



TYNWALD COURT OFFICIAL REPORT

**RECORTYS OIKOIL
QUAIYL TINVAAL**

PROCEEDINGS

DAALTYN

HANSARD

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

**BING VEAYN TINVAAL MYCHIONE
COARDAIL COONREY THALLOOIN
SCOILL SKYLLEY MAAYL**

Douglas, Monday, 20th May 2013

PP96/13

KMLX, No. 3

*All published Official Reports can be found on the Tynwald website
[www.tynwald.org.im/Official Papers/Hansards/](http://www.tynwald.org.im/Official%20Papers/Hansards/)Please select a year:*

*Published by the Office of the Clerk of Tynwald, Legislative Buildings,
Finch Road, Douglas, Isle of Man, IM1 3PW. © High Court of Tynwald, 2013*

Members Present:

Chairman: Hon. S C Rodan, SHK
Mrs B J Cannell, MHK
Mr J R Turner, MLC

Clerk:

Mr J D C King

Business Transacted

Page

Procedural	51
Evidence of Mr Charles ‘Buster’ Lewin.....	51

The Committee sat in private at 12.22 p.m.

Select Committee of Tynwald on the Kirk Michael Land Exchange Agreement

*The Committee sat in public at 10.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR SPEAKER *in the Chair*]

Procedural

The Chairman (Hon. S C Rodan): Good morning, everyone, and welcome to this sitting of the Select Committee on the Kirk Michael School Land Exchange Agreement.

My name is Steve Rodan, Speaker of the House of Keys and Chairman of the Committee. The other Members are Mrs Brenda Cannell, Member of the House of Keys, and Mr Juan Turner, Member of the Legislative Council; and our Clerk is Jonathan King, who is Clerk to the Legislative Council.

I would ask that you please turn all mobile phones off. They need to be off, not just switched to silent, because otherwise they will interfere with our recording equipment.

Also, for the purposes of *Hansard*, I shall be making sure we do not have more than one person speaking at once. This applies to the Committee and to witnesses.

Today, we welcome Mr Charles Lewin to give evidence in our second inquiry, and I will outline the background to this in a moment. I would first acknowledge that Mr Lewin is currently serving a custodial sentence for a criminal offence which is not related to this Committee investigation, and we are grateful to Prison staff for making possible Mr Lewin's appearance before us today.

This Committee has been underway for quite some time. For the benefit of the public and *Hansard*, I will summarise the history of this briefly. The Committee was established by a resolution of Tynwald of 22nd February 2012 as follows:

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.

We published our Report on Thursday, 8th November 2012. On Sunday, 18th November 2012, Mr Charles Lewin sent an e-mail to Mr Alfred Cannan MHK, querying the conclusions of our Report. On Monday, 19th November 2012, Mr Cannan circulated Mr Lewin's e-mail to all Tynwald Members. On Tuesday, 20th November, the Report was debated in Tynwald. Mr Lewin's e-mail was referred to extensively during the debate. This Committee's Report was not accepted. Instead, it was resolved, and I quote:

That the Report of the Select Committee on the Kirk Michael School Land Exchange Agreement [PP No 0122/12] be not received and: (1) In the light of new evidence received in relation to rights over access routes, that the Committee review all matters pertaining to that evidence; (2) That the Committee seek clarification by way of public hearing of the matters raised from Heritage Homes and associated parties.

We have effectively been instructed by Tynwald to undertake a review of our original investigation, but also taking into account what Mr Lewin has to tell us. We have studied his original e-mail in depth and we have also had some further e-mails from him, which we will be discussing this morning.

Administration of the Oath

45

The Chairman: I will now ask the Clerk to administer the Oath.

Mr Lewin took the Bible in his right hand and repeated the Oath.

50

Mr Lewin: I swear by Almighty God that the evidence I shall give to the Committee at this and any further hearing shall be the truth, the whole truth and nothing but the truth, so help me God.

The Chairman: Thank you very much.

55

If I can just put on the record, for the general understanding of everyone, that evidence given to a parliamentary Committee such as this attracts parliamentary privilege. However, the Committee will not allow that privilege to be abused and the Committee proceedings must not be used as a platform to make or repeat unsubstantiated allegations against any individual; but, Mr Lewin, your evidence is covered by privilege this morning, in addition to which, of course, you have just taken the Oath.

60

Mr Lewin: Obligated, sir, thank you.

65

EVIDENCE OF MR C LEWIN

Q211. The Chairman: Mr Lewin, I would like to start by talking about the alternative access, and it perhaps would be helpful just to set the scene about what it is we are talking about.

70

The land at Kirk Michael, which is the subject of potential development, required an access to that land and the preferred access by the developer was via Kirk Michael School. That preferred access could only be obtained if there was an exchange of land agreed with the Department of Education. That possibility was being promoted and actively discussed until 2007 when the then Minister for Education took the offer off the table in response to, as she put it, the views of the Kirk Michael community and what was in their best interests.

75

As a consequence of that, an alternative access was sought by the developer, and that alternative access is usually referred to as the Lhergy Vreck access. It was the obtaining of that alternative access that prompted, from the evidence, the reopening of discussions between the developer and the Department of Education with a view to furthering a land swap to facilitate the preferred access through the school. So we just want to talk a little bit about the alternative access at this stage.

80

In January 2011, Mr David Cannan, who was then MHK for Michael, tabled a motion that Tynwald should not support the land exchange i that is the land exchange with the Department which would have facilitated the access via the school. In response to that motion, Mr Teare told Tynwald that, I quote:

85

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

90

The access Mr Teare was referring to was the alternative access also referred to in the papers as the Lhergy Vreck access. The Department's argument was that housing development was inevitable and therefore the Department might as well take advantage and agree the land exchange to facilitate what was the preferred access, via the school, in order to secure benefits for the school.

95

In our first Report, we examined the viability of this alternative access, and in particular the assertion by Dr and Mrs Naylor that it could not be used because it might affect their rights. These assertions were made in the letters they sent to the Minister in May 2011, and these are on pages 109 and 111 of our original Report. We concluded in our Report as follows:

100

oThe 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.o

That was what we said in our first Report.

105

So my first question to Mr Lewin is what do you say that the Department should have done differently in respect of the alternative access and the Naylor's assertions about it?

Mr Lewin: Thank you, Mr Chairman, for that.

I just wonder whether it would be more helpful to the Committee if I gave a very brief summary of when I joined the company and what actual work I did *ï* because that is first-hand evidence *ï* to bring you up to that point, because as we go through we will unravel issues that I believe the Committee really need to look at again, which are very important and *ï* please do not take this the wrong way *ï* there are a number of serious inaccuracies in the Report.

I also want to stress that I am not here to argue a case for the land being developed or against the land being developed, or for any political person. I just wish to give you the honest facts as I see them, sir. So if I could indulge^e if I can start in May 2007 and take you quickly through, I think that may help the Committee to understand where I am coming from.

The Chairman: I am quite content for you to give us the background, in relation to yourself, that will lead up to the answering of this question, (**Mr Lewin:** Yes, sir.) but I do assure you we have received and have looked carefully at your written submissions to us and we have a number of questions relating to that, (**Mr Lewin:** Yes, sir.) so I do not want you to be saying anything that will simply be repeated later.

Mr Lewin: I will try and keep it *ï*

The Chairman: Can I ask my colleagues, Mrs Cannell and Mr Turner, if you are happy to proceed on that basis?

Mrs Cannell: Yes, thank you, Mr Speaker, I am quite happy to proceed on that basis, but I think, Mr Lewin, you ought to be mindful that we have read your e-mails and studied them in depth, and of course in those e-mails you provide the background which you now want to expand upon.

Mr Lewin: Yes, which I did *ï*

Mrs Cannell: I would, as Mr Speaker said, very much appreciate it if you do, in fact, answer the first question, because we have quite a lot more questions for you.

Mr Lewin: If I can quickly spin through it, and then I am more than willing to answer questions.

Mr Turner: Yes, content with that, Mr Speaker.

Mr Lewin: I joined the company, sir, in May 2007, and quite shortly after that I was invited to attend a meeting with Dan Tynan, Seamus Nugent, Ciaran Downey and Dave Humphrey. To my absolute horror, I witnessed first hand a person being degraded beyond belief by abuse. The essence of it was that Ciaran Downey had issued a press release. The issue that came out of that was that Ciaran Downey was not to issue any more press releases; they were to be issued through me, and I was instructed then to secure all the properties along the road, regardless of cost or whatever. That was the instruction that came from Dan Tynan; that is what I set about.

The first point that became obvious to me, sir, was the Cass A Lergy *ï* I will call it Lhergy Vreck. That was the obvious access in. There was an existing roadway there. I referred back to Dan Tynan. I was told, *ö*You will have no chance of getting an entrance through there, it is a garden, but if you want to, go ahead.*ö*

I went along and I met Mrs Cassidy. I do not intend to go into the private discussions I had with Mrs Cassidy because they were private with her. They extended over a six-month period, in which we concluded on an agreement. This was the option to purchase. That option to purchase was concluded in December, and as far as I was concerned, that was the issue of securing sufficient land to get the access in.

During that period, the members of the design team within Dandara checked dimensions, checked all the issues regarding visibility splay, and the answer that I was given was that it would work: *ö*That will get us the entrance in.*ö*

Now, in the evidence, sir, if we go to what I call the old plan, and that is on page 169^e and I think it is very important to look at this plan, sir, because believe it or not, this plan, if you look carefully, down in the bottom right-hand corner, it is dated 10th December 2009. This plan was then superseded by many plans after and was the actual plan that was put forward to the

Department of Infrastructure on 14th March 2011, and believe it or not, this plan was the plan that they approved.

170 If you look at this plan, sir, what it shows is two accesses directly alongside one another. If you just think about that, sir, how are two accesses directly alongside one another going to work? But regardless of that, this was the plan that the Department of Infrastructure approved. That plan does not show any dimensions as such, but what it does show is that it was lacking visibility splays – it was lacking forward visibility, sideways visibility – but it did come within the Cass A Lergy, or the Lhergy Vreck, boundary.

175 What turned up was that that design worked within the 30-mph speed limit. Officers from Dandara then met with Mr Dereké I knew I was going to forget his nameé Sewell, at the Department of Transport. Quite correctly, Mr Sewell said, “No, I am not going to approve that, because the 30-mph sign is up the road and cars will come through there faster than that and there is going to be an accident. So you have to design it on the basis that you are going to the actual speed of the vehicles.”

Q212. Mrs Cannell: Sorry, Mr Lewin, through Mr Speaker, can I ask you to pause there?

185 You pointed out the two access road that are illustrated on this 2009 map. (**Mr Lewin:** Yes.) When Mr Sewell made his comment and said, “No, you are not going to have that because of what he has just said,” which access was he talking about? Was it the one to the far right or the one to the left?

Mr Lewin: Sorry, the one to the left is existing; the one to the right is the new one.

190 **Mrs Cannell:** It is the proposed one, (**Mr Lewin:** Yes.) which shows visibility splays. (**Mr Lewin:** Yes.) Right. Okay.

Mr Lewin: Now if we flip back to – and it is important to go through this letter, and I was going to ask Mr Turner a question because I think it is very interestingé if you read Bryan Hall’s letter, what do we believe that that plan – 14th March 2011 – was going to provide as an access for a 100-house estate? Was it going to provide a halt sign? Was it going to provide a junction stop? The answer is no. It only was going to provide a “give way” and if you read Bryan Hall’s letter, and I will read it to you, sir, on page 165:

200 “This will result in inclusive delays of some 8-9 seconds per vehicle. There is therefore no requirement for vehicles which are emerging from the residential estate road”

A mobile phone rang in the Public Gallery.

205 **Q213. The Chairman:** I do ask members of the public to please turn telephones off, as per the original request. If this happens again, I will have to suspend the sitting. Is that clear?
Mr Lewin.

210 **Mr Lewin:** If I can read again, sir:

“This will result in inclusive delays of some 8-9 seconds per vehicle. There is therefore no requirement for vehicles which are emerging from the residential estate road to join A3 without first coming to halt so that their drivers can see traffic which approaching from both directions”

215 I have gone around the TT course and, besides roundabouts, I cannot find a junction from an estate where there is only a give way sign, and I would ask this Committee to sincerely go down to Cass A Lergy and sit there, because if you look up to the road there areé and as Mr Teareé he picked it up, sir. He identified that the visibility splays were not there and that when you look up the road, if a vehicle is coming down and somebody is overtaking, if you coming over the give way sign on to the high road, there is going to be an accident.

220 That plan was the plan that was then decided, and I will use the words “to con”, to get a DoI approval through, because if you look at page 399, which is the new plan, there we can see the design layout. We have actually got the houses and we have actually got it coming over Cass A Lergy, which they did not have an access on, so why would they go to the Department of Infrastructure in 2011 with a 2009 plan, when here they have the plan dated 26th August 2010?

225 So here we had two plans running, sir; one for the DoI – this was never shown to the DoI – and this one was for the Department of Education. Now that to me was the runner. There was the runner running away.

230 If we actually then look at the issue of safety and there is a great issue made about who said what and who said this in the inquiry, but if I refer you to paragraph 66, it states:

235 ‘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: [é]
27. Independent Planning Inspector’s report, paragraph 114’

240 These inspectors – and I notice there was reference about parties coming in front of them to argue – they have 30 or 40 years’ experience as being planning inspectors. When we go in front of them, sir, it is almost like teaching grannies to suck eggs, but that inspector concluded:

‘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.’

245 Now, underneath, Heritage Homesé

250 ‘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 its transport consultant had been asked whether the site could be accessed via Westlands or Knock-e-Tholt.’

That is not what the inspector said, sir. He said, ‘At Cass A Lergy.’ So he looked at that access and he knew that it was not a safe access. So there we are with a situation where we have two plans going off in different directions.

255 Heritage Homes then write to the Chief Secretary and argue that the inspector was fundamentally incorrect. Having worked as Heritage Homes, sir, money, in legal fees, is not an object; it is not a problem. If they for one moment believed that that inspector had drawn the wrong conclusion and was blighting their land, they would have put in a Petition of Doleance, without blinking. The instruction would have gone to King Street, the Petition of Doleance, and have it knocked out.

260 They did not, sir, because their media release does not relate to what the inspector said, and the inspector is the person who makes the decision. I think when you go there, and I hope you do go there and sit on the hedge, you will see exactly what I mean, but I have not seen any –

265 **Q214. The Chairman:** Mr Lewin, what you have told us is very interesting. We have a certain amount of evidence before us that we want to question you about this morning, including issues that you have just told us, and I would like you to come back – you did indicate you were going to lead us through your background and involvement (**Mr Lewin:** Right, sir.) and you have described in some detail a number of issues that we are going to ask you about.

270 So I would ask you to conclude your preliminaries and answer the question that was put to you: what do you say that the Department of Education should have done differently in relation to being informed by the Nylors that they had some control over that alternative access, such as to render that access inoperable, in effect? It was a specific question.

275 **Mr Lewin:** If I was in the Nylors’ position, siré in Mr Teare’s positioné and again, just on one point, in the Report it says that the option was not registered: it *was* registered; it was registered on 7th January 2008. I know you make a big issue that it was not, but it was there and Mr Teare actually refers to it in his letter. So the issue, the option, was there.

280 What Mr Teare should have done, in my opinion, was obtain the option planned, and as he says to Mr Pearson, he asked him in the letter for an overlay, and what he should have done was say, ‘Right, okay, I am the Minister – get me somebody to overlay that plan on there and get me somebody – not within the Department of Infrastructure, because of their conflict, but I need somebody to tell me is that junction a goer. If it is a goer, then we have got a problem.’ From my calculation, sir, by not doing that, he has left £8 million to £10 million on the table. If you say those words slowly, £8 million to £10 million has been left on the table.

285 Now, what he was faced with was a position of, ‘I am being told by Heritage Homesé – and if I was being told by Heritage Homes that that wall was green and it was solid, I would go and knock it and check it to make sure it was green. Of course they are going to tell you, and they were continually sayingé and it is all the way through your Report, sir. In fact, in John Wrighté he says Heritage Homes bought Cass A Lergy. They never bought Cass A Lergy; they only had an option. So the whole scam was to create this attitude and make sure it was known that Heritage Homes had an access.

I was under strict instructions, because I raised it with Seamus Nugent and Dan Tynan and said, 'You've got a problem: this is not going to work,' and I was told, 'Don't worry about it, tell everybody we have got an access.' When it came back from Derek Sewell, I discussed it with Dan and said, 'Look, this is not going to work, we are not going to get through there,' and his words to me were 'I and I can remember it as clear as day' 'Don't worry, I will speak to AB tonight.'

I said, 'Okay, fine.' I went in the next morning and he said, 'I've spoken to AB tonight. Sewell is now off the job. Don't worry, the Department will give us permission. It is not going to be in the form of a letter and it is going to have a safety-clause provision that we won't be able to use it.'

I said, 'Okay, fine, but the problem you are going to have is now that you have got Eddie Teare on board, he is going to be looking for every possible angle on this and he is going to quickly realise that we don't have an access.' The answer to that was, 'Don't worry about that, Buster. I've had a word with AB: Eddie Teare is going to deal with this himself.'

I said, 'Well, how is that going to help us, because that's not going to keep us away from the lawyers, the Attorney General?' I said, 'Pinecrest's lawyer?' and he said, 'Don't worry, Pinecrest's lawyer is a friendly Dandara lawyer, Mark Humphrey.' Now, Mark Humphrey happens to be the brother of David Humphrey, who happens to be a director of Heritage Homes, and there is another case that I can refer you to, sir.

This whole thing, I could not believe that it was going to work, but as you can see, even with respect to your Committee and John Wright, who is a very astute man – he has fallen for the fact that Cass A Lergy was purchased. He never refers to an option, because the option that was registered on 7th January, which I asked Graham Kirkpatrick to do because every time I purchased or got an option – there is a famous Mr Phil Gawne, who used to give us stick that we never registered options.

Q215. Mrs Cannell: Sorry, Mr Speaker, if I can just interject there.

Can you explain to us what your understanding, in these terms, of an option is? What is involved in an option?

Mr Lewin: An option is simply we will sign up a contract and, in a year's time, if we want to exercise the option, we will give you x amount of money for that option.

Q216. Mrs Cannell: So no money exchanges hands at the time of the contract?

Mr Lewin: There might be a little bit, but normally we try and get it for as little as possible.

Q217. Mrs Cannell: And the option is usually extended to what sort of period of time?

Mr Lewin: The option in that case would be subject to the standard clause that it is until such time as planning approval has become final, or 18 months after a decision. So, in other words, even if it was refused, you can still go back in again and then it only runs out – If you have got a planning approval, you exercise it, but otherwise you can keep going back and back.

Q218. Mrs Cannell: Bearing in mind that you were involved in the discussion and negotiation to acquire sufficient land for the alternative access at Cass A Lergy, did you get to see a copy of the contract for the option?

Mr Lewin: Yes.

Q219. Mrs Cannell: Do you have a copy of that contract?

Mr Lewin: No.

Q220. Mrs Cannell: So we have to believe everything you are telling us this morning. You have no evidence that you can submit to us to substantiate what it is that you are telling us?

Mr Lewin: With respect, Mr Chairman, I have been in prison, so it is a little bit difficult to nip out and go down the Registry.

But if you look at Mr Teare's letter of 20th March 2012, his words, and this is in your bundle:

19 December 2007

Heritage Homes secures option over part of the garden of Cass A Lergy which is on the South Side of the Lhergy Vreck Road. Registered at Land Registry 7th, January, 2008.

355 Now, Mrs Cannell, if I go to your Report, you make very strong criticism of the fact that it was
not registered; in fact, at 119, under Conclusions:

360 *Mr Lewin:* An option [é] 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.

I say that is in your conclusion and that is not factual.

365 **Q221. Mrs Cannell:** So are you saying ĩ through Mr Speaker ĩ then, that the option
agreement was registered in the General Registry?

Mr Lewin: Yes.

Q222. Mrs Cannell: And a copy of it ought to be there?

370 *Mr Lewin:* Well, what I am saying, it was registered and what I am sayingé and I have no
reason at all to cast any aspersions on Mr Teare, that in his letter of 20th March, he actually lists it
being registered at the Registry on 7th January.

375 **Q223. Mrs Cannell:** But to your knowledge, bearing in mind your deep involvement with this
whole affair during this period of time, was it actually registered?

380 *Mr Lewin:* I do noté Once I have finished the deal, it is handed over to Graham Kirkpatrick,
who I would say is one of the most respected conveyancing lawyers in the Isle of Man, and he
asks, 'Do you want it to be registered?' I do not actually physically do the registration; but it was
registered, because why would Mr Teare say it was registered? I mean Mr Teare is not going to
mislead this Committee.

385 **Q224. Mrs Cannell:** But what you are suggesting, or you seem to be alluding to, is that
perhaps the developer misled Mr Teare.

390 *Mr Lewin:* No. No. No. Why wouldé ? No, because it was registered. The deal was on 19th
December and Mr Teare in his letter of 22nd March actually refers to it as one of the documents
that he had actually been provided. So he knew it was there and that was before he did the deal. So
if he knows the option is registered at the Registry, the only way he would know that is if
somebody went to the Registry and it was registered.

395 I accept in your Report that you consistently say it was not registered. I say, and I do not
disagree with Mr Teare, because I would have no reason to disagree with an honourable man, in
his letter to you, he said it was registered on 7th January, and for that reason he must have seen it.
I am sure he would not have made that up and I know ĩ

Q225. Mrs Cannell: Perhaps, or perhaps he was just merely advised that, in fact, it was
registered and was merely provided a copy of the contract on the option.

400 *Mr Lewin:* No, what he says in his letter is very clear. He actually says 'registered at the
Registry on 7th January 2008.'

Mrs Cannell: Okay, thank you, Mr Lewin.

405 *Mr Lewin:* He says to ĩ

The Chairman: Okay, we take the point. We accept the point.
Mr Turner.

410 **Q226. Mr Turner:** I think the point is if then Mr Teare had evidence that the option was in
fact registered, would that not have given him the signal that the alternative access was potentially
viable?

Mr Lewin: No.

415 **Q227. Mr Turner:** It was certainly a lot more viable than having no options on that particular area though.

Mr Lewin: Just for the record, the letter is 20th March 2012:

420 ðHeritage Homes secures option over part of the garden of Cass A Lergy which is on the South Side of the Lhergy Vreck Road. Registered at Land Registry 7th, January, 2008ð

So Mr Teare is aware of it. There was no doubt about it: he was aware that there was an option. I think he was also under the impression that, by the words that were being spun, Heritage Homes owned the whole of Cass A Lergy. What he did not see was the old plan. What he saw was the new plan that was attached to the report by Richard Collister, which is two different plans.

425 So, to answer the Chairman's question, if I was him, if he is going to take the word of a developer and I am sure, of all the years he has been in experience, you would be a brave man to take the word of a developer when you are talking about a £10 million access. What he should have done was taken the access, got it overlaid, which he asked Mr Pearson for if he did everything right, and you are correct, Mr Pearson could not have, or should not have gone back and he should have overlaid it and given it to JMP Consultants etc, because there is another crucial point in this whole issue, in that the approval that Dandara got, or Heritage Homes, could not be implemented. It was cast in such a way that, if you did not know what it meant, it could never be implemented. That is why the telephone call would have gone from Dan Tynan to Allan Bell to the Minister at DoT, or whoever. All of a sudden, Derek Sewell is taken off the job. The next thing is Eddie Teare is dealing with the whole thing separately, and it beggars belief. If you are talking about £10 million and if

440 **Q228. Mr Turner:** How do you account for it? You say £8 million to £10 million: how do you quantify that figure?

Mr Lewin: Well, if you take, first of all, Mr Collister's figures, the developer is working on a 30% profit, so average price £240,000 times a hundred houses, £24 million in total: there is £8 million total profit. The 140 houses, add that in again if because that is also in the option, so add that in and that gives you another £16 million, and at the end of the day, when you come out and divide it by a third, you end up with between £8 million to £10 million.

I am more than happy to give you a detailed breakdown, but all you have to do is work out 240 properties times £240,000 times 30%, plus if and it is stated in here if under planning, Strategic Plan policy, you have to put 25% of the site for open space. Now, Heritage Homes, the two acres that they were giving to the school were the two acres that they had to provide as open space, so they were benefiting two acres on top of that, which at £600,000 an acre is a further £1.2 million.

455 **Q229. Mr Turner:** That is assuming those figures are assuming the alternative access was not viable because, as later in the Report was indicated, the alternative access was deemed suitable for a lesser number of properties on the site. (**Mr Lewin:** No. No.) That was indication the DoT gave.

460 **Mr Lewin:** No, if we just go to that, this is where the very careful scam comes in. If we go to page 159 sorry, page 160, I think page 159, believe it or not, this is the and if we go to page 157, if you look there, Mr Chairman, you will see an e-mail from Kevin Almond, at 10.31 and then another e-mail from Kevin Almond at the same time, at the same date, at 10.21. Then if you read below:

465 ðThank you for your letters of the 10th February and 14th March 2010.ð

Those letters do not exist.

But if we go to the crucial issue, which is on page 159, what it says is that if and this is amazing, and I think, Mr Chairman, when you were a member of the Planning Committee you would never have allowed this to go out in this format as a statutory approval for an estate road to serve 100 or 240 properties if

475 ðThe Department considers that the proposed junction could serve the 100 dwellings as previously considered by the Department in relation to the proposed junction adjacent to Kirk Michael School.ð

Bear in mind, this is not the halt sign; this is the give way. This is the one where you can fly out onto the main road, and I am sure when you go and see it. But interestingly:

480 ðThe Department is willing to accept a reduction the ð distance to the north from 4.5m to 3.5m on assumption that it serves only the 100 dwellings as previously considered.ð

So, so far, it is an approval.

485 **Mr Turner:** Well, that was the point I was making.

