PP132/10

REPORT OF THE SELECT COMMITTEE ON CROSSAG FARM

SELECT COMMITTEE OF TYNWALD ON CROSSAG FARM

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REPORT OF THE SELECT COMMITTEE OF TYNWALD CROSSAG FARM

To The Honourable Noel Q Cringle OBE, President of Tynwald,
and
the Honourable Members of the Council and Keys in Tynwald assembled.

PART 1:

INTRODUCTION

1. Background

1.1.1 At the sitting of Tynwald Court on 16th July 2008 it was resolved that a Select Committee of three members be established 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 details of the contractual agreement between J G Kelly Limited and the Department of Local Government & the Environment and report thereon with recommendations as soon as practicable."

1.1.2 The Members elected to the Committee by Tynwald were Mrs Brenda Cannell MHK, Mr David Callister MLC and Mr Graham Cregeen MHK. At the first meeting, Mrs Cannell was elected Caairliagh. The Committee held 14 meetings and took oral evidence in public on two occasions.

2. Terminology

1.2.1 In this report, unless otherwise stated, "the Department" means the then Department of Local Government and the Environment (DoLGE).

1.2.2 "The Agreement" refers to the contractual agreement between DoLGE and J G Kelly Limited and associated companies.

1.2.3 We have found that the parties to the Agreement were the Department and three companies: Jackson Homes (Southern) Limited; Jackson Holdings

Limited; and J G Kelly Limited. These three companies form part of a group which also includes J G Kelly Homes Limited and the Jackson Family Trust. We refer to this group of companies as "the Group".

PART 2:

STRATEGY

2. Introduction

2.1 Your Committee resolved to:-

i) Acquire a copy of the Agreement
ii) Study the way in which it was made
iii) Consider details of the contents of the Agreement
iv) Consider matters arising from the Agreement
v) Consider any risk arising to IOM Government
vi) Consider the information given to Tynwald and whether Tynwald was misled
vii) Consider the way in which Government Departments worked together on the Agreement
viii) Consider how the situation might be improved

PART 3:

ENQUIRY

3.1 Scope

3.1.1 We took the view to stick closely to the remit that had been approved for us. The motion moved and agreed by Tynwald was moved by Mr Graham Cregeen MHK who was elected as a member of this Committee. We have not, for example, allowed ourselves to be drawn into arguments about the merits of the planning application associated with the agreement (for which there was a pending appeal) or about the aspects of the planning and legal systems which the case may have illustrated. The planning system has been the subject of a separate review which was reported to Tynwald in January 2010 while the legal system – specifically petitions of doleance – has been the subject of a separate Select Committee, on the Petition for Redress of Grievance of Donald Whittaker, which reported to Tynwald in December 2009.

3.2 Seeking of Evidence

3.2.1 We sought evidence from the Department of Local Government and the Environment (the Department), the Treasury, HM Attorney General's Chambers, Malew Parish Commissioners and J G Kelly Limited. Research was undertaken from the Companies Registry and the Land Registry.

3.2.2 We wrote to the Department on 15th September 2008 to request a copy of the Agreement, as referred to in our remit (the Committee had taken the view that if the Agreement was not forthcoming, a Precept would be issued). A copy was to be supplied by 30th September 2008. On 2nd October 2008, in response to a request from the Department, your Committee granted an extension of time to supply other information requested but not the Agreement (see Appendix 16). A precept was issued under the Tynwald Proceedings Act 1876. On 6th October an extension of time was granted until 5 pm on Friday 10th October to supply a copy of the Agreement. Gough & Co, Advocates, informed the Clerk of Tynwald that an injunction to prevent the Department from disclosing the Agreement between J G Kelly Limited and Jackson Homes (Southern) Limited and the Department and/or any other related parties was to be heard before Deemster Doyle on 6th October. The request for the hearing was withdrawn at the last moment and no proceