinct more coastal feel. This is in line with the pre-application consultations undertaken by the applicant.

2. The new house is in keeping in scale with neighbours in the run of residential development along Gansey and is much smaller in scale to Seascapes opposite.

3. The previous proposed encroachment back into the field behind the existing site to the degree previously submitted has now gone except for a small strip thus reducing encroachment into the field that gave rise to what was a significant concern.
4. The replacement design offered has greater resonance with the former house and its neighbours.

5. The design in the context of the streetscape is not detrimental to the rural amenity and has a relatively low building signature relative to its shape and the use of 1½ storeys of height, ensuring efficient use of the site and located to utilise existing and planned infrastructure (in line with Strategic Policy 1).

6. The design does not impact on its neighbours because of its lower height and the containment of first floor dormer windows to the field side away from the neighbours opposite.

7. The building design also has a small signature profile in its appearance from the approach towards Gansey and the rising approach from Gansey going up Mount Gawne Road the house is to a reasonable degree lost behind the hedge (see DAS section images).

8. The positioning of the house is sited so that the access and garage is on the curtilage extension in line with DoI visibility splays for access and use of indigenous stone for boundary walls visible from the highway, making good use of previously poorly developed land and redundant Brewery workings (Appendix C.) in line with Strategic Policy 1.

2) HP14

There is no detrimental effect on agricultural use as the land is poor quality in that location.

The proposed site is extended into a small triangular area of a rough former agricultural access area by extending the line of the rear boundary to a point at which it intersects the road frontage.

The manner of the increase and the resultant narrow signature of view do not create a detrimental effect on the landscape.

Making reference to the original OS map provided by the previous application’s Planning Officer which shows intended alignment of rear boundaries extended past ‘Clybane’. This is now the principle for the proposed extended site area of this application. Providing a natural conclusion of this run of residential development along Gansey to its intersection with Mount Gawne Road (refer 1:500 original OS map extract circa 1800s, Appendix C.).

Also, reference can be seen of previous extensions into rear fields of properties further along Gansey Road (refer 1:1250 aerial map view, Appendix D.), where the rear field extension of Aigney Me run behind the adjacent few properties increasing its own plot ratio.
Where previously there was no straight back line curtilage (1957 map, Appendix E.). The original farm access lanes, both highlighted on the 1957 map have also subsequently been incorporated into the residential boundaries.

3) Information on existing and proposed floor areas

The existing house has no garage and therefore comparison is made on a house-for-house basis. The existing house also does not afford liveable accommodation to modern standards.

Existing House: 90m$^2$ overall approx
Proposed House: 225 m$^2$ (combined ground and part first floor) approx.

The garage (single storey) is: 41 m$^2$ approx.

The basement/semi-submerged element of the house is: 109 m$^2$ approx.

In terms of an overall site footprint area, the proposed dwelling (ground floor 128 m$^2$) is an increase of 42% against the existing dwelling.

The Applicant purchases the property in 2011 following previous initial Planning Officer consultation and encouragement relative to being able to achieve a modern decent sized family home. The investment associated with demolition of the existing property and rebuilding to a similar size property with modern construction methods and materials is not financially viable. The site and property as purchased only becomes viable with carefully considered design and greater investment achieved by this current design.

4) Comparison of the existing and proposed site area

The proposed site has been extended without detrimental effect on Policy HP14 and largely retains the essence of the back boundary line (Appendix C.). It is noted however that some properties have been altered to extend rearwards and to the rear of adjacent properties into the field on Gansey (Appendix D.) but this will now not be the case here.

Existing: 360 m$^2$ (approx)
Proposed: 525 m$^2$ (approx)

Gives an additional area of:- 165 m$^2$ (approx) added to the site.
3. CONCLUSION

The design has significant merits over the one previously submitted and the refused proposals. It is clearly a design of appreciable merit. It is our considered opinion that it addresses the concerns of the Inspector and provides a liveable replacement home opposite a recently redeveloped site and at the end of the existing ribbon development of Gansey.
Kirrie Jenkins

From: Phil Chadwick
Sent: 12 February 2014 12:30 pm
To: Kirrie Jenkins; Mike Norrey
Cc: RE: Clybane, Mount Gawne Road

...I asked the question and she replied that they now don’t say and it will be as per the agenda when issued – as such therefore I don’t know.

Regards,
Phil

---

From: Kirrie Jenkins
Sent: 12 February 2014 10:24
To: Mike Norrey
Cc: Phil Chadwick
Subject: Re: Clybane, Mount Gawne Road

Has she said if she is supporting it?

Kirrie

Sent from my iPhone

On 12 Feb 2014, at 10:19, Mike Norrey wrote:

Good Morning Phil and Kirrie,
Just to let you know that Sarah Corlett has advised that she is
hoping to get the application to the next Planning Committee meeting on 24th Feb.
We will also register prior to this so as to be able to speak at the meeting for 3 minutes.
We can review further nearer to that date.

Regards
Mike

Associate
For
Savage + Chadwick Architects
Armitage House
Lord Street
DOUGLAS
Isle of Man
IM1 1LE

T 01624 672050 F 01624 628237 Mob 07624 430047 www.savagechadwick.com
Also at: Savage + Chadwick Architects, First Floor, Webbs, Shap Road, Kendal, LA9 6BZ

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Minutes of a meeting of the Planning Committee, held on 24th February 2014, at 10.00am, in the Ground Floor Meeting Room of Murray House, Mount Havelock, Douglas

Present:  
* Mr L D Skelly MHK, Chairman of the Planning Committee  
Mr D Evans, Member  
Mr I Cottier, Member  
*Mr P Young, Member  
Mr W Gilbey, Member  
*Mr A Kermode, Member

In Attendance:  
Miss J Chance, Development Control Manager  
*Miss S E Corlett, Senior Planning Officer  
*Mr E Baker, Development Control Officer  
*Miss L Davy, Assistant Planner  
*Mr E Riley, Assistant Planner  
Mrs C Dudley, Deputy Secretary to the Planning Committee  
*Mr S Moore, Conservation Officer  
*Mr K Almond, Transport and Traffic Officer, Highways Division.

*Part of the meeting only

1. Introduction by the Chairman
The Chairman welcomed members of the public in attendance to view the proceedings.

2. Apologies for absence
None

3. Minutes
The minutes of the 10th February 2014 were agreed and signed as a true record.

4. Any matters arising
None

5. Delegated Decisions
The Members noted the decisions on those applications determined by the Director of Planning and Building Control, the Development Control Manager or a Senior Planner, under the appropriate legislation, for the period 4th to 17th February 2014.

Mr Young enquired with reference to PA13/91531/B if there were proposed to be any buildings above ground as part of the application. Miss Chance advised that she would ascertain if there were to be and report to the Members at the next meeting of the Planning Committee. Mr Cottier enquired with regard to the new format of the report. Miss Chance advised that she would discuss the matter with the Secretary and report at the next meeting.

6. The Members considered and determined the schedule of planning applications as follows.

PC Minutes 24.02.2014
The case officer reported on the matter and summarised the key issues as set out in the report:

Mr Chadwick from Savage & Chadwick, the agent, had registered to speak in support of his client’s application. The key points he raised were:

1. Outlined the case and the reason for the proposal;
2. Reported with regard to the site history and to the triangular shape of the site;
3. Visual impact and safeguarding the rural character of the area;
4. The greater architectural value of the proposal and the local architectural elements – the design responds to the size, shape and topography of the site;
5. The modest increase in the footprint.

In clarification of the key issues the Members enquired regarding local objections, the increase in the footprint and the proximity to the roadside. Miss Corlett reported, and confirmed that proposed garage is nearest to the roadside and that the house is set further back.

The Chairman invited Mr Almond to report with regard to Highways issues. Mr Almond requested that a note be applied that the Applicant contact the Highway Authority with regard to maintaining the roadside verge.

The Chairman commented on the provision of illustrations of how the building would look in its context and stated that the Members found them helpful.

**DECISION**
The Committee accepted the recommendation of the case officer and the application was approved subject to the following conditions.

C 1. The development hereby permitted shall commence before the expiration of four years from the date of this notice.

C 2. This approval relates to the erection of a replacement dwelling and the enlargement of the existing residential curtilage as shown in drawings SC1299/P/10-01, SC1299/P/11-01, P00-01, SC1299/P/10-02, SC1299-P-10-00 all received on 23rd December, 2013.

**PARTY STATUS**
Interested party status was considered by the Committee and agreed as recommended.
Town and Country Planning Act 1999

The Town and Country Planning (Development Procedure) (No 2) Order 2013

In pursuance of powers granted under the above Act and Order the Department of Infrastructure determined to APPROVE a planning application by Mr Philip & Mrs Kirie Jenkins, Ref 13/91532/B, for the erection of a replacement dwelling, extension of residential curtilage into parts of fields 414177 and 414179 and creation of new vehicular access at Clybane Mount Gawne Road Port St. Mary Isle Of Man IM9 5LX subject to compliance with the following condition(s):

1. The development hereby permitted shall commence before the expiration of four years from the date of this notice.

2. This approval relates to the erection of a replacement dwelling and the enlargement of the existing residential curtilage as shown in drawings SC1299/P/10-01, SC1299/P/11-01, P00-01, SC1299/P/10-02, SC1299-P-10-00 all received on 23rd December, 2013.

Date of Issue:
25th February 2014

Director of Planning and Building Control

Guidance Note

This decision was made by the Planning Committee in accordance with the authority delegated to it.

This permission refers only to that required under the Town and Country Planning (Development Procedure) (No 2) Order 2013.

In accordance with Article 8 of the same Order any appeal against this decision must be in writing and must be received by this Department within 21 days of the date of this notice.
Should you wish to appeal against this decision your request must be in writing, signed by you as appellant, and submitted to the Department within 21 days of the date of this Notice. To further validate the appeal your request must contain:

- Payment of a planning appeal fee as prescribed in an order made by the Department under Section 1(1) of the Fees and Duties Act 1989 (currently £150);
- The reasons for making the appeal; and
- An election to have the appeal conducted by means of an inquiry (a hearing) or by means of written representation.

An appeal form and guidance notes are available from either the Planning Office, Tel 685950, or to download from the Department’s website http://www.gov.im/categories/planning-and-building-control/planning-development-control/planning-decisions-and-powers-of-appeal/

Please note that a copy of the Officer’s report which led to the decision, together with correspondence relative to the application, are available for inspection at the Department.

The proposed development must not be commenced until either;

- The time for requesting an appeal has expired; or
- Any appeal has been determined;

Whichever is the later.

If no appeal is lodged within 21 days of the date of issue overleaf, and this decision becomes final, the Department’s public reference copy (counter copy) of the planning application may be collected by the applicant or their agent from Murray House.

Please note that if the counter copy of the application is not collected within THIRTY DAYS following the last date on which a planning appeal can be made it will be destroyed without further notice.

Department of Infrastructure, Murray House, Mount Havelock, Douglas, Isle of Man, IM1 2ST Tel (01624 685950) email; planning@gov.im

13/91532/B
STATEMENT OF THE PLANNING AUTHORITY

Isle of Man
Government

Planning statement on behalf of the Department of Infrastructure
Planning and Building Control Division in respect of planning for the Erection of a
replacement dwelling, extension of residential curtilage into parts of fields 414177
and 414179 and creation of new vehicular access Clybane
Mount Gawne Road
Port St. Mary
Isle Of Man
IM9 5LX - 13/91532/B

Statement prepared on behalf of the Planning and Building Control
Division by Miss S E Corlett

20 March 2014
13/91532/B
Page 1 of 6
THIS APPLICATION IS REFERRED TO THE PLANNING COMMITTEE DUE TO THE PLANNING HISTORY OF THE SITE AND THE SIZE OF THE REPLACEMENT DWELLING COMPARED WITH THE EXISTING

1.1 The site is the residential curtilage of a modest dwelling, Clybane, which sits on the northern side of the Mount Gawne Road which links the A5 Shore Road (Gansey) to the A7 Main Road at Ballakillowey. The site also includes a portion of land which is currently part of the field to the north. This additional land is triangular in shape, extends the curtilage by around 28m and at a maximum width of 11m, extending the rear boundary into the adjacent field by 1m - effectively extending the residential curtilage by 35%.

1.2 The existing dwelling is plain, L-shaped and modest in height and size and is finished in timber boarding and split stone and shallow pitched slated roof. The existing dwelling has a footprint/floor area of around 77 sq m. There is also a small garage on the site which has a footprint of around 17 sq m.

1.3 The context of the site is characterised by a significant variety of sizes, shapes and styles of dwelling. The closest dwelling, Seahaven which sits immediately to the east is two to three times the size of footprint of the existing and is two storey which a relatively steeply pitched roof and a dormer window which looks directly onto the application site. Across the road is a new dwelling, Seascape, which is larger again and contains a lot of glass and has a modern feel. The Mount, which lies to the west of Seascape is a very large, traditional dwelling in a significantly sized garden. Avondale and Kilvarock which sit on the corner of Mount Gawne Road and Shore Road are much smaller in smaller sites.

1.4 The context of the site has changed in recent years with the redevelopment of Seascape and is likely to continue to change in the future with approval having been granted to the redevelopment of the Motorlands Garage and offices and the dwelling alongside, as three detached dwellings (PA 13/00845). Kilvarock has also been the subject of two unsuccessful applications for redevelopment in the form of two dwellings (PAs 12/01684 and 13/00796).

THE PROPOSAL

2.1 Proposed is the redevelopment of the site and the extension of the residential curtilage as described in 1.1 above to accommodate a new dwelling, part of which will be built upon the extended curtilage. The dwelling will have three floors of accommodation but the lower floor is only available over part of the site. The dwelling has a steeply pitched roof (45 degrees) finished in slate, and rendered walls with elements of grey coloured timber cladding. An integral garage is included in the floor area. The property will have a chimney at the south eastern end of the roof and the north western roof will overhand the walling below in a point. A large balcony is provided over the garage at the north western end. The new dwelling will have a floor area of around 225 sq m plus a lower floor which has around 30 sq m which has an outer face, the remainder being subterranean and an attached garage which provides a further 41 sq m. This results in a total increase in floor area of over 200%.

2.2 Parking is available for up to three vehicles on the site in front of the garage which in turn provides generously proportioned accommodation for a further vehicle. Vehicles will not be able to turn within the site and will have to either drive in and reverse out or reverse into the site and drive out in a forward gear.

PLANNING POLICY AND STATUS

3.1 The site lies within an area which is designated as Open Space on the Southern Area Plan of 2013. As such, there is a presumption against new development as set out in Environment Policy 1. However, there are policies which allow and give guidance on the replacement of existing dwellings within areas not designated for development. Housing Policy 14 states:
"Where a replacement dwelling is permitted, it must not be substantially different to the existing in terms of siting and size, unless changes of siting or size would result in an overall environmental improvement; the new building should therefore generally be sited on the "footprint" of the existing, and should have a floor area which is not more than 50% greater than that of the original building (floor areas should be measured externally and should not include attic space or outbuildings). Generally the design of the new building should be in accordance with Policies 2-7 of the present Planning Circular 3/91 (which will be revised and issued as a Planning Policy Statement). Exceptionally, permission may be granted for buildings of innovative, modern design where this is of high quality and would not result in adverse visual impact; designs should incorporate the re-use of such stone and slate as are still in place on the site, and in generally, new fabric should be finished to match the materials of the original building.

Consideration may be given to proposals which result in a larger dwelling which involves the replacement of an existing dwelling of poor form with one of more traditional character, or where, by its design and or siting, there would be less visual impact."

3.2 It is considered that the existing is of poor form, although not particularly conspicuous as the existing dwelling whilst of a "seaside" character due to its timber cladding and chalet type appearance, is not traditional in the sense of a vernacular cottage. Very few, if any of the existing dwellings in this area are of this type.

PLANNING HISTORY

4.1 There are two previous applications for this site which are highly relevant to the consideration of this current application.