Mr Lewin: No, no. Now we get to the final sentence:

490 ðIt should be noted that the design and layout of the development if accessed from this point shall not constrain the future development of a by-pass and its junction with the A3 & A4.ð

That was in the Strategic Plan. A by-pass, and if you read in Mr Hall's letter he talks abouté in fact, he changes the width of the road from 5.5 down to 4.5, but if you actually go for a by-pass, you are talking about a 9.3 metre road. That was when Dan said to me, ðIt will never happen,ð because that was the line that stopped upé avoided the DoI granting approval, and if you go to the Strategic Plan it requires the by-pass provision of 9.3. So that was not an approval that they could implement because it said those very words. It had to accommodate that minimum requirement for a Strategic Plan provision and a Local Plan provision and I think if we look até
Even if we look at Mr Hall's letter, this access:

500 ðThey show the major road dimension of the visibility splay [é] to the north, is correct at 90.0 metres but that to the south, towards the derestricted section of the road, should be 120.0 metres in accordance with the guidance based [é]
A minor road dimension of 4.5 metresð

505 i so it has shrunk another metre from the plan i

áis available for the visibility splay to the south when it is measured to a point 0.06 metres into the carriagewayé ð

510 So by the time you have not stopped and you are in the carriageway, what it is saying here is a distance which will not result in the visibility of an approaching vehicle being lost from the view of emerging drivers.

ðThe minor road distance is equivalent to 2.9 metres when measured on the kerb line.ð

515 What he is saying is thereé that letter has been so carefully worded, and believe me, I was the first person to bring Bryan Hall over to the Isle of Man. He is probably one of the best traffic consultants in the UK and he considers his words extremely careful. I know he was the person that upset a lot of people over the delay at the hospital because he argued that, at the hospital, you had a T-junction and it was not going to work and he argued for the roundabout. I think if you go there today, if you can try and imagine that working as a T-junction, it would not be working.

520 So you need to read this letter very carefully. The DoT letter is not a letter of approval, because if you then look at Mr Pearson's reply, he actually i even though I thought he was a little bit aggressive to Mr Teare i sets it out quite clearly, that it has to be compliant with the Strategic Plan, the Local Plan, and if I can just find ité

525 Yes, if we read at page 239, sir, Mr Teareé and this is Mr Teare doing due diligence as best he could, bearing in mind he was also the Minister. My view would be that he should not have been doing due diligence; he should have passed that off to somebody else who was totally competent.

But what he does say in the first paragraph:

530 ðWhen the All Island Strategic Plan was placed before Tynwald in 2007 there was a traffic management report incorporated into the plan which had been prepared by J M P. I understand that this document forms Government Policyð

535 i that is correct i

án relation to traffic issues and, interestingly enough, on page 19 it deals with the A3/A4 junction at Douglas Road Corner. A specific comment is made and I quote, a committed scheme will convert the existing priority junction to a roundabout.

540 This does raise several issues from my perspective upon which I would seek clarification from your good self. Bearing in mind that this is an agreed Tynwald policy, it is binding, and will it have a bearing on the proposed access into the

field via Lhergy Vreck Road. Could you comment whether this proposal was drafted with a view to the development of the area zoned for development to the South of the school? Would you resist an application to access zone from any other point?

545 Now this is Mr Teare and he is a very eminent bank manager, but he is certainly not a traffic engineer; but common sense, he does have. He says:

550 I am not convinced that the necessity of a 70M x 4.5M visibility splay could be engineered at the exit point of the Lhergy Vreck Road onto the A3, nor of its suitability bearing in mind that there is a slight rise in the main road and it is within a few metres of the end of the 30 mph speed limit zone.

And then he asks:

555 Perhaps an overlay or a plan could be prepared to consider this point. Please clarify whether the road servicing the estate would be designated as a strategic road.

560 So there you have it, that whilst everybody believes that DoT had approved it, they had not, and you cannot even call it a Grampian approval. It is an approval between Dan Tynan and Allan Bell that got down through to get them to a point where they could hopefully con Mr Teare, unfortunately, that they had another access. They never had another access that would work, sir, because if they did, why would they submit a plan before we signed the option with Mrs Cassidy, going back there, why would they submit that plan to Minister Teare to the Department of Infrastructure on 14th March 2011? Because they knew that it would not work.

565 If you look at that plan, sir, I would say for any Highway Authority to approve two roads coming to the main road together, just common sense says that it cannot be right. You cannot have two roads, because people are going to hit one another and there is going to be a commotion. Minister Teare has picked that up.

570 So what you do have there, sir, is this is the scam. Right? Minister Teare was nearly there. He nearly got there. But when you read and I know you agree with Richard Pearson's reply. I think that reply could have been a little bit more helpful. It could have actually said, We cannot assist you, but we would recommend you go to JMP, because you are dealing with a deal that was worth £8 million to £10 million.

575 I know in the UK we have got a coalition, but the thing is the people on this Island do not realise we have got a coalition.

Q230. The Chairman: Right, I think I will stop you there, Mr Lewin. Thank you very much.

You are basically telling us that the access junction was not approved by the Department of Transport

580 **Mr Lewin:** It was not an approval that you could implement, sir.

Q231. The Chairman: That could be implemented.

585 I want to ask you about the other aspect of this, which was that to activate the alternative access through the Cassidy land would have required the Naylor's permission

Mr Lewin: Right, that

590 **The Chairman:** because you have suggested that Heritage Homes were concerned about the Naylor's ability to block the alternative access. Putting to one side the actual status of that access, to activate it would have required the Naylor's permission. The question is did Heritage Homes think that the Naylor's position made the alternative access impossible, or just more difficult and more expensive to bring about?

595 **Mr Lewin:** If you look at the old plan, sir, which is the 2009

The Chairman: On page is that the one

Mr Lewin: On 169.

600 **The Chairman:** Page 169, yes.

Mr Lewin: Based on that, as I understand conveyancing law, the Naylor's would not have any issues with that because their existing access remained, and basically, even though it does not

605 show ité and this is why I say ôHow can the DoI approve this?ô This little butte obviously goes across the Naylor'sô road at some point, but I would agree that that does not interfere with the Naylor access.

That is why this plan was put back in, because this kept the Naylor's down and kept the advocates away. But when we go to the new plan ï and this was where the problem came in, which is at 399 ï there you can see that this was the actual plan that was submitted for planning permission, and there, all of a sudden, you see not only is the Naylor'sô existing right of way being movedé You cannot move somebody else's right of way without their approval. That is basic.

610 So, not only was it being removed; from being an inch wide on this plan, it was coming down to half an inch. And then, if you actually look, sir, just where it points to ôNew junction formed giving access to Lhergy Vrecké ô if you look at that ï and I have tried to scale this off ï if you would not agree with me that that interferes significantly with the existing Naylor access, thené I think common sense speaks for itself, of course it does. It changes significantly ï in fact, to the point where, when I looked at it and checked it, I could not get a wagon through there. This is where the problem comes in, because John Wright was never shown this plan.

620 As for the answer, sir, yes, because Seamus Nugent called me in, and his words wereé Do you want me to miss out the swearing words?

The Chairman: Yes, if you miss out the swearing words.

625 **Mr Lewin:** ôWe have a problem: we are going to have to move the access.ô I said, ôWell, what's the problem with that?ô He said, ôWe're going to have to move the Naylor'sô access.ô I said, ôOkay. Do you want me to go and see them?ô He said, ôNo, don't go and see them. Keep away.ô I said, ôWell, we cannot just move their access. You cannot just move somebody else's land without their permission.ô

630 What turned out was that also he was very annoyed because this really gave him a problem, because he believed that the DoE would see through this, and that once they saw through that, Naylor would not give permission, full stop, because he was opposed to it.

But let's assume he *did* give permission: then *he* would be entitled to the 33% off Stokes and Cambridge, because there is no doubt that that is significant interference.

635 The issue was raised about lenders, and I said, ôWell, you know, obviously, what about Pinecrest?ô Seamus said, ôDon't worry, we've got Mark Humphrey: he'll turn a blind eye to us, but our problem is Graham Kirkpatrick.ô He said, ôUnder this new registration system, you have to have a clean title, and when you start to sell the houses that title will noté the buyersô advocates will stop.ô

640 So it was a total block in three or four ways. That was never going to work, and he knew that in November 2010 when the first plan was prepared. So that was never ever going to work.

Government have compulsory powers, but Dandara or Heritage Homes do not have, so that was out ï that was blanked out totally. I was not allowed to go and speak to them. It had to be moved, there was no alternative, but it was not going to happen.

645 So, if Minister Teare had known that, he could have gone into those negotiations and said, ôRight boysôï and I am not too sure whether I liked his way of negotiation by playing poker; I do not really think that that always achieves the best result, but he could have gone in and said, ôRight, here's the deal: you pay me 33%, full Stokes and Cambridge, or the deal is off, because the alternativeé ô And if I was Mr Teare, I would have said, ôThe alternative is you sell me the land, because you cannot get access to it and we need some first-time buyersôé ôï ideal, Kirk Michael ï and he could have put himself in a position where the deal with Pinecrest would have fallen through, because Dandara's option would have gone because they could not get access.

650 The Lewises, or particularly the Lewisesô daughter, who Seamus was having tremendous problems dealing with, would have realised that she had a huge chunk of land that the only person that could get access to was Government. Was she going to hold out foré They say, there, 20% of the resale value as being high. That is low. That is the lowesté The deals I have done, it is 25% of the actual sale value, so that was low. But she was sitting on a piece of land that was worthless.

660 **Q232. The Chairman:** So essentially, to summarise, what you are saying is that according to Heritage, by October or November 2010, they had secured the alternative access.

