



**TYNWALD COURT  
OFFICIAL REPORT**

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**DAALTYN**

**(HANSARD)**

**SELECT COMMITTEE OF TYNWALD ON  
CROSSAG FARM**

**BING ER-LHEH TINVAAL MYCHIONE  
BALLEY NY CROSSAG**

**Douglas, Thursday, 25th June 2009**

**Members Present:**

Chairman: Mrs B J Cannell, MHK  
 Mr D A Callister, MLC  
 Mr G D Cregeen, MHK

*Clerk:*

Mrs M Lambden, Third Clerk of Tynwald

**Business transacted**

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*The Committee sat in private at 11.21 a.m.*

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## Select Committee of Tynwald on Crossag Farm

*The Committee sat in public at 9.55 a.m.  
in the Millennium Room,  
Legislative Buildings, Douglas*

[MRS CANNELL *in the Chair*]

### Procedural

**The Chairman (Mrs Cannell):** Good morning. May I welcome members of the public who are attending this oral evidence session of the Select Committee on Crossag Farm.

Just by way of introduction, if I could say that the Committee was established by Tynwald in July of last year to investigate the details of the contractual agreement between J G Kelly Ltd and the Department of Local Government and the Environment, and to report thereon, with recommendations.

If I might, first of all, introduce my colleagues on the Committee: to my right is our Clerk, Mrs Lambden; to my immediate left is Mr Callister, Member of the Legislative Council; further to my left is Mr Graham Cregeen, Member of the House of Keys; and also our *Hansard* Editor who is here this morning, and he is responsible for recording all proceedings.

Could I just say at this point, to ensure that if anybody has got a mobile telephone, if they have switched it off, please, because it does interfere with the recording equipment.

For today's public sitting, we have two witnesses. Our first witness is Mr Carl Hawker, who is Assistant Financial Controller from the Treasury, and then later we have Mr Ken Kinrade, who is Chief Executive of the Department of Local Government and the Environment.

### EVIDENCE OF MR C HAWKER

**The Chairman:** If I could, first of all, call upon Mr Hawker, please, to come forward and take a seat. Please avail yourself of a glass of water, if you feel the need.

**Mr Hawker:** Thank you.

**The Chairman:** Can I, just by way of starting off, clarify one point, because obviously we have received a lot of written evidence and we have had correspondence with the Treasury, and we do have a letter – in fact, we have two letters – from officers in Treasury stating that they did not have any involvement whatsoever and did not have sight of this contractual agreement on a formal basis. Is that correct?

**Mr Hawker:** That is correct, until July 2008, when I met with the Chief Executive of the Department of Local Government and the Environment to review the development agreement.

**The Chairman:** July 2008. But that would be after it was signed, would it not?

**Mr Hawker:** Yes, indeed.

**The Chairman:** Is that usual practice with a contract, the consequences of which could amount to a considerable amount of money? Is that usual that Treasury would not officially be involved?

**Mr Hawker:** I think Treasury have not been involved in a number of development agreements or contracts that are signed between Departments and third parties. On the other hand, there have been some occasions where Treasury involvement, through negotiation of development agreements, has been forthcoming in respect of areas like the bus station site and so forth, where Treasury officers have been involved throughout the development of Heads of Terms.

**The Chairman:** Just looking at the agreement and the types of agreement the Government enter into, what is your opinion with regard to when an agreement is entered into with a company whose circumstances and directors may change from time to time? Is continuous substantive checking done at all by Treasury? Does Treasury keep an eye on that?

**Mr Hawker:** Not as a matter of course, no.

**The Chairman:** Obviously, if circumstances and directors of companies with whom Government do business by way of agreements for whatever... Obviously, if those changes are made, it could impact upon the company's validity, in terms of their financial position etc. Is that ever taken cognisance of?

**Mr Hawker:** Certainly Treasury would look at the financial position of a company before entering into a contractual arrangement with it. The issue of, if a director changed in that company subsequent to that, whether that would be picked up and whether that would constitute a significant event in terms of the financial viability of the company, I do not know. I think you would have to review that on a case-by-case basis.

**The Chairman:** So is there no automatic informing of Treasury then from time to time? If Treasury have done certain financial checks on a company from the beginning, is there no way that you are actually informed if there is a change within the company?

**Mr Hawker:** In the directorships of the company, no.

**The Chairman:** You are not?

**Mr Hawker:** No.

**The Chairman:** So that could potentially be quite risky, couldn't it? If the directors changed fairly substantially and the direction of the company changed and the financial standing of the company changed, Treasury would clearly be under the impression that the company was sound, having first checked it out, say, several years ago.

**Mr Hawker:** Yes.

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### Procedural

#### Select Committee of Tynwald on Crossag Farm – Evidence of Mr C Hawker

**The Chairman:** So there could, potentially, be a risk there, could there not?

**Mr Hawker:** Yes, there could.

**The Chairman:** Talking now about the arrangement within the contract, the contractual agreement is mainly with J G Kelly Ltd, but J G Kelly Ltd is one company within a group of companies.

**Mr Hawker:** That is correct.

**The Chairman:** Yes.

Was Treasury ever aware, when they did the check initially, which company owned the controlling interest in that group of companies?

**Mr Hawker:** No. The arrangements that came to Treasury for approval were in respect of the deal, or the land transaction, with J G Kelly Ltd, not with any of the other group companies, be it the parent or any other subsidiaries.

**The Chairman:** But they are all very closely linked, aren't they?

**Mr Hawker:** Yes, they are part of the same group.

**The Chairman:** Yes, so one might do the land transactions, one might hold the finance, one might be doing the building, and then there could be a trust involved. Were Treasury aware of all of the different components?

**Mr Hawker:** Some of the corporate structures there were not actually in place at the time that the approval was made by Treasury to enter into the transaction with J G Kelly Ltd, or when Tynwald approved the transaction to enter into with J G Kelly Ltd. I believe some of the companies were created after that date in order to facilitate the actual development agreement.

**The Chairman:** Does that not make Treasury a little bit nervous of the fact that it changed?

**Mr Hawker:** Yes. When the Member for Malew and Santon spoke to me in July 2008 and informed me of his concerns with regard to the creation of a new company for the purposes of holding certain land on the development, I went to speak to the Chief Executive of the Department of Local Government and the Environment because, clearly, that creates a risk of that land being owned by a separate legal entity than the legal entity that you are doing the development agreement with.

**The Chairman:** Just to clarify for *Hansard*, you were approached by Mr Cregeen prior to this Select Committee being in post. As a constituency MHK, he went to you and spoke to you in a private capacity, did he not?

**Mr Hawker:** Yes, well, he spoke to me in a professional capacity, I believe, because he felt that there was a financial risk there to the Government.

