



SELECT COMMITTEE ON THE KIRK MICHAEL SCHOOL LAND EXCHANGE AGREEMENT

AGENDA

**Monday 29th October 2012
11.00 am
in the Millennium Room**

- 1. Apologies for absence**
- 2. Minutes of the last meeting (10th October 2012)**
- 3. Matters arising**
- 4. Papers received**
 - i. E-mail dated 10th October 2012 from Committee Clerk to DEC, forwarded to Committee on the same day, with reconciliation of DEC and Heritage calculations.
 - ii. E-mail dated 17th October 2012 from Heritage Homes confirming that it signed the version of the Third Schedule referred to by the DEC.
 - iii. E-mail dated 22nd October 2012 from DEC, circulated to the Committee the same day, commenting on the calculations by Heritage and by the Clerk of the net benefit to the Department of the overall deal.
- 5. Draft Report**

To consider the attached draft dated 23rd October 2012
- 6. Next steps/date(s) of future meeting(s)**

The table deadline for the November sitting of Tynwald is 5 November 2012.

Jonathan King
23rd October 2012



**MINUTES OF A MEETING OF THE SELECT COMMITTEE OF TYNWALD ON
THE KIRK MICHAEL SCHOOL LAND EXCHANGE AGREEMENT
HELD ON WEDNESDAY 10TH OCTOBER 2012 AT 10.00 AM**

Present: Mr Speaker (Chairman)
Mr Turner

In attendance: Deputy Clerk of Tynwald

1. Apologies

Mrs Cannell

2. Minutes of the last meeting (5th September 2012)

Agreed and signed

3. Matters arising

None

4. Draft Report

- i. With reference to the paragraph numbers in the draft dated 16th August which was considered at the last meeting, the Committee considered the following items.
 - a. §§27-32 Planning system – letter dated 26th October 2012 from the Director of Planning and Building Control. It was agreed to incorporate this into the Committee’s Report, quoting in particular from the last two sentences of the letter.
 - b. §§27-32 Planning system – letter dated 25th September 2012 from Mr Henry Kennaugh. No changes were needed to the wording of the Report but the full correspondence with Mr Kennaugh was to be included in the Appendices.
 - c. §38 Legal advice as to whether the Agreement is still “live” – covering e-mail and revised advice received from John Wright on 2nd October 2012. Noted – corrected version to be used within the Report.

- d. §§89-95 Property valuations – submission from Heritage dated 12th September 2012 quoting different valuation figures from those in the version of contract supplied to the Committee by the Department. It was agreed to go back to Heritage and ask if they had they agreed the revised valuation figures put to them in the e-mail from Anthony Murphy dated 5th August 2011 (see item 4(g) below). It was further noted that the copy of the contract submitted by the DEC in March 2012 did not bear a signature on behalf of Heritage Homes. Heritage were to be asked to supply a copy of the signature page with their signature.

The map submitted by Heritage Homes was to be adapted for use in the Report.

- e. §§89-95 Property valuations – e-mail from Heritage dated 19th September 2012 giving permission to publish the figures given by them. Noted.
 - f. §§89-95 Property valuations – e-mail from Pinecrest dated 13th September 2012 concurring with Heritage and giving permission to publish. Noted.
 - g. §§89-95 Property valuation – e-mail dated 27th September 2012 and three attached further e-mails from Richard Collister, DEC, explaining the different valuations including those quoted by Heritage. Noted.
 - h. §§89-95 Property valuations – commentary by Committee Clerk summarising implications of all the evidence on this topic. Noted.
- ii. The Committee considered again its approach to the issue of value for money in the light of the new evidence received. Accepting John Wright’s revised legal advice that the Agreement was still “live”, the Committee confirmed that it would accede to the Department’s request not to publish the material from the Government Valuer, although the Report should still recommend that when the deal became “historic” the valuation information should be published (cf item 4(d) on 5th September 2012).
 - iii. The Committee had previously been minded to publish the difference in the land valuations in Schedule 3 together with the accommodation works figure given by Mr Teare in oral evidence. It was now clear from the Heritage submission of 12th September 2012 as well as the original DEC submission of March 2012 that the this would be misleading because the figures in the Third Schedule (in either version) were based on 1.85 and 0.89 acres, whereas the areas eventually to be exchanged were 2.01 and 0.63 acres.

- iv. It was noted that when the eventual areas were taken into account, Department and Heritage had produced different estimates of the “bottom line” net benefit to the Department – this despite both parties claiming to base their calculations on the advice of the same Government Valuer. In its March 2012 submission the Department had put the net benefit at £370,000. In its September 2012 submission Heritage put it at £579,000.
- v. In these circumstances the Committee decided to examine the evidence further to identify for itself the highest and lowest differential figures which could legitimately be attributed to the land exchange on the basis of the Government Valuer’s advice. The Committee would report a range to Tynwald, concluding that on any assessment the deal represented value for money.
- vi. Although the value of the accommodation works was also subject to different estimates by the Department and Heritage, the figure in the Third Schedule would be used for this element of the Committee’s estimate as it could be seen as a “maximum” which had been secured by the Department.
- vii. It was further agreed (a) to give the Department another opportunity to comment on Heritage’s assertion that the deal was worth £579,000 to the Department; and (b) to inform the Department that the Committee was going to report to Tynwald on the net value of the deal in the form of a range. Any response from the Department was to be circulated as soon as it was received.
- viii. On the issue of the Committee’s right to see and publish information (item 4(e) on 5th September), it was agreed to report to Tynwald about the incorrect advice the Department had received from the Attorney General’s Chambers during the course of this investigation as to the applicability of the Code of Practice on Access to Government Information to a Tynwald Committee. The Select Committee Report could cross refer to any resolution of Tynwald on the related topic of legal professional privilege, which was to be debated at the October sitting of Tynwald, item 14.

5. Next steps/date(s) of future meeting(s)

It was agreed to meet on Monday 29th October at 11am with the intention of finalising the report and tabling it at the November sitting of Tynwald Court.

Chairman: Date:

Jonathan King

4(i)

From: Jonathan King
Sent: 10 October 2012 15:25
To: Steve Rodan; Juan Turner; 'Brenda Cannell'
Cc: Roger Phillips
Subject: FW: Kirk Michael School Land Exchange: property exchange values
Attachments: 20121010KMLXcalcs.xlsx

To: Members of the Select Committee on KMLX

See below and attached, which explains why Heritage and the Department have submitted different figures for the overall net benefit of the deal. Subject to any comments from the Department I think you can legitimately conclude that the net benefit is £474,250 to £690,235 and therefore that on any analysis the deal gives value for money.

Jonathan

From: Jonathan King
Sent: 10 October 2012 3:20 PM
To: Collister, Richard (DEC)
Cc: 'Dobson, Stuart'
Subject: Kirk Michael School Land Exchange: property exchange values

Dear Richard

The Select Committee would be grateful if you could respond to this e-mail by 19th October 2012.

Thank you for your e-mail of 27 September 2012, which the Select Committee has now studied.

I note that you have offered an explanation of the different version of Schedule 3 provided by Heritage Homes in their e-mail to me of 12 September 2012. You have not commented on their assertion that when the eventual areas of land exchanged are taken into account there is a net benefit to the Department of £204,000 in land and £375,000 in accommodation works making a total of £579,000.

The Department has previously commented in written evidence on the additional benefit gained by the Department when the actual land areas are taken into account. In his letter of 22 March 2012, Stuart Dobson put the net benefit to the Department at £370,000 comprising £70,000 in land and £300,000 in accommodation works.

Heritage have explained, in their e-mail to me of 12 September 2012, how they arrive at the £204,000 based on the Government Valuer's e-mail to them of 27 July 2011, adjusted for the finally agreed areas. Their calculations are replicated in the attached spreadsheet as Calculations 1 and 2.

I imagine that the figure of £70,000 given by Stuart is based on the Government Valuer's e-mail to you of 5 August 2011, adjusted for the finally agreed areas. I have replicated this calculation in the attached as Calculations 3 and 4. In my version I arrive at a bottom line land exchange benefit of not £70,000 but £74,250.

(i)A

You will note that in the Valuer's e-mail of 27 July 2011 and consequently in Calculations 1 and 2 (Heritage), the "quasi-ransom strip" value appears to have been based on a percentage uplift of the value of the Department's property as residential land. In the Valuer's e-mail of 5 August 2011 (DEC), by contrast, the "quasi-ransom strip" value is expressed as a fraction of the value of the "development land" to which the "quasi-ransom strip" gives access. As a result, in the Heritage calculations the "quasi-ransom strip" figure falls when the area being given by the Department changes, whereas in the DEC calculations the value of the "quasi-ransom strip" stays the same.

The Committee has accepted that the Agreement is still "live" and on that basis it will accede to your request not to publish the valuation figures. The Committee does not intend to put the detail of these calculations in its report but it wishes to give you the opportunity to make any comments on them should you wish to. In particular, have you any comment to make as to Heritage's assessment of the net benefit of the deal to the Department is £579,000, as compared with your assessment that it is £370,000?

The Committee does intend to report to Tynwald a range for the net benefit of the deal to the Department. For this purpose it will adopt a figure of £400,000 for the accommodation works, being the figure in the contract. Based on that figure together with the ranges in the attached Calculations 1 to 4, it will report the net value to the Department of the overall deal as £474,250 to £690,235.

Jonathan

Jonathan King
Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
01624 686303

Calculation (1)

Government valuer's e-mail to Heritage Homes of 27 July 2011

Original areas

Land value per acre used			350	to	400
FIRST PROPERTY (Department giving)					
Area assumed (acres)	0.89	giving value of	312	to	356
Uplift for preferred access applied (derivation not specified)			415		474
Total land value including uplift			726	to	830
<i>Effect of uplift interpreted by Heritage as percentage</i>			233		233
SECOND PROPERTY (Department receiving)					
Area assumed (acres)	1.85	giving value of	648		740
NET BENEFIT TO DEPARTMENT					
Lowest difference: least received minus greatest given			-183	to	
Highest difference: greatest received minus least given					14

Calculation (2)

Government valuer's e-mail to Heritage Homes of 27 July 2011

Adjusted areas

Land value per acre used			350	to	400
FIRST PROPERTY (Department giving)					
Area agreed (acres)	0.63	giving value of	221	to	252
<i>Uplift applied based on percentage inferred by Heritage</i>			293		335
Total land value including uplift			514		587
SECOND PROPERTY (Department receiving)					
Area agreed (acres)	2.01	giving value of	704		804
NET BENEFIT TO DEPARTMENT					
Lowest difference: least received minus greatest given			116	to	
Highest difference: greatest received minus least given					290.235

SELECT COMMITTEE ON THE KIRK MICHAEL SCHOOL LAND EXCHANGE AGREEMENT

Property Exchange Values

All figures in £,000

Calculation (3)

Government valuer's e-mail to DEC of 5 August 2011

Original areas

Land value per acre used			350
FIRST PROPERTY (Department giving)			
Area assumed (acres)	0.89	giving value of	312
Uplift for preferred access (based on area of zoned land)			409
Total land value including uplift			720
SECOND PROPERTY (Department receiving)			
Area assumed (acres)	1.85	giving value of	648
NET BENEFIT TO DEPARTMENT			-73

Calculation (4)

Government valuer's e-mail to DEC of 5 August 2011

Adjusted areas

Land value per acre used			350
FIRST PROPERTY (Department giving)			
Area agreed (acres)	0.63	giving value of	221
Uplift for preferred access (based on same area of zoned land)			409
Total land value including uplift			629
SECOND PROPERTY (Department receiving)			
Area agreed (acres)	2.01	giving value of	704
NET BENEFIT TO DEPARTMENT			74.25

Jonathan King

4(ii)

From: Jonathan King
Sent: 18 October 2012 09:23
To: Steve Rodan; Juan Turner; 'Brenda Cannell'
Subject: KMLX - written evidence from Heritage Homes
Attachments: Page 40 of the Agreement.JPG; Signature page from the Agreement.JPG

Info – this clears up the point about the different versions of Schedule 3.

From: Ciaran Downey [mailto:cdowney@dandara.com]
Sent: 17 October 2012 1:13 PM
To: Jonathan King
Subject: RE: Select Committee: publication of financial information

Dear Mr King,

Thank you for your email of the 10th October 2012.

In response we confirm that the figures in Anthony Murphy's email of the 5th August 2011 were agreed by Heritage Homes Ltd. prior to the agreement being signed on the 16th August 2011.

In relation to your second query, please find attached a copy of the execution page of the agreement on the part of Heritage Homes Ltd. together with a copy of page 40 showing the figures as being £720K and £650K. You will of course have noted that the Agreement made provision at clause 26 for the Agreement to be executed in six counterparts and we confirm that the two counterparts executed by Heritage Homes Ltd. were handed over at exchange to Mr Murphy and the representative from Pinecrest. In return, we received their respective counterparts, the originals of which we hold.

For the avoidance of any doubt, the page 39 which I sent you came from an earlier working draft of the document.

Kind regards,
Ciaran

From: Jonathan King [mailto:j.king@tynwald.org.im]
Sent: 10 October 2012 16:09
To: 'Ciaran Downey'
Subject: RE: Select Committee: publication of financial information

Dear Mr Downey

Thank you for your e-mail of 12 September 2012 and attachments, which the Select Committee has now studied. The Select Committee is particularly grateful for your analysis of the net value of the land exchange when the finally agreed land areas are taken into account. There remains, however, one point on which the Committee would ask for further clarification.

You have submitted a scanned page numbered 39 including a Third Schedule with the figures £778,000 and £694,000 for the First and Second Properties respectively. The Department meanwhile has submitted a version of the contract in which the Third Schedule appears on page 40 and the equivalent figures in it are £720K and £650K. The signature page submitted by the Department has been signed by it and by Pinecrest but not by Heritage Homes (see attached).

The Department says that its version of the Third Schedule is the version that was finally agreed. It has provided the Select Committee with the attached e-mail dated 5 August 2011 from Anthony Murphy in the Attorney General's Chambers to your lawyer Graham Kirkpatrick.



The Committee therefore asks Heritage Homes:

(1) Did you agree the figures in Anthony Murphy's e-mail of 5 August 2011 before the Agreement was signed on 16 August 2011?

(2) Please would you supply a copy of the Third Schedule and signature page as signed on behalf of Heritage Homes.

Many thanks.

Jonathan

Jonathan King
Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
01624 686303

-----Original Message-----

From: Ciaran Downey

Sent: 12 September 2012 12:37

To: Jonathan King (E-mail)

Cc: Seamus Nugent

Subject: RE: Select Committee: publication of financial information

Dear Mr King,

Seamus has asked me to respond on his behalf.

We have re-checked the area of the two parcels of land and agree with the areas quoted below.

I attach a copy of page 39 of the agreement together with a copy of an email from Mr Eddie Griffiths (The Government Valuer) dated 27th July 2011. You will note that Mr Griffiths's assessment was based on the Second Property being 1.85 acres and the First Property being 0.89 acres. The difference between these areas and those stated below is due to an 'eleventh hour' amendment to the estate entrance and access road. The traffic light junction arrangement requires less land than the previous roundabout arrangement.

The "Properties Exchange Values" listed at the bottom of page 39 are based on the values in Mr Griffiths email (i.e. an average land value of £375/acre with an 'uplift' of approximately 233% to reflect the fact that it is the 'preferred access').

E.g.

The value of the 'Second Property' is based on 1.85 acres x ave. £375,000/acre = £693,750 (Say £694,000)

The value of the 'First Property' is based on 0.89 acres x ave. £375,000/acre = £333,750 x 2.33% = £777,638 (Say £778,000)

Based on the actual areas of 2.01 acres and 0.63 acres respectively, the value of the two parcels of land work out as follows:

'Second Property' - 2.01 acres x ave. £375,000/acre = £753,750 (Say £754,000)

'First Property' - 0.63 acres x ave. £375,000/acre = £236,250 x 2.33% = £550,462 (Say £550,000)

Whilst the land values listed in the Agreement differ by £84,000 (i.e. the Department's land is worth £84,000 more than the land being offered in exchange), the difference should in fact be £204,000 (albeit the other way round) The Department's land is in fact worth £204,000 LESS than the land being offered in exchange.

We estimate the value of the 'accommodation works' to be in the region of £350,000 - £400,000 (say £375,000).

When the value of the 'Accommodation Works' are taken into consideration there is a net benefit to the Department of approximately £579,000 (£204,000 + £375,000).

The fact that the areas were not re-checked prior to the Agreement being signed is due to an oversight on our behalf. We did not appreciate that the areas had altered so significantly. In hindsight it would appear that we have missed an opportunity to renegotiate the deal.

In reality, it would have been difficult to claw anything back on the basis that we/Pinecrest were parting with more land and the Department were parting with less.

Time was of the essence and negotiations had been protracted.

I trust the above is self-explanatory.

Please let me know if you require any clarification.

Kind Regards,
Ciaran Downey

-----Original Message-----

From: Jonathan King [<mailto:j.king@tynwald.org.im>]

Sent: 11 September 2012 15:36

To: 'Ciaran Downey'

Subject: Select Committee: publication of financial information

For the attention of Seamus Nugent, Managing Director, Heritage Homes Ltd

Dear Mr Nugent

The Select Committee on the Kirk Michael Land Exchange Agreement is preparing to report to Tynwald. As you will recall, it is part of the Committee's remit to report on the value for money achieved by the Agreement dated 16th August 2011 between the Department of Education and Children, Heritage Homes and Pinecrest Investments Ltd. In order to fulfil this part of its remit, the Committee considers that it must put before Tynwald Court, and must therefore publish within its report, some financial information which will justify its conclusions.

As regards the accommodation works element of the Agreement, you may be aware that in oral evidence in public on 7th June 2012, Hon Eddie Teare MHK, former Minister for Education and Children, stated in relation to the accommodation works referred to in the Agreement: "We are looking at total investment - not by the taxpayer, I have to add - of between £300,000 and £400,000 in actually delivering a purpose-built sports facility for the school." This information, therefore, is already in the public domain.

As regards the assessed values of the properties to be exchanged, the Committee has received written evidence in confidence from the Department but as yet no figures have been released into the public domain. While the Committee reserves the right to publish what it needs to publish in order to fulfil its remit, the Committee would prefer to proceed by consensus. The Committee therefore asks if you would be content for the following facts to be published as part of its report?

- The land to be transferred *from* the Department amounts to 0.63 acres and is referred to in the Agreement as the "First Property".

- The land to be transferred to the Department amounts to 2.01 acres and is referred to in the Agreement as the "Second Property".
- Under the Agreement the assessed value of the First Property is £70,000 greater than the assessed value of the Second Property.
- When the value of the accommodation works is taken into consideration, the Agreement therefore represents a net benefit to the Department of £230,000 to £330,000.

The Committee also intends to include in its Report a plan, based on the plans associated with the Agreement, indicating the locations of the First and Second Properties.

Many thanks.

Yours sincerely

Jonathan

Jonathan King
Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
01624 686303

From: Ciaran Downey [<mailto:cdowney@dandara.com>]
Sent: 27 June 2012 6:37 AM
To: Jonathan King
Subject: RE: Kirk Michael Select Committee - update

Thank you for the update Jonathan.
Kind regards,
Ciaran

-----Original Message-----

From: Jonathan King [<mailto:j.king@tynwald.org.im>]
Sent: 26 June 2012 10:53
To: 'Ciaran Downey'
Subject: Kirk Michael Select Committee - update

Dear Ciaran

The Committee is continuing to consider the written evidence that Heritage Homes and others have provided, together with the oral evidence it has already heard. I know we did notify you some weeks ago that Heritage Homes might be called. However, following a meeting of the Committee yesterday afternoon I can now confirm that the Committee does not intend to call Heritage Homes to give oral evidence.