Mr Lewin: No, I think it is ï

665 **The Chairman:** In other words, the alternative access was not only a theoretical possibility, but a genuine practical alternative and what you are saying is, essentially, this was a bluff.

Mr Lewin: At 10th December 2009, which is the date of that plan, it was a bluff. From that point on, they knew they could not get access.

670 **Q233. The Chairman:** And the bluff related to, as you have described, the map on page 169 of our Report, (**Mr Lewin:** Yes.) which showed two accesses off the road. (**Mr Lewin:** Yes, sir.) The one that was the existing access, over which the Department of Transport position, you have told us, was not clear cut and the other one, which would have involved widening the visibility by utilising the Naylor's land. That element if the Naylor's not giving permission it would have similarly made that access unusable.

675 **Mr Lewin:** There is criticism as to why the Naylor's did not come forward. If I was in the Naylor's position, I would not have come forward. I would have sat and waited, because at some point, somebody would have had to come to me. So why should they go to the expense of trying to get legal advice? Because, remember, this was not within the planning application. So if I was Naylor, I would have sat there and said, 'Somebody is going to come and have to see me, at some point.'

680 **Q234. The Chairman:** So, such were the difficulties associated with actually using this alternative access, that what you are saying is the Department's land was still, in effect, a ransom strip.

685 **Mr Lewin:** The difficulties, sir, were clear: in Seamus Nugent's own words, 'Naylor will not give us permission.'

690 So it was not an option it was not even kindling; it was gone, it was out. That is why the whole direction then moves to Kirk Michael School, and this is how the initial contact that was made was made by way of a conversation with Dan Tynan and Seamus Nugent, that to get back in with the school was to ask the Lewis girl to speak to the architect who was speaking to Eddie Teare.

695 This whole situation did not just happen: it was planned. It was planned to happen, and Mr Teare, with everything he had I would refer back to the days of the Mount Murray: the developer had the control and nobody was big enough or clever enough to get to it, and Mr Teare, unfortunately well, fortunately it

700 **Q235. The Chairman:** Are you telling us the alternative access your evidence is that it was only a theoretical and not a practical possibility? It was only theoretical and not practical, and therefore the Department's land the ransom strip that they continued to hold it should have been valued accordingly?

705 **Mr Lewin:** At the full 33, and fortunately it

Q236. The Chairman: Okay. Now, are you saying that the fact that it was only a theoretical possibility, this access, which was evident from 2009, was known by Mr Teare and he operated on that basis, knowing that it was only theoretical and never going to be a practical possibility?

710 **Mr Lewin:** Yes, sir. I believe the phone call and these phone calls between That is why I said we have a coalition Government here: we have Mr Bell and we have Mr Tynan. There are regular two-hour telephone calls between Mr Bell and Mr Tynan, and believe you me, when the call comes in or goes out, this is what happens, and this is why and I have seen it first hand. You could tell, as soon as the phone call was made, the Minister would take it on and keep the officers away.

715 **Q237. Mrs Cannell:** I am sorry, Mr Speaker.

You are making these, again, unsubstantiated allegations about the cosiness between a developer and a Government Minister, but they are unsubstantiated, Mr Lewin.

720 How do you know the terms of the conversation, and if indeed Mr Tynan was, in fact, talking to, as he was in those days, the Treasury Minister? How do you know that it was Mr Bell?

Mr Lewin: Because I was standing there, Mrs Cannell, and I was being told, but if it

725 **Q238. Mrs Cannell:** Was the telephone on loudspeaker, so that you could hear?

730 **Mr Lewin:** At time it was, but if you want to check it, I am sure the telephone logs will clearly record two-hour telephone calls going between the Treasury Minister's phone and Dan Tynan's personal number, because if he ever ran on the private number, Dan would say, 'Just hang on a minute, give me a ring back on the line.'

735 So all I can tell you is what I saw and heard first-hand. The evidence will be there in the telephone logs and it would be very interesting, because I have always been told that Mr Tynan will never appear in front of a Select Committee. Now, both those gentlemen will have to come here and tell you that they did not have regular phone calls.

The Chairman: Alright, now, Mr Lewin, it will be of course for us to determine who appears before a Select Committee.

740 **Mr Lewin:** Of course, sir, but I would

Q239. The Chairman: I want to bring this back to the discussions between the Department and Heritage Homes. Now we have got the evidence that Mr Nugent and Mr Downey used the alternative access as a bargaining chip at a meeting with the Department in August 2010. We have got the notes of that meeting. Was Heritage Homes being honest with the Department at that stage?

750 **Mr Lewin:** They were not being honest with them, sir, from 10th December 2009. **(The Chairman:** Okay) and those plans proved that point, sir, because if somebody is giving you evidence, if it sounds reasonable, it is normally true. Why on earth would you, in the Department of Infrastructure, have detailed plans drawn up showing house layouts, etc, but not put that plan in, but go back to the old sketch plan to get an approval, some two years later?

755 **Q240. The Chairman:** How much did the Department ask Heritage about the alternative access between that August 2010 meeting and the Tynwald debate in 2011, January and later?

760 **Mr Lewin:** All I can see is from correspondence here, sir, but I think when you look at the correspondence, Richard Collister's letters appear to be off the understanding in the same as this Committee was and the same as John Wright was in that they had purchased the whole of Cass A Lergy. Once you have purchased the whole of Cass A Lergy, that is a totally different ball game because you can cut straight and across access

765 But this Select Committee John Wright, who is one of the most eminent lawyers, has not picked it up. They believed that the whole of Cass A Lergy was purchased. It is in your Report. They obviously that convinced you, as well.

Q241. The Chairman: You have made that point.

Did the Departments at any time ask Heritage about the viability of the alternative access, in terms of the impact and private rights of way?

770 **Mr Lewin:** I do not know. I do not know in I was not there, sir. Realistically, in a real world, if I was dealing with a developer, I would not rely for one minute on what the developer said, if I was negotiating a price with him.

775 **Q242. The Chairman:** Did the Department at any time ask the developer about the position of the Naylor's?

Mr Lewin: I do not know, sir, I was not there.

780 The Department should have in once they were aware, they should have checked that access themselves. That is the only fault they have made, sir, and *fortunately*, we have not lost the £8 million or £10 million because they can still do that now, because there is no planning approval. So that can still be checked now, and I would urge this Committee to actually have that checked and actually have a conveyancer check the whole process.

So fortunately, we are sitting here having saved £8 million to £10 million.

785 **Q243. The Chairman:** We note your advice to the Committee.

Can I ask, could the Department, by using its best endeavours, have actually discovered the concerns Heritage had with the alternative access? I am talking about the Naylor's here.

Mr Lewin: No, because Seamus Nugent said, ‘We’re not going to tell the truth.’

790 **The Chairman:** Thank you. Thank you, Mr Lewin.
I turn to my colleagues: Mr Turner?

795 **Q244. Mr Turner:** Yes, it is just to pick up on the point you made about using the old map on page 169. Looking at that map, would it not be fair to say that the purpose of that map was to show the gradient rather than the access, because none of the development is actually marked on that access at all. It is just indicative of where the new access is going to be and the actual purpose of the plan is to look at the gradient of the road, with the cross-section. So, surely it is not meant to be indicative of two entrances?

800 **Mr Lewin:** I fully agree with you, Mr Turner, but please note that this was the plan that was submitted by Bryan Hall to the Director of Highways on 14th March 2011, and this was the plan that he was actually asking the Department of Highways to approve and this was the plan that the Department of Highways actually approved. I agree with you. How on earth can a responsible
805 Department of Highways approve something like that?

Q245. Mr Turner: Could the purpose of the plans be to show the distances from the 30-mph zone and the gradient from that zone down to the location of the proposed junction? (**Mr Lewin:** No, no.) That is what it says on the actual plan itself.

810 **Mr Lewin:** That is what the words say, but that plan, as is seen by the letter of 15th March to the Highways Department, was the plan that was used to get the approval.

Q246. Mr Turner: For the proposed access?

815 **Mr Lewin:** Yes. So that was the plan. That is all they submitted to the Department of Infrastructure and said, ‘Hey, ho, we are going to have a housing estate for 100-plus houses. Can we have an approval for that plan?’

I agree totally with you: how on earth could a responsible Highways Department approve that plan with so little information? ?
820

Q247. Mr Turner: I did not actually question how the Department approved it. What I am saying is that the location of the proposed access on the old plan is in the same location as on the new plan.

825 **Mr Lewin:** No. If you take your little line, a line, sir ?

Mr Turner: It seems to be a road width from the existing junction.

830 **Mr Lewin:** No. If you take a straight line and you run it parallel to the right-hand side of the Naylor road, you will see that that new junction is totally outwith the Naylor road; in fact, I would say that that junction is further into the Cass A Lergy land than we actually got control of.

Now if you go to page 399, you can see that all of a sudden it changes and it comes within the line, but I fully accept where you are coming from, Mr Turner. But you are absolutely correct, this is nothing more than an indicative plan and yet the Department of Infrastructure approved it for a
835 100-house estate.