**The Chairman:** You subsequently then went, in July 2008, to meet with the Chief Executive of the Department.

**Mr Hawker:** Yes.

**The Chairman:** What was his response when you raised your concerns?

**Mr Hawker:** We sat down and we reviewed the development agreement together and, following the review of the development agreement, I prepared a paper for the Treasury, outlining what I felt the issues were in respect of the creation of the separate company and in respect of the approvals that had been sought from Treasury and Tynwald for the development to go ahead.

I can elaborate on that, if it helps.

**The Chairman:** Yes, please, if you would. I would just like to know... You raised... A concern was raised with you, you took it further and did the responsible thing, and we would just like to know what the outcome of all of that was.

**Mr Hawker:** I think the outcome was that Treasury acknowledged that the risk, in terms of the separate company and the land being disposed to Jackson Homes (Southern) Ltd, was there, but the risk at that time was dependent upon the various planning issues having been resolved, because obviously the planning inspectorate made his decision in January 2008 and the development agreement was in abeyance until those planning issues were resolved.

So in terms of the financial risk, the financial risk was only going to become real at any point where the planning approval was given to the development. On that basis, I think Treasury felt that the risk was hypothetical because it was dependent on other things changing before it became real.

**The Chairman:** But then had planning permission been granted, the mortgage debenture would have kicked in, wouldn't it?

**Mr Hawker:** Yes.

**The Chairman:** Did you have sight of that, as well?

**Mr Hawker:** I had sight of the development agreement. I do not recall having sight of the mortgage debenture, but I was aware it was in existence.

**The Chairman:** Mr Callister, do you have any questions?

**Mr Callister:** Yes, thank you.

Mr Hawker, we got in touch with J G Kelly to ask for their comments, pretty soon after this Committee was set up and we had a reply from them saying that the detailed principles of the agreement were approved, firstly, by Treasury, then by Tynwald and subsequently by the office of the Attorney General, on behalf of the Department. Would you say that is an accurate statement, that the detailed principles of the agreement were approved by all three bodies, in view of the fact that the Attorney General's department tell us that Chambers do not carry out, or become involved in, business or financial checks on behalf of a Department; these are for a Department to ensure and verify?

Would you say that the Department of Local Government did all the checking and verifying that was required?

**Mr Hawker:** I think, in respect of the first part of the answer, the approval that came to Treasury was for a transaction with J G Kelly, insofar as the land would be conveyed to the company and the company in return would build public-sector and other housing for the Government. Certainly, the development agreement never came to Treasury, the detail of how that deal would work itself through, in terms of the timing of the various transactions, never came to Treasury, and therefore I would conclude that, if that is what is meant in their response by detail, then that is certainly not what I understand by detail.

Sorry, you will have to remind me of the second part of your question.

**Mr Callister:** The second part was a reference to a letter from the Attorney General's department, on behalf of the Attorney General, saying that Chambers does not carry out or become involved in business/financial checks on behalf of a Department and these were for a Department to ensure and verify. Is that a satisfactory situation?

**Mr Hawker:** That is a statement of fact, in terms of the position of the Attorney General's Chambers in performing those financial checks. The Treasury will perform financial checks at the behest of any Department, if they ask for those to be done, and Treasury will similarly perform financial checks on any company that we enter into an agreement with, like J G Kelly in this instance.

What we clearly did not do was enter into financial checks in respect of any of the subsidiary or associated companies, because we were not aware that they were part of the arrangement.

**Mr Callister:** So the financial checking, then, seems to be just a little bit vague, and presumably the relationship with J G Kelly and the fact that this was a new scheme, from the Department's point of view, would be based on the relationship with J G Kelly on previous contracts (**Mr Hawker:** Yes.) and having confidence in them. Would you say that was the case?

**Mr Hawker:** Yes, and I think the Department's view is the fact... My understanding of the reasons why the subsidiary company was created was because it was required to secure the bank lending, to allow the developer to put the initial groundworks in on the site that would facilitate the building of the housing. From the Department's perspective, that would have been a sensible thing to do to get the development up and running, if the developer could not have access to funding in another way.

Is that a sensible thing to have done? It has clearly created a financial risk, insofar as the land is owned by a separate legal entity. The Department were negotiating the detail of the contract with the developer and, in my investigations, I never found any evidence that they did anything other than try and negotiate the best deal with the developer possible.

Would we have done the agreement in the same way? Possibly not.

**Mr Callister:** Thank you, Chairman.

**The Chairman:** Thank you.  
Mr Cregeen.

**Mr Cregeen:** Are you happy with the know-your-

customer format? Going through it, it looks pretty basic for Departments to carry out the full checks. Do you consider there could be changes to the Government know-your-customer?

**Mr Hawker:** I think the checks that we perform in respect of the financial position of the company are quite detailed and thorough, because by necessity they have to be, but we would only, obviously, perform checks on companies that formed part of any transaction or any deal. So I do not believe there are any problems in respect of know-your-customer.

I think the issue of the directors of companies has changed and that creates a significant change in the corporate structure of a company and the financing of a company. That is certainly something that I will have to take away and think about in terms of the risks that might come from that, from a financial perspective.

**Mr Cregeen:** Do you not consider that, if individual Departments are coming to agreements with companies, it may not be better for everything to be passed through a single body who deals with it on a regular basis so you have got a consistent format and experience to do that?

**Mr Hawker:** In respect of the legal arrangements?

**Mr Cregeen:** The legal arrangements and the financial checks that DoLGE carried out themselves, because, as you have stated, you were not informed about all the additional companies until later on, and that was after Tynwald approval.

**Mr Hawker:** Yes, I think it would have been better, clearly, if the Department had come to Treasury and told them that this subsidiary was being created and what the financial issues would have been with the creation of that subsidiary.

**Mr Cregeen:** Would you also agree that if, for instance, J G Kelly had started the construction of their four-bedroomed houses and, for any particular reason, had either changed company or wound up, it would have left the Government land exposed, as in they had lost so many acres and they were still landlocked?

**Mr Hawker:** Yes.

**Mr Cregeen:** Thank you.

**The Chairman:** Can I just go back, Mr Hawker. You said, when you talked about the fact that it was the Department of Local Government and the Environment who negotiated with the contractor the contents of the contract –

**Mr Hawker:** The development agreement, yes.

**The Chairman:** The development agreement, yes. You suggested that, had Treasury been responsible for doing that, you may have done it differently. Could you elaborate on that?

**Mr Hawker:** I do not want to be seen to second guess the Department, because clearly, as I said, I think they negotiated that in good faith and to the best of their ability.

I think the problem is if you have got a developer sat on the opposite side of the table and they say, 'We need some sort of help to get this project off the ground,' which is clearly what they were saying in this case, the Department only has a limited number of ways it can provide that assistance. Clearly, we are not in the position of providing guarantees for lending or other things, so that could not have been done, and the only real asset the Department had which would have facilitated the developer achieving the finance was to, in effect, allow them to have a piece of the land which they could then borrow against, and that is what they did. That does create a financial risk. There is no getting away from that fact, and therefore I think we would have tried to explore other ways of providing guarantees or protecting the taxpayer from what Mr Cregeen was talking about, which was that land then being taken off them and disposed of without any of the public-sector housing benefits being materialised.

