

The close personal interest taken by Mr Teare

81.91. In a letter sent to all Tynwald Members on 30th January 2012 (reproduced within his written evidence to the Committee), Mr Alfred Cannan MHK wrote:

I have little or no evidence as to how the negotiations were conducted or the terms of the deal, other than a letter which clearly states that the former Minister for Education (Minister Teare) has taken direct responsibility for the negotiations. I am not convinced this was an appropriate way for such a technical and difficult negotiation to take place.

82.92. Section 3 of the Government Departments Act 1987 provides that:

... the functions of each Department shall be exercised by the Minister in the name and on behalf of the Department.

More colloquially, it is often said in Isle of Man Government circles that “the Minister is the Department”. This is a central feature of our current Ministerial system of Government.

83.93. We asked Mr Teare why he had taken such a close personal interest in this deal. He said:³⁹

It is because of the previous life: I have been dealing with property and land issues in my previous role in my previous employment, so I had an element of experience in these areas and working with my colleagues in the Department, and as a team, we could progress it...

You will recall, sir, that the initial negotiations were conducted in 2010, through the Director of Estates. Then as matters continued, he referred it to me and I said they needed to sharpen their pencil. Over the terms of negotiations, as things got more fraught, we managed to improve the deal, but then, in fairness, the developers needed to speak to or have access to the person who is able to make the decision in consultation with his colleagues.

Conclusions

³⁹ QQ 177 to 178

Given the high degree of political sensitivity surrounding the Kirk Michael land exchange proposal, and given its significance both in financial terms and for the future of Kirk Michael School, it was in our view entirely to be expected that any responsible Minister would take a close personal interest in the progress of the negotiations.

Given the background and expertise of the particular Minister concerned, it was not entirely unexpected that he would get involved directly in the negotiations themselves, while working closely with Departmental officials throughout.

This case illustrates exactly what is intended to happen under the doctrine that “the Minister is the Department”.

VI. THE VALUE FOR MONEY ACHIEVED

84.94. The fourth element of the Committee’s remit is to investigate “the value for money achieved”.

A couple of goalposts in exchange for a multi-million pound development?

85.95. In Tynwald in February 2012, Mr Alfred Cannan MHK said:

In fact, what was the deal? A piece of land for a piece of land which was to be turned into a school playing field. Is it not true that Heritage Homes would have had to have provided that space, anyway, as part of any planning regulations? Did the Department really believe they were getting the best deal for the taxpayer – a deal that called for the developer to exchange open space, which he had to provide for anyway, as I have just said, in return for access? In a nutshell, a couple of goalposts in exchange for a multi-million pound development and profit. Is that a fair deal?

86.96. We have considered elsewhere in this Report the question of whether the idea of a land exchange was justified in the first place and we have concluded that it was. We do not accept that it would have been wise for the Department to rely on the planning system to protect the long-term future interests of the school. From the school’s point of view the most significant value of the land exchange would be to protect those

interests. There was also the additional value of improving the sports facilities here and now.

87.97. Furthermore, as the Department informed us in its written evidence:⁴⁰

... under the terms of the agreement there is to be a covenant preventing development of more than 100 dwellings on the zoned land (as DoI Highways agreed limit on the alternative Lhergy Vreck access secured by Heritage Homes), or any development on the land beyond accessed through the zoned land, without our agreement to lift the covenant and an overage payment being determined and payable to us for the same.

88.98. From the point of view of an objector to development, we can see how these advantages to the school may appear to be outweighed by certain potential disadvantages: the effect on the conservation area, for example, or an increase in traffic. However, the land behind the school is zoned for development. If development is to come, the Department of Education and Children is clearly justified in seeking to protect its interests.

Conclusion

To characterise the Agreement as achieving “a couple of goalposts in exchange for a multi-million pound development” is unfair. It follows from our conclusions in respect of the alternative access that a multi-million pound development is inevitable. In that context the Agreement achieves an increase in the amount of land owned by the Department; the protection of the long term interests of the school; an immediate improvement in the sports facilities; and a potential share in the additional value of future development beyond the 100 houses provided for; all in return for no cash outlay.