The Committee will not be ready to report to the July sitting of Tynwald but is aiming to report early in the new parliamentary session (October onwards).

Thank you.

Jonathan

Jonathan King
Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
01624 686303

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SECOND SCHEDULE

("the Second Property")

ALL and SINGULAR those lands and premises presently part of the estate of Lhergy Vreck Kirk Michael in the Parish of Michael the same being represented on the plan hereto annexed hereto and marked "Plan No. 2" by the portion delineated and edged red and to which said hereditaments (inter alia) the Land Owner became entitled by a deed of Conveyance (D-1988-66) bearing date the 1st day of November 1988 from Robert James Lewis and Sally Lewis.

THIRD SCHEDULE

("the Properties Exchange Values")

First Property - Seven Hundred and Twenty Thousand Pounds (£720,000.00)

Second Property - Six Hundred and Fifty Thousand Pounds (£650,000.00)

Accommodation Works - Four Hundred Thousand Pounds (£400,000.00)

FOURTH SCHEDULE

("the Future Land")

ALL AND SINGULAR those lands and premises part of Lhergy Vreck in the Parish of Michael the same being represented on the plan hereto annexed and marked "Plan No 6" by the portion delineated and edged red to which said hereditaments (inter alia) the Land Owner became entitled by a Deed of Conveyance (D-DEC1988-66) bearing date the 1st day of November 1988 from the said Robert James Lewis and Sally Lewis and by Deed of Conveyance (D-DEC1988-65) also bearing date the 1st day of November 1988 from the said Robert James Lewis and Sally Lewis

SIGNED by the Land Owner
acting by :-

.....
Deputy

.....
Director / Secretary

SIGNED on behalf of
the Department by the Minister or a
person duly authorized by the Minister
for Education and Children
in the presence of:-

SIGNED by the Developer
acting by :-

.....
Director

.....
Director / Secretary

(Cory Lenny)

(Cory Lenny)

Jonathan King

From: Collister, Richard (DEC) [Richard.Collister@doe.gov.im]
Sent: 22 October 2012 11:33
To: Jonathan King
Cc: Dobson, S
Subject: RE: Kirk Michael School Land Exchange: property exchange values
Attachments: Response to J King 221012 - back-up.xlsx

Dear Jonathan,

Thank you for your email, and extension until midday today to respond. I have extracted your queries from the email, and comment accordingly below.

You have not commented on their assertion that when the eventual areas of land exchanged are taken into account there is a net benefit to the Department of £204,000 in land and £375,000 in accommodation works making a total of £579,000.....

In particular, have you any comment to make as to Heritage's assessment of the net benefit of the deal to the Department is £579,000, as compared with your assessment that it is £370,000?

We were not asked to comment on Heritage Homes assessment within your email 19/9 – I am happy to do so now as requested. I don't think that Heritage Home's assessment is accurate – their application of an 'uplift' percentage, appears to distort and incorrectly enhance the value of the preferred access, and is not in line with the intent of the Government Valuer in his valuation calculations. Within the attached spreadsheet, sheet A, I have replicated the valuation method outlined in the Government Valuer's email to DEC dated 5/8/11, for land values of £350,000/acre (as 5/8/11 email), £375,000/acre and £400,000/acre. The value of the land exchange to DEC ... £647,500 to £740,000, ties in exactly with that stated within the Government Valuer's email to Heritage Homes dated 27/7/11. With regard to the value of land exchange to Heritage Homes, the replicated calculations establish a range of £720,250 to £824,000, compared with the range of £726,250 to £830,000 stated within the 27/7 email to Heritage Homes. I cannot explain the common £6,000 difference between the replicated calculations and those stated by the Government Valuer to Heritage Homes, because that minor difference aside the method of valuation is consistent. I therefore believe that this method, should be used consistently when comparing overall benefit using different land values / acre, and different accommodation works assessments.

Under sheet B, of the attached spreadsheet, under columns i, ii and iii, I have recalculated the sheet A sums, based on the finally agreed land acreages, incorporating as previously a value of accommodation works of £350,000. Columns iv and v, refer to my answer below. Under column vi, I have outlined my assessment of what Heritage Homes assessment should be, based on their assessed 'average' land value of £375,000/acre, and their 'average' estimated value of the accommodation works of £375,000 – both as stated in their email to you dated 12/9/12. This gives a total net benefit to the Department of £454,125 (£454,000 rounded), including a net additional land value to DEC of £79,125 (£79,000).

I imagine that the figure of £70,000 given by Stuart is based on the Government Valuer's e-mail to you of 5 August 2011, adjusted for the finally agreed areas. I have replicated this calculation in the attached as Calculations 3 and 4. In my version I arrive at a bottom line land exchange benefit of not £70,000 but £74,250.

The figure of £70,000 stated by ourselves previously is indeed based on the calculation method outlined in the Government Valuer's email 5/8/11, as the calculations above, and as your calculation of £74,250. This is

(iii)A

detailed under columns iv and v of sheet B attached – the only difference is we rounded the calculated land values, as the Government Valuer has done in valuation advice.

The Committee does intend to report to Tynwald a range for the net benefit of the deal to the Department. For this purpose it will adopt a figure of £400,000 for the accommodation works, being the figure in the contract. Based on that figure together with the ranges in the attached Calculations 1 to 4, it will report the net value to the Department of the overall deal as £474,250 to £690,235.

As noted above I don't think that Heritage Homes assessment is correct. I further consider the highest / lowest difference method you have outlined, therefore using different land values/acre within the same difference calculation, is somewhat unusual, and consider that a common land value/acre should be used in each individual calculation. I therefore consider that a suitable range of benefit to the Department, to report could be £374,250 (DEC assessment as Sheet B, column iv – based on £350,000/acre land value, and £300,000 accommodation works value) to £484,000 (as Sheet B, column viii – based on £400,000/acre land value (top of Government Valuer's range), and £400,000 accommodation works value (top of assessed value range, as included in Third schedule)) – my corrected assessment of Heritage Home's view i.e. £454,125 as above, based on £375,000/acre and £375,000 'average' value for the accommodation works, falls between these figures.

When reporting any range, please ensure that you do also make reference to the covenant included, and the potential to extract further value in due course.

I hope the foregoing responses are helpful.

Regards

Richard

Richard A Collister BSc (Hons), MRICS,
Director of Estates
Department of Education and Children
Unit 15 Snugborough Trading Estate
Braddan
Isle of Man
IM4 4LH

Tel: 01624 686428

Fax: 01624 628667

Mob: 07624 431456

Email: richard.collister@gov.im

Website: www.gov.im/dec

From: Jonathan King [mailto:j.king@tynwald.org.im]

Sent: 10 October 2012 15:20

To: Collister, Richard (DEC)

Cc: Dobson, Stuart

Subject: Kirk Michael School Land Exchange: property exchange values

Dear Richard

The Select Committee would be grateful if you could respond to this e-mail by 19th October 2012.

Thank you for your e-mail of 27 September 2012, which the Select Committee has now studied.

I note that you have offered an explanation of the different version of Schedule 3 provided by Heritage Homes in their e-mail to me of 12 September 2012. You have not commented on their assertion that when the eventual areas of land exchanged are taken into account there is a net benefit to the Department of £204,000 in land and £375,000 in accommodation works making a total of £579,000.

The Department has previously commented in written evidence on the additional benefit gained by the Department when the actual land areas are taken into account. In his letter of 22 March 2012, Stuart Dobson put the net benefit to the Department at £370,000 comprising £70,000 in land and £300,000 in accommodation works.

Heritage have explained, in their e-mail to me of 12 September 2012, how they arrive at the £204,000 based on the Government Valuer's e-mail to them of 27 July 2011, adjusted for the finally agreed areas. Their calculations are replicated in the attached spreadsheet as Calculations 1 and 2.

I imagine that the figure of £70,000 given by Stuart is based on the Government Valuer's e-mail to you of 5 August 2011, adjusted for the finally agreed areas. I have replicated this calculation in the attached as Calculations 3 and 4. In my version I arrive at a bottom line land exchange benefit of not £70,000 but £74,250.

You will note that in the Valuer's e-mail of 27 July 2011 and consequently in Calculations 1 and 2 (Heritage), the "quasi-ransom strip" value appears to have been based on a percentage uplift of the value of the Department's property as residential land. In the Valuer's e-mail of 5 August 2011 (DEC), by contrast, the "quasi-ransom strip" value is expressed as a fraction of the value of the "development land" to which the "quasi-ransom strip" gives access. As a result, in the Heritage calculations the "quasi-ransom strip" figure falls when the area being given by the Department changes, whereas in the DEC calculations the value of the "quasi-ransom strip" stays the same.

The Committee has accepted that the Agreement is still "live" and on that basis it will accede to your request not to publish the valuation figures. The Committee does not intend to put the detail of these calculations in its report but it wishes to give you the opportunity to make any comments on them should you wish to. In particular, have you any comment to make as to Heritage's assessment of the net benefit of the deal to the Department is £579,000, as compared with your assessment that it is £370,000?

The Committee does intend to report to Tynwald a range for the net benefit of the deal to the Department. For this purpose it will adopt a figure of £400,000 for the accommodation works, being the figure in the contract. Based on that figure together with the ranges in the attached Calculations 1 to 4, it will report the net value to the Department of the overall deal as £474,250 to £690,235.

Jonathan

Jonathan King

Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
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RAAUE: S'preevaadjagh yn chaghteraght post-l shoh chammah's coadanyn erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheyynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scrut leayr veih Reireyder y Rheyynn ny Boayrd Slattyssagh t'eh bentyn rish.

Valuations based on pre-agreement land acreages
1.85 acres to DEC, 0.89 acres to Heritage Homes / Pinecrest

Value of Exchange to DEC

	350,000	375,000	400,000
1.85 acres	647,500	693,750	740,000
Accom works	350,000	350,000	350,000
	997,500	1,043,750	1,090,000

Value of Exchange to Heritage Homes / Pinecrest

0.89 acres	311,500	333,750	356,000
Plus preferred access			
11.85 acres	4,147,500	4,443,750	4,740,000
Less ag value at £5,000 /acre	60,000	60,000	60,000
Devt value	4,087,500	4,383,750	4,680,000
Stoke v Cambridge			
Not full ransom 10%	408,750	438,375	468,000
	720,250	772,125	824,000

Gov Valuer email to HH 27/7	726,250		830,000
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All figures £

Valuations based on pre-agreement land acreages
2.01 acres to DEC, 0.63 acres to Heritage Homes / Pinecrest

	i	ii	iii	iv	v	vi	vii	viii
Value of Exchange to DEC								
Land value / acre	350,000	375,000	400,000	350,000		375,000		400,000
2.01 acres	703,500	753,750	804,000	703,500		753,750		804,000
Accom works	350,000	350,000	350,000	300,000		375,000		400,000
	1,053,500	1,103,750	1,154,000	1,003,500	1,000,000	1,128,750	1,129,000	1,204,000
Value of Exchange to Heritage Homes / Pinecrest								
0.63 acres	220,500	236,250	252,000	220,500		236,250		252,000
Plus preferred access								
11.85 acres	4,147,500	4,443,750	4,740,000	4,147,500		4,443,750		4,740,000
Less ag value at £5,000 /acre	60,000	60,000	60,000	60,000		60,000		60,000
Devt value	4,087,500	4,383,750	4,680,000	4,087,500		4,383,750		4,680,000
Stoke v Cambridge								
Not full ransom 10%	408,750	438,375	468,000	408,750		438,375		468,000
	629,250	674,625	720,000	629,250	630,000	674,625	675,000	720,000
Net benefit				374,250	370,000	454,125	454,000	484,000
			Rounded					
			Land		70,000		79,000	
			Accom		300,000		375,000	
			Actual					
			Land	74,250		79,125		84,000
			Accom	300,000		375,000		400,000

All figures £

**DRAFT DATED
23 OCTOBER
2012**

5



SELECT COMMITTEE ON THE KIRK MICHAEL SCHOOL LAND EXCHANGE AGREEMENT

**REPORT
2012-2013**

REPORT OF THE SELECT COMMITTEE OF TYNWALD ON THE KIRK MICHAEL SCHOOL LAND EXCHANGE AGREEMENT

Resolved on 22nd February 2012 –

That Tynwald appoints a Committee of three Members with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to investigate the Kirk Michael School Land Exchange Agreement between Heritage Homes, Pinecrest Investments Ltd and the Department of Education and Children; whether by January 2011 access to the land had been secured, as was stated at that time by the Hon. Member for Ayre; the manner in which the negotiations were conducted; and the value for money achieved; and to report with recommendations by May 2012.

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

Committee Membership

The Hon S C Rodan SHK (Garff) (Chairman)

Mrs Brenda Cannell MHK

Mr Juan Turner MLC

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

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

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To: The Hon Clare M Christian MLC, President of Tynwald, and the

Hon Council and Keys in Tynwald assembled

**REPORT OF THE SELECT COMMITTEE OF TYNWALD ON THE KIRK
MICHAEL SCHOOL LAND EXCHANGE AGREEMENT**

**I. BACKGROUND: THE COMMITTEE AND THE
INVESTIGATION**

1. The Committee was established by the following Tynwald resolution of 22nd February 2012:

That Tynwald appoints a Committee of three Members with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to investigate the Kirk Michael School Land Exchange Agreement between Heritage Homes, Pinecrest Investments Ltd and the Department of Education and Children; whether by January 2011 access to the land had been secured, as was stated at that time by the Hon. Member for Ayre; the manner in which the negotiations were conducted; and the value for money achieved; and to report with recommendations by May 2012.

2. The Members elected to the Committee by Tynwald were Mrs Cannell, Mr Turner and Mr Speaker. At the Committee's first meeting on 6th March 2012 Mr Speaker was elected chair.
3. Mr Turner became a Member of the Department of Education and Children on 19th April 2012. As a consequence Tynwald agreed in May 2012 to discharge him from the Social Affairs Policy Review Committee. He has continued to serve on this Committee because it is only scrutinising the Department at a time before he became a Member.

4. The Committee invited written evidence from the former Minister for Education and Children, Mr Teare; the Department; the other parties to the Agreement; Mr Alfred Cannan MHK and all Tynwald Members. A public call for evidence (MR 11/12) was issued on 7th March 2012 requesting responses by 23rd March 2012.

5. Written evidence has been received from:

- the Department of Education and Children, which also submitted a copy of the Agreement
- the Department of Infrastructure
- Hon Eddie Teare MHK
- Mr Alfred Cannan MHK
- Michael Commissioners
- Heritage Homes
- Pinecrest Investments Ltd
- Ten private individuals or couples

6. ~~The written evidence has been reproduced in full within this report [with two exceptions. The Department provided, but asked us not to publish:~~

- ~~• the Agreement itself, on the basis that to publish would interfere with the confidentiality expected by the other two parties; and~~
- ~~• the detailed valuation figures produced by the Government Valuer, on the basis that they are commercially sensitive;~~

~~and we have agreed to the Department's request.]~~

6. On 10th May 2012 the Committee heard oral evidence from Mr David Cannan and Mr Alfred Cannan MHK. On 7th June 2012 the Committee heard oral evidence from Hon Eddie Teare MHK with Mr Stuart Dobson, Chief Executive of the Department of Education and Children. The oral evidence is reproduced within this report.

Publication of written evidence

7. We have reproduced within this Report as much as possible of the written evidence we have received. The exceptions are the Agreement itself and the detailed valuation figures provided by the Government Valuer, which the Department has asked us not to publish.
8. A parliamentary committee has the right not only to obtain, but also to publish any information relevant to its remit. If, however, there is a reason why information should not be published, it is right for the committee to consider this. In the present case, the Department asked us to with-hold publication of valuation figures on the basis that they were sensitive for the ongoing revised planning application process. Our independent legal advisor has confirmed that the Agreement is still part of a "live" process and on that basis we have acceded to the Department's request.
9. In our judgement, however, if the process had not still been "live" it would have been in the public interest to publish the Agreement itself and the associated valuation figures provided by the Government Valuer on 17th January 2007, 29th October 2010, 26th July 2011, 27th July 2011, and 5th August 2011. Sooner or later either planning permission will be obtained and the land exchange will go ahead, or planning permission will be refused and the land exchange will fall through. In either case the valuation data will then be of historic significance only. Accordingly we make the following recommendation:

Recommendation

That as soon as the final outcome of the Kirk Michael Land Exchange Agreement is known, the Department of Education and Children should publish in full both the Agreement itself and all associated valuations provided by the Government Valuer during the negotiations which led to the Agreement.

Committee powers

10. As part of its written evidence in relation to this matter, the Department wrote in an e-mail dated 2nd July 2012 as follows:

The Attorney General's office have advised that it will be unlawful for the Select Committee to publish commercially and legally sensitive figures without the consent of all the parties to the contract. They have made reference to the 'Code of Practice on Access to Government Information' / Government Circular 20/96 which is binding on all of Government including the Select Committee.

We reaffirm our non-consent to the public release of the valuations or reference to valuation figures.

11. The advice attributed here to the Attorney General's Chambers as to the applicability of the Code of Practice to a Select Committee is wrong. It is a matter of grave concern that such erroneous advice has been given to a Department. We draw this incident to the attention of the Standing Orders Committee of Tynwald Court, which may wish to consider it in the context of its work on committee powers following the Tynwald resolution of 16th October 2012.

7.

II. BACKGROUND: THE PROPOSED DEVELOPMENT, THE LAND EXCHANGE AGREEMENT, AND THE CONCERNS WHICH HAVE ARISEN

- 8.12. Timelines were included in the written submissions of the Department of Education and Children, the Department of Infrastructure, and Hon Eddie Teare MHK, which can be found within the Appendices of this Report. The key dates are brought together in our own Timeline at Annex 1.

The proposed development

- 9.13. There exists to the east of the main road in Kirk Michael an area of land which has been zoned for development since the early 1990s and owned by Pinecrest Investments Ltd, a local company (see Map 1). Pinecrest

agreed in August 2010 to sell it for development to Heritage Homes Ltd, part of the Dandara Group.¹

10.14. A major consideration in developing the site has been the access which would be needed from the main road. The access preferred by Heritage Homes Ltd is to build an access road from the Douglas Road Corner. This road would cut across land belonging to the Department of Education and Children currently in use as a school playing field. Therefore between 2005 and 2007 a proposal was developed that:

- the Department would transfer to Pinecrest Investments Ltd the land needed for the preferred access route (in the eventual Agreement this was referred to as the “First Property” and amounted to 0.63 acres: see Map 1);
- Pinecrest Investments Ltd would transfer to the Department a larger piece of land to the rear of the school suitable as the site of an alternative playing field (in the eventual Agreement this was referred to as the “Second Property” and amounted to 2.01 acres: see Map 1); and
- Heritage Homes would level and seed the alternative playing field.

The question of who initiated the deal is considered in more detail elsewhere in this Report.