**The Chairman:** To your knowledge, do other such similarly worded contracts exist within Government? Have you seen... Because you did have sight of it.

**Mr Hawker:** I have not seen anything similar personally, no.

**The Chairman:** You haven't?

**Mr Hawker:** No.

**The Chairman:** So, during your time in Treasury, then, you have not become aware of anything that was remotely similar?

**Mr Hawker:** No, but I think I have now appreciated that there are financial risks associated with development agreements that we should be aware of, and where I am aware that development agreements are being negotiated, I am certainly more active in trying to get sight of those, if I think this may exist.

**The Chairman:** But you are suggesting, therefore, are you not, that there is no format for you to be involved?

**Mr Hawker:** No. I think one of the issues that the Committee needs to consider is at what point does a development agreement that may contain risks such as these become subject to some form of oversight, be it by Treasury or Tynwald or somebody else.

Clearly, we do not want every single contract to have to go through a long bureaucratic process, but some of the contracts that are being entered into by Government Departments do have significant financial consequences.

**The Chairman:** I am sure we would agree with you.

If I could just return to the question raised by Mr Cregeen with respect to the know-your-customer best practice guidance notes, have you seen those? Have you read them?

**Mr Hawker:** I have read them in a banking context, from history, but I am not aware of them in a Government context, so if they differ materially then the answer is no.

**The Chairman:** I just wonder whether or not our Clerk could perhaps pass a copy to Mr Hawker to refresh his

memory. I am sure you will agree, once you refresh your memory, that really those know-your-customer are basically to do with the individual, where they come from and whether or not they should be legitimately here and impinges upon immigration-type questions.

I am sure you will agree, will you not, that there is not one in there to do with any kind of financial checks or standing? I am just wondering whether or not, in your opinion, you think that is sufficient for everything to be based on, that if the person you are going into contract with satisfies the areas covered in the know-your-customer best practice guidance notes, that is sufficient to then go into business with him?

**Mr Hawker:** I think you have got to distinguish between the know-your-customer requirements in respect of which legal entity you are dealing with. So if you are dealing with a company, then you clearly need to have an understanding of the financial position of the company.

Knowing the financial position of the individuals behind the company helps as background, but it does not really alter the legal standing of the company and the risks that you will be exposed to by entering into a financial transaction with the company. So I think you need to limit yourself to dealing with an understanding of the person you are entering into a legal arrangement with, and not try and bring in lots of associated ancillary considerations.

**The Chairman:** Other than those which we appear to only have in circulation, to your knowledge, are there any more appropriate guidance notes available to Isle of Man Government Departments?

**Mr Hawker:** Not to my knowledge, no.

**The Chairman:** Mr Callister.

**Mr Callister:** Just on the know-your-customer, you would have been in the Treasury, presumably, when this document first was issued, in 2005, I think?

**Mr Hawker:** Yes.

**Mr Callister:** Would you say this document was primarily aimed at banking and would not have considered the kind of relationship with a company on a building contract?

**Mr Hawker:** Yes, I think that would be fair.

**Mr Callister:** So, to consider it in the context of this contract with J G Kelly would make little sense, would you say?

**Mr Hawker:** Yes, because –

**Mr Callister:** On the basis that the Department had worked with J G Kelly on numerous schemes in the past, none perhaps of this size, but they would have assumed, maybe, that they knew their customer.

**Mr Hawker:** Yes, and the sort of legal and financial considerations that you need to take in mind when you are entering into a contract with a company, as opposed to an individual, are quite different and quite...

**Mr Callister:** So, following on, then, from what the

Chairman asked, about whether there were more appropriate guidelines, do you think perhaps there ought to be better guidelines along these lines of more accurate checking on companies that Government is operating with?

**Mr Hawker:** I think that would help. I think that, clearly, there is a lot of checking that goes on in an informal way, whereby Departments contract either the Attorney General's or Treasury to perform legal checks or financial checks on companies before entering into contracts, but that is not standardised. Procedure notes would help people know where to go and when to go, yes, for that advice.

**The Chairman:** Just following on from Mr Callister's question, who would be responsible, then, for drawing up new guidance notes in that respect? Which segment of Government?

**Mr Hawker:** If you mean in respect of legal advice on contracts, I think you would look to the Attorney General's. If that advice does not already exist in respect of financial advice on companies and their viability then, clearly, they should come to the Treasury.

**The Chairman:** They should come to Treasury?

**Mr Hawker:** Yes, absolutely.

**The Chairman:** So new guidance notes then could incorporate the compulsion that there is Treasury involvement when there are substantial sums of money involved.

**Mr Hawker:** Yes.

**The Chairman:** And it could also, could it not, embrace a requirement by the company to automatically notify Treasury if there has been a change to the company's structure?

**Mr Hawker:** Yes, it could.

In respect of the first part, that is done, anyway, in respect of financial checks that are performed, say before a company undertakes a capital scheme for Government and so forth, so I would not want the Committee to form the impression that there is not a process in place. It is just whether the limits in place for people to have to perform financial checks were appropriate and whether they would cover events such as this, where money is not going out of the door. Clearly, this was a development agreement on the back of a negotiated exchange of land for housing, and therefore we need to consider how we bring that into an approval process, because it is not your normal... you are going to spend £5 million on a contract with a company, because in that sort of circumstance financial checks are required and mandatory and are performed.

**The Chairman:** But when you say checks are done, it is only a case of Treasury checking the balance sheet, isn't it?

**Mr Hawker:** We perform a check on the financial statements of the company to convince ourselves that they are able to do the contract.

**The Chairman:** Mr Cregeen.

**Mr Cregeen:** You will be aware that part of the agreement

was a £3 million transfer for the public-sector first-time-buyer housing.

**Mr Hawker:** Yes.

**Mr Cregeen:** If, for any reason, there was difficulty for any of these companies to continue, would you not consider it a considerable financial risk for DoLGE, under the contractual agreement that they formed with the company, as you have got the £3 million, the land and they could still end up with no access?

**Mr Hawker:** My understanding was that the £3 million would be paid to the company in stages on completion of the various public-sector properties, so in that case there was not the risk to the taxpayer unless part of the company had delivered its side of the bargain, basically. The only risk that I found was in respect of the uncharged portion of the land.

**The Chairman:** Members, do you have any further questions for Mr Hawker at this point? No, you do not.

If I could invite our Clerk, Mrs Lambden, if you have any questions.

**The Clerk:** Do you think there could be a more robust system for ongoing due diligence, not just financial checks, but full due diligence before going into contracts with such companies as third parties?