Property valuations in 2007, 2010 and 2011A changing picture over four years of negotiation

89.99. In Tynwald in January 2011, Minister Teare said:

⁴⁰ Submission dated 22nd March 2012; see also QQ 179 to 180

Mr President, we are all experts in hindsight, but if the original transaction had gone ahead, then considerable benefit could have accrued to the Government under the principle of the Cambridge case in the UK, which gives the party that owns access to a landlocked site a share in the development value. Recognising that the site would be difficult to develop without access through the school grounds, the developer made an attractive offer, which is no longer available to Government. In effect, we have potentially lost a golden opportunity.

~~90.100.~~ In his submission to this Committee of 19th March 2012 Mr Alfred Cannan MHK expands on this concern as follows:

- 10. What was the value of the original transaction referred to?*
- 11. Why was this “golden opportunity” no longer available?*
- 12. What were the terms of this deal and why did it have to remain secret?*
- 13. Has the taxpayer received any value for money?*

~~91.101.~~ The written evidence supplied by the Department of Education and Children includes calculations produced by the Government Valuer at various times and from these figures it is possible to glean information about the progress of the negotiations.

~~92.102.~~ The first valuation dates from January 2007. This was before Heritage Homes purchased properties on either side of the Lhergy Vreck Lane. The alternative access existed in theory but was not something the developer could rely on. Taking this into account, the Government Valuer assessed the value of the land owned by the Department and desired by the developer (equivalent to the “First Property” in Map 1) as well in excess of the land owned by the developer and desired by the Department (equivalent to the “Second Property”). The amount by which the first value exceeded the second value (the “credit balance”) represented the amount of work which the Department could reasonably have expected the developer to undertake in improving the new playing field.

~~93.103.~~ After Mrs Craine’s May 2007 decision, the land exchange was no longer on the table. The business need for the Department to protect the future interests of the school remained, however. Officers of the

Department met the landowner in November 2008 and January 2009 to discuss the possibility of simply buying a piece of land similar to that which would have been provided to the Department under the exchange deal. The landowner held out for a very high price for such a purchase, and the dialogue stalled.⁴¹ This indicates that without a land exchange, an alternative deal to protect the long-term interests of the school was impractical.

94.104. Following the appointment of Mr Teare as Minister and the re-starting of negotiations, the Government Valuer was asked to revisit the January 2007 valuation and he did this in October 2010. By now Heritage Homes had purchased land and options on land on either side of the Lhergy Vreck lane, making the alternative access a much more immediate prospect. Taking this into account, the value which could be attributed to the land owned by the Department and desired by the developer had fallen dramatically. Whereas in January 2007 the value of the “First Property” was well in excess of the value of the “Second Property”, by October 2010 the positions were reversed. On the face of the calculations the Department could no longer assume any “credit balance” from the land exchange which would enable it to insist on improvement works to the new playing field.

105. As the negotiations draw to a close in late July and early August 2011, a further assessments ~~was~~ were provided by the Government Valuer. The estimated value of the “Second Property” was the same as before, but adjustments had been made to the estimated value of the “First Property” such that it was now higher than that of the “Second Property”: the Department was once again “in credit”.

The eventual deal and the bottom line

106. The Agreement itself includes as its Third Schedule three figures: a value for the First Property (land to be transferred from the Department to the developer); a value, for the Second Property (land to be transferred from the developer to the Department); and a value for the Accommodation

⁴¹ QQ 103 to 114 and letter from the Department to the Committee dated 22nd June 2012.

Works (work to be done by the developer to prepare the new playing field. The “bottom line” from the Department’s point of view, or the net value of the whole deal to the Department, is the value of the Second Property, plus the value of the Accommodation Works, minus the value of the First Property.

107. The figure for the Accommodation Works is a reliable estimate of the maximum amount of work the developer will do on the playing field if the exchange goes ahead, although it is possible the specification provided for in the Agreement may be delivered at less cost to the developer. The figures for the land exchange are less reliable. Both the Department and the developer explained to us in written evidence that the land exchange values incorporated into the Agreement were based on the assumption that the area of the First Property would be 0.89 acres and the area of the Second Property 1.85 acres. It seems that at a late stage the areas were changed and that under the final version of the Agreement the areas to be exchanged were 0.63 acres and 2.01 acres. In other words, there was an increase in the the net benefit to the Department in terms of land gain. No adjustment was made to the land values in the Third Schedule to reflect this.

108. Both the Department and Heritage Homes, in their written evidence to us, offered revised calculations of the overall net benefit based on the Government Valuer’s figures and taking into account the areas to be exchanged under the eventual Agreement. These estimates differ because of differences in:

- the basic land value per acre adopted, the Government Valuer having provided a range of values;
- the amount assumed for the Accommodation Works; and
- rounding.