4.2 PA 12/00118 proposed a replacement dwelling and extension of the residential curtilage and new access which was refused at appeal. This proposal involved the demolition of the existing dwelling and its replacement with a mostly two storey property with two side single storey annexes. The Inspector notes that the existing property is of indubitably poor form and accepts that a new dwelling which is larger than 50% greater than the floor area of the existing may be acceptable. However, he notes that this should result in less visual impact or a more traditional design and in respect of the former, he states "less visual impact does not to my mind have to mean being more secluded or less visible. that would be unrealistic at this location, fronting the road and the first property seen on this side when approaching from the northwest. However, meeting the underlying aim behind the Policy to safeguard the rural character and simple presence or mass of building combined with the quality of its design - should have at least no more impact than does the existing Clybane" (paragraph 19). He goes on, "The modest size of the existing bungalow limits its inherent impact resulting from presence or mass but this is offset by a lack of architectural merit. The proposed house would be very much larger and more prominent...I intend no criticism of the design, but it would not offset the increased presence and mass of the replacement building by causing it to recede visually. The outcome would simply be large and prominent...replacing Clybane with something better does not require development of size or spread of that proposed..." (paragraphs 20 and 21).

4.3 PA 12/01683 also proposed a replacement dwelling, extension of the residential curtilage and creation of new access and was also refused at appeal. The Inspector for this appeal notes that the proposed dwelling would be significantly larger than the existing in mass and bulk and different in terms of siting and as such could only be said to comply with the provisions of HP14 if there were an overall improvement or where there is either a more traditional dwelling or where there would be less visual impact. He considered that the existing dwelling is of poor form but that the replacement would not be "noticeably traditional" and would be much larger and more prominent (his paragraphs 28 and 29).
4.4 In addition, PA 12/00244 proposed the relocation of the field access and PA 12/00119 proposed the erection of a detached stable and garage and both were refused for being premature pending the approval of a scheme for the redevelopment of Clybane.

REPRESENTATIONS
5.1 Rushen Parish Commissioners indicate that they do not have any objection to the application.

5.2 Highways Division indicates that they do not oppose the application subject to conditions although none is stated.

5.3 A resident of Douglas considers that the proposal does not accord with Environment Policy 1 although does not say why, and does not make any reference to Housing Policy which is the more relevant policy to be applied.

5.4 The owners of Seascape state that they are likely to be affected, but do not state how or to what extent, and request interested party status.

ASSESSMENT
6.1 The key issues in this case are whether the increase in floor area and curtilage are acceptable, bearing in mind the requirements of HP 14 that the new dwelling has a reduced visual impact or is more traditional and results in an overall environmental improvement.

6.2 The proposed dwelling will be around twice the height of the existing dwelling and over twice its area. However, in assessing the impact of these changes, it must be borne in mind that the existing dwelling is disproportionately modest in size and mass compared with its neighbours and does not presently contribute positively to the character or amenities of the area, a point agreed in both previous appeals. As such, the fact that the new house will be larger and therefore more visible must be assessed against any improvement in the visual appearance of the new dwelling as well as whether it would stand out within the streetscene. These are in some respects subjective judgements. However, the applicant has explained that they have taken elements from other properties in the vicinity, whilst not slavishly copying any in particular and have had regard to the seaside location in the use of materials and colour as well as the shape and topography of the site.

6.3 The existing dwelling is of poor form and disproportionately short and small compared with its neighbours and as such there is flexibility within the policy to consider positively a replacement dwelling which is larger than 50% greater in area than the existing if there is a commensurate improvement in the appearance or character of the building as it relates to its environment. In this case, as with many, it is a subjective judgement, however it is considered that whilst more of the new dwelling will be visible than what currently exists, the improved and more appropriate appearance and character of what is proposed outweighs its increased visual impact - ie that a viewer will be able to see more of it.

6.4 The increase in residential curtilage is in principle contrary to Environment Policy 1. However, in many other cases the appropriate approach is not to dismiss out of hand a proposed increase in curtilage but to assess the impact of such a change. In the vicinity of the site there have been some rearward increases in residential curtilage which have been considered acceptable (Barrule Apartments and Newhaven step back further than does the property to the east) and other examples demonstrate where such development has been both accepted and refused - Curlew Cottage, Scarlett, Castletown (PA 12/00999). This permission related to a proposal to extend that residential curtilage by around 750 sq m. The reporting officer recommended that the application be permitted and the Committee refused the application on the basis that the proposal would be contrary to EP 1 and would undermine the openness and rural character of the area of High Landscape Value and Scenic Significance. The appeal inspector concluded however that whilst "in principle...the proposal is contrary to policy
EP1...however, the policy also seeks to ensure that the development would not have any adverse visual effect and the proposal should be assessed on this basis as well as on the basis of the principle of the development" (his paragraph 11). He states that the boundary treatment would limit views of the extended curtilage which was considered by him to be appropriate for a garden use (paragraph 12) and concluded that the proposal would not be harmful to the character and quality of the landscape and the application was recommended by him for approval and the Minister accepted this recommendation.