The significance of the alternative access

11.15. The land owned by the Department and needed for the preferred access route was in the nature of a “ransom strip”: in other words, one would expect its value to be increased because of its significance to the success of the wider development plan. For a true ransom strip, according to the Department’s written evidence, the value would be around 33 per cent of the profit that would be realised by the development of the land. However, in the present case the Department and the Treasury took the view that the Department’s land was not a true ransom strip because it was not the only possible means of access to the development site. In

¹ Heritage Homes submission of 18th April 2012

January 2007 the Government Valuer took the view that access was at least in theory possible via the Lhergy Vreck farm road. He therefore used an estimated “ransom” value of 15 to 20 per cent of the profit that would be realised by the development of the land.

~~12.16.~~ Following local opposition to the development, the then Minister, Hon Anne Craine MHK, decided not to progress the land exchange in any case. This decision was announced in the House of Keys on 29th May 2007, when Mrs Craine said:

I have personally taken an interest in the community’s views on this proposal and have considered them very carefully. At the present time, I have decided to decline the proposal for the land exchange, because the potential disadvantages to Kirk Michael outweigh the possible benefits to the school.

~~13.17.~~ The Department having at this stage taken the view that a land exchange should not be on the table, there followed some further negotiations as to whether the Department could buy some land from the developer to protect the position of the school. These negotiations were unsuccessful.²

~~14.18.~~ In April 2010 the name of the Department was changed to the Department of Education and Children and Mrs Craine was succeeded as Minister by Hon Eddie Teare MHK. Later that year, negotiations began again. The way in which they were initiated is considered in more detail elsewhere in this Report.

~~15.19.~~ This time Heritage Homes said that the alternative access via the Lhergy Vreck farm road was no longer just a theoretical possibility. During the intervening period they had acquired an option to purchase the property to the right of the farm road (Cass A Lergy), and they had bought the property to the left (Westlands). It appeared to the Department that Heritage was in a position to proceed even without a land exchange. This had a financial impact, making the Department’s land less of a ransom strip and further diminishing its value. In October 2010 the Government Valuer produced a revised estimate of the value to the developer of the Department’s land. This time he used an estimated

² QQ 102 to 113

“ransom” value of 10 per cent of the profit that would be realised by the development of the land.

~~16.20.~~ The news that the developer had secured alternative access did not only have financial implications for the Department. It also had political significance, because it suggested that even without a land exchange, the development would inevitably go ahead.

The Tynwald debate of January 2011

~~17.21.~~ In January 2011 the development was debated in Tynwald. The following motion was tabled by the then Member for Michael, Mr David Cannan MHK.

That Tynwald does not support any current or future proposal by the Department of Education and Children to sell or transfer the ownership of the school playing field at Michael Primary School, Douglas Road corner site, Kirk Michael, to Dandara Limited or any other developer or person.

~~18.22.~~ The following amendment was moved by the then Minister for Education and Children, Hon Eddie Teare MHK –

To leave out all the words after “Tynwald” and add: “supports the Department of Education and Children in its current and future discussions to sell or transfer the ownership of part of the land at Michael Primary School, Douglas Road, Kirk Michael, for the purpose of ensuring the ability to develop further the school site for the benefit of the school and the community”.

~~19.23.~~ During the debate the Minister for Education and Children, Mr Teare, said:

Access to the land has been secured. That is a done deal and, subject to the planning process, development will occur.

~~20.24.~~ In the ensuing vote, Tynwald supported the Department’s amendment, endorsing the Department’s continuing negotiations for the land exchange 21/3 in the Keys and 8/1 in the Council. Given this endorsement the Department went ahead with the negotiations and the Agreement was finalised in August 2011.

Doubts about the alternative access

21.25. In the debate establishing this Committee on 22nd February 2012, Mr Alfred Cannan MHK cast doubt on the viability of the alternative access which, it would appear, had, it would appear, had such a significant effect both financially and politically. Doubt was cast on two grounds:

- remarks made at a planning inquiry in December 2011 by the developer's transport consultant created an impression that the alternative access was unfeasible for reasons of road safety; and
- a local landowner (Dr Naylor) asserted rights over the Lhergy Vreck farm road which, he said, might prevent access by Heritage Homes to the zoned land

22.26. These two points are explored further in the section of this Report entitled "Whether by January 2011 access to the land had been secured".

Other questions raised

23.27. In the February 2012 debate and in his written evidence to the Committee Mr Alfred Cannan MHK raised further questions in two areas:

- as to the manner in which the negotiations were conducted, querying both the level of personal involvement of the former Minister, and also the timing of the final Agreement immediately after the Dissolution of the House of Keys;
- as to the value for money achieved.

24.28. These further issues are explored in detail in separate sections below.

III. INVESTIGATION OF THE AGREEMENT ITSELF

25.29. The first element of the Committee's remit is "to investigate the Kirk Michael School Land Exchange Agreement between Heritage Homes, Pinecrest Investments Ltd and the Department of Education and Children".

~~26.30.~~ While the purpose of a Select Committee is not to examine the merits of the planning application per se, we believe it necessary to consider first whether the idea of a the land exchange was justified in the first place.

Was there a need to protect the interests of the school?

~~27.31.~~ The Cannans in their oral evidence pointed out that the number of pupils at Kirk Michael school fell from 138 during the period 1996 to 1999 to 135 in March 2011. Meanwhile in 2002 a new sports hall, two extra classrooms and a school community room had been opened and in March 2011 Mr Teare had proposed using the extra space as a doctor's surgery. This called into question the view that further land was needed for expansion of the school.³

~~28.32.~~ We put these points to the former Minister and the current Chief Executive of the Department of Education and Children. They defended the land exchange on each point, saying that:

- while there is a recent history of declining numbers at Kirk Michael, the latest census shows an overall increase in the number of primary-age children and the Department needs to look further than five or 10 years ahead;⁴
- according to the Department's figures, if 100 houses are built the Department would expect at least 40 more children in the primary school. While it is true that there are two spare classrooms at present, the school does not have some of the things that other schools have;⁵
- concern as to the possibility of development completely surrounding a school was well founded as was illustrated by the case of Ballaugh School;⁶

³ Q 1

⁴ QQ 81 to 82

⁵ QQ 89 to 91

⁶ Q 82

- the proposed new playing field would have more resilience in bad weather conditions, would be properly drained and would be properly fitted out for modern sports facilities.⁷

Conclusion

We concur that there was a need to protect the long-term interests of the school.

Was a land exchange an appropriate way to seek to protect those interests?

29.33. The Cannans argued further that even if there was a need to protect the interests of the school, the planning system could have been relied on to ensure open spaces were provided as part of any future development and houses would not be built right up to the school boundary.⁸

We received from Mr Henry Kennaugh written representations to the effect that, without giving away the land desired by the developer for the Douglas Road Access: A land exchange and benefits for the school could still have been achieved by planning conditions and concessions from the developer, with the developer themselves providing the entrance located south east of the village on property they had maintained they were in control of.

34. We drew these concerns to the attention of the Director of Planning and Building Control and asked for a comment as to whether the planning system could be relied on to prevent development adjacent to a school boundary. It is clear from his response that it cannot. He wrote:

... it cannot be said from a planning perspective that having housing immediately alongside a school is unacceptable in principle or in some way has a negative impact either on the school or the housing concerned ... the planning system could not constrain the principal development of housing on land alongside the school if this land were designated for housing unless there was a robust evidence based justification for safeguarding the land for educational purposes. The Planning Committee or a Planning Inspector would consider that the decision on how large the site should be, including future proofing it, should

⁷ Q 92

⁸ Q 5

have been taken when the land was designated and it is unreasonable to withhold otherwise acceptable development on the basis of an unjustified future possible need for the land.

35. We consider that these comments give further weight to the Department's argument. There is a present need for a playing field and a potential future need to expand the school buildings, albeit in the mid- to long term. Only by owning the land adjacent to the existing buildings can the Department keep both of these options open.

30.36. Mr Kennaugh maintains further that in seeking the endorsement of Tynwald to a land exchange at Douglas Road Corner the Department was in effect seeking to over-ride the planning process. He asks:

was Tynwald on the 18 January 2011 made fully aware of the implications that the mandate they were giving to the Minister of Education was to then be used to condone the wholesale blatant breaching of Government Planning Policy.

31.37. We consider these concerns to be misplaced. In the January 2011 debate the Minister said he expected development to occur "subject to the planning process". The Agreement itself is, as explained below, expressly subject to the planning process in any case. To argue that in endorsing the principle of a land exchange Tynwald was also endorsing a breach of the planning process is to misrepresent the terms of the Tynwald resolution. A Government Department must follow the planning process like anyone else. It is not entitled to assume that a planning application which has its support will succeed for that reason alone. In its capacity as a landowner it is, however, perfectly entitled to buy and sell land, or to enter into agreements for the buying and selling land under particular conditions, as in the present case.

Conclusion

We consider that a land exchange was an appropriate way to protect the long-term interests of the school. For reasons set out elsewhere in this Report, we believe that by 2010 the Department was justified in its view that some form of development was inevitable. That being the case, the Department's ownership of land at the Douglas Road Corner gave it a strong hand to play. By negotiating for a land exchange the Department

had the opportunity to achieve much greater certainty than would have been achievable merely by seeking to have conditions imposed on the development through the planning system.

32.38. Balancing the needs of the school, the community and the taxpayerThe Cannans emphasised in their oral evidence the need to achieve a good deal not only for the school but also for the community, pointing out that Mrs Craine, when Minister, had accepted that the deal brought potential disadvantages to Kirk Michael.⁹

33.39. We asked the Cannans to specify the potential disadvantages of the land exchange. Their answers were the protection of the conservation area and the management of traffic.¹⁰ These are matters for the planning process. At the same time we note that according to their written evidence to this Committee:¹¹

Michael District Commissioners have supported this advantageous deal since first offered many years ago.