109. The Department’s estimate of the bottom line is £370,000 although in its written evidence it has acknowledged a possible range up to £484,000. The developer has put the figure at £579,000. On our own analysis the figure could be as high as £690,235 – although the Department has disputed our methodology as well as that adopted by the developer. In

any case, having considered the various estimates on offer we are satisfied that on any analysis the Agreement represents value for money.

95. ~~The land values which appear in the Agreement itself indicate that this calculation was accepted by the developer. Moreover, the Agreement itself also includes a figure for the value of the accommodation works to be undertaken by the developer. When this is taken into account the Agreement provides the Department with a net benefit of between £300,000 and £400,000.⁴² This exceeded the “credit balance” estimated in January 2007.~~

Conclusion

The Agreement does represent value for money. The Department's negotiating position was strong in January 2007 and considerably weaker in October 2010. Through negotiation the Department succeeded in restoring its position to the extent that the net benefit which the Department could expect under the Agreement of August 2011 was as good as, or better than, that which might have been expected in 2007.

VII. CONSOLIDATED LIST OF CONCLUSIONS

- 96.110. The following are the conclusions of this Report, reproduced for ease of reference.
- 97.111. We concur that there was a need to protect the long-term interests of the school. (paragraph 28)
- 98.112. 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

⁴² Q 92

than would have been achievable merely by seeking to have conditions imposed on the development through the planning system. (paragraph 31)

99.113. 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. (paragraph 34)

100.114. 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 the potential disadvantages of the development outweighed its potential advantages. (paragraph 34)

101.115. Given ~~even~~ 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.~~ (paragraph 34)

102.116. On the basis of the independent advice it has received, the Committee is content with the way the Agreement is drafted. (paragraph 41)

103.117. 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. (paragraph 42)

104.118. Independent confirmation is readily available from the Land Registry that by January 2011 the developer had bought the freeholds of 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. (paragraph 48)

105.119. 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. (paragraph)

~~106.1~~120. The Minister's statements in Tynwald in January 2011 were based on unwritten assurances from the developer which were subsequently vindicated when he rightly sought written confirmation. (paragraph)

~~107.1~~121. 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. (paragraph)

~~108.1~~122. The Minister's response to the correspondence he received from the Naylors is defensible. In an ideal world it might have been interesting for the Department to investigate the Naylors' 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. (paragraph)

~~109.1~~123. There is no evidence that the Department pre-judged the outcome of either the Tynwald debate or the planning process. (paragraph)

~~110.1~~124. There is no contradiction between the Department's statements of January 2011 and March 2011. (paragraph)

~~111.1~~125. Given the high degree of political sensitivity surrounding the Kirk Michael land exchange proposal, and given its significance both in financial terms and for the future of Kirk Michael School, it was in our view entirely to be expected that any responsible Minister would take a close personal interest in the progress of the negotiations.

~~112.1~~126. Given the background and expertise of the particular Minister concerned, it was not entirely unexpected that he would get involved directly in the negotiations themselves, while working closely with Departmental officials throughout.

~~113.1~~127. This case illustrates exactly what is intended to happen under the doctrine that "the Minister is the Department". (paragraph)

114.128. To characterise the Agreement as achieving “a couple of goalposts in exchange for a multi-million pound development” is unfair. It follows from our conclusions in respect of the alternative access that a multi-million pound development is inevitable. In that context the Agreement achieves an increase in the amount of land owned by the Department; the protection of the long term interests of the school; an immediate improvement in the sports facilities; and a potential share in the additional value of future development beyond the 100 houses provided for; all in return for no cash outlay. (paragraph)

115.129. The Agreement does represent value for money. The Department’s negotiating position was strong in January 2007 and considerably weaker in October 2010. Through negotiation the Department succeeded in restoring its position to the extent that the net benefit which the Department could expect under the Agreement of August 2011 was as good as, or better than, that which might have been expected in 2007. (paragraph)

S C Rodan

B Cannell

J R Turner

[date]

