



**TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
QUAIYL TINVAAL**

PROCEEDINGS

DAALTYN

(HANSARD)

**SELECT COMMITTEE ON THE AFFAIRS
OF BRADDAN PARISH COMMISSIONERS**

**BING ER-LHEH MYCHIONE
COOISHYN BARRANTEE SKEEREY BRADDAN**

Douglas, Thursday, 19th July 2007

Members Present:

Chairman: The Speaker of the House of Keys (Hon. S C Rodan)
Mr P Karran, MHK, Mr A Downie, MLC

Clerk:
Mr L Crellin

Business transacted

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Tynwald Select Committee on the Affairs of Braddan Parish Commissioners

The Committee sat in public at 10.30 a.m. in the Millennium Conference Room, Legislative Buildings, Douglas

[MR SPEAKER *in the Chair*]

Procedural

The Chairman (The Speaker of the House of Keys, the Hon. S C Rodan): Good morning and welcome today to the public sitting of the Select Committee on the Affairs of Braddan Parish Commissioners.

Just a small housekeeping matter, first of all. Can I remind fellow panel members and those giving evidence that today's proceedings are being recorded for *Hansard*, so would all contributors speak clearly, try not to interrupt or speak at the same time as others, because this makes the job of transcription quite difficult. Would all members of the public please turn off mobile phones, as they can interfere with the *Hansard* recordings.

Today's sitting is a resumption of the oral evidence given by Mr John Rimington. Mr Rimington was sworn in on 28th June to present his statement and that meeting was adjourned for further questioning until today. It may well be that we will invite Mr Rimington to come back on a further occasion.

Mr Rimington was called at 10.40 a.m.

FURTHER EVIDENCE OF MR J RIMINGTON

The Chairman: So we recall you, Mr Rimington, and we thank you for giving up your time to attend this morning.

Can I, as a matter of record, also, Mr Rimington, point out to you that the press notice to Isle of Man Newspapers, we submitted with the correct spelling of your last name, one 'm'. Unfortunately, it appears Isle of Man Newspapers have put an extra 'm'. So there was no discourtesy intended in spelling your name incorrectly.

Mr Rimington: A very common mistake.

The Chairman: It is a common mistake, but it was not our one on this occasion.

Mr Rimington, if I may start by summarising the key dates in the process for developing the draft Braddan Plan and invite you just to confirm that this is your understanding.

In mid-1999, or after, August onwards – that is July or August onwards, let us say – there were initial discussions to highlight issues and options between the Planning Office and Braddan Commissioners. By October 1999, a draft Issues and Options document was produced, after which there was

further consultation resulting in the publications of the Issues and Options written statement in May 2000.

April 2001 then sees the publication of the draft written statement. Then, in February 2003, we have the modifications document, incorporating a summary of responses to the draft Plan and what was called the modified written statement for consideration at the public inquiry, and in June 2003 the public inquiry was held.

You were appointed Minister for the Department in June 2004, just after the previous Department, with Mrs Crowe as Minister, had accepted the Inspector's Report with a few minor modifications. You then held a Department meeting in September 2004 and were in accord with the previous decision to accept the Inspector's Report.

So now the Plan was ready to be progressed to Tynwald, until certain issues were brought to your attention, and indeed you presented these issues in considerable detail to this Committee on 28th June. Would that be your understanding of the time frame?

Mr Rimington: Yes. One minor thing at the beginning: the initial Issues and Options document that went to the Commissioners, dated October, I think, actually – although it had October on the front – went to them at the end of September, (**The Chairman:** Right.) but that is minor.

In September 2004, the reason why the Plan then did not have the necessary works undertaken on it at that point to then progress it to Tynwald was not from any particular concern on my part, but because it was already subject to the challenge which we could broadly call the McKinney complaint.

The Chairman: So you are saying that it was the McKinney complaint that caused a pause (**Mr Rimington:** Yes.) in progressing the Plan to Tynwald, while the outcome of that was known?

Mr Rimington: Yes. The chances are if that complaint was not being investigated, it probably would have, subject to not hearing anything different at that point – and I did not appreciate there were things I have since appreciated – it probably would have wended its way towards Tynwald.

The Chairman: We will come on to that particular issue in a moment.

So, having had the opportunity to consider your previous evidence, we now have a number of questions concerning the issues which you have identified, a number of which you will understand my colleagues and I had already recognised from initial inquiries and existing documentation.

Starting off, then, you made reference, fairly early on in your submission, to the discussions that the Department was conducting at an early stage with the local authority as part of the revision of the Plan process, and you said:

'While it is correct that the Department should consult with the Local Authority in the preparation of a draft Local Plan, the practice was taken to the extreme in the case of the Braddan Plan.'

Could you just elaborate a bit further on what you mean by that and what your understanding is of the Department's obligations, if any, to consult with the local authority?

Mr Rimington: Under the old legislation, which this Plan

Procedural

was commenced under, there was a statutory obligation.

The Chairman: This is the 1934 Town and Country Planning Act.

Mr Rimington: Yes, there is a statutory obligation to consult with the local authority.

I do not think that statutory obligation is there in the new Act, but it would be good practice and you would wish to consult with the local authority of an area under discussion, because obviously they have got a knowledge and appreciation of that area. They are a prime body to consult with and that is right and proper so that should take place.

I think the concern was that it became more of a partnership approach without the necessary detachment between the central Government – the Department – which was looking at matters from an all-Island point of view, or looking at things in the round, and a local authority, which is looking at things from very much a local perspective and swayed by local opinion, possibly.

The Chairman: Just focusing on the initial consultations and meetings leading up to the production of the Issues and Options written statement, what evidence do you have that the initial discussions, pre Issues and Options written statement, were taken to an extreme degree?

Mr Rimington: I would not like to isolate that period in itself, because you are looking at the whole process from September 1999 to February 2003, when the final modified Plan was prepared for the inquiry, but certainly there was... and it is there in the record of numerous correspondence between the Commissioners and the Department on various matters and also this going back and forth with the drafts of the Issues and Options document. That, to my mind, from my recollection of being involved as a local authority member, did not take place to that extent, if at all.

It was really the Department's role to hear the views of the different parties, and, obviously, the local authority would be a significant one there. I do not actually see why a local authority should be partly involved in formulating the Issues and Options document. It is really the Department comes out, identifies the issues and the possibilities, and then, from that process on, the Commissioners would be more of a prime consultee.

The Chairman: Would you agree that it is perfectly reasonable for a professional planning officer... As a first part in the process, the first point of contact would be to elect that body which is representative of the public in any particular area, whether it is Braddan or anywhere else, to initiate discussions with them as to what were the issues that should be considered as part of the Plan revision and what were the options in respect of those issues, which would then go on to be tested with other parties?

Mr Rimington: Yes, somewhere in there is a fine line of distinction because, at that point, you are only identifying issues and options; you are not... What took place was the... okay, there was correspondence there showing that the report of the draft Issues and Options document was being amended by the Commissioners, or putting forward for amendment or for issues that they wished to include and which were included. I think that was probably beyond the

normal run of things.

They would come into the... Because that puts them in a prime position where they are putting forward their views and, in fact, they are putting them forward behind the scenes, because it is only when you get to the responses thereafter that you start entering into a more open process and indeed – obviously the Department recognises now that it would wish to behave differently – treated the comments from the publication of the Issues and Options document in May 2000, before the actual draft Plan was produced in 2001, as confidential. They were not available for parties to see, although it seems apparent that Braddan Commissioners did. They were party to them.

The Chairman: Would you be aware in your time as Minister of the process regarding the Laxey and Lonan Local Plan and how that might have differed?

Mr Rimington: No, it would be interesting to... Obviously, that was part of the... It would be a good benchmark, how that progressed.

The Chairman: If I was to say that the process of discussion with the Commissioners to identify the options and the issues that would then be further tested with other parties, would that seem unusual to you?

Mr Rimington: No, that is fair. An issues and options document is very much an initial document and I do not think, if you might then have that informal discussion with the Commissioners prior to putting forward that issues and options document, that is necessarily a bad thing. You would not test it with other parties, because once you have produced it, it is then that you are going to get the other parties start putting their views in, and obviously the Commissioners there being the significant public body.

The only other sort of people you might consider discussing with before putting the issues and options document would be other statutory bodies, such as the Water Authority or DoT, if they could flag up issues that were of concern to them.