34.40. When we asked Mr Teare if the motivation for striking this deal was the best interests of the school and the Kirk Michael community, he said:¹²

No, the school and the taxpayer and also I did say at the outset, damage limitation, bearing in mind that they had alternative access.

Conclusions

When the land exchange was first proposed, in 2005, the Department of Education was justified in entering into negotiations on behalf of the school and the taxpayer.

Mrs Craine's decision of May 2007 to halt the negotiations in the face of vocal opposition led by the local MHK was based on a judgement that

⁹ Q 25

¹⁰ QQ 25 to 29

¹¹ Submission dated 22nd March 2012 from Michael Commissioners

¹² Q 204

the potential disadvantages of the development outweighed its potential advantages.

Given the change in circumstances which occurred after May 2007 as described in this Report, it was reasonable for Mr Teare in July 2010 to allow negotiations to recommence. ~~This effective reversal of Mrs Craine's decision was justified in the circumstances.~~

Was the Agreement competently put together?

35.41. We obtained legal advice on the Agreement itself from John Wright, Advocate. His advice is reproduced in full as an Appendix to this Report ~~[except that the Property valuation figures reproduced in the legal advice have been redacted in line with our treatment of all valuation figures throughout this Report].~~

36.42. We asked Mr Wright to provide an explanation in layman's terms of the effect of the Agreement. He wrote:

Simply put the Agreement recites that Pinecrest owns land, (fields 234456, 234265, 234455, 234252 and 234253), that it has agreed to sell that land to Heritage, which is going to apply for planning to develop the land, and that to assist in obtaining planning both Pinecrest and Heritage want to acquire land belonging to DEC at Douglas Road Corner and swap it for some of the Pinecrest, land to allow "suitable access" and to do certain works, at the expense of the developer, for the benefit of the school.

The Agreement is made conditional upon Heritage applying for obtaining planning consent on terms which are acceptable. "Acceptable" is defined.

The Agreement provides that if acceptable planning consent is granted to Heritage, in respect of land owned by Pinecrest and the DEC, then the DEC will transfer ownership of a triangular area of land, part of Michael school playing field at Douglas Road Corner, to Pinecrest in exchange for Pinecrest transferring to the DEC a larger area of its land, part of fields 234456 and 234455, immediately behind Michael school, the Mitre and the Old Fire Station.

The areas are not stated in the agreement but the land involved is adequately identified by plans. From the report of the Planning Inspector I have ascertained that the area of DEC land to be exchanged is 0.63 acres and the area of Pinecrest land to be exchanged is 2.01 acres. ie DEC is getting slightly more than 3 times as much land as it is giving away.

~~37.43~~. We asked Mr Wright if the Agreement covers the eventualities which ought normally to be covered in such Agreements? He confirmed that it did.

~~38.44~~. We asked Mr Wright where the Agreement leaves the Department if the Developer fails to get planning approval? He wrote:

If planning is not approved in acceptable terms for Heritage and Pinecrest the Agreement comes to an end and the DEC is in exactly the same position as it was before the Agreement was entered into, ie it owns the playing field free from restriction. ~~Planning was recommended to be refused by the Inspectors report which was then approved by CoMin. It appears the Agreement is at an end. I have not been advised that the parties have agreed to vary or extend it to allow for a new application, although I am instructed such a new application has been submitted.~~ Planning was recommended to be refused by the Inspector's report which was then approved by CoMin. It appears prima facie the Agreement came to an end. I have not been advised that the parties have agreed to vary or extend it to allow for a new application, although I am instructed such a new application was submitted on or about 20 April 2012. The notification of CoMin that the Inspector's report had been accepted and planning refused was dated 27 February 2012. As a result, under the terms of the Agreement as the second application was made within two months of refusal, the agreement continues to be live.

~~39.45~~. We asked Mr Wright if there is a fixed end date to the Department's obligations under the Agreement? He wrote:

No. There is no stated fixed end date, or "long stop" date, for the Agreement by which the planning consent must be obtained. However planning had to be applied for within 3 months of 16 August 2011, and, once applied for, there is an expiry date of 18 months from the date of submission, subject to some minor powers to extend in clause 5.12 to allow for appeals and reviews if Heritage says that planning has been granted BUT is not acceptable. In my view these terms

are reasonable, measurable and capable of adequate and certain determination. The Agreement came to an end when the Inspectors report, approved by CoMin, was published in ~~March~~ February 2012. Clause 5.12 does not in my opinion allow extension in the case of refusal. In other words it would have come to an end by 16 May 2014 (if planning had not been resolved by then) or by refusal of planning (which has happened) except that if a second application was made before the expiry of two months from the refusal of planning the agreement continues, but that is still subject to the long stop expiry date of 16 May 2014.

40.46. We asked Mr Wright if the Department had the legal power to enter into an Agreement of this kind? He wrote:

Yes. I am not aware of any restriction on a Department of the IOM Government which limits its ability to enter into an Agreement to sell or exchange land or requires it to obtain Tynwald approval in advance. There are requirements for Treasury approval. I am instructed that Treasury approval was obtained prior to the Agreement being entered into. The DEC thus satisfied Treasury requirements. Obviously it should also have attempted to ensure value for money and any decision had to be reasonable, based on rational criteria and decision making, or it may be subject to judicial review by way of Petition of Doleance, in appropriate circumstances and by persons with locus standii. The Agreement is not stated to be subject to approval by Tynwald, I presume the draftsmen did not consider it necessary either.

41.47. We asked Mr Wright if the Agreement raised any other legal concerns? He advised that it did not.

Conclusion

On the basis of the independent advice it has received, the Committee is content with the way the Agreement is drafted.

Was the Agreement properly entered into?

The Agreement was signed on 16 August 2011. The House of Keys was dissolved on 18 August 2011. In their submission dated 19th March 2012, Dr and Mrs Naylor asked:¹³

Why was the contract signed when Tynwald was in recess and Kirk Michael had no MHK because of retirement, i.e. we had no democratic representation at the time?

42.48. When asked if there was any significance in the Agreement being signed when the Keys was about to be dissolved, Mr Teare said:¹⁴

None at all, but I was conscious that the Department had spent a considerable amount of work on it and I did not really want this to go on to the next administration. It was just a case of "let's get this resolved and we can then move on." Nothing more than that.

In analysing the Naylor's various concerns, our legal advisor John Wright commented as follows on this point:

I am not sure what democratic deficit they allege as the agreement did not require Tynwald approval in any event. It did require, and had, Treasury approval, or so I am instructed, not having seen any documentary proof. Government goes on, even after the House of Keys has been dissolved and an election called. The Dissolution was in any event after the date of the Agreement, if my memory serves me right.

At a political level Tynwald had of course taken an interest in the Agreement and the Department's actions were consistent with the resolution agreed to in January 2011.

Conclusion

There is no evidence that there is any significance in the Agreement having been signed shortly before the Dissolution of the House of Keys in August 2011.

¹³ Appendix 2

¹⁴ Q 96

IV. WHETHER BY JANUARY 2011 ACCESS TO THE LAND HAD BEEN SECURED

43.49. The second element of the Committee's remit is to investigate "whether by January 2011 access to the land had been secured, as was stated at that time by the Hon. Member for Ayre". This is a reference to the alternative access which is referred to in the written evidence as either the "Lhergy Vreck access" or the "High Tilt access".

44.50. Mr Alfred Cannan MHK identifies a number of questions in his written evidence to the Committee. The following are relevant to this section of our Report:

2. What evidence did the Department of Education have that Heritage Homes had access to the zoned land behind the school?

3. What plans or drawings were submitted to the Department of Education to authenticate such claims and when?

4. What discussions took place with the Planning Department to evaluate such plans or drawings and when?

5. What confirmation was provided by the Planning Department to the Department of Education in respect of this matter?

6. What discussions took place with the Department of Infrastructure in respect of road access to the zoned land and when?

In investigating the remit set to us by Tynwald we have also borne in mind these further questions from Mr Alfred Cannan MHK.

Did the developer acquire properties around the Lhergy Vreck Farm Road before January 2011 and did the Department do enough to verify this?

45.51. Heritage Homes state in their written evidence that they have:¹⁵

- an option agreement over a portion of Cass A Lergy dated 19th December 2007

¹⁵ Submission dated 18th April 2012 from Heritage Homes

- the freehold of Westlands, purchased on 1st July 2008
- the freehold of Knock-e-Tholt, purchased on 21st March 2007
- the freehold of a portion of Greystones, purchased on 15th April 2008

For the location of these properties, see Map 2.

46-52. The Committee wished to obtain independent confirmation from the Land Registry that the land concerned was in the ownership of Heritage Homes before January 2011. The Land Registry has confirmed the transactions related to Westlands, Knock-e-Tholt and Greystones.¹⁶ An option agreement such as that referred to in relation to Cass A Lergy would not need to be registered.

47-53. The Department's written evidence shows that by August 2010 the officers in the Department of Education and Children had accepted that Heritage Homes had now purchased Westlands and Cass A Lergy and that in October 2010 this assumption underlay a discussion between the Minister and Departmental officers.¹⁷ We asked the former Minister if he had checked the veracity of the claim of the property ownership to permit a new access. He said:¹⁸

It was already in the public domain through deeds which had been filed at the deeds registry that they had alternative access... It was public knowledge, sir.

48-54. Heritage Homes states in its evidence that:¹⁹

The Department also has proof of our Ownership and Control of the alternative access land.

Conclusion

Independent confirmation is readily available from the Land Registry that by January 2011 the developer had bought the freeholds of

¹⁶ JK phone conversation 19 Apr 2012; subsequently followed up in e-mail from David Brown dated 2nd May 2012

¹⁷ Documents C and D attached to the Department's submission.