**Mr Hawker:** Yes, I think you can always form the view that there should be more due diligence and more checks and more controls put in place before we enter into any of these arrangements. What I would say is there is a balance to be struck, obviously, between checking significant transactions and significant risks and allowing Departments to get on with the job of actually doing the job and not having to go through long processes of checking this, that and the other and I think, not only that, but the nature of some of the transactions that Government is getting involved with, on occasions, presents new risks that have not been present in the past and we have to respond to those and change the rules and the controls to react to those.

So, yes, I agree, we can always do more in respect of checks, but I think we might have to make sure that the changes that we make to areas such as the financial regulations to deal with risks are appropriate in relation to the size of the risk. So, they do not just become a blanket – you cannot do anything without either coming to Treasury, or to the Attorney General's or wherever. So, I think that is my conclusion, from what I have seen in respect of this transaction, that it is something that I have not seen before; it does create a significant financial risk, theoretically, and that we need to think how best we respond to that in terms of managing that risk going forward.

**The Clerk:** Thank you.

**The Chairman:** Anything further, Mrs Lambden?

**The Clerk:** No, thank you.

**The Chairman:** Okay. Just one final question, using your expertise as an officer of Treasury in terms of company set ups. We discussed the complicated set up of J G Kelly,

subsequent to the negotiated agreement with the Department and, of course, the Trustees of the Jackson Family Trust appear to have the controlling interest in Jackson Holdings Ltd and Jackson Homes (Southern) Ltd, which is all part of J G Kelly, which may cause problems in possible matters of litigation or in the event of the companies being wound up. In terms of that, the question really is, can the individuals – the people behind a trust – be revealed, as is the case of people who are the directors behind a company, for example? I mean you can actually find who the directors are behind a company.

**Mr Hawker:** I think that depends on where the trust is incorporated. My understanding, although I am not 100 per cent, is that the Trust is based in the U.S. Is that correct? I believe that may be correct. But, anyway, whether you can actually find out who is behind a trust organisation depends on where that trust is incorporated.

Clearly, there may be costs across jurisdictional risks associated with that, if the trust is incorporated in a separate country.

**The Chairman:** Can I just ask you, where did you hear that the Trustees of the Jackson Family Trust are based in the U.S.?

**Mr Hawker:** That is a recollection of a discussion I had with the Chief Executive of the Department, but it may be wrong; it may be right.

**The Chairman:** Okay. Any further questions? Yes, Mr Callister.

**Mr Callister:** Just whether Mr Hawker needs to make a final statement.

**Mr Hawker:** No. I have prepared a statement, but I think you have covered most of the issues within that. I would be more than welcome to provide any additional information the Committee needs.

**The Chairman:** Well, I think you have more or less satisfied our queries for this morning and I would hope that if we need to call upon you again to come back, you would be willing to do so.

**Mr Hawker:** Absolutely.

**The Chairman:** Yes. Alright. Thank you very much. Thank you.

*Mr Kinrade was called at 10.33 .a.m.*

#### EVIDENCE OF MR K KINRADE

**The Chairman:** Right. If I could call our second witness, who is Mr Ken Kinrade, Chief Executive of the Department of Local Government and the Environment.

Good morning to you.

**Mr Kinrade:** Good morning.

**The Chairman:** Can I just clarify... Well, I do not think Mr Hawker actually drank. It is alright, please feel free to help yourself to a glass of water!

I just wanted to clarify one point, for the record, and that is, when did you actually take up the post of Chief Executive of the Department of Local Government and the Environment?

**Mr Kinrade:** On 8th November 2006.

**The Chairman:** Okay, 8th November 2006.

Right, I would ask you, at this point, are you happy for us to just put questions to you or would you wish to make a statement at the beginning?

**Mr Kinrade:** I am more than happy to answer questions, if I can.

**The Chairman:** Right, okay.

Would it be fair to say, then, that when you came in in November 2006, that the contract arrangement which was approved and agreed by the Department was probably one of your first responsibilities?

**Mr Kinrade:** It was certainly the first major land transaction, development agreement, that I signed, certainly.

**The Chairman:** Would it be the first one that you had seen?

**Mr Kinrade:** It would have been the first development agreement. I mean, obviously, the Department is responsible for housing, so there are probably, I suppose, ten or a dozen, perhaps, legal agreements for purchase of property and such like that go through the Department every month, but this was the first development agreement, certainly.

**The Chairman:** Okay. Would I be correct in assuming that everybody within the Department, other than yourself, had approved it and it just required your approval also?

**Mr Kinrade:** The Heads of Terms, as I understand it, had been to the Department. The Department had been kept informed. Obviously, there had been Members' presentations on what was going to take place and such like. The fine detail of the final agreement, I suspect, would not have been through to the Department because my recollection of it is that this was the Heads of Terms... I think, were not agreed until... I think we gave you a chronology early on as to when this took place.

I think, looking at it, the Heads of Terms were agreed some time in November, which means that the legal agreement would have come some time after that. I think it was eventually signed on 22nd December, from memory. So, it was a fairly short period to work up what was a fairly complex document, I have to say, looking at it.

So, yes, obviously, the Department was aware of the broad terms of the agreement; how it was going to operate. It had been involved in the presentations and it would have been the previous Minister who would have been involved in the presentation to Members. Now, whether that information passed to the current Members in December 2006, I cannot really say.

**The Chairman:** I think we are more concerned with the fine details, to which you referred before, of the actual development agreement.

We heard evidence earlier from Mr Carl Hawker, from Treasury, that Treasury never actually had sight of the agreement, nor were they called on in a formal capacity to look at the contents of that whilst it was being worked up and that it was negotiated between the Department of Local Government and the Environment and the developer. So, who, within the Department, will have been doing that negotiating?

**Mr Kinrade:** The people involved were largely Richard Senior, who was the Director of Estates and Housing at that time; assisted by Kevin Barber, who was Head of Estates section; and probably, to a lesser degree, but in terms of the architectural and such like, Phil Halliwell. Those were the three main participants in the negotiations.

**The Chairman:** What about the financial implications imposed by the development agreement if planning approval had been achieved? Who will have checked that?

**Mr Kinrade:** The practice has been that all of the documentation would have been checked by the Attorney General's Chambers.

Treasury were aware of the financial commitment that was being made, in terms of the £3 million which was to actually be paid out for the public sector housing elements of it. They were obviously aware that it did involve land transfers but probably not, as I say, the fine detail and what went behind the document, I suppose, in terms of guarantees, etc. That was left to the Attorney General's Chambers.

**The Chairman:** I am sure you would agree that the Attorney General's Chambers really only look at points of law, the finer details of points of law, and they cannot be, or would not necessarily be, expected to look at the financial aspects?

**Mr Kinrade:** In terms of the... I accept what you are saying to a point, but in terms of the good legal advice, we would expect them to protect the Department and, obviously, there were clauses within that agreement which clearly did just that, in terms of guarantees and such like and checking up on the structure of the companies and the element of due diligence, as it were, that was undertaken.