The Chairman: But the fact that initial discussions with the statutory body, which was the local authority, elected representatives of the public, that seems a reasonable starting point?

Mr Rimington: Yes.

The Chairman: Just moving on, then, you referred in your evidence to a complaint being formally made to the Department in January 2004 by Mr McKinney concerning perception of bias in the involvement of a planning officer in the Plan process and the Report by Mr McGreal, the investigating officer, was completed in November 2004.

Having accepted the inspector's report into the draft Plan in September 2004 – albeit a qualified acceptance, as you indicated – what were your views on the McGreal Report's findings?

Mr Rimington: At that point – and we accepted the McGreal Report – I was not personally feeling, 'this is the end of the Braddan Plan' or any such matter, but it still required – and that was under advice – that we should go

through and investigate what had taken place from within the Department, just to satisfy ourselves that nothing untoward had taken place or if there had been any bias.

He had said there was a perception of bias by virtue of residents – and that is residents only, not through looking at any decisions that are made, just by virtue of residents – and obviously we had the advice that, yes, we should make sure that that had not led to anything else, by that process of investigation.

We appreciate that all this was taking place within quite a constrained time period in that the planning directorate were working on the Strategic Plan, they were also working on modernising the planning system and the new legislation and regulations involved with that. So there was actually a limit to the number of things they could do at any one time.

The Chairman: So when the Department considered the McGreal Report in February 2005, which found a complaint was upheld, but it was a failure of procedures within the Department, essentially, in not being alert to this perception of bias, it was at that point, you said in your evidence, the Director of Planning would investigate any potential bias in relation to planning matters. What was the purpose of that further investigation then?

Mr Rimington: That was on advice received that, before going ahead with the Plan and taking it on the route to Tynwald – as it was being demonstrated that there was a perception of bias from the McGreal Report – they should investigate whether any actual bias had taken place or not.

The Chairman: And your conclusion of that investigation in your evidence was that the full investigation that was requested had not taken place and no further investigation had taken place. So the matter was still, in your mind, left unresolved?

Mr Rimington: Yes.

The Chairman: Okay, and, therefore, would it be correct to say that –

Mr Rimington: Can I just qualify that, in the sense that we were also aware of another complaint being lodged and that was not a complaint against the Department as such, but, obviously, it would affect the Braddan Plan, so that again was another reason for not charging ahead.

The Chairman: Okay.

Mr Downie: I take it that is the Kennaugh complaint in October 2005?

Mr Rimington: Yes.

Mr Downie: Right.

The Chairman: Okay, we will come on to that, we will come on to the matter of your meeting with Mr Kennaugh in October 2005.

Mr Rimington: Well, sorry, the Kennaugh complaint of October 2005... I am not sure when Baccarat... they were in correspondence with the Department –

Mr Downie: Yes, right from that time.

Mr Rimington: – all the way through, and then – I do not have the documentation – had lodged a formal complaint, which was being dealt with by the Chief Secretary's Office.

Mr Downie: Could I just take a little step back here, Mr Chairman, with your permission? In regard to the McGreal Report and whether or not you felt it was safe to proceed with the Plan, you said that you took advice – advice was received. Can you tell us who you took the advice from about progressing the Plan?

Mr Rimington: We always take our legal advice, in the first instance, from the Attorney General's Chambers.

Mr Downie: And do we have that advice in our... Did you present that advice in your bundle of papers, or is that withheld by the Department?

Mr Rimington: I think it may well have been withheld, in the sense that, traditionally –

Mr Downie: Yes, that is one area we are keen to explore further.

Mr Rimington: Right, you would need to...

The Chairman: You have confirmed that that advice exists and this Committee will then seek exactly what that advice was. Thank you very much.

Mr Karran, on what has been discussed so far, have you any questions?

Mr Karran: Do you know why it took so long in order to get the complaint started and finished, as far as the McGreal Report, and are you informed of the way the previous Minister tried to brush it under the carpet?

Mr Rimington: No, I am not. I actually have no knowledge of that latter, to be honest, and obviously some of this took place before I was appointed.

Mr Karran: Oh, absolutely.

Mr Rimington: I believe the first person to be appointed to look into the McKinney complaint was challenged and I do not know why or other reasons for, so Mr McGreal was the second person to investigate that complaint.

Mr Karran: Do you know who the first person was?

Mr Downie: It was the Chief Registrar, wasn't it?

Mr Rimington: No. Well, I think –

Mr Karran: Was it the Chief Executive?

Mr Rimington: I do not know if it is necessary to mention it, but it was an officer from the Department of Education.

Mr Karran: We have heard about the Lonan and

Laxey Plan. Are you aware of any private and confidential submissions being put into the Lonan and Laxey Plan? Is this a normal process, as far as when you are talking about the thing? Is there any other local authority you are aware of?

Mr Rimington: No, I am not aware of the details of how the Laxey and Lonan Plan has progressed at all.

Mr Karran: Are you aware, as Minister, of any other Local Plan where there are private and confidential submissions put in by local authorities? Is this the norm?

Mr Rimington: It should not be because all business of a local authority is in public session, unless there are obviously staff matters or the usual sensitive matters that should be held in private.

Mr Karran: Can you tell us why they gave the issue of private and confidential submissions? When did the policy change? Have you got any idea? Was it before your time?

Mr Rimington: It was. I think Mr Gilbey had made some sort of commitment on that matter. Whether that was following the event –

Mr Karran: What, that they would accept private and confidential – ?

Mr Rimington: No, that it had gone forward on that basis and that they were not prepared then to unravel that, but in future... I think the Department quickly came to the conclusion that that cannot... it is not sustainable going forward, but having accepted submissions on a private and confidential basis, they then could not turn them into public ones.

Mr Karran: So you are not aware of anywhere else where people were so pivotal, as far as being able to make submissions? A couple of people had so much power by the looks of... in other strategic plans as far as...

Mr Rimington: No. Again, as a Minister, I would not see the detail of what was happening. There is only the Laxey and Lonan Plan that was on the go when I took over, and really I did not look at that process at all. When I took office, it had all been done and dusted and was just waiting for the Department to bring it to Tynwald.

The Chairman: So you have no reason to believe that the procedures that the Department used to consult local authorities in the process of Plan revision were being applied differently, in the case of Braddan, as anywhere else currently or previously?

Mr Rimington: No, I did not. Obviously there are not any procedures, or there were not any procedures that I am aware of, that were actually set down.

The Chairman: It was your perception of what was happening.

Mr Rimington: Yes.

The Chairman: That is fine.

Mr Downie: Just to clarify, Mr Rimington, it is normal practice to put an advertisement into the newspaper. The public are invited to make views, make representations. Discussions take place with the Commissioners on a formal or informal basis, and on the basis of that, what you do then is put together the issues and options document.

That is further progressed and refined and then it finishes up at a public inquiry where everybody involved again can come and have their ten-penn'orth. Then the final arbiter is Tynwald, and if you had been in the position in 2004, you would have been the Minister taking the Braddan Plan to Tynwald and there was a further opportunity presented there for anyone who was not happy with that Plan to come and appear at the Bar of Tynwald.

The Chairman: With respect, are you asking for a comment?

Mr Downie: I am just getting Mr Rimington to confirm what the progression normally is.

Mr Rimington: Yes, I am aware of the –

Mr Downie: There is confusion here about private and confidential and all the rest of it. It is quite an open process, really.

Mr Rimington: The open process really starts after the issues and options document is produced and not before then, because you have not really got anything to be open about until you have something down on paper and published it, and then you are inviting for comments and...

The Chairman: Yes, you are then testing the propositions with various parties prior to a decision. Now I want to move on, Mr Karran, unless you have a final point.

Mr Karran: I have got two. One is that the point is that private and confidential submissions from a local authority is not the run-of-the-mill situation, as far as the planning process is concerned.

The other one was that on the January 2004 McKinney complaint, that was really the catalyst of the start of the concerns, as far as the Braddan Plan was concerned and that is why we are here today.

Mr Rimington: Yes.

The Chairman: Before your meeting with Mr Kennaugh in October 2005 then, were you happy or were you not happy to continue with the progression of the Plan at that point?

Mr Rimington: I would say that I was, on balance, happy.