¹⁸ QQ 121 and 123

¹⁹ Press release dated 3rd February 2012 included in submission dated 18th April 2012 from Heritage Homes

Westlands, Knock-e-Tholt and a portion of Greystones. An option to buy does not need to be registered so this element of Heritage's claim could not have been independently verified in the same way either before or after the Tynwald debate in January 2011. It was nevertheless reasonable for the Minister to approach the Tynwald debate on the basis that Heritage had control over the land needed for the Lhergy Vreck access.

Were the properties acquired by Heritage Homes sufficient to provide adequate visibility splays and did the Department do enough to verify this?

49.55. The Department's written evidence shows that at a meeting in August 2010 the developer had tabled plans showing access via the Lhergy Vreck farm road and proposing 127 homes.²⁰ However, the Department's written evidence is silent as to how stringently the viability of this access route was checked at the time. The written evidence of the then Minister, Mr Teare, for this period, merely records:²¹

November and December 2010

Telephone conversations with Highways regarding access to the site from the Lhergy Vreck Road.

50.56. We asked Mr Teare whether he had followed these conversations up in writing at the time. He said:²²

I did not achieve it in writing, until after the debate in Tynwald... I got verbal clarification and I was content to rely on that and they followed up in writing in April.

57. The written evidence submitted by the Department of Infrastructure confirms that Mr Teare sought written confirmation from the Highways Division soon after the January 2011 debate. In a letter to the Director of Highways dated 7th February 2011 Mr Teare asked a series of questions

²⁰ DEC submission of 22 March 2012, document B

²¹ Letter to the Committee dated 20th March 2012

²² QQ 147 and 149

relating to the idea of a roundabout at the Douglas Road corner and to the viability of the Lhergy Vreck access. Mr Teare concluded:²³

Quite obviously, your response will have a major influence on my negotiations with the developers and I would appreciate a reply as soon as possible as I am anxious to resolve this issue at an early juncture.

58. In a response dated 17th February 2011 the Director of Highways commented on transport issues in Kirk Michael generally but refused to comment on the specific proposal underlying Mr Teare's request for information, writing:²⁴

You will, I hope, appreciate that I cannot enter into arrangements with a third party regarding another party's planning application, even if that party is another Department or a Minister. To do so would be maladministration or worse.

59. We consider that the Director's response to Mr Teare was understandable given the way in which Mr Teare worded his inquiry and particularly given the final paragraph of Mr Teare's letter, quoted above, which we do not think was advisable.

60. Mr Teare was not, therefore, able to obtain written confirmation of the viability of the Lhergy Vreck access directly from the Highways Division because the question related to another person's potential planning application. Written evidence submitted to us both by the Department of Education and Children and by the Department of Infrastructure shows, however, that the viability of the Lhergy Vreck access was analysed by Heritage Homes' transport consultant soon after the Tynwald debate; and that this analysis resulted in a written response from the Highways Division which Heritage passed immediately to Mr Teare.

51.61. In their press release dated 3rd February 2012 Heritage Homes says that:

Prior to entering into the agreement with the Department of Education, we were required by Minister Teare to provide irrefutable proof that we could

²³ DoI submission, attachment 5

²⁴ DoI submission, attachment 7

access the land to the rear of the school (albeit for a maximum of 100 houses) via an ALTERNATIVE access. This was for the specific purpose of establishing that the Department WERE NOT in possession of the ONLY access which would enjoy an enhanced value.

52.62. The “irrefutable proof” referred to takes the form of a drawing and analysis of the Lhergy Vreck access by the developer’s transport consultant sent to the Highways Division on 14th March 2011 and a response from the Highways Division concluding that the Cass A Lergy access was sufficient to build a junction capable of serving 100 dwellings. This information was passed to Mr Teare by Heritage Homes in an e-mail dated 15th April 2011, some four months before the Agreement was signed in August 2011.²⁵

53.63. After the Agreement was signed, Heritage Homes put forward a planning application for the development and this went to a public hearing in December 2011. The planning application did not rely on the Lhergy Vreck access but on the Douglas Road Corner access now made possible by the land exchange Agreement. The Lhergy Vreck access was not therefore germane to the outcome of the planning inquiry and the Inspector did not hear argument about it from all parties.

54.64. Reference was, however, made to it in the independent inspector’s report published on 3rd February 2012. Alluding to the 2004 Kirk Michael Relief Road Joint Study Draft Final Report, the inspector commented on the idea of a direct access to the development site at the south of the village. He wrote: ²⁶

The present proposals explored such an access, at Cass A Lergy, where Heritage Homes purchased Douglas Road properties backing onto the southern end of the site. The company was, however, unable to obtain control of sufficient frontage to satisfy the Highway Authority’s visibility requirements.

55.65. As soon as the Inspector’s report appeared, Heritage Homes issued an emphatic rebuttal in the form of a media release dated 3rd February 2012. Heritage explained that during the planning inquiry in December 2011

²⁵ DEC submission of 22 March 2012, document E

²⁶ Independent Planning Inspector’s report, paragraph 114

its transport consultant had been asked whether the site could be accessed via Westlands or Knock-e-Tholt. He answered “no”. He was not asked whether the site could be accessed when all the land under the control of Heritage Homes was taken into account. The media release was accompanied by a letter from the transport consultant, also dated 3rd February 2012 explaining that his answer to this question, if it had been asked, would have been “yes”.²⁷ The same point was made in a letter from Heritage Homes to the Chief Secretary dated 2nd March 2012 arguing that the inspector was “fundamentally incorrect”.

Conclusion

The viability of the Lhergy Vreck access in terms of visibility splays is ultimately a planning matter and will only be finally determined if ever a planning application is put forward which relies on it.

The Minister’s statements in Tynwald in January 2011 were based on unwritten assurances from the developer—Highways Division which were subsequently vindicated when he rightly sought written confirmation.

The Highways Division confirmed in writing in April 2011 that the Lhergy Vreck access was suitable for a development of up to 100 houses. The Minister was entitled to rely on this confirmation for the purposes of finalising the Agreement.

Was the Lhergy Vreck Farm Road itself unencumbered and did the Department do enough to verify this?

56.66. In the debate establishing this Committee, Mr Alfred Cannan MHK drew attention to concerns which had been raised by a local landowner about the proposed Lhergy Vreck access. He said:²⁸

²⁷ See Heritage Homes press release dated 3rd February 2012 and transport consultant’s letter dated 3rd February 2012, both contained within Heritage Homes’ submission to the Committee dated 18th April 2012.

²⁸ *Hansard* 22nd February 2012 lines 1042 to 1050

In a letter to Minister Teare and the Department of Education on 9th May 2011, a Kirk Michael landowner writes: "We understand there is a proposal to exchange land at the school in Kirk Michael to enable Heritage Homes access to land zoned for building. The details of this proposal seem to be based upon the belief that Heritage Homes, in the absence of access through the school, would have access from the Douglas Road through the entrance of High Tilt. This is uncertain since we own the farm buildings and some of the land of Lhergy Vreck Farm and our deeds give us right over the access road to High Tilt. We simply do not know whether our rights would or would not prevent Heritage Homes access to the zoned land."

57.67. Mr Alfred Cannan reiterated this concern in his written evidence to the Committee.²⁹ We have also received a written submission from Dr and Mrs Naylor making the same point. They say:³⁰

We have rights over Lhergy Vreck Lane because of our ownership of the Lhergy Vreck farm buildings. When there were rumours of an impending planning application, we tried to find out whether it would involve Lhergy Vreck Lane and whether it could potentially affect our ability to exercise our legal rights. Heritage Homes refused to give us any details of any proposal involving Lhergy Vreck Lane. So we wrote to Mr Teare. [this is the letter of 9th May 2011 referred to in Tynwald by Mr Alfred Cannan MHK]

We asked for further information and at the same time pointed out that any entrance via Lhergy Vreck Lane might infringe our rights and therefore might not have been possible as an access route. Mr Teare did not provide us with any information, and did not even ask us for further details of the potential problem with Lhergy Vreck. He, therefore, knew that Lhergy Vreck Lane might not be useable as access to a development before he signed the contract.

58.68. In his written submission to this Committee, Mr Alfred Cannan MHK includes copies of two rounds of correspondence between the Naylor and Mr Teare showing no inclination on Mr Teare's part to engage with the substantive point raised by the Naylor.³¹ The written submissions of

²⁹ Letter dated 19th March 2012, point 7

³⁰ Letter to the Committee dated 19th March 2012

³¹ Naylor to Teare 9th May 2011; Teare to Naylor 11th May 2011; Naylor to Teare 17th May 2011; Teare to Naylor 27th May 2011; all four letters attached to letter from Mr Alfred Cannan MHK to Committee, 19th March 2012

the Department and of the former Minister, Mr Teare, make no reference to the concerns of Dr and Mrs Naylor.

59.69. It seems on the face of it unlikely that Dr and Mrs Naylor's rights over the Lhergy Vreck Farm Road would include ~~to~~ a right to prevent the use of the road, once suitably widened, as access to a housing development. If such a possibility did exist, however, it would have been useful to the Department to have known this before finalising the Agreement as it could potentially have increased the value of the Department's land as a near-"ransom strip".

60.70. We referred the Naylor's concerns to our legal advisor who has provided a comprehensive analysis of the position distinguishing clearly between matters pertaining to planning and matters pertaining to legal rights. Mr Wright's advice includes the following points:

The existence of rights in favour of Dr & Mrs Naylor, or anyone else, and possible interference with them if planning were granted, would generally be something which planning would not take into account or consider when determining an application. An easement of access is a civil law matter between the landowners. So planning could be granted, irrespective of civil rights such as rights of way, and then, if their rights were actually interfered with, Dr & Mrs Naylor MIGHT be able to claim damages or an injunction to prevent the interference. It is not for the planning committee or inspector to determine legal rights of ownership, boundaries and rights of way etc. or to settle disputes as to them...