I am like you. I am struggling to try and understand how that could happen. It can only happen when other things happen and that is why I am saying, when I was told by Mr Tynan that ‘We will never build it and there will be a condition within the approval’ it is only I mean you are a bright lad and when you read it you thought it was an approval, bar from that bottom one which ?
840

The Chairman: Thank you, Mr Lewin.
Mrs Cannell.

845 **Q248. Mrs Cannell:** Thank you, Mr Speaker.
I would just like to ask a couple of questions about your e-mails that you submitted to us. (**Mr Lewin:** Certainly.) First of all, the one dated 28th November 2012 and my first question is in respect of bullet point 17, where you are talking about having attended a meeting in April 2010, and towards the bottom of that paragraph you talk about the Cass A Lergy access to inform Mr

850 Teare that he had control of the Cass A Lergy access, which was true, but that they still prefer to use the school site.

I do not understand that because you are saying in writing here that the plan was to inform Mr Teare that there was control of the Cass A Lergy access, which was true; but you have just been telling us a great length this morning that in fact it was not true.

855 **Mr Lewin:** No, no. If you read it, I clearly recall asking SN if it would not be better to approach the Naylor's. SN said, "Definitely not." What he was setting up was to inform Teare that he had control of the Cass A Lergy access, which was true.

860 **Q249. Mrs Cannell:** What was true? That that was what he was proposing to do?

Mr Lewin: That he had control of that Cass A Lergy strip, but that they would still preferé This is what Seamus is telling me, not me telling you. Right?

865 He said, "Definitely not." What he was setting up was to inform Teare that he had control of the Cass A Lergy access, which was true, but that they would still prefer to use the school site, as there was no maximum number on the houses that could be served by this i

Q250. Mrs Cannell: Can I ask you just to pause there. "As there was no maximum number on the houses," how do you define thaté no maximum? (**Mr Lewin:** Right) What was the master plan here? What was the master plan? Was the master plan to put hundreds and hundreds of houses (**Mr Lewin:** Oh yes, yes.) through the access of the school?

875 **Mr Lewin:** Basically, yes. If you look in the option that Mr Teare signed i and again, here is a big problem, because he is giving access to the first chunk, and then there is another 14 acres of land which they referred to as being purchased within the Pinecrest Ltd; and cleverly i and I have seen this done i is that you do not pay, or you do not agree to pay, for the land out there.

880 Now, Mr Teare thinks, "Ah, we can get an overage there." Once that highway becomes adopted as a public highway, the covenant falls, so they could have built the 140 houses, got the Department of Infrastructure to adopt the highway, it then becomes a public highway, there is no ransom strip left, because a ransom strip has to be a physical strip and all of a sudden, what Mr Teare believed was that here he was, going to pick up another £3 million or £4 million at a later date. He was never going to pick it up, because it was going to be a public highway.

885 So, that was where the second loss came in. So, I know it takes some believing, but that is the truth: that he was sitting there, thinking, "Right, okayé" and that is why Seamusé We talk about a hardheaded businessman: Westlands, for example, when the word came out that half of it was in contact because he had had a falling out with Lewises, he left that car park probably at 50 miles and hour, and the woman i and you can verify this by speaking to the owner i said to him, "I have already done a deal with Hartford." He said, "Sod them. We are hard-headed businessmen. It doesn't matter where you get your money from. I will give you a million quid." You can ask that of the owner.

890 So, even when the deal was done with Hartford, he went in there, and £1 million, and that is why I am saying the magnitude of money here i

Q251. The Chairman: Okay, you have made that point, Mr Lewin.

895 Mrs Cannell's point, I think, was that despite what you were telling us about the practicality and the legality of the alternative access, in your e-mail what you said was Seamus Nugent said what he was setting up was to inform Mr Teare that he had control of this Cass A Lergy access, which was true, but they would still prefer to use the school site.

900 **Mr Lewin:** They were his words, what he was saying to me, which was true.

Q252. The Chairman: Now, going on from that, in paragraph 18 of the same e-mail, you say:

905 "The Naylor's right as explained to me, was that if the existing access was to be used, then there was no problem, but where the actual access was to be moved onto land outside the existing right, then the Naylor's consent would be required."

Mr Lewin: Correct, sir.

910 **The Chairman:** From that, we would deduce that the private rights-of-way issue was the only difficulty with the alternative access. That is what you would conclude from reading those words i

915 *(Mr Lewin:* No, because i) but I want confirmation that that is not the case, that in fact the alternative access, whether or not there were any alteration to private rights of way of the Naylor, could not in fact have been constructed to allow some form of development, even if it was not as many houses as Heritage might have wished for i that that access could have been used for a lesser number of houses.

Mr Lewin: All I can take you to is the most eminent person who has looked at these plans, the most qualified person and independent person, and that is the planning inspector. He said:

920 ðThe present proposals explored such an access, at Cass A Lergy, where Heritage Homes Ltd 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.ð

925 If you look at the plan, that was it. He was saying, ðForget it. On technical grounds, highway safety, you cannot get in there.ð The Naylor were saying, ðWe are not going to give you permission to move our land or move our access.ð So, on two counts, the Cass A Lergy site was out.

930 **Q253. The Chairman:** But the company came back immediately after that report of the inspector to challenge what was actually said.

935 *Mr Lewin:* No, sir. Again, what the inspector says there is clear: you cannot get a safe access. What the company came back and said was é and again, this is an issue, a rebuttal in the form of a media release dated 3rd December é their words. Heritage explained that during the planning inquiry in December 2011, its transport consultants 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.

940 That, sir, is totally contradictory to what the inspector said é and they are talking not about é they are saying the whole length. Right? He is dealing with the whole issue and theirs is just dealing with what Bryan Hall said, whether he said this. Bryan Hall is a very honest man and I believe when he said, ðNo, there is no other access,ð that was what he was meaning. That is what the inspector has written down, but Heritage Homes press release does not in any way reflect é in fact they say, ðOh well, the inspector was only talking about two properties.ð But the inspector actually spells out Cass A Lergy and all the properties to the south of the Douglas Road.

945 **Q254. The Chairman:** So when the inspector said that there was no permission for the alternative access, that was absolutely correct and not to be qualified by a belated statement of the company that he had not taken into account other properties under the control of the company, which he had been asked about?

950 *Mr Lewin:* What he says, and it is an important point:

955 ðThe present proposals explored such an access, at Cass A Lergy, where Heritage Homes Ltd 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.ð

960 I can assure you, sir, that when I was there, if there was anything that was damaging in any way to Heritage Homes, I did not have to go to Dan Tynan or Seamus. I would have sent that straight off to King's Chambers and asked for a petition. If I was aggrieved with that, ðCan we a petition of dolence?ð For £1,750 I would have an opinion back two or three days later and I would take it to Dan and say, ðLook, that is a blight. That is seriously a blight on that land,ð and that would have been dolenced. So if they were really aggrieved about it, it would have been in the courts i trust me.

965 **Q255. The Chairman:** So you are saying the lack of such a strong reaction tells you that actually the inspector was correct?

970 *Mr Lewin:* Heritage Homes issued an emphatic rebuttal. We are dealing here with a man who just went and purchased a property for £600,000 more than what it was worth. Yet here it is, and that is a blight because whoever comes to sell that will look at that and say, ðWell, I cannot get in because the inspector said, ñNo wayò,ð and that is the end of the ship. So none of the Douglas properties could é

975 We did that survey on every property. You just could not get in. The only way was through the Cass A Lergy and then once Derek Sewell decided that, *“No, you cannot have the visibility as per the 30-mph speed limit. You have got to go to the average speed”* which, to be fair to Derek Sewell, I thought was extremely sensible because if you go there, there is that brow just coming over the top and I could see in TT week it would be a bloodbath; but because Derek did not bow, that was when the phone call was made.

980 **Q256. The Chairman:** Yes, but it was going to the average speed that brought about the requirement to use the Naylor’s land to change the access, to widen the access and the visibility.

985 **Mr Lewin:** Yes. If we were sticking on the 30, we could have got in on the 30th of the old plan. We could have got in then, but that would have still meant dealing with the Naylor’s and we were not aware that there was a problem with the Naylor’s until later, until Graham Kirkpatrick had advised Seamus.

990 **Q257. The Chairman:** And if you were getting access through the original entrance, that did not involve the Naylor’s had a right, but that right would not have been disturbed (**Mr Lewin:** Yes.) under the original plan because there was none of their land having to be utilised.

Mr Lewin: Their land would continue and their access would continue. Under the new one, it shot right over there and they were left with a six-foot gate.

995 **Q258. The Chairman:** How many houses could have been developed if there was a possibility of some form of development then, using the original access without the Naylor’s land on the reduced visibility?