I realised that there were going to be issues with it, that it was going to be... there were challenges to it – there had already been the McKinney complaint – and that Baccarat were making representations as well. So it did not have the ring of a 100 per cent certainty with me at all, but I was probably at that point balanced in favour of saying it needs to go forward.

The Chairman: So, following the meeting when you were made aware of the sale of the land at Mount Rule and

Camlorck, what was your reaction and what action did you take?

Mr Rimington: First of all, can I say it was a fairly short meeting with Mr Kennaugh because we were aware already that he had a complaint in the system, so it would have been inappropriate for us to have been having a detailed or lengthy discussion on such matters. It really centred on the land sales and the role of the Commissioners and there were some discussions with the Deputy Chief Executive, Mrs Mellor, about how we should write to the Commissioners and take a complaint through that process.

So, yes, it centred on the land sale as being, obviously, a critical issue. That was when I asked for the correspondence between Braddan Commissioners and the Department from August 1999, when the Plan process started, to effectively the current day, to be produced for me.

The Chairman: To whom did you address that request?

Mr Rimington: That was to the Director of Planning and obviously that would be copied to the Chief Executive and probably Deputy Chief Executive as well.

The Chairman: So you wanted all the documentation available in the DoLGE office and in Braddan's offices?

Mr Rimington: In the DoLGE office. That should contain everything, anyhow.

The Chairman: But it would not necessarily contain documents held by Braddan Commissioners. They are under no obligation to lodge minutes, for example, with DoLGE.

Mr Rimington: No.

The Chairman: So did you, as far as you were aware, get everything you asked for?

Mr Rimington: I got very little. Initially, there was the Report Mr McCauley had been working on – in fact, that interim report which you have got a copy of, outlining the area 14 proposals and how they had developed. That was, obviously, produced to me a couple of days after my initial memorandum, so obviously he had been working on that, but that was a very small fraction of the documentation available.

Can I just say that I did ask for that. It did not come. I must admit I was very heavily involved in the issue of local government reform at the time, which was very time demanding, so it did, from my own personal point of view, slip backwards in terms of priority.

The Chairman: So this investigation was one you undertook personally, (**Mr Rimington:** Yes.) review of the e-mails and the correspondence. Why did you decide to do it personally and not assign an officer of your Department?

Mr Rimington: Initially, all I wanted to do was just look at the correspondence. That is what I basically was asking for, to see if there was anything there. When I decided to actually look at it all – and I looked at it all in more depth, I suppose – there are two reasons. One is that I do not actually have

that... There were not that many officers in the Department to assign such matters to, and those there were had already been involved in it. So, you needed to look at it independently of the people who had been involved in the process, which obviously includes the Chief Executive and the Planning Directorate. Outside of that, there is not actually a body of people I could say, 'Go off and spend x amount of time ferreting through the information.'

Probably the other reason – and you might call this a weakness or a strength – is that that is my nature. I do look at things in detail, whether it is to do with planning, or whatever it might be.

The Chairman: Okay.

Mr Downie: But you were aware, then, that you had power to put a commissioner in charge of Braddan Commissioners and have a proper internal investigation into this matter.

Mr Rimington: No, we did not have that.

Mr Downie: The power does exist under the Local Government Act for you to do that.

Mr Rimington: No. The powers under the Local Government Act are and were, and to a certain extent still are, quite constrained. We already, at that time – and this is how it had arisen – instituted an inquiry into the affairs of the Commissioners with a certain set of terms of reference, which were then taken to Tynwald in October 2005. So we were, within the Local Government Act, already instituting an inquiry and that was predominantly on pensions and salaries type of issues. We did refer this, as a subsidiary issue, to the Chairman, not for his investigation, but we made him aware this is an example of a conflict of interest, and the Chairman made his –

Mr Downie: So it would be fair to say there were a number of issues relating to Braddan Commissioners that you were not entirely happy about at that time.

Mr Rimington: That is very fair to say, yes.

The Chairman: Thank you.

Mr Rimington: We were not receiving, and rarely did receive, all the documentation that we requested from Braddan Commissioners, and this is on other matters. We did not have a helpful relationship.

Mr Downie: Right, and this was right in the middle of the Briarcliffe and (**Mr Rimington:** Yes.) the other inquiry that was going in parallel.

Mr Rimington: Yes.

The Chairman: Just a general question: you referred in your evidence to a possible 901 additional dwellings for the inspector's consideration, the majority of which was either land under... or on which Dandara had options. Given that Dandara, or Heritage Homes, is a major developer on the Island, do you not think that acquiring land or taking options in this way makes commercial sense? Is there anything necessarily untoward about that?

Mr Rimington: No, there is not. That is fine, and I would imagine if you took any plan across the east or the west or the south, or wherever, you would expect Dandara, as one of the biggest developers, to have a significant part of any development rights that arose from that process. That is understandable.

The concern there was that there was quite a big imbalance. Of that 900, as I said, 560 were Dandara, 130 for land under the Government's control. I think it was 83 were bits and pieces, and then the other developers really had next to nothing out of that process, with those two big areas – Area 27 and the Camlork land, Areas 1 to 4 being excluded.

The Chairman: In your evidence, you referred to an audit of the proposed housing allocations, showing a perceived imbalance in favour of Dandara against an exclusion of land owned by Kirby Estates. Would these be issues that you would say are contrary to planning principles? Land ownership of this sort, is this a matter (**Mr Rimington:** No.) for the planners or for the planning inspector?

Mr Rimington: No, it is not. The planning inspectors... the planning system does not work on a land-ownership basis, does it? Indeed, any individual in this room can put in an application to build a luxury hotel on this very site that we are sitting and would be free to do so. It might not get very far, but the law does not require ownership.

The Chairman: No. Nonetheless, that outcome was the product of a process of assessing the merits of merging hamlets or villages, consolidating existing residential areas and so on, matters which are properly within planning.

Would you have expected the inspector to pick up these issues, if not the issue of ownership, which you point out correctly is not a material planning matter?

But given that it was the outcome of material planning considerations regarding merging of hamlets and villages, which you yourself had your own views on, why do you think the inspector accepted the situation and did not, perhaps, reserve some of his judgements as evidently as he apparently did?

Mr Rimington: For a start, the inspector was faced with quite a strong argument from both the Department and the Commissioners in terms of the land that was being proposed, and so they would hold significant weight with the inspector. That would be a logical process, although obviously the inspector did pick up that despite the strength of the arguments against the Camlork land, in his view it should not be precluded from development, i.e basically he did not see any, on balance, reason why that should not be –

The Chairman: A strategic reserve was – ?

Mr Rimington: Yes, and he used the term 'strategic reserve', acknowledging the fact that the Department had proposed all these other pieces of land, so that they had the notional housing allocation that they required on the land which was being strongly supported by both the Commissioners and the Department.

The Chairman: On which the Department had made decisions by this point.

Mr Rimington: Yes. That principle of merging hamlets or keeping spaces between the two is significant. I am aware of that as a principle from my own area of Port Erin, Port St Mary, and the need to keep some sort of (**Mr Downie:** Separation.) separation between the two.

There is a difference between Port Erin and Port St Mary and Union Mills and the Strang. They are of a different nature. The Strang is not in itself a village – one shop at a crossroads does not in itself make a settlement.

The Chairman: Okay. We will, perhaps, come on to the specific areas now then and –

Mr Karran: I have got a couple of questions, please.

The Chairman: Is it in relation to –

Mr Karran: What has just been said.

The Chairman: – Mr Kennaugh's investigation?

Mr Karran: It is in relation to what has been raised here.

The Chairman: Carry on, yes.

Mr Karran: You talk about the possibility of 901 additional houses. The issue of good planning; obviously the planners should make the agenda.

Is there a possible concern that, with so many of the planning officers coming from your Department to Dandara, it is just good planning process that they just happen to have all the strategic land?

Do you, sir, think that the issue of good planning is about making an open market accessible so that we do not end up with cartels controlling the housing market within the Island?

Does that not mean that that statement alone just shows how totally unhealthy the whole planning procedure seems to be, that, basically, virtually it is controlled by a very small selective cartel, and most of those possible 109 were going to be under the development of one development company?

Mr Rimington: Yes, it is a difficult area, because planning should not necessarily look at land ownership. It is not a material consideration, but it is something that maybe the Department itself, or some sort of wider audit, should at least be cognisant of, rather than the planners themselves.