**The Chairman:** The actual companies changed, did they not? The structure of the companies: they formed other companies, did they not, to facilitate some borrowing from the bank, in order to start the development?

**Mr Kinrade:** Not to my knowledge, in connection with this agreement. I mean, obviously, there were, in the agreement, three companies cited, one of which was effectively the land owning company; one which was the builder, J G Kelly; and the other which was part of Jackson Holdings which, I think, was the guarantor for this on behalf of the family trust.

**The Chairman:** Well, actually the company structure is J G Kelly, Jackson Holdings Ltd, Jackson Homes (Southern) Ltd and behind all of that is the Trustees of the Jackson Family Trust.

**Mr Kinrade:** They are there, as I understood it, as the guarantor to ensure that the development agreement could be completed.

**The Chairman:** Right. Okay.  
At this point I will invite Mr Callister.

**Mr Callister:** Yes, thank you.

Two points. If I could just go onto this finance issue. We have been in correspondence with the Attorney General's department and they have made it clear – and I will just quote from one of their letters – that they do not carry out financial checks for Departments.

'Chambers do not carry out or become involved in business/financial checks on behalf of the Department. They would not expect and would not have the expertise to check the financial credibility and accounts of a developer and that is in the Department's remit.'

Is that clearly understood in the Department for Local Government, because, from what you are saying, there is some idea that the AG's Department does carry out financial checks?

**Mr Kinrade:** I was not involved in the actual checking. I understood that checks had been undertaken. Maybe not to the degree that, perhaps, they should have been. As I understand it, enquiries were made through Treasury.

If you could just give me one second, I will just see whether or not this was referred to in the chronology. You have probably got a better idea of it than I have, actually.

**Mr Callister:** I have got a letter here, yes.

**Mr Kinrade:** Obviously, in August 2006, there was a business case prepared and presented to Treasury, giving a briefing on the new proposals for Crossag. Treasury met again on 23rd August and concurred with proposals negotiated with J G Kelly.

**The Clerk:** What year was that, Mr Kinrade?

**Mr Kinrade:** August 2006. Then, of course, finally, on 18th September, Treasury agreed to the wording of the motion which went to Tynwald.

As I say, whether Treasury expected us to have done all the various checks, I probably have to accept that I am not sure what checks... The Attorney General's are saying they do not have the expertise. I am not sure DoLGE does, either. I am sure DoLGE does not. On that basis, then, if Treasury had –

**Mr Callister:** On that basis, no-one does the checks!

**Mr Kinrade:** On that basis, however, though, I would have hoped that Treasury would have said, 'Well, before agreeing to the motion going forward, have you done these checks?' I am not blaming Treasury, but basically that is an omission on our part that, perhaps, we were not aware of. I am speaking for somebody else, of course, at that time.

**Mr Callister:** Would it be a view, then, probably, that the Department of Local Government would be comfortable working with these people, having worked with them on numerous –

**Mr Kinrade:** Well, certainly, they had experience of working with J G Kelly's and had done various, at least one other development that I am aware of and probably others.

**Mr Callister:** There were others, yes.

**Mr Kinrade:** So, yes. I mean, they had and, in fact, we would probably still do business with them today.

**Mr Callister:** Could I just ask you about an e-mail that you... There is only a matter to clarify something here. An e-mail that you sent to Mrs Lambden on 10th October and in one paragraph you refer to the –

**Mr Kinrade:** Sorry Chair. Is it 10th October 2008?

**Mr Callister:** Can I just, perhaps... no, it is... Yes, 2008.

**Mr Kinrade:** Sorry.

**Mr Callister:** Perhaps if we just pass over to... just have a look at that comment about Jackson Homes Ltd, because there is a reference there to a company called Jackson Homes Ltd which I suspect is meant to mean Jackson Holdings.

**Mr Kinrade:** It depends on the context, I suppose.

**Mr Callister:** Perhaps. Could you pass that over for him to just have a look at, because I have not found a Jackson Homes Ltd. I am assuming it is a typing matter, perhaps that it was meant to say Jackson Holdings. It was the company that was the guarantor.

**Mr Kinrade:** Yes. Jackson Holdings, it should have been.

**Mr Callister:** That would have been Jackson Holdings?

**Mr Kinrade:** Yes.

**Mr Callister:** Yes. Thanks. Thank you.

**The Chairman:** Okay, Mr Callister?

**Mr Callister:** Thank you.

**The Chairman:** Mr Cregeen.

**Mr Cregeen:** Mr Kinrade, the ownership of the land at Crossag Farm: DoLGE owned the majority of it. Can you confirm who owned the access to the site?

**Mr Kinrade:** In terms of the Douglas road side, that would have been held by Jackson Homes (Southern) Ltd.

**Mr Cregeen:** So, in the debate on the motion in October 2006, would you not consider that the Minister was incorrect when he said that J G Kelly now owned the access to the land?

**Mr Kinrade:** If he said they owned...

**Mr Cregeen:** J G Kelly owned the proposed access

on Douglas Road, whereas, in fact, it was Jackson Homes (Southern).

**Mr Kinrade:** Yes. I have to agree.

**Mr Cregeen:** And this area, if, for instance, J G Kelly, for some reason wound up, ceased trading, could have left your Department landlocked still and the possibility of houses being built on your land and the Department would have been left still exposed for access?

**Mr Kinrade:** The Department, as I understand it... in the event that J G Kelly could not complete the development, the land effectively had to come back to the Department.

**Mr Cregeen:** Yes, but what I am actually talking about is the land owned by Jackson Homes (Southern) Ltd, which was the access was still belonging to Jackson Homes (Southern) Ltd.

**Mr Kinrade:** Yes. As I understand it, there was no security or no charge placed on that land by us. That is understandable and obviously, they would retain ownership of that in the event that the company went into liquidation. That land would probably be... That would mean that we were still landlocked, yes.

**Mr Cregeen:** And you could have possibly lost the acreage where J G Kelly were proposing to start the development.

**Mr Kinrade:** I understood they were starting on their land, anyway, because they had to do the infrastructure works. To be able to get on and develop what they currently owned, they had to put in the infrastructure. That is where, in my opinion, any risk that might have been perceived would have been more than covered off by the infrastructure costs that they were having to put into the development to even start to put any houses on their own land.

**Mr Cregeen:** This is land on the Crossag Road side, which was going to be the first phase, as such, which is owned by DoLGE.

**Mr Kinrade:** The open market.

**Mr Cregeen:** But it was originally owned by DoLGE.

**Mr Kinrade:** Yes. But, they had to put in the infrastructure: the roads, the drains, sewerage, whatever.

**Mr Cregeen:** But if they would have constructed those houses on what was your land and then ceased trading, the pay off from the money that was going to be transferred over to constructing the first-time buyers and public sector housing, you still would have been left exposed on, because you were landlocked and you have possibly lost some of the development land which you owned.