6.5 By comparison, the same inspector concluded in respect of another application which involved an increase of an existing residential curtilage, PA 12/00832 for Cronk ny Killey in Maughold, that that proposal resulted in "a prominent and noticeable encroachment of built form into the open countryside" (paragraph 15). Also, PA 12/01683 proposed a replacement dwelling at Mount Gawne Road which also involved an increase in the residential curtilage to accommodate the larger dwelling. The Inspector in that case found that, "...the widening of the curtilage would spread domestication further along the road and that the albeit now modest rearward extension would intrude into what is fully open countryside...the proposal would represent unwarranted encroachment into the countryside to the detriment of the character of the landscape, and would cause significant harm to the visual amenity of the area" (paragraphs 31 and 32 of the appeal report).

6.6 Further applications for extensions of residential curtilages include Slegaby Cottages - PAs 13/00151 and 13/00019 which were refused by the Planning Committee and which were approved at appeal, Thie ny Garree in Bellaragh (PA 12/00913) which was approved and Bay View in Ballaveare, Bradden which was refused twice and finally approved by the Planning Committee, all illustrating that in certain circumstances extensions to the residential curtilage into the countryside can be considered acceptable but in others it is not and that each case has to be considered on its own merits and in terms of its own particular impact.

6.7 In this case the increase in the residential curtilage at the rear will have a limited, if any public impact and will tie in with the existing rear boundary of Seahaven. The western extension will take the boundary to a natural change of direction in the road bringing the rear boundary parallel with the highway. As such, it is considered that the change in residential curtilage will not have a detrimental impact on the impact on the area and whilst it would facilitate a larger dwelling, it is not considered that this is out of keeping or would be detrimental to the area in which the site lies.

6.8 In summary, it is considered that the proposed replacement dwelling and enlarged curtilage would result in an enhancement of the environment and as such that the proposal complies with the intentions of Housing Policy 14 and the application is recommended for approval.

PARTY STATUS
7.1 The local authority, Rushen Parish Commissioners are, by virtue of the Town and Country Planning (Development Procedure) (No 2) Order 2013, paragraph 6 (4) (e), considered "interested persons" and as such should be afforded party status.

7.2 The Highway Authority is granted interested party status under the Town and Country Planning (Development Procedure) (No 2) Order 2013 paragraph 6 (4) d.

7.3 The residents of Seascape are opposite the site and should be afforded party status in this case.

7.4 The resident of Douglas is not directly affected by the proposal and should not be afforded party status in this case.
C 1.
The development hereby permitted shall commence before the expiration of four years from the date of this notice.

C 2.
This approval relates to the erection of a replacement dwelling and the enlargement of the existing residential curtilage as shown in drawings SC1299/P/10-01, SC1299/P/11-01, P00-01, SC1299/P/10-02, SC1299-P-10-00 all received on 23rd December, 2013.
APPENDIX 7
Post from ‘Keep cars and horse trams off the walkway’ community page
Accessed 24th April 2016
Good morning all.

On Friday I received, on the last of the 20 days allowed under the Freedom of Information Act, a reply from the cabinet office which I publish in full on the first of the three images in this post or as a pdf here:

www.murrayandmarie.com/Prom/FOIreply.pdf

To date, I have only received a few emails and the press release but don't worry, I will pursue this much further yet.

The first thing to reveal is that the cabinet office received the report from the independent planning inspector even earlier than we thought. The fourth image attached shows that it was received as an email attachment at 10.58 on 31 January.

Nobody was officially told about its receipt. 38 days later John Shimmin refused to make any comment about the status of the report (5th image).