On a small island you are always going to get domination in market places, as we see in so many areas, but then the system should provide appropriate checks and balances to ensure that that is not overly so or that there are opportunities for other people.

Mr Karran: But do you think that the situation has not helped, with the fact that the situation of so many ex-employees of the Department now work for the planners, know what the planning policy is, so that they have bought up the land in advance so that...? Is this something that needs to be – ?

Mr Rimington: It is one employee, I believe.

Mr Downie: One I know of.

Mr Rimington: Yes, but that is –

The Chairman: One employee; that is what you mean.

Mr Karran: Is it one employee that is in...?

Mr Downie: One employee.

Mr Rimington: But then, that was probably 25 per cent of our Planning Office when it happened!

Mr Karran: The other thing was that you did undertake the investigation personally, so it was not a matter of little faith that you could keep your concerns confidential and separated away from different officers within the Department.

Mr Rimington: No, as I said, the various officers had been involved in the process so far and were installed, but my investigation was for my own purposes and it did not go forward, in a sense, the decision that the Plan could not go forward. It probably confirmed it. It was the initial... The conflict of interest from the sale of the land was the critical issue, and you then had this double perception of bias.

The Chairman: Okay, Mr Karran.

Mr Downie: I just want to move on a little bit, if I can, Mr Chairman, and ask you some questions relating to your meetings with Henry Kennaugh. The first question I want to ask you is: following your meeting with Mr Kennaugh in October 2005, when you were made aware of the sale of land at Mount Rule and Camlork, what was your initial reaction; what action did you take?

The Chairman: With respect, I think that question has been asked.

Mr Downie: Right, in a different way. Do you want to answer that?

Mr Rimington: No, that was it. I just wished to look at what had taken place. It did not affect the progression of the Plan at that point, because it was already in limbo.

Mr Downie: You indicated that you got personally involved in this issue. I think we really need to know if this decision taken by you to investigate personally was because you had little faith in your officers.

Mr Rimington: No, it was not that. As I said, there are not that many officers available within the Department to undertake such work. Most of them are rushed off their feet. There was not really anybody, effectively, to assign it and it is partly a weakness on my part, in that I like to look at matters in detail, which I do, whatever they are.

Mr Downie: Are you aware that, in the past, when progressing Local Plans, the Department has imported specialist advice from the UK? It is well documented. There used to be a Mr Ryzner and other people (**Mr Rimington:** Yes.) came in and helped the Department from time to time. Would you not have thought that, given the amount of work

involved and the need to have some independence, as you have indicated today, that perhaps should have been an option the Department took, in progressing the Local Plan in Braddan?

Mr Rimington: It may well, with hindsight, have been the thing we should have done and should have done in early 2005, when we had the initial advice that we needed to undertake that process.

As I said, I think it was a mistake – which I accept responsibility for, being the Minister at the time – to expect the Director of Planning to investigate the process which he was already highly involved in.

Mr Downie: Moving on a little further, you referred, in your evidence the last time you spoke to us here, to a copy of a fax from Dandara Holdings Ltd to Mr Lewin concerning an arranged meeting with a legal firm in London. Was this fax found in the correspondence provided, and if not, where did it come from?

Mr Rimington: It was supplied to me by an individual who may well name himself in due course, but that individual had legitimate access to the Braddan files within the Braddan Commissioners' office. So that is where it came from. It was not supplied by Braddan Commissioners.

Mr Downie: Have you at any time had the opportunity to peruse the full Rawcliffe file on the investigation into Braddan Commissioners?

Mr Rimington: No, because that file was more about the pensions and the salaries and rates and other issues, and very little on this matter.

Mr Downie: What I would like to do is to provide you with a page of that Report, which indicates the Commissioners' business involving Mr Lewin in London the day before, where they discussed waste management matters. I am sure at some time the Commissioners will be in the same position that you are in and I want to find out the background to this meeting in London with this particular –

The Chairman: I think we are talking about matters that Mr Rimington would not have cognisance of, so I do not want this discussion, Mr Downie.

Mr Downie: It is flagging it up, yes.

Finally, in evidence, you referred to this imbalance. I am talking about numbers of houses now in the proposed Plan. Did the Department at any time have any indication of how many houses they thought that the Braddan Plan should produce? Did they have a benchmark?

Mr Rimington: There was numerous correspondence with the Commissioners on that issue and there were disagreements and so forth.

No, the Department itself, as far as I am aware, did not take a hard and fast decision, but needless to say, there is a demand for housing. Braddan, being where it is situated geographically, is the prime area for expansion.

Mr Downie: The other thing I would just finally ask you: is there any provision under our planning legislation

to actually hold land in reserve? Is there a terminology that provides for that?

Secondly, would you think it would be fair to hold land in reserve and perhaps, at some stage, deprive the owner of that land the opportunity to bring it forward for development?

Mr Rimington: No, that was the concern. That was the only major reservation that the Department under Mrs Crowe, and then following that, with myself, had, was that this term 'strategic reserve' does not fit into any legislation that we have on the Island. How could we accommodate it or not, and that matter never got resolved because other matters... That issue never got fully bottomed out.

Mr Downie: Thank you.

Mr Rimington: Personally – and these are just personal views – if land is suitable for development, then really each planning application should be considered on its merits within that context and not look at it a different way, but that is neither here nor there.

Mr Downie: So you would, therefore, also support the argument if land is owned and for whatever reason a person sits on that land, knowing that it is going to go up and up in value, at some stage it should be equally considered whether to take that land out and give somebody else an opportunity.

Mr Rimington: That is right, and that has been done, hasn't it? Certainly in my Arbory area, there was land that was zoned and I do not think the people were sitting on it for speculative purposes, but they were not going to build on it, so it was removed from the Plan.

Mr Downie: Thank you.

The Chairman: Mr Karran.

Mr Karran: There was just one question. Mr Downie raised this meeting in London about the waste management. Was this the thing where your Department was involved where originally you were going to buy the land for the waste management and then, all of a sudden, Dandara bought the land for it.

Mr Rimington: No, I do not think it is anything to do with that. I am not sure what the issue was. It was in relation to the incinerator, but obviously the Commissioners will be able to give you guidance on that.

Mr Karran: So it was not your Department that was in the lead, as far as buying this. Originally, Government was going to buy it, I think, through the Commissioners, this land, and maybe this meeting is something to do with that, yes?

Mr Rimington: No, I do not think so.

The Chairman: Thanks.

Now Mr Rimington, we are just moving on to specific areas of land that you referred to in your opening statement to us, and bringing discussion back to the focus of what this Tynwald Committee is about, which, of course, is the involvement of the Clerk of Braddan Commissioners

and the Braddan Parish Commissioners themselves in the period from 1999 to 2006, concerning the draft Plan and the circumstances that led to its withdrawal.

Much of what we have talked about, of course, is by way of the background to that. This is not an investigation into the merits of the planning system or a rehearing of the Braddan inquiry. It is not that at all.

So I want to start with Area 14, which is the specific area of land that was sold by Mr Lewin, the then Clerk, to Heritage Homes, and this is the piece of land that is close to the home of the planning officer concerned. When you became aware of the sale of the land...

First of all, can I just ask you to confirm when it was that you became aware of the area of land identified as Area 14 at Mount Rule – became aware of that sale by the Clerk?

Mr Rimington: It was a few days before the meeting with Mr Kennaugh. When we had announced the Public Inquiry into Braddan Commissioners, Braddan Commissioners held an open day on the Saturday – I am not sure of the precise date, but only a few days before – and made some public statements about how they had nothing to hide. I believe Mr Kennaugh visited that open occasion and produced the document to them at that point. So the Commissioners were then aware and thereafter.

The Chairman: So this would be about October 2005.

Mr Rimington: That would be the end of September that they would have held the...

The Chairman: Yes. Did you consider, at that point...? Presumably you viewed that as a very serious matter indeed – so serious it led to a train of process that caused the withdrawal of the Plan. Did you at that point consider satisfying your concern by exercising the default powers under the Local Government Act, to investigate if the local authority had acted improperly?

Mr Rimington: No, not specifically. As I said, we were already within that default process, holding the Inquiry – just initiated that process already – so it would then be adding on another inquiry onto that.