1000 **Mr Lewin:** None. It was a blank. Basically on the fact that the Highway Authority would not allow any access based on calculations within the 30-mph limit, any access had to go for the average speed of the cars coming down; so it was not an option that we could drop down. You cannot do that. You have to go to it

1005 **Q259. The Chairman:** So in your view then it is an important point it was not inevitable that there would be some development of some sort, be it less than 100, because the visibility requirements could not be met. Utilising the original access, you are saying that some sort of development, far from being inevitable, there would have been none.

1010 **Mr Lewin:** There would have been none, sir. No.

The Chairman: None would have been allowed.

1015 **Mr Lewin:** None would have been allowed unless the Highway Authority were prepared to allow an access based on it being within the 30-mph speed limit. I can assure you there were many meetings where this point was argued strongly.

1020 **Q260. The Chairman:** We are coming back to where we started and therefore when the company asserted that they had an alternative access and that negotiations therefore with the Department could resume with this new bargaining chip, that was actually a bluff, is what you are saying.

Mr Lewin: If they had that access, Mr Chairman, they would have gone in through there. They would have gone in there it

1025 **Q261. The Chairman:** And furthermore, is it correct that you are saying that Mr Bell and Mr Teare knew it to be a bluff?

1030 **Mr Lewin:** Yes, that is what I was told, and I was subject to many phone calls of that kind of situation. I was aware As I have said in there, I am quite prepared to expand into other areas and you have and I say to you, you have a potential bomb sitting at the moment it

Q262. The Chairman: Where you also said in the e-mail that, in relation to your evidence that you are prepared to provide the Committee, which you have done orally, this can be corroborated

1035 by further witnesses ĩ and yes, we will consider that aspect and/or documents which have been in
existence ĩ what documents are you referring to?

Mr Lewin: There will be documents at Dandara in the e-mail files and folders, and virtually
everything was documented. For example, Graham Kirkpatrick's file will include everything from
1040 day one to the end. My files would have all the file notes, telephone calls etc. Everything was
written down so we had a reference to it.

Q263. The Chairman: So the evidencee and clearly we, in compiling our initial Report, took
written evidence from Heritage Homes, extensive written evidence, there are in existence
documents within the company that would inform that evidence.

1045 **Mr Lewin:** Definitely, sir. If they have not been shredded.

The Chairman: Right.
Can I ask Mrs Cannell, please?

1050 **Q264. Mrs Cannell:** Yes, thank you, Mr Speaker.
Still sticking with the original, the first e-mail that I was asking you questions of before, 28th
November 2012, at bullet point 22, you say:

1055 "As to if any sweeteners were made, then I am prepared to expand on this to the Select Committee in the giving of oral
evidence."

What is meant by "sweeteners" Mr Lewin?

1060 **Mr Lewin:** I am sure, Mrs Cannell, you have been around the world enough to know that a
sweetener is not a sweet, but is actually a benefit to encourage or to have somebody do something
for you. (**Mrs Cannell:** An enticement.) An enticement. A reward. It is like, as I said in there, Mrs
Cassidy understandably wanted to know how many houses are going there. I knew exactly how
1065 many houses were going there because the plans had already been prepared. I was told under no
terms was I allowed to tell Mrs Cassidy, and I was told to get her to go to a friendly lawyeré Tom
Maher, who is very close friends with Seamusé Mark Humphreys of this world, because they
would not ask questions.

I was very pleased when she went to Paul Kerruish because, at the first meeting, Paul Kerruish
raised, quite correctly, some vital points for his client to get benefit. Paul Kerruish was adamant.
1070 He said, "No deal unless you tell me how many houses are going there" and the answer wasé
because Mrs Cassidy had then set her mind on the use or the money had been identified for
specific good purposes and there was no way the number was going to be told. The number will
increase.

1075 If you go to Peelé if you look on plan 399, that does not show you, for example, the actual
plan because on 399, it was proposed that there would be houses built on the corner.

So sweeteners areé and if I can just give an example, and I think this is a matter which should
be in the public domain and I know it will cause concern, but your current Attorney General was
kicked out of Callin Wild because he advised Dan Tynan's wife to take £10 million instead of £50
million.

1080 **Mrs Cannell:** I am sorry, Mr Lewin, I do not think that has any bearing or relevance ĩ

Q265. The Chairman: I am going to rule, actually, on that very serious statement, that I will
not permit this hearing to be used for any unsubstantiated allegations.

1085 **Mr Lewin:** I think you should investigate, Mr Chairman.

The Chairman: That is my ruling on this matter (**Mr Lewin:** Yes, sir.) and that is not to be
pursued.
1090 Mrs Cannell.

Q266. Mrs Cannell: Thank you, Mr Speaker.

1095 You still have not answered my question, Mr Lewin, of what you see as a sweetener. You merely bounced it back to me and have made an assumption that I understand what a sweetener is. (*Mr Lewin:* Money.) Money.

Mr Lewin: Money. Holidays.

1100 **Q267. Mrs Cannell:** So what you are alleging then in your e-mails is that certain individuals have been or would have been offered sweeteners. In other words, financial inducement ĩ

Mr Lewin: I would not put them as ĩ

1105 **Mrs Cannell:** ĩ to help the developer.

Mr Lewin: I would not put them as an offer. I would say that it was accepted that, for example, on a land deal down south that the person who assisted Dandara in guaranteeing to get that land received a substantial amount of money.

1110 I was offered on numerous occasions on this one, ōf you can sort out the Cass A Lergy entrance, Buster,ō ĩ or ōBusō ĩ ōthere is two million quid in it for you if you get planning permission.ō That is the amount of money that was floating around. We are not ō I was told ĩ

1115 **Q268. Mrs Cannell:** And did that financial inducement encourage you to do your level best for the developer?

Mr Lewin: I do my level best for whoever I work for, Mrs Cannell.

1120 **Q269. Mrs Cannell:** Did it work ĩ the sweetener ĩ on you? (*Mr Lewin:* No.) No. It is just that you make big ĩ

Mr Lewin: Well, put it ĩ

Mrs Cannell: Sorry, Mr Lewin, I am speaking. (*Mr Lewin:* Sorry.)

1125 You make big issue about sweeteners here and sweeteners there and sweeteners all over the place within your evidence, which is very provocative, but this morning you have not provided us ĩ

Mr Lewin: Do you want me so specify?

1130 **Mrs Cannell:** ĩ with any substantiation ĩ

Mr Lewin: Do you want me to specify?

1135 **Mrs Cannell:** ĩ that in fact it has been used.

Mr Lewin: Yes, for example, in the land that was purchased for Colby Football Club ĩ

1140 **Q270. Mrs Cannell:** Sorry, Mr Lewin, but we are primarily concerned and focused on the land exchange agreement in Kirk Michael. (*Mr Lewin:* Right.) We are not interested in anything else that you may have heard or may have knowledge of in respect of this. (*Mr Lewin:* Right.) We are interested just in *this*. This is the *focus* of our investigation.

1145 *Mr Lewin:* Right. I would say without a shadow of a doubt that, by the fact that there was a friendly advocate brought in to deal with the Lewises, there would be a financial benefit.

Q271. Mrs Cannell: And that is the only, the *only* suggestion of a sweetener in this?

Mr Lewin: I am sure there were other sweeteners.

1150 **Q272. Mrs Cannell:** You are sure, but you cannot substantiate.

Mr Lewin: Well, put it this way: why would somebody do something that was not in the best interests of the Isle of Man if they were not getting a sweetener?

1155 I could understand it if somebody was doing something to double the take for the public purse
ĩ I can understand that; but what I do not understand is why somebody would do something to
reduce the take for the public purse without having a financial benefit.

But it was common and I can give you examples, but if you do not wanté I meané

1160 **The Chairman:** Can I ask ĩ

Mrs Cannell: Thank you, Mr Lewin.

The Chairman: Thank you, Mrs Cannell.

1165 **Mrs Cannell:** Thank you, Mr Speaker.

Q273. The Chairman: We are grateful to you for giving evidence this morning, but why
should we believe anything that you say that you have had to tell us? Why should we believe it?

1170 **Mr Lewin:** Well, Mr Chairman, it is very easy for you to verify what I have said this morning
because in actual fact if you read your own Report, and I will just go to some of the conclusions,
you actually say:

1175 *“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.”*

That was the Report you put to Tynwald. In here is a document saying it was registered. So when
you ask me why should you believe me, I am saying there are some horrendous mistakes in this
Report that are contrary to the evidence that is there; but, by all means, verify the evidence.

1180 I have given you the evidence of why would somebody use a plan of 2009 ĩ and as Mr Turner
correctly said, it is illustrative ĩ to get a highway approval? You would never have granted that
when you were there as the Chairman of the Planning Committee. Re-read the clause on what the
approval was given by the Department of Infrastructure.

1185 **The Chairman:** Can I ask you to confirm ĩ

Mr Lewin: I have got no reason to tell you a lie, sir.

1190 **Q274. The Chairman:** You have been dealing through an Employment Tribunal with
Heritage Homes, your former employers.

Mr Lewin: That is correct, sir.