At 10.18 on 22 March Richard Parslow, the Government's Communication Executive broke the news to the media that the record levels of opposition to an Isle of Man planning application with this:

"Subject: Embargoed news release - Douglas Promenade plans
Dear Media,
The Council of Ministers has upheld the recommendation of the independent planning inspector to refuse the Department of Infrastructure's plans for the redevelopment of Douglas Promenade.
The Department is now bringing forward fresh plans to reconstruct the failing highway."

The press release, was all about Phil Gawne begrudging acceptance of the decision: "I believe the Department designed the best possible scheme for Douglas Promenade, one that would have served the best interests of the Isle of Man, Its economy and its people for the next 50 years."

The full press release is here:

www.murrayandmarie.com/Prom/PromPressRelease.pdf

This media release concluded an extraordinary year of mis-use of the Isle of Man Government news page.

There were 13 stories about Douglas promenade published during that period. I have tabulated them in full on this pdf:

www.murrayandmarie.com/Prom/Prom%20press%202.pdf

You can also see an image of the list (image 7).

Have a look at the headlines and the frequency when the Department of Infrastructure thought it could just do what wanted when it wanted.

Then have a look for any announcement about the appointment of an independent planning inspector, the receipt of the report or its publication. Why did the media release of 22 March not provide a link to the contents of the
report or comment on the failure of one its departments to submit a planning application which didn’t even come close to meeting any of the criteria, under Isle of Man planning law, to succeed?

Meanwhile a day earlier, on 21 March, a letter should have been sent to all interested parties to the planning application. A number of them did not receive such a letter, several received three copies and one person even received six copies. Soon after 9 am on 22 March the first of these letters was received.

Tim Knott broke the news on behalf of this campaign at 10.24:

https://www.facebook.com/douglaspromenade/posts/1516107192029192

And the report had been published, but only on the cabinet office website and even some of the campaigners found it difficult to locate. This was despite a request at 8.11 am that morning (see image 6) that it should not be published until mid-day because an embargo had been placed on the news until Mr Gawne made his announcement that the inspector had been “persuaded by concerns raised at the public inquiry” not that he had wasted a year (and a lot of money) on a planning application that should never have been made.

We will continue to use our spare time find out what happened behind the closed doors during the 52 days between receipt of the report and the two line announcement, as a prelude to the next announcement that the minister is always right.

(ML)
Dear Mr Lambden

REFERENCE NUMBER: IM40673I

REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2015 ("the Act")

08 April 2016

We write further to your application received by us on 10 March 2016, and the further clarification of details received on 01 April 2016.

Regarding your request for the following information;

"Copies of emails, letters, file notes, memoranda (whether electronic or hand written) relating to the above planning application since receipt of the report.

My FOI request should extend to any information held by cabinet office in relation to the Stewart Burroughs letter regarding application 15/000994/8 and the Inspector's addendum report. I would expect that any correspondence between the DOI and the Cabinet Office regarding press releases, any drafts or discussions relating the planning application and the inspector's report etc would also be covered within the scope of my request. I would also expect that any inclusion, references or discussion of the report on any agenda or minutes of COMIN meetings to be included and any information held about the release of the report regarding Tynwald questions.

As I understand that the decision was made on 17th March which was after my original request was made on 10th March. I would like to extend my request to all information held up to the date of your email (30 March)"

Part response to your request

This is an initial supply of information and not a complete response; we will endeavour to provide you with further details in a formal full response shortly. Please find attached copies of the information we are currently in a position to be able to release as per your request.

If there is any information that we are unable to release to you because of the application of an exemption, we will provide an explanation as to why this cannot be released.