Also, the matter was raised in Tynwald and Questions were being asked. We were asking questions on Tynwald's behalf and not getting the answers.

The Chairman: And during the course of your subsequent investigations and access to documents, you presumably saw the Braddan Parish Commissioners' minutes of that period in 1999.

Mr Rimington: Only eventually, in December 2006, when they finally produced them.

The Chairman: Right, so you had not seen them prior to the decision to abandon the Inquiry.

Mr Rimington: No.

The Chairman: Those minutes, when you saw them, you obviously considered whether declarations of interest had been made at that time. In your statement, you said several times that no declaration of interest was made by

the Clerk in respect of the land to Heritage Homes. (**Mr Rimington:** Yes.)

Were you aware of any other declarations of interest made at that time?

Mr Rimington: Not at that time. The Commissioners made a declaration in summer 2000 – I cannot remember whether it was June or July – stating that they did not own land etc, and Mr Lewin also did not own land, except their own residences.

The Chairman: Did it surprise you that no declaration of that land ownership was made during this period of looking at the issues and options?

Mr Rimington: No, it did not, because I suppose... It certainly did not happen in my Local Plan or the area that... We did know one of my fellow Commissioners was putting a piece of land forward, but then that was... He had told everybody and we knew that. I suppose the system of democracy works by and large on a lot of –

The Chairman: In other words, would you have expected the Clerk or any Commissioner who had owned land which was being considered to be identified for residential development, to have declared an interest?

Mr Rimington: Yes. It is an absolute necessity of... Anybody involved in the process should have to.

The Chairman: If the law says that that declaration of interest need only be declared, or is appropriate for when a contract is being entered into, would you regard that that is too restrictive in terms of requiring to declare an interest?

Mr Rimington: Yes, it is, and that is why the legislation has now changed. That was one of the things that came out of the Rawcliffe Report. He suggested the legislation should be changed. We were also aware that, in strict legal terms, there was not a necessity to declare that interest. There is no legislation saying an officer should.

There would be for a Commissioner. There was that disparity between officers and Commissioners. That has now been tidied up.

The Chairman: Thank you.

Still with Area 14, of course we are aware that it was included, ultimately, in the Issues and Options document of May 2000 and in the preliminary draft of October 1999, along with Areas 13 and 15. The text in those documents refers to a review of Mount Rule, following an unsuccessful planning application in 1994 to rebuild the mansion house.

Do you not think, therefore, that it is entirely reasonable for the planning officer to include such areas for discussion, given that they had been commented on previously in the context of the previous Braddan Plan and applications had been made previously?

Mr Rimington: I have no intrinsic objection to Areas 14 or 15 or whatever of that land being put forward for consideration by the inspector, at all.

It is a process, but the process is not there whereby a planning officer picks out land and says, 'Oh, put that in.' It is really done by the landowners putting that land

forward, saying, 'Our land is available, we would like it to go forward.'

The Chairman: If the land in question, given that there has been criticism and a formal complaint about a planning officer and of that officer being a resident of Mount Rule, would you not think it more likely that such an area, this Area 14, would not have been promoted?

Mr Rimington: Yes, from a 'not in my back yard' (NIMBY) point of view, I would never have thought that the planning officer would hold those sorts of...

The Chairman: Now, I am going to ask you: do you have any evidence or knowledge that the planning officer knew who owned Area 14 at the time of the preparation of the Issues and Options document?

Mr Rimington: No, I do not – but somebody should know. As I said, land does not appear out of nowhere, when it is put forward in the process.

The Chairman: But I put it to you that it should not necessarily have been viewed as a surprise, because it did not appear out of nowhere. It had previously been identified from previous applications.

Mr Rimington: Yes, under the name of the... Area 14 had had previous applications under the name of Mr Lewin or one of his companies.

Mr Karran: Lewin Farms, wasn't it?

Mr Rimington: Lewin Farms, or whatever. So its ownership would be...

The Chairman: In your view, the ownership should have been well known.

Mr Rimington: Yes.

The Chairman: Thank you very much. That is all I have on Area 14.

Mr Karran: I have got a couple from –

The Chairman: Can we stick with Area 14 at the moment and then move on to 1, 2 and 3.

Mr Karran: Okay.

The Chairman: Are you happy to move on, Mr Downie?

Mr Downie: Just one final point. It does appear in the correspondence that has been sent to us from the Commissioners that Mr Lewin expressed to them, back in the mid-1990s, that he owned this land then. So there is something on record. Whether or not he refreshed that on a regular basis, we do not know, and that is one of the issues we have got to get to the bottom of, but you would be happy, from what you tell us, where there are specific areas, the planners should be more aware of in whose ownership the land is.

Mr Rimington: Yes. Not that it is critical that they should know, but they would know, as a matter of working practice.

Mr Downie: Yes, and the other issue, of course, that is asked from time to time by my colleague on the end here is whether the issue of people having options on land should be in the public arena.

Mr Rimington: That is a wider issue. I would agree that it should, but there is no legislation that says so at the moment.

Mr Downie: Thank you.

Mr Karran: There is something on Area 14: were their submissions private and confidential, as far as Area 14 is concerned, do you remember, from the Commissioners?

Mr Rimington: I have not seen any specific submissions from the Commissioners in the evidence that I saw on that, particularly on that area, other than their comments on the draft Braddan Plan and such matters. They were not letters on Area 14 as such, but they were making other submissions on the whole of the Plan.

Mr Karran: So, there were not specific ones on Area 14.

Mr Rimington: No.

Mr Karran: You said about declarations of the Clerk's interests. You were quite firm that in the past there had not been declarations of the Clerk's interests. You have read the papers to see that there had been no declarations as far as DoLGE was concerned. When you read the papers, were you aware of reading any stuff to do with declarations of the Clerk's interests?

Mr Rimington: No. I think if that had been made known in 1999, that he had this interest in the land, then a lot of the problems with the Plan may not have occurred. I am sure that the Department would have known about this. They would just be widely out there in the public arena and he would have stepped aside from that because there was an interest.

Mr Karran: So you asked for minutes, as far as any declaration from the Clerk, and were never furnished with any.

Mr Rimington: We asked for minutes later, not initially, covering that time period, in 2006, and they did not come.

Mr Karran: So, if they have now turned up, they were not supplied to you as Minister for Local Government and the Environment at the time.

Mr Rimington: No.

Mr Karran: So either they did not inform you, or they might not have existed until a later date.

Mr Rimington: No, there were minutes and each meeting was a little booklet in terms of their minutes. There

was certainly no shortage of paperwork produced by the Commissioners, but they were selective in their co-operation with the Department.

Mr Karran: You are aware that Commissioners, basically, do not have to furnish any concrete minutes to your Department, so they are totally in their control, as far as storage for posterity is concerned.

Mr Rimington: Yes, the minutes, I understand, are the property of the Commissioners. There is now an obligation under the new Act, the amendment Act, for them to provide minutes when requested, I believe.

Mr Karran: There is supposed to be the Braddan Parish Commissioners' minutes of 12th July 1999 which refer to a report that the Clerk did declare an interest and forwarded it on to the LGB for information, as far as this land was concerned.

Mr Rimington: Sorry?

Mr Karran: There is supposed to be, in minutes of the Braddan Parish Commissioners dated 12th July 1999, it referred to a report of the Clerk, Mr Lewin, declaring an interest and forwarding this information on to the DLGE for their information. When you looked in the information, that was not there?

Mr Rimington: No, that is the first I have heard of that.

The Chairman: So that comes as news to you. It relates to my question as to whether you were aware of any declarations of interest, and those minutes show one of 12th July 1999 in relation to a company owned by the Clerk, who was doing some work for Isle of Man Business Parks. Are you familiar with that?

Mr Rimington: I am aware that there was... that, yes, he owned a...

The Chairman: That is the one you are referring to, Mr Karran.

Mr Rimington: Yes, but not –

The Chairman: Not about the ownership of the land, correct.

Mr Karran: Cherry picking.

Mr Rimington: No, I was aware that there was –

The Chairman: There had been a declaration of interest in relation to another matter.

Mr Rimington: Yes.

The Chairman: Okay. Just continuing on that theme before we move on, would you consider, notwithstanding there was no declaration of interest made in terms of ownership of the land, the fact of the sale of the land in December 1999 in order to remove any conflict of interest,

let us say, given that this was at an early stage of the Plan process, would that be seen to be not unreasonable?