1195 **Q275. The Chairman:** Would it be fair to suggest that much of what you have said is
vexatious and borne out of other issues relating to yourself, the terms in which you terminated
employment and ongoing issues with your former employer?

1200 **Mr Lewin:** I said I noticed in the *Hansard* that that was raised and I actually sent you a copy of
the Employment Tribunal decision, which was chaired by Mr Quayle, and Mr Quayle concluded
that the claim was *not* vexatious. That is a totally separate matter.

When I read this Report, I realised that the Isle of Man and the people of this Island were going
to lose between £8 million to £10 million. That was my only concern in bringing it to your
attention and in fact the situation of this ĩ shall we say the strings coming out ĩ is becoming very
serious. I mean ĩ

1205 **The Chairman:** Okay. Thank you, Mr Lewin. You have answered my question.
Mr Turner, do you have any further questions?

1210 **Q276. Mr Turner:** Yes, thank you, Mr Speaker.

Of course, the primary role of our investigation is to look at how the Department dealt with
this. Did you have any meetings with anybody on the Department?

Mr Lewin: No, I refused.

1215 Q277. **Mr Turner:** Why was that?

Mr Lewin: Because I did not believe that what they were doing was correct, and if you notice in my e-mail, I took advice from Graham Kirkpatrick. The advice was very clear, that if you make misrepresentation in a land sale, then you could find yourself in deep water. So I refused to be involved and you will see in the e-mail, because of the refusal to tell Mrs Cassidy how many houses were there, I then handed the file over and refused to get involved in any discussions because I knew that what they were going to say wasé there was not evené If there was a glimmer of hopeé I mean you know me, if there was a glimmer of hope I would have fought the corner, but when it was absolutely ruled out, you just cannot do that.

1225 Q278. **Mr Turner:** But you say you were givené earlier on you said you were given rein to go and sort out the problems around Cass A Lergy on the other ÿ (**Mr Lewin:** Oh, yes. Yes.) Were you given any particular brief as to how far you could go approaching those landowners?

1230 **Mr Lewin:** No. At Dandara it was a very level management. You were given a job, you went away and if you are doing a deal with somebody, if you agree £6 million, that is it, and you did not have to go back and report; but óway beholdó if the boss thought you paid too much, then you would know about it, but it was noté it was a very level management system.

1235 When I was going around the south of the Island, I could buy and sellé I could buy land without reference back.

Q279. **Mr Turner:** And coming back to Mrs Cannellós issue over the word you used ósweeteneró was that the only time you were offered to have that as one of the tools in your armoury?

1240 **Mr Lewin:** No, numerous times.

Q280. **Mr Turner:** Was that with other properties along the Douglas Road?

1245 **Mr Lewin:** It was with other properties and also, I mention it, with another matter that is very serious; but there were sweeteners on offer all the time and óf you achieve that, there is £1 million in it. If you achieve this, there is £1 million in it.ó You do not realise how much money in cash that you are considering. You are not considering sweeteners of £50; you are considering sweeteners of millions.

1250 Q281. **Mr Turner:** And regardless of all that on offer to you to dish out, you were still adamant that the Naylor's would not negotiate and could effectively be paid for changing their mind over the access.

1255 **Mr Lewin:** No. It was Seamus who was adamant the Naylor's would not move ÿ

Mr Turner: At any cost.

1260 **Mr Lewin:** ÿ and I was under instruction not to go there. I believe that they would have moved; it would have come at a cost, and maybe the cost was cheaper that he decided to go through the school. Plus the fact that the maximum, the maximum was 100 there, whereas once you are at the school, and if you follow the zoned line, it is like a wiggly-woggly curve, you were heading outé I mean the eventual by-pass was to head out to Dougie Boltonós. So there was a whole plain of land there that was open.

1265 But the main issue was not to let Hartfordós get in because if you look até say there were 500 houses developed a year: if Dandara can keep control of that market, then they can control the price. If Hartford had got in there, then you would have had two people competing in the same market, which would have reduced the price, but you would not have sold more than 500 houses. So there was a premium to be paid.

1270 But as you can see on the plan 399, in Westlands, which Seamus paid £1 million for, the rear garden has got three houses. So if you work out 30% on that, it is not that expensive.

Q282. **Mr Turner:** One final question, if I may, Mr Speaker?

1275 Finally, you say about your concern for the taxpayer losing out on £8 million to £10 million, surely you must have known that when you were working for the company.

Mr Lewin: What?

1280 **Mr Turner:** When you were working for the company, you must have known i

Mr Lewin: That is why I refused to get involved.

Mr Turner: And that was the reason?

1285 **Mr Lewin:** Yes.

The Chairman: Thank you.
A final question, Mrs Cannell.

1290 **Q283. Mrs Cannell:** Thank you, Mr Chairman.

It is just going right back to the beginning when you gave us a little bit of history in terms of how you came to arrive working for the developer, you said you started in 2007. Just as a housekeeping exercise, when did you leave them?

1295 **Mr Lewin:** I would have to check that date and come back to you.

Q284. Mrs Cannell: But approximately, how many years did you work for them?

1300 **Mr Lewin:** I think it was 2011. I can come back to you with that.

Mrs Cannell: Okay. So you think it was 2011?

Mr Lewin: Late 2010 or 2011.

1305 **Q285. Mrs Cannell:** Okay. Had you had any contact or association with the developer prior to being engaged by them in 2007?

Mr Lewin: Yes.

1310 **Q286. Mrs Cannell:** They appear, from what you say, to have placed an awful lot of trust and reliance upon you. Why do you think that was?

1315 **Mr Lewin:** Because they found me a guy who gets things done. As Seamus said in the court, ðf you need somebody to get something done, give it to Buster and he will get it done.ð

Mrs Cannell: What was the i

1320 **Mr Lewin:** And the main reason that I was employed was that the Port St Mary Hotel, Hartford had just purchased that and Dan Tynan was absolutely boiling because they had missed it and he did not wanté I mean there was significant foul language being used and he said, ðRight, I will tell you what, Buster. I want you to come and I just want you to do a complete across-the-Island. Secure anything that moves, anything that we can build on.ð

1325 **Q287. Mrs Cannell:** So that was the extent of your remit, to find and source out potential development sites for the company.

Mr Lewin: And look after Danôs personal affairs and other private matters that needed attending to.

1330 **Q288. Mrs Cannell:** So they appeared from what you say, if we believe you, to be heavily reliant upon you. How do you think the company is coping now without you?

1335 **Mr Lewin:** I would think that like any company and like the House of Keys, we are birds of a feather. We come and we go, and it is like your good selfé you know, there will be another MHK.

The Chairman: I think we take your point. Thank you. *(Laughter)*

Thank you, Mrs Cannell.

1340 **Mrs Cannell:** Thank you. That is it.

Q289. The Chairman: Finally, Mr Lewin, we do intend to take evidence from Heritage Homes and from the Department of Education. What should we ask them?

1345 **Mr Lewin:** What should you ask them? The Department of Education is very simple. What they should have done is and I am the first to admit it is easy with hindsight is was say, "Right okay. These nasty developers, they are saying they have got an access" and if I was the Minister I would have said, "I will tell you what, get me proof. Have they got one or haven't they got one?" and that is the reason that I have the option recorded, so it was in the public domain so it could be
1350 obtained. That could have been very quickly tested and from that they would have known whether the access was a goer or not. Once the Department of Education had known that, then that is it, game over. That was it is end of story. That is all they had to do. Once they knew that that is
1355 Read the inspector's report. Read Mr Pearson's Island Strategic Plan. How many years have we been doing the all-Island Strategic Plan and the Local Plans, and these were all the planning policies? So that would be the first one.

Q290. The Chairman: That is the first question.
And to Heritage Homes?

1360 **Mr Lewin:** I wish you well with Heritage Homes, Mr Chairman. I would be very intrigued because I have been reassured that Mr Dan Tynan will never appear in front of a Manx select committee, and I wish you well with that.

The person who I would put considerable weight and trust on is Graham Kirkpatrick. He is a very honest and genuine person.

1365 The rest of them, I think you have got to accept you are up against professionals and with the greatest respect, they may be in the Manchester United league. They are very hard to tie down.

Q291. The Chairman: And the line of questioning, apart from the personalities of who may or may not be getting questioned?

1370 **Mr Lewin:** The line of questioning, if it was me, Mr Chairman, I would take that Report and I would request all the documents that they have got relating to that. I would send somebody up there immediately to stop them being shredded, because I have seen documents being shredded when they were requested, and then I would sit down and I would go through it, because if they
1375 say it is black, take your glasses off and have a look just to make sure it is black. Go through the line of questioning and most of the evidence is in there.

The evidence that I have given you today has really come out of your document.

1380 **The Chairman:** Thank you very much, Mr Lewin. I think that that is very clear. I would like to thank you for giving your evidence this morning.

This public session of the Select Committee is now at a close and I thank the public for their attendance. Thank you very much.

1385 **Mr Lewin:** Thank you very much, Mr Chairman.

The Committee sat in private at 12.22 p.m.