**Mr Kinrade:** That was, as I understand it, again, I do not believe that was...

Well, you may wish to check with the Attorney General's Chambers, or indeed with Richard Senior, when he gives evidence, because that was not my understanding of how

that would work. I was quite clearly on the understanding that that land would actually be... The value of that land was actually balanced by the cost of the infrastructure works that would have to be done to enable the development to take place; accepting that there was still the possibility that we would be landlocked.

**Mr Cregeen:** You could have infrastructure on land which is a no development proposal because you were landlocked.

**Mr Kinrade:** We were still going to have to go forward. We still had to get the access to Douglas Road.

**Mr Cregeen:** So, you could have had infrastructure on land that you still had no access to?

**Mr Kinrade:** Potentially, yes.

**The Chairman:** Mr Callister, yes.

**Mr Callister:** This was to be a combination of first-time buyer and private dwellings.

**Mr Kinrade:** And public sector rental.

**Mr Callister:** Yes. Were these to be built in tandem? In other words, could all the private aspect have been built first and then the first-time buyers being left until a later stage in the development?

**Mr Kinrade:** I do not believe all of the open market properties could have been.

**Mr Callister:** Was there anything in the agreement that qualified that?

**Mr Kinrade:** Other than, well, the phasing of the development agreement, I understood, would actually ensure that there were first-time buyers and public sector coming on stream before the completion of all the open market ones. Because, as I understand, there was some on the Crossag Road side and some on the Douglas Road, as well. Mr Cregeen probably knows it better than I: the actual phasing of the development as to when those various constituent parts came on stream. So, I do not believe all of the open market could have been.

**Mr Cregeen:** During the planning process, I think it was confirmed that what was going to happen was they were going to start on the Crossag Road side and then work towards Douglas Road and the entrance there, so the entrance would have gone through and then the final private houses would have been built on the exit onto the Douglas Road.

**Mr Kinrade:** I am not sure of the timings. That is all I am unsure about.

**The Chairman:** Could I just ask you, going back to the actual agreement: if you can think, put your mind back to the wording of the actual development agreement, was there any provision within there where Government could rescind from the agreement?

**Mr Kinrade:** Well, the agreement only became

unconditional once planning had been obtained. There was one particular clause, I think, which said that if the development had not commenced within a number of months: 72 months? Again, it has been a while since I looked at the development agreement in detail, but I think, if the development had not commenced within 72 months, then the Department basically took control of it again.

**The Chairman:** Well, given that the agreement was signed in December 2006: the development agreement, and the planning application process was protracted somewhat, was there any provision, such as the passage of time, within the agreement, whereby Government would not have to sign the debenture, because there was a compulsion, was there not, within the agreement, that, if planning permission was achieved, then the debenture would automatically kick in, because it had been prepared, had it not, but not signed?

**Mr Kinrade:** I think there was a draft as part of the documentation. There was a three-month period, as well, which I am not sure where that fits into the equation.

Certainly, once planning had been obtained, then the agreement became unconditional; then the agreement, basically, has to be implemented. It goes forward from there. I do not believe that there were any other opt-out clauses in the agreement at that point, other than to do with non-completion or the companies going into liquidation and such like.

**The Chairman:** Do you think that was an oversight, in view of the fact that, when the development agreement was originally signed, it was signed and sold to Tynwald by the then Minister, John Rimington, that the agreement was going to be between the Department of Local Government and the Environment and J G Kelly Ltd and subsequent to the signing of the agreement, the structure of the company changed.

Bearing in mind that Government, at that point in time, were locked into the development agreement, the only caveat being planning consent... Had planning consent been achieved, but because of the consequences of the company structure changing, thereby potentially putting Government at greater risk, do you think it was... upon reflection, would it not have been better to have inserted some sort of safety clause in the event of the company changing and its financial obligations changing, since the signing of the development agreement?

**Mr Kinrade:** In the event that the – again, you may have to take legal advice on that – companies changed after the development agreement was changed, then the development agreement may well be unenforceable. If I enter into an agreement with you and then suddenly you want to delegate that to somebody else, then my agreement with you no longer stands, I would argue, in terms of the contract that we were entering into. If it changed after the development agreement was signed, then it is a different agreement. It has to be a new agreement.

**The Chairman:** Please accept that we have taken independent legal advice on these matters and, in fact, we are advised that that perception is not correct.

**Mr Kinrade:** Right.

**The Chairman:** In fact, Government would have been locked into a development agreement, irrespective of the

changes within the company.

**Mr Kinrade:** It depends whether it affects the core of the agreement and I would have thought the least that should have happened is that there would have been notification of that.

**The Chairman:** Just going through my questions here ticking them off, was the Department satisfied about the financial and due diligence checks? There was the presumption that others were doing them because you did say, earlier on, that you do not have that kind of expertise within the Department, so was there possibly an expectation that the Attorney General's Chambers would do it and, if they did not, it would be Treasury?

**Mr Kinrade:** I think it was expected it was going to be a team effort on behalf of everybody who had been involved. I suppose it was a presumption that things would have been checked as well as we could have done.

**The Chairman:** But, to your knowledge, there is not any... you suggest a team effort –

**Mr Kinrade:** When I say a team effort I mean that the Attorney General's were involved and Treasury had been kept advised but –

**The Chairman:** But to your knowledge does a format like that exist currently?

**Mr Kinrade:** I do not believe there is anything different... I do not believe there is anything done differently now than it was then, to be fair. There is probably not... the types of development agreement that we tend to enter into now is basically the complete transfer of Government-owned land to the developer for a price and, in return for that, he will build what we want him to build. Then there are charges placed on the individual properties so they cannot be sold, other than to ourselves, and that charge remains until everything has been completed.

So, in terms of lessons learnt, maybe that is... there is no risk involved in that because the land is continually secured and all the properties are secured. This was unusual in that it was this sort of mix and at one time there were going to be even more people involved in it because Jackson Home (Southern) did not own all the land, they only had options on parts and a certain Mr Ayres had involvement in it, in fact on both sides, so it was going to be incredibly complicated trying to negotiate, as the chronology demonstrates. This was a very, very fluid negotiation over a number of months and, unfortunately, probably if we had owned the whole site, we would not be sat here now. I hope we would not, anyway.

**The Chairman:** We are pleased that you have actually raised the issue with regard to Mr Ayres because I am going to ask you, was the Department comfortable by the fact that the land transaction and the option agreement between Mr Ayres and J G Kelly Ltd were deemed to be confidential? It was only the Attorney General who was able to have sight of the agreement through J G Kelly's advocates, Gough and Co, in order to confirm that they existed? I mean, were you comfortable with that?