Mr Rimington: It would not have been unreasonable if it had been declared, and then everybody could have taken steps accordingly. Presumably the Department would know and the Commissioners would know, but because it was not declared, then it was wholly unreasonable because the land had agricultural value and was sold, if not for a full development price but for a development price. So there must be some expectation of the buyer that it was going to achieve a development value. That was all done behind the scenes.

The Chairman: Thank you. Turning to specific areas where you express concern, also the Camlork land: could you just clarify what you mean, because the former Camlork Farm South covers quite an area.

Mr Rimington: Yes, I am aware of the area. Traditionally, the Camlork land, in terms of planning, has referred to this Area 1 to 4. There has been this dispute through the 1990s and late 1980s on that particular land, but technically you are right. The Area 7 is Camlork land and then there is land surrounding that, which is also Camlork Farm.

The Chairman: Thank you, that is fine.

Area 7, of course, is owned by Heritage Homes, but before it was owned by Heritage Homes, the Department expressed an interest in acquiring it. In fact, that did not happen. You made some reference to that in your statement. You said in your statement that, in your opinion, a proposed major development of Area 7 should not have been so readily countenanced.

Given that a developer, the local authority, your own Department and the inspector himself all identified the potential for the site, whether it be for a hundred houses or a primary school, why were you yourself so much against it being included on planning grounds?

Mr Rimington: I am not that much against it. I am trying to find some balance here.

First of all – I discount the inclusion of developer in that list – a developer, for their own profit, will build anywhere if they are allowed, and also in a sense the inspector did not identify... The inspector was asked to agree with what the Commissioners and the Department – and they are the two central parties in that...

It is high ground. You come off the Mountain Road and you will see it, and it is a basic principle of planning that the higher up you go the bigger the visual impact. That is not an absolute rule, but it is a general rule. So you do not rush into building on higher ground. You may have to. It may, in the circumstances, be the most appropriate place, but to my mind, it was not held in balance. There seemed to be a desire to exclude some land, which is what Areas 1 to 4 –

The Chairman: Would you accept that this is your own view? There is a professional planning view and the planning inspector did not reach that conclusion.

Mr Rimington: Which conclusion?

The Chairman: About the unsuitability of the land.

Mr Rimington: I have not said it is unsuitable; I said it should not have been so readily countenanced. It should have been held more in the balance.

This is this issue to do with introducing, as an issue, about the merging of settlements and should there be ‘Please tick the box if you agree that there should be a green space’? Everybody would, understandably, tick the box. But if you put in as an issue there: ‘Should we avoid building on higher ground where there is a greater visual impact?’, you probably would have got a corresponding amount of ticks in the box against that.

It was a loaded question – that was my concern – and without balancing. They have picked on one issue which suited the purpose of actually excluding the Camlork land, but did not introduce other issues which could be considered relevant.

The Chairman: And yet the inspector, in his recommendation over Area 7, is agreeing with you in part. He is saying:

‘Whilst the site is to some extent visible from higher ground, these are long views and the visual amenities of the area should not be unacceptably impaired by development of the site.’

So the planning inspector acknowledges your concern, but has reached a separate conclusion.

Mr Rimington: Yes, it may well be if the matter is looked at afresh and all the land is put forward in a balanced manner, then it comes out as ‘this land is acceptable for development’ – particularly if you start changing our policies on development... instead of filling up every available corner of a field but introducing some significant structure of tree planting around such developments, it could soften in the landscape quite well.

Mr Karran: Can I just ask: this planning inspector, how many hats did he have? Was this the same inspector who has been looking at other issues? Has this one been working to help augment the staff in the Department, with the lack of planners?

Mr Rimington: No, no.

Mr Karran: Which inspector was he?

Mr Rimington: Mr Mossop, who is involved with the Strategic Plan, but his other involvement, as a planning inspector –

Mr Downie: An independent planner –

Mr Rimington: Yes, he was an independent, from across.

Mr Karran: But he has been directly employed, as well, by the Department, if I am led to believe.

Mr Rimington: No, he will not have been.

Mr Karran: Maybe not in your time, but maybe since.

The Chairman: He is on the panel of inspectors that

the Department uses for planning appeals and conducting inquiries.

Mr Rimington: Yes.

Mr Downie: But employed by the Crown Division.

Mr Rimington: Yes, it would be logical to... If you could use –

The Chairman: Not employed by the Department; employed through –

Mr Downie: Crown Division.

The Chairman: Crown Division.

Mr Rimington: Crown Office, yes.

Mr Karran: So you are not aware whether he has been working to help and assist the planning process within the Department as a side issue?

Mr Rimington: No.

The Chairman: Just sticking with Area 7, what exactly happened when the Department expressed interest in the housing potential of this site, only to find that Braddan Parish Commissioners were already there, were already involved?

Mr Rimington: That was not, I do not think, an issue. The Department was trying to, and, I believe, wrongly... Well, rightly, the Department was looking for opportunities for its first-time buyer programme and to acquire land for that purpose, and that is a good thing.

Unfortunately, they put forward to Council of Ministers at the time the range of funds that would be required if they wished to fulfil some of these ambitions in terms of landownership – and that was not specifically in Braddan, but elsewhere as well – and that money was not forthcoming. There was no money in the pot for that purpose. There is a limit on the capital funding.

So that is when the Department realised that it did not have the wherewithal to successfully go into and complete negotiations.

The Chairman: So did the Commissioners seek the Department's approval to purchase the site, or did they suggest that the Department itself purchase the site? Clearly, there was a mutual identification of the housing potential.

Mr Rimington: Yes, this was, obviously, before my time. Apparently, the Minister of the time gave some sort of informal permission that if they were interested in it then they could go ahead, if the Department was unable to. As I said, I find that strange.

I found it strange that the Department was trying to purchase that land so early on in the planning process. The risk involved of public money, whether it is Commissioners' money or taxpayers' money, is still relatively high.

The Chairman: And the sum that would have been involved would have been what the Government Valuer

had placed on it. Is there evidence that it was at the full development value? Is that the sum that was being considered at the time? I think in your evidence you said that the Minister, or the Department, would have been put in the position of having to find £x million which it had not allowed for.

Mr Rimington: Yes, they did not have the funding. I do not know the figure.

The Government Valuer, I think, initially said, was it £2½ million or something, which was... That might be what the Government Valuer would say, but it was a seller's marketplace and the whole farm went for just over £6 million. Within that £6 million the prime piece of land, obviously, would be that Area 7, so that would be in the £5 million territory.

The Chairman: Thank you. Mr Karran.

Mr Karran: Can I ask you on this Area 7, to start off with, are there any resemblances of LGB, Braddan Commissioners: one was going to buy the land, just like the land with the waste management, and then, all of a sudden, we did not buy the land and Dandara bought the land? Has there been any investigation?

Are there any reasons why we end up with a situation where there was this idea that we were going to buy Area 7 and then, all of a sudden, we did not buy Area 7, and we just get pipped by the taxpayer? The same with the waste –

Mr Rimington: Well, I do not know –

Mr Karran: – the land to do with the incinerator, where we again get pipped by the same developer.

Mr Rimington: I think there are two separate issues there. With the waste land, that took place... It did not come out into the marketplace, or as an issue, until later.

Mr Karran: We were going to buy that, as well, from the public purse, and we did not.

Mr Rimington: Right, okay, that would have been certainly before my time. We were not pipped at the post in terms of Area 7. We just never got off the ground because we just did not have the money. That is simply the issue; there was not the capital funding.

Mr Karran: So there was never really any political will to buy that land. So wouldn't that in itself not be a conflict?

Mr Rimington: Not outside the Department, anyhow.

Mr Karran: Alright. Wouldn't that have itself conflicted the Plan if we were saying that we were doing an independent Plan and yet we were doing deals on land for Area 7? Would that not have conflicted us?

Mr Rimington: It would. We should not have even gone into that process. Besides the risk to public funds, it would have been improper. You are not holding land in a fair and evenly balanced manner if you have gone and bought it part way through the planning process.

Mr Karran: Yes. So there was never really any political will to buy that land.

Mr Rimington: There was a desire within the Department and there were the negotiations for that, but it dried up because of lack of money.