It appears to me that they should by now [9th May 2011] be able to identify what their rights are, sight of the agreement or planning application would not be a pre-requisite to that. Their rights are set out in their title. Yet they still do not do so...

Again [17th May 2011] Dr & Mrs Naylor do not actually assert what their rights are. They confuse the existence of their rights, and the enforcement of them, and the planning process. Their rights are generally going to be irrelevant to planning...

To obtain advice, from their advocate, as to what their rights were and how the development of the land within the zoned for development area

contained in the Kirk Michael plan using exclusive access via Lhergy Vreck Road, would affect those rights, interfere with them and whether they had the right to stop such development as a result did not, and does not, depend on the information they say has not been provided to them...

Again Dr & Mrs Naylor set out [on 19th March 2012] that they have rights over Lhergy Vreck Road. Their highest point is that any development using access via Lhergy Vreck Road "might infringe our rights". At no stage do they identify what they claim their rights are and what land in their ownership has the benefit of them...

It has to be remembered that Heritage had acquired Cass a Lhergy, Westlands etc, so it is quite possible that they could arrange access to the development site for building and development operations (subject to beneficial planning) without interfering with those rights, and, what is more, the sheer fact that a road way was to be put in to serve the new estate with other people having rights over Lhergy Vreck Road, would not be an interference with the rights attached to Lhergy Vreck farm or High Tilt...

There are three questions... included in the Select Committee papers sent to me, as follows:

(a) whether the Naylor's' rights could indeed have enabled them to block the use of the Lhergy Vreck access, as they claim;

(b) whether the use of the Lhergy Vreck access could indeed have been threatened by rights enjoyed by any other landowners in the vicinity, including Pinecrest Investments Limited/the Lewis family; and

(c) whether the Department erred in ostensibly ignoring the Naylor's' concerns when they came forward in May 2011

For completeness I answer them briefly:

(a) No, not without actual physical interference and that is not a given, especially as Heritage owned Cass a Lhergy, Westlands etc.

(b) Ditto.

(c) In my view probably not, as the more relevant and serious matter by far was the adequacy of the visibility splay at the entrance to Lhergy

Vreck Road and Cass a Lhergy and Westlands etc and not the rights over the Lhergy Vreck Road. That matter had been the subject of the 15 April e-mail.

61.71. The legal advice concludes:

I am not convinced that access via Lhergy Vreck Road would have interfered with the rights of Dr & Mrs Naylor. I am surprised that they did not, and apparently still cannot, specify what they considered their rights to be, what land owned by them benefitted from those rights and how those rights would be interfered with if access was via Lhergy Vreck Road and Cass a Lhergy. Their rights were established by Deed T and were not changed by the plans of Heritage. In any event these civil rights are not relevant to the planning process. The question of whether access via Lhergy Vreck Road is or is not ultimately viable, due to visibility splay requirements, or other planning issues, is a planning matter and that does have a knock on effect on the value to be attached to the DEC Douglas Road Corner playing field. I am not in a position to comment on whether the values of the land, their respective areas, and the value of the works to be done by Heritage for DEC were adequate compensation to reflect the proposition that without the Lhergy Vreck Road and Cass a Lhergy access point being viable the site is landlocked and undevelopable without either the acquisition of other property on Douglas Road A3 at that point to allow sufficient visibility splay or via the Douglas Corner school playing field site.

Conclusion

The Minister's response to the correspondence he received from the Naylor's is defensible. In an ideal world it might have been interesting for the Department to investigate the Naylor's' concerns in more depth, had time and resources been no object. However, in the light of our legal advice it seems highly unlikely that such an investigation would have had any impact on the Department's negotiating position.

V. THE MANNER IN WHICH THE NEGOTIATIONS WERE CONDUCTED

62.72. The third element of our remit is to investigate "the manner in which the negotiations were conducted".

63.73. In his written evidence to the Committee, Mr Alfred Cannan MHK identifies the following specific questions related to this element of our remit:

1. Who initiated the deal and when? ...

8. [With reference to an e-mail sent by the Department of Education and Children on 6th January 2011] Is it right therefore to properly suggest that any public debate, letters, Tynwald motions etc were in fact irrelevant?

9. How can this be true [i.e., how can it be true that in March 2011 negotiations were still continuing]? According to the e-mail of the 6th January 2011 and the Tynwald Hansard, the deal was effectively complete.

The initiation of the deal

64.74. This section relates to Mr Alfred Cannan MHK's Question 1.

65.75. Negotiations have been underway since 2005 but broke down in 2007 and 2009. The deal has therefore been "initiated" three times: in 2005, 2008 and 2010.

66.76. According to their written evidence, it was Heritage Homes Ltd who took the lead in opening the dialogue with the Department, which they say they did in or around May 2005.³² This is consistent with the Department's written evidence, which states that it had an initial approach from Heritage Homes in May 2005.³³

67.77. In May 2007 the then Minister, Hon Anne Craine MHK announced that she had decided "at the present time" to decline the land exchange. The Committee wrote to Mrs Craine about this. She declined to make any comment.

68.78. Between November 2008 and January 2009 the Department's written evidence shows a second round of dialogue, this time initiated by the "landowner" (i.e. Pinecrest Investments Ltd). Mr Teare's submission refers to this as an approach by the "landowner's daughter". The

³² Letter from Heritage dated 18th April 2012

³³ Submission of 22nd March 2012, schedule of key events

evidence of Pinecrest Investments Limited explains that it is a family business: the directors are Mr and Mrs Lewis but their daughter has been closely involved and has negotiated on behalf of the Company. The Pinecrest submission does not allude to any approach to the Department in November 2008 but does say “negotiations with Heritage started afresh in 2009”. Heritage’s submission is silent on any negotiations with the Department in 2008/09.

69.79. In April 2010, following the restructuring of Government, Mr Teare was appointed Minister of Education and Children. A further re-starting of negotiations on the land exchange followed this appointment. According to Mr Teare’s speech in Tynwald in January 2011, he received an approach from the developers. He confirmed this in correspondence with us.³⁴ Mr Teare’s written submission records that in July 2010 he met “the landowner’s daughter”. The Department’s written submission records that in July 2010 “Minister meets with Landowner”.

70.80. Mr Teare explained further in oral evidence how this came about. He said:

I was involved in a constituency planning matter and one of the parties – the constituent’s architect – happened to be the same architect who was acting for Pinecrest. We just had a general discussion. The subject came up: “now there has been a change in administration at Education, would the Department be prepared to have a look at the deal again?” I said, “Well, if you want to try, fine”. They then came back through my Director of Estates at the time.

Whether the Department prematurely regarded the transaction as complete

71.81. Mr Alfred Cannan MHK draws attention at Question 8 of his submission to an e-mail exchange correspondence between the Department of Education and Children and a Kirk Michael resident who objected to the proposed development.

72.82. In response to an e-mail sent by the constituent on Christmas Day, Mr Teare wrote on 5th January 2011:

³⁴ Mr Teare e-mail of 1st May 2012, included in Appendix 2

The developers have secured alternative access and the development is likely to proceed.

~~73.83.~~ The constituent responded later the same day:

Your response suggests that this decision has already been made, whereas I was under the impression from the correspondence I have seen that it was a proposal still being considered?

~~74.84.~~ He received a response from the Minister's office at 11.02am on 6th January 2011 saying:

Minister Teare has asked me to advise you that he has agreed in principle and we are now finalising the details, although the deal could still fall through.

~~75.85.~~ The deadline for submission of motions for the January 2011 sitting of Tynwald was 31st December 2010. The Order Paper would have been finalised on Wednesday 5th January 2011 and sent to Members of Tynwald that evening; it would have been issued to the press and the public on Thursday 6th January 2011. On that basis it is possible that when the Minister said "he has agreed in principle" he did not know that the deal was to be debated by Tynwald. The e-mail in any case included the important caveat "the deal could still fall through".

~~76.86.~~ In his original e-mail of 5th January 2011 to Mr Cannan's constituent, Mr Teare twice used the expression "likely to proceed" and made direct reference to the planning process. In the Tynwald debate Mr Teare did take care to mention that he thought the development would proceed "subject to planning approval".

~~77.87.~~ The Committee asked Mr David Cannan whether he gave Mr Teare advance notice of his motion. He was not sure.³⁵

~~78.88.~~ The Committee asked Mr Teare whether he knew about the imminent Tynwald motion when he advised Mr Cannan's constituent on 6th

³⁵ Q 48

January 2011 that he had “agreed in principle”. Mr Teare could not recollect.³⁶

Conclusion

There is no evidence that the Department pre-judged the outcome of either the Tynwald debate or the planning process.

Is there contradiction between the Department’s statements of January 2011 and March 2011?

79.89. In his written submission at Question 9 Mr Alfred Cannan MHK draws a contrast between:

- on the one hand, the e-mail of 6th January 2011 to a Kirk Michael resident in which Mr Teare advised that “we are now finalising the details”; and
- on the other, a letter of 29th March 2011 to the then Kirk Michael MHK Mr David Cannan, in which Mr Teare stated that “negotiations are continuing”.³⁷

80.90. We asked Mr Teare about this. He explained as follows:³⁸

Negotiations continued right up until the 11th hour. The Committee will recall that Dandara were constantly put under pressure to improve the terms of the deal. So basically, we had agreed in principle there was a deal there to be done, “now let’s work on the finer details and work through it”. In contract terms, there are many stages to a contract, as I am sure the Committee will appreciate.

Conclusion

There is no contradiction between the Department’s statements of January 2011 and March 2011.

³⁶ QQ 168 to 169

³⁷ The letter bears the date 29 March 2010 but this must be wrong as Mr Teare was not Minister for Education and Children then

³⁸ Q 170