**Mr Kinrade:** I suppose we took that, to a degree, on risk, but having said that, the Attorney General's did get sight of

the agreements so if you are saying that we were held to ransom on the possibility of their not having entered into that, as far as we were concerned we dealt with that, we got the Attorney General's to check the options agreement, or whatever it was described as at the time. They were satisfied that they had a genuine interest in that land, which would be confirmed, I cannot remember what the date was now, but they obviously had the first interest in that property and, if they did not, then they could not proceed with the agreement.

**The Chairman:** We received your letter dated 21st August 2008 and I just want to invite you to reaffirm whether you agree today with the comments that you made then or whether, in hindsight, you perhaps would reflect a little differently? It was stated that:

'considerable checks are made to ensure that the legal agreement contains adequate safeguards, such as the way in which the development is to proceed, the charge over certain lands and the ability to recover any land conveyed by Government in the event the development did not proceed to completion.'

If you are still satisfied by that and when you say 'considerable checks' I would ask who did those considerable checks and what did they involve?

**Mr Kinrade:** Covering the checks first of all, as far as I was concerned at the time, the advice that I received was that the development agreement covered the points that were likely to... sorry the scenarios that might have arisen in the event of liquidations or failure to complete the development.

The development certainly in public sector and the first-time buyers, those lands were secured through the various charges that applied to that land and, on top of that, there was the ability for the Department to have step-in rights in the event that those properties were not developed. My understanding, again, was that the land had to come back to the Department and the only cost that the Department might have had to pay were those relating to any works that had been... so if some of the dwellings had been partially finished, there would have been a sort of stage payment effectively: there would have been a measure of the work that would have been done. That was completed and we would have paid for that.

There was no cost of the land effectively, the value of the land. We were paying nothing for the land, only for what work had been done to that land. I was not aware that there was no security on the first phase element which I think is now suggested, so certainly when I wrote that particular letter, I was not aware of that particular element of the agreement.

**The Chairman:** Okay. Mr Cregeen.

**Mr Cregeen:** Would you not consider, in the future, that any land purchased by Government should have access before it is actually signed off, because it has held the Department to ransom over the whole of this development?

**Mr Kinrade:** I think if any... in an ideal world, yes, I think that is fair to say. Bearing in mind that this purchase I think started in 1991, another phase then in 1999 and in 2009, some 18 years later, we eventually get control of the site. That is not the ideal way to assemble any development project, but

I suppose, at the end of the day, we were intending to have access through a particular property, through Glashen Farm. That was one of the options that was put forward. That was taken away from us when the property had to be registered, so there was a possibility that we would have access to the land without going onto the Douglas Road as we will now do.

**Mr Cregeen:** And also, then, if you would have been involved in this arrangement from the start, would you have changed anything in light of what has been brought forward?

**Mr Kinrade:** Obviously coming in, as I did, in November 2006 without any development experience, I would have taken a far greater interest from day one and I would have known what Tynwald had agreed, I would have known the various types of development agreement that are available to people.

So from a personal point of view I hold my hands up and say the last two years have been a very steep learning curve and I certainly take a greater interest in the work that is going on. Having said that, I honestly believe that I had two very good officers in Richard Senior and Kevin Barber, who had wide experience of doing all this and I was content six weeks into the job to rely on their expertise and having done the checks that they would.

There are things I think that Government does now differently. Corporate governance of a lot of these projects is much tighter now, I think we probably have a closer working relationship with Treasury perhaps than we did even then, probably a more constructive relationship with them, as well, and I am sure that there will be things learnt from this exercise that Treasury will say and probably for your own recommendations coming out of this that certain other things need to be done and we hold our hands up and say, yes, please, we would look forward to that.

**Mr Callister:** Yes, thank you.

**The Chairman:** Mr Callister.

**Mr Callister:** Just on that same point, you have been mentioning there, this had all happened before you came into position –

**Mr Kinrade:** To a degree. I signed the agreement so I cannot deny responsibility –

**Mr Callister:** So you signed the agreement: all the work had been done, let us say.

**Mr Kinrade:** A lot of it had.

**Mr Callister:** Did you afterwards then ask Richard Senior or Kevin Barber if they had any reservations about any of it?

**Mr Kinrade:** Not until the questions from Mr Cregeen, in fact, and I have to say that it was probably not helped by the... I suppose there was a conflict between the Department and what Mr Cregeen was trying to do and what BADRA were trying to do and so forth which probably made them a little bit more defensive, I suspect. To a certain degree there was reluctance to discuss the development agreement whilst

it was still potentially the subject of Petition of Doleance proceedings in respect of the planning approval, planning rejection.

**The Chairman:** Can I just say that we heard evidence this morning from Mr Hawker of Treasury that, following his meeting, he had a meeting with Mr Cregeen as constituency MHK prior to the establishment of this particular Select Committee to investigate the issue, and he arranged to go and see you in July last year to raise his concerns as an officer of Treasury with the potential financial risk involved for Government.

**Mr Kinrade:** Yes.

**The Chairman:** Yes.

**Mr Kinrade:** He did meet me and although I have not got a record of it, I think we also met with Felicity Reeves from the Attorney General's, who had been responsible for constructing the agreement – the development agreement – to get her to run through the concerns that had been made by Mr Cregeen. I think she went away and prepared a memo that I might have. I do not know whether that was... I do not know, was there... no, it might have been an e-mail.

**The Chairman:** Could I ask you, then, at this point –

**Mr Kinrade:** Can I come back to you, Chair, then obviously in fact –

**The Chairman:** If you could –

**Mr Kinrade:** I will provide that later.

**The Chairman:** – copy us in on that particular e-mail or whatever it was of her evaluation of the concerns that were raised. What were your initial thoughts when Carl Hawker went to see you?

**Mr Kinrade:** I am not sure that we were as concerned, perhaps, as he was as to the risk that we were, or that the Department was possibly exposed to. Certainly, I am fairly confident that Miss Reeves would have actually... I think she felt it really was not the risk that perhaps was being made out. She had an intimate knowledge of the development agreement and she felt there were sufficient safeguards in it.

**The Chairman:** Thank you.

Can I just also... it was raised this morning in evidence by Mr Hawker, he said he was given to understand that the trustees of the Jackson Family Trust were based in the U.S. Is that correct?

**Mr Kinrade:** I heard that and I think he attributed that to me. It is the first time I have heard that, although I think certain people, maybe from BADRA, had mentioned that previously but it did not come from me.

**The Chairman:** Do you know where they are based?

**Mr Kinrade:** As I understood it, they were Isle of Man based.

**The Chairman:** Okay. I just want to ask you what the

current status is now of this development agreement because it would appear to us that the development agreement was all based on obtaining planning permission. Planning permission was not obtained, but is there anything to prevent J G Kelly now from coming forward with a fresh planning application or does the same head of agreement, the same agreement which has been signed...?