Mr Karran: How much is in the land bank fund? Do you have any idea now?

Mr Rimington: No, not much. Only a few millions and that has usually got usage earmarked for it.

The Chairman: Yes. Just for the record, the valuation of £2½ million received from the Government Valuer –

Mr Karran: What date?

The Chairman: This is a memo of 2005.

Mr Rimington: Yes, that is the memorandum, but the date from the Government Valuer would have been in 2002 or 2001. That was for the time period.

The Chairman: Evidently, the Clerk of the Commissioners did contact the Department to suggest that the Commissioners should negotiate for the purchase of the Camlork land and that they could negotiate a lower price – presumably the Government Valuer would have been called in first, though – and it was, I think, recognised that the Department did not have the funding. The then Minister agreed that Braddan should enter into negotiations, with a view to purchasing the land for the public sector and there was no point in central Government and the local authority bidding against each other.

Did you find that surprising, the Minister's decision, giving the green light to the local authority to enter into a bidding process?

Mr Rimington: Yes. First of all, there is a formal process of committing public funds, or ratepayers' funds, and this was outside of that process, and if they had gone into these informal negotiations and then had to go into the formal process, the Department already would have been compromised. It could not have been looking at it independently because it had already said, 'You go ahead,' (**The Chairman:** Yes.) and the effect on the rates, even if it was that of the Government's Valuer, the figure of £2½ million, it would have still been a 60 pence or 70 pence hike on the rates.

Mr Downie: Would you not agree, though, as Government meets all the deficiency on public sector housing, this land could have been land-banked and financed by Government, with an arrangement through Braddan Commissioners, and this could have been held for some future time for local authority development? It could have been secured to provide low-cost housing.

Mr Rimington: The housing deficiency I do not think would cover the capital purchase of the land.

Mr Downie: It could have gone into the land bank the Government holds, but at the end of it, of course, it has been

oversold for £6.1 million, so Government would never have bought it at that price.

Mr Rimington: No, that is true.

Mr Karran: Isn't it a fact that, under the law, if a local authority buys the land, then it does not go onto the housing deficiency fund and in fact it is...? We have problems in my constituency with my local authority not buying land, because it would have to be a rate-funded project.

Mr Rimington: Yes.

The Chairman: Okay. Shall we move on?

Mr Karran: I have just got a few points.

What I find a bit concerning is that it was confirmed that Sarah Corlett was removed from the Plan because of complaints of conflicts of interest and perception of bias, which did involve Mr Lewin with the sale of land. What I would like to know is: should it have been observed by the Director of Planning, Mr McCauley, that Mr Lewin should also be removed from this process, as far as this land is concerned as well, because of other actions with other areas within the Plan?

Mr Rimington: I do not think at that point that, no, Mr McCauley was not aware, and nor was anybody else, of the sale of the land. We knew there was a lot of concern around Area 14, because that was being expressed by Quinn Kneale on behalf of Baccarat, but they had not actually stated that there had been this sale of the land or, indeed, who owned the land.

The Chairman: Just to clarify the point, the declaration of interest by the planning officer was back in 2000, when the issue had first arisen that, as a resident immediately adjacent, there could be a perceived conflict of interest and the then Director of Planning, which was not Mr McCauley – Mr Vannan, in fact – ordered that she, the planning officer, not be involved in consideration of Area 14.

But Mr Karran's question was in relation to why did the subsequent director not get involved with, or require the Minister to remove the Clerk. Your answer, Mr Rimington, is that it was not known until much later on.

Mr Rimington: Until October 2005.

The Chairman: Until 2005.

Mr Rimington: Yes.

Mr Karran: And when it was known, was any action taken, because of representations, to make sure that both the Clerk and Miss Corlett had been perceived to have bias as far as this?

Mr Rimington: Again, it is before my time, but I understand that, as soon as it was raised as an issue – by Mr McKinney, I believe, at the public inquiry, or in that timeframe – it was then that Mr McCauley took over and presented the Plan at the inquiry and the planning officer then ceased to have any further involvement with the Braddan Plan and it was in the hands of Mr McCauley.

Mr Karran: And in all these areas, was there any change of policy, as far as allowing Braddan Commissioners... Did they have to respond in the normal way? Were there private and confidential minutes about this land, 1 to 4 and 7?

Mr Rimington: I have not seen any particular minutes about that land but obviously there were numerous meetings with the Commissioners right throughout the Plan process, and also the responses of the public and the various parties to the draft Braddan Plan were forwarded to the Commissioners, so they became a partnership in the consultation process. That is the concern.

Mr Karran: Do you think that was more like control the driving wheel, more than...?

Mr Rimington: That could be it but that is for the Committee to consider whether that took place or not. They were then in the position where, certainly, they had a hand on the wheel, and whether that was two hands or not, you will have to make that judgement.

Mr Karran: So, you are not aware that there were any private and confidential submissions put in on behalf of Braddan Parish Commissioners just on these areas alone.

Mr Rimington: Sorry, I am just uncertain about the terminology of 'private and confidential'. In the evidence that you have got, there is this record of documents going back and forth from the Department and going electronically, I believe, where the Commissioners would go through it – or perhaps you could say the Clerk, on behalf of the Commissioners, would go through it – paragraph by paragraph and put comments on about what they agree with and what they do not agree with. I do not think all that correspondence was out there in the public domain, no.

Mr Karran: It is said that they were having meetings with the local residents' association in the same day, saying different information to what was being said to the Department. Have you ever seen these residents' association minutes in the Department?

Mr Rimington: No.

Mr Karran: No-one has ever gone to find out. Right, okay.

Mr Downie: I think they had an open day, not...

The Chairman: Just moving on, then, Area 25 was between Braddan cemetery and Port-e-Chee as an Area you made some comment on. Again, this was supported by the Department and the Commissioners and the inspector reported that, from his inspection, the site seemed to be a good site for major housing development.

Do you agree with the statement in the draft written statement that the site is well placed in terms of its proximity to places of major employment and is within easy walking distance of the existing primary school?

Mr Rimington: Oh, yes. In the balance, that may be a good site.

I think the people of Douglas might like to have their

view on it, as it is nicely out of the way for the... There is no impact for the people of Braddan, although it is within their boundary, but it has more of an impact on the people of Douglas, and it may be a site.

But it was supported strongly from the very beginning, from that initial letter of the Commissioners on 8th October, whatever, in 1999, right through, and when criticism was made of it, by saying the arguments about coalescence of settlements – you could say it is coalescing Braddan and Douglas – it is certainly not consolidating a settlement. There is no settlement in that area. Those arguments could be made against it: whether they are valid, or not. But then it was said, 'Well, we have got to hold on to this because this is our housing allocation.'

The Chairman: So, whereas it had not been in as an original component in the Issues and Options document, it was identified subsequently.

Mr Rimington: No, it was in the initial Issues and Options document. That was my concern, I think, when I mentioned that as an issue. It was issue 10 in the document:

'Are there existing settlements which could accommodate further expansion into the surrounding area without detriment to the amenities of the immediate vicinity or the area as a whole?'

So you are suddenly putting in this 'without detriment'. For example:

'The land between Ballafletcher Road and Port-e-Chee Meadow has been suggested as an area worthy of consideration in terms of its potential for accommodating further development.'

That, to me, is an issue which invites, 'Oh, yes, we'll have one of those, thank you,' as opposed to holding it more in balance. It certainly was not given... The Camlork land was not treated in such a way.

The Chairman: Thank you very much.

Mr Rimington: That particular land, in a different approach, that particular issue 10 could have actually been written for the Camlork land. But it was not.

The Chairman: Okay, thank you. We take your point, thank you.

Now I intend to bring the session to a close for the time being, but I would invite my colleagues if they have got any further questions at this stage. Mr Downie?

Mr Downie: I have nothing further.

The Chairman: Mr Karran?

Mr Karran: Yes, there were a couple of questions.

So, really speaking, one of the concerns you had as Minister is that between the Commissioners and the planning officer seemed to be the decision-makers on the point, as far as Area 25 is concerned. Somehow different agendas were made up for different areas.

How did the situation happen that we ended up with the Commissioners ending up with such a pivotal role, as far as planning is concerned by your Department? Is it just simply because they are so overstretched, as far as planning?