ANNEX 1: TIMELINE

Date	Event	Source
2004	Negotiations begin in earnest between Pinecrest Investments (the landowner) and Heritage Homes	Pinecrest
May 2005	Initial approach from Heritage Homes to Department of Education	DEC
July 2005	Meeting between Department of Education and Heritage Homes	DEC
January 2006	Proposal put to the Department of Education	DEC
March 2006	Minister for Education and Estates Director meet Michael Commissioners and Michael School Governors. Both groups are supportive of the Department continuing in dialogue with Heritage Homes	
17 January 2007	Government Valuer confirms proposal represents a satisfactory arrangement for the Department, with regard to consideration of <i>Stokes v Cambridge</i> principle.	DEC
21 March 2007	Heritage Homes purchases Knock-e-Tholt	Heritage Homes/Land Registry
17 May 2007	Public display/consultation at Kirk Michael School	DEC

Date	Event	Source
29 May 2007	Hon Anne Craine MHK, Minister for Education, states in the House of Keys: "I have taken a personal 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."	Hansard
19 December 2007	Heritage Homes obtains option agreement over a portion of Cass A Lergy	Heritage Homes
January 2008	Michael Commissioners seek reassurance from the Department that it will take appropriate steps to secure land to sustain future of the school	DEC
15 April 2008	Heritage Homes purchases a portion of Greystones	Heritage Homes/Land Registry
1 July 2008	Heritage Homes purchases Westlands	Heritage Homes/Land Registry
November 2008	Landowner approaches Department to gauge appetite for purchase of land adjacent to school; landowner outlines very high valuation of the land, and clear desire to progress a land swap, which Department confirms was not on the table.	DEC

Date	Event	Source
15 December 2008	Heritage Homes purchase Knock-e-tholt and land at rear of Greystones	
December 2008	Department confirms Estates Director to progress dialogue re purchasing 1.95 acres.	DEC
7 January 2009	Estates Director and Government Value meet landowner to discuss valuation of land and potential way forward to secure; landowner agrees to provide Government Valuer with details of valuation of land, to progress. This is not forthcoming and the dialogue stalls.	DEC
April 2010	Hon Eddie Teare MHK becomes Minister for Education and Children	Tynwald Library
July 2010	Minister Teare meets with landowner to discuss possible land swap options.	DEC
26 August 2010	Estates Director meets Heritage Homes at their request to discuss the situation. Heritage has secured two properties at the southern end of Lhergy Vreck Farm – Westlands and Cass A Lergy. They also have an option to purchase 14 acres of unzoned land directly adjacent and to the east of the proposed development. Douglas Road Corner is still their preferred option for access. Heritage was offering the 1.95 acres of land plus £100,000 works undertaken by them at cost, a lesser deal than previously.	DEC

Date	Event	Source
8 October 2010	Meeting between Minister, Director of Education and Estates Director at which Estates Director reports that following negotiations an offer was now available from Heritage Homes which was closer to the 2007 position.	DEC
29 October 2010	Government Valuer confirms that latest proposal represents a satisfactory arrangement for the Department.	DEC
24 November 2010	Informal meeting between Minister and Kirk Michael Commissioners. No record is made.	Oral evidence of Mr David Cannan (Q1); Kirk Michael Commissioners letter of 22 nd June 2012
17 January 2011	Public meeting in Kirk Michael. Proposal rejected by those present.	Oral evidence of Mr David Cannan (Q1)
18 January 2011	The proposal is debated in Tynwald	Hansard
8 February 2011	Minister Teare writes to the Highways Division of DoI asking for comments on the Lhergy Vreck access	DoI
17 February 2011	Highways Division responds to Minister Teare's letter in general terms but explains that it cannot enter into arrangements with a third party about a planning application, even if that third party is a Minister	DoI

Date	Event	Source
14 March 2011	Transport consultant to Heritage Homes, provides a drawing and analysis of the Cass a Lhergy access for consideration by the Highways Division	DEC/DoI
15 April 2011	Highways Division replies to the Transport Consultant's letter of 14 March 2011, saying that the DoI considers the Cass a Lhergy access could serve 100 dwellings. Later that day, Heritage forwards the Highways Division reply to Minister Teare	DEC/DoI
15 April 2011	Government Valuer confirms valuation provided on 29 October 2010 is still valid.	DEC
26 July 2011	Government Valuer confirms relative land valuations.	DEC
10 August 2011	Treasury approval given.	DEC
16 August 2011	Agreement signed by Mr Teare	DEC
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18 August 2011	House of Keys is dissolved	Tynwald Library
19 to 20 December 2011	Planning Inquiry held	DoI
3 February 2012	Independent Inspector's report is submitted to Council of Ministers recommending against the scheme	DoI

Date	Event	Source
22 February 2012	Select Committee established	Hansard