With this in mind please note that we have been obliged where necessary in the current information supplied, to apply an absolute exemption under s25(2)(b) of the Act to withhold personal details, email addresses, signatures and telephone numbers, as we believe that disclosure would contravene the Data Protection first principle within the Data Protection Act 2002.
As explained in our earlier correspondence Part 3 of the Act s20(2) explains an absolute exemption would be employed for information that will not be supplied, if it is accessible to the applicant by other means. Some of what you originally and subsequently requested is readily available via:

Publication of the Inspectors report, addendums, annexes and decision notices

Written Question 4 – Mr Karran MHK to Minister for Infrastructure – 2 February 2016

This Hansard that gives the answer - 551 (further detail will be DOI held information)

As you have been an interested party in respect of this planning application you will already be either in receipt of, or have been directed to, the considerable amount of published documents relating to this application. However we are aware that this request also covers some personal correspondence from and to you, which is absolutely exempt for the purposes of Freedom of Information. Should you wish to obtain your own personal data this will need to be treated as a data subject access request pursuant to s5 of the Data Protection Act 2002, for more information on your rights and the process around this can be found on the Information Commissioners website
https://www.inforights.im/information-centre/data-protection-unsolicited-communications/guidance-for-individuals/your-rights/subject-access-requests/

To proceed with a data subject access request please confirm the same and provide us with the respective fee [£10]. Please be aware that the complete and formal full response, under the Freedom of Information Act, will neither be able to confirm or deny that we hold any of your personal information.

We endeavour to provide information whenever possible and to enable us to provide the full response to your request, we are obliged to consider whether a number of qualified exemptions apply to further information requested within the provisions of the Act;

1. under s34(1)(b) – Formulation of policy
2. under s35 – Conduct of Public Business
3. under s40 – Legal professional privilege

To enable us to do this section 13(3) of the Act says that we are allowed an extended period to consider qualified exemptions, beyond 20 days, to;

1. Consult with a person who may be affected by the disclosure of information; or
2. Consult with a person about whether access to the information would be in the public interest; or
3. Consider whether responding to your request will substantially or unreasonably interfere with the day to day operations of the wider IOM Government

Whilst this process is ongoing we will continue to give you reasonable notice of the progress of your application.
Should you have any queries concerning this letter, please do not hesitate to contact me.

Further information about Freedom of Information requests can be found at: [www.gov.im/foi](http://www.gov.im/foi).

Yours sincerely

**Lisa Kelly**  
**FOI Co-ordinator**

Information and Records Officer  
Cabinet Office  
E-mail: [FOI@gov.im](mailto:FOI@gov.im)
From: Wharton, Tony
Sent: 31 January 2016 10:58
To: Johnstone, Andy (CSO)
Subject: DOUGLAS PROMENADE INQUIRY REPORTS & APPENDICES

Andy

I attach completed Report plus Addendum Report and Appendices. The Files and Documents will be posted tomorrow, Monday. There are two separate packages to look out for!

There are Appearances Lists and a Document/Plans list at the end of the main report. I have Numbered all documents and these are in large envelopes with each showing contents.

Give me a ring if any queries.

Regards

Tony

Mr Quirk: Thank you, Mr Speaker. Can I ask the Minister for Policy and Reform, Mr Shimmin: what recommendations the Independent Planning Inspector made to the Council of Ministers in connection with planning application ref 15/00594/B?

The Speaker: I call on the Minister for Policy and Reform, Mr Shimmin.

The Minister for Policy and Reform (Mr Shimmin): Thank you, Mr Speaker. I have to inform the House that no decision as yet has been made in respect of this planning application. I hope Members will understand that to release the recommendations in advance of a decision being made would prejudice the proper consideration and, importantly, the integrity of the planning application process.

HOUSE OF KEYS, TUESDAY, 8th MARCH 2016

The Speaker: Mr Quirk – bearing in mind that definitive Answer.

Mr Quirk: Thank you, Mr Speaker. I accept the warning from the Minister, but can I ask the Minister then what date did the Council of Ministers or the Cabinet Office receive the report from the inspector?

The Speaker: Minister.

The Minister: Mr Speaker, I am refusing to answer any of these questions. It will become clear in the light of time.
HI All

Would it be ok to add some documents to the Cabinet Office Douglas Promenade page please?

If the documents could be added to the list of Downloadable Documents on the [https://www.gov.im/about-the-government/offices/cabinet-office/douglas-promenade-1500594b/](https://www.gov.im/about-the-government/offices/cabinet-office/douglas-promenade-1500594b/) page that would be perfect thanks!

Please see above for the PDF versions of the documents.

Sorry – would it be possible to delay the uploading of the documents to the page until just before 12 noon today please? There’s an embargo on the decision being made public until this time.

Thanks very much

Andrew