Mr Rimington: Yes, I think so. Also, the Commissioners, under their previous management, were very keen to be involved in it and pushed themselves strongly in that direction. It is fair to say that Mr Lewin is a very capable and clever individual and would be –

Mr Karran: And the agenda was made before you were a Minister, by the previous Minister.

Mr Rimington: Yes, and you will also bear in mind that the Plan came to fruition in the time when the previous Director of Planning was probably in the closing period of his employment with the Department. Then there was a gap, before the new director took place in the summer of 2001, and within that time period – and probably the new director would not be able to get on his feet straight away, either – the Plan had predominantly taken shape.

Mr Karran: Have you got a list of the documentation that you handed back to the Department, and is it possible that the Committee could have a copy of that list if you have still got a copy of that documentation?

Mr Rimington: I do not think I have got a copy of it!

Mr Karran: Of the stuff that you gave back to the Department.

Mr Rimington: No, I did not take a full list, sorry.

Mr Karran: Oh, right.

The Chairman: That is for the Committee to reconcile what you have handed to the Department with what has been, up to this point, made available to us.

Just by way of a final comment, Mr Rimington, the investigation into Mr McKinney's complaint, while that complaint was upheld in the McGreal Report, the Department, I think under legal advice, concluded that this did not mean that the process undertaken by the Department in the preparation of the Plan had been flawed.

In other words, despite perceptions of bias, in accordance with the new *Pilling* judgment rules, the process had not been flawed, yet ultimately the Plan was withdrawn by yourself. It was not brought to Tynwald, and in your evidence, in your statement, you consider, I think, the process had been – your word – unsafe.

Does that, at the end of the day, relate to – given that we are looking at the period from 1999 to 2006 – the early stages of involvement by the Commissioners, given that the ultimate decisions as to what would go forward to an inquiry were made by the Department?

In other words, however recommendations or the contents of drafts are arrived at, the decision is ultimately for consideration by the Department for decision, so whatever the Commissioners may think and recommend, whatever the planning officer may think and recommend, ultimately it is the Department that makes the decision, and it is the inspector who tests those conclusions in public with all the parties.

Do you still stand by your statement that the withdrawal of the Plan was justified because the processes were unsafe?

Mr Rimington: Yes, I do. It was unsafe for the double

perception of bias – as I said, the second one being the more serious – and that in itself could stand as the reason for the withdrawal of the Plan.

Secondly, in my investigation of it, that would be the correct word that I would use for it: a big 'unsafe'. I have seen a body of circumstantial evidence, which I have given to you for you to make your judgement upon, but to me it did... It seemed out of balance that certain developers were excluded strongly or seemed to go to quite considerable effort to keep certain land out of development and, conversely, include other land. It was not treated in a balanced manner, and that is the concern.

As I said, I do not know which land is the best professionally from a planning point of view which should be developed.

The Chairman: But ultimately, did the reasons for that rest with the actions, or the non-actions, of the local authority, Braddan Parish Commissioners?

Mr Rimington: No, the Commissioners had a much stronger role in the process than is normal, and as you will see from the reports that went to the Department, it was all 'the Commissioners and the planning officer resolved,' and 'the Commissioners and the planning officer have come up with this.'

In a sense, any Department of Government, on any matter, you rely heavily on your officers and the whole system behind bringing a report, whether it is on a health matter or whether it is on –

The Chairman: And the professional judgement of those officers, which has been upheld... certainly in the McGreal Report, the professional activities of the officer have not been held in question. It is for the Department, though, to make the ultimate decision.

Mr Rimington: It was for the Department to make the assessment, following the McGreal Report, whether any bias had taken place or not.

The Chairman: And given that a particular officer is considered to have acted professionally, the Department ought to be safe in relying its assessment on what that officer has produced and making its decision accordingly.

Mr Rimington: Yes, that would normally be the case, but the McGreal Report is not an analysis of the Braddan Plan. That did not go into that. It is really looking at that perception of bias and it left the question of was there anything...

But there is no suggestion from McGreal that the planning officer had done anything untoward. That was not his remit – he was looking at the perception of bias in respect of the *Pilling* judgment and residing in the area. But we had advice that we should then satisfy ourselves, the Department, that the perception of bias, which we accept, was no more than that.

Yes, it is true to say the Department had made decisions. Everything went through the Department. You rely, in all these matters, very heavily on the professionalism of your officers, and the due process by which it arrives at a Department meeting, and especially in a complex area like a Plan, with a whole body of knowledge and information behind it, you are in... Unless there is something that sticks

out strongly, you are very much in the hands of the people behind that report, and obviously behind it, in this case...

I do not think... The current Director of Planning, having just arrived in the Island, was probably not aware that possibly the involvement of the Commissioners was beyond the norm.

The Chairman: Those were your words, that it was 'beyond the norm'.

Mr Rimington: Yes, well, it is also the planning officer's words, as well, so they did not respond in a normal way. They were party to everything as it went through, considered all the submissions.

The Chairman: That is fine, Mr Rimington.

These are matters obviously the Committee will explore with the Commissioners.

Mr Karran: There were just a couple of things. You talked about the McGreal investigation. It took something like six months to try and get it sorted out, but even after there was an agreement that there was a perception of bias, the planning officer still had strategic involvement, maybe by a step further away, on the Braddan Plan.

Mr Rimington: No, the planning officer was... Sorry, I will correct that. In terms of involvement with the Braddan Plan and how it should or should not progress, the planning officer had been taken out of that loop at the receipt of the McKinney complaint and that was in 2003, the time of the inquiry.

Mr Karran: But she was still making submissions, wasn't she?

Mr Rimington: But she is still... I am not aware. The planning officer was involved with some of the planning applications in the Braddan area and some of the... I think there was an involvement with – I do not know – with the energy for waste land and possibly the golf course land. I am unsure.

Mr Karran: Can I just also ask –

The Chairman: A final one.

Mr Karran: – a final one? There are other ones I would like to ask. Document 17 said that 17th February 2004 in the Braddan Parish Commissioners' minutes, Area 23, business park proposed rezoning of Area 23, zoned as business park... How was it achieved to get permission from residential housing without first the zone being changed? Were there private and confidential submissions put into the Department?

Are you satisfied, when you see the likes of this and you hear that Mr Sinden refers to the recent planning inspector who had assisted the Strategic Plan preparation was the same Mr Mossop that presided over the Braddan Plan and, I am led to believe, helped out with in the Department in

a supervisory role? Have we actually learnt any lessons, as far as your brave decision, as far as withdrawing the Braddan Plan, as far as making sure that we cannot have this perception of bias?

Mr Rimington: Unfortunately, no. The business of Area 23 went ahead and was going ahead by the time that I joined the Department as, indeed, was the land next to the energy from waste as, indeed, was the planning application for the golf course, with a sympathetic response from the Department.

Technically, Area 23 can be developed as such within the context of the original Braddan Parish District Plan of circular 6/91 and, in strict legal terms, that Area 23 development can fall within that, but it is tenuous. You would think that, with the Plan waiting to go to Tynwald for approval and that very specific evidence, you would not then suddenly rely on something of some considerable years earlier.

Mr Karran: Can I just ask one more and then I will leave the rest? The situation is you have withdrawn the Plan. What action have you taken, as far as the possibility of making it not acceptable in the future for submissions to be private and confidential from local authorities?

Mr Rimington: That has been accepted by the Department.

Mr Karran: That it will not happen in future.

Mr Rimington: Yes. We have to have this fully open and transparent process, but obviously, these are some of the things – issues like that – the Committee can confirm its views in terms of its recommendations.

The Chairman: Thank you very much, Mr Rimington. That brings us to the end of this morning's session. It may well be that we will be asking you to come back again to respond further to questioning in the light of our ongoing investigation, but in the meantime, thank you very much for your attendance.

This public session, therefore, of the Select Committee into the Affairs of Braddan Parish Commissioners stands adjourned. Thank you very much, ladies and gentlemen.

The Committee sat in private at 12.33 p.m.

CORRIGENDUM

On page 10 TBPC of the Official Report (*Hansard*) of the Select Committee on the Affairs of Braddan Commissioners, Thursday, 28th June 2007, for:

'Without delay, on 26th February 2003, the Commissioners submitted a planning application for a Civic Amenity Site adjacent to the EfW, which *required* approval, even though the Department was still committed to the Middle River Site'

read *acquired*.