**Mr Kinrade:** Well as you know anybody can apply for planning approval on anybody else's land. Now that the Department has purchased all of the relevant land, they would have to obtain our permission to go forward. We have no intention of trying to resurrect that development agreement: it will be a totally new agreement.

Mr Cregeen is aware that we possibly will look to have a planning application for Crossag in to Planning probably within the next 12 months, subject to the Southern Area Plan being approved and it is likely that the new proposals for Crossag Farm may well be a phased scheme which might involve more than one developer.

**The Chairman:** Nevertheless, what you appear to be suggesting, then, is that, in hindsight now, and having learned through bitter experience, I would suggest, Government are now going to take full responsibility and control for development at Crossag Farm, subject to planning approval, of course.

**Mr Kinrade:** In the case of Crossag Farm, we have decided that as you saw from difficult negotiations that ran over probably the best part of two to three years with various people having ransom strips and land ownership issues that, from the Government's point of view, it is far easier to have control over the whole site.

I have to say that that would not preclude us from entering into an agreement, maybe, of a similar nature again. If we have to partner with somebody – and that is what we are trying to do in a lot of cases, particularly in the current environment – we need to provide work for the construction industry so if people have land maybe adjoining ours then we would still enter into a partnership arrangement, a development agreement, something similar to what was discussed here.

With hindsight, there would be more safeguards built into it and more security or charges applied to any transferred land, but it would not stop us swapping land. We have to have that flexibility to enable these developments to go forward. I have to say I feel quite passionate about that because, at the end of the day, our role, whilst we accept that we have to protect the public purse, we have quite clear targets as to what we need in terms of housing to be delivered, so that we have to be given a little bit of freedom to be able to negotiate almost on equal terms with other developers and there has to be an appreciation that we must have some flexibility to be able to negotiate and to bring in other parcels of land as may become available.

**The Chairman:** Whilst accepting that you have to have the abilities and the flexibility to negotiate, you have said earlier on, Mr Kinrade, that you do not have the particular expertise within the Department to do all the due diligence of financial checks on developers or the companies that you might have to do business with.

So would it not be for the benefit of the Manx taxpayer

and Government, if they are keen to pursue further development agreements with other developers in the future in order to satisfy the requirement for housing, that an ideal development agreement should be put together and not rely upon the contents of this one?

We are given to understand from the evidence we have taken this morning from Treasury that in Mr Hawker's time in Treasury he has never seen a development agreement worded quite in the way this one was and he had never heard of one.

**Mr Kinrade:** Well, I cannot speak for Mr Hawker, but obviously large tracts of that development agreement are very similar, almost identical, in terms of the wording to those that applied to the Harcroft development, which was the other J G Kelly development, which had been completed probably two to three years previously. So when you are talking about a model, we were already trying and, to some degree, already using elements of previous ones as a model.

I do not believe that it is possible to have one size fits all. There are always going to have to be tweaks to it, shall we say, to cover the various different scenarios that we are going to face but, in terms of the actual general wording as to how we complete within a certain phased development, all of those and the security that can be applied, I would argue that perhaps the way to go forward is not so much to concentrate on the development agreement, but to actually lay down the corporate governance requirements before we enter into that agreement – which we would be quite happy to work with Treasury on to see what might be appropriate because I would argue that those are probably more consistent than, perhaps, the development agreements are. If you cover the corporate governance, you can build that into the subsequent development agreements.

**The Chairman:** But it would appear to us that the only guidelines that are available to Isle of Man Government at the moment are the very ineffective –

**Mr Callister:** Know-your-customer –

**The Chairman:** – know-your-customer best practice guidance notes.

**Mr Kinrade:** Yes. Yes. I mean they do not do very much at all.

**The Chairman:** Well, they do not do anything, really, to satisfy –

**Mr Kinrade:** Not in connection with what we are talking about today, no.

**The Chairman:** One more question I have, in terms of I asked you about the current status of the situation. Is there not a legal requirement, is it not incumbent upon the Department who signed this agreement, which was subject to planning approval, to now sever that agreement formally?

**Mr Kinrade:** My understanding is that it automatically becomes void once planning has reached the final stage, so there was no possibility of planning approval being obtained. The Petition of Doleance that was lodged by J G Kelly as against the decision of the Council of Ministers, was

withdrawn and cannot be resurrected. So the agreement is at an end, there is no question about that.

**The Chairman:** Do you accept that, perhaps, you might like to check with the Attorney General's Chambers that our independent legal advice suggested that, given the wording of the agreement, the fact that it was signed and accepting that the first development proposal has been rejected through planning, the developer, J G Kelly, could come back with a fresh planning application for severance of that land and expect that the agreement will still be in force and that there might be a legal requirement upon the Department to formally sever that particular agreement to put an end to it?

**Mr Kinrade:** I will check on that.

**The Chairman:** Mr Cregeen.

**Mr Cregeen:** You stated earlier that Mr Senior and Mr Barber had done similar development agreements. Can you give an example of which ones –

**Mr Kinrade:** I mentioned the Harcroft, I think that was a J G Kelly development.

**Mr Cregeen:** But was that similarly with a ransom strip, where –

**Mr Kinrade:** No, not that I am aware of. I cannot think of another one where a ransom strip was involved, although they had... I think you have invited Mr Senior to give evidence at a later date. I am quite sure that he has been involved in ransom strip negotiations and certainly the Government Valuer has put prices on ransom strips previously.

**Mr Cregeen:** It is just that that was a new part of this development agreement, which was the exposure –

**Mr Kinrade:** – and to some degree I suppose the way that the development agreement was arranged, was to avoid the outright payment of a fee for the ransom strip. I mean it is not unheard of for millions of pounds to be involved in the purchase of a very small area of land purely as a ransom strip. Effectively, we got round that by entering into this

development agreement.

**Mr Cregeen:** Thank you.

**The Chairman:** Mr Callister, do you have anything further?

**Mr Callister:** No thank you.

**The Chairman:** Mrs Lambden?

**The Clerk:** No thank you, Mrs Cannell.

**The Chairman:** No? Right well it just remains for me to thank you and also to ask you that if we feel that we want you to come back because we have further questions for you, as Chief Executive, we would hope that you would be willing to facilitate us.

**Mr Kinrade:** I have no problem coming back at all.

**The Chairman:** We understand you are off on holiday.

**Mr Kinrade:** I am leaving the Island for a week – nothing to do with this Committee. *(Laughter)* No, it is pre-booked but I shall be back within a fortnight.

**The Chairman:** Thank you. We wish you a pleasant holiday.

**Mr Kinrade:** Thank you.

**The Chairman:** Thank you very much, Mr Kinrade.

**Mr Kinrade:** Thank you.

**The Chairman:** Thank you, ladies and gentlemen. We are now finished having taken oral evidence for this particular session. We thank you for your attendance. The meeting is now closed to the public.

Thank you very much.

*The Committee sat in private at 11.21 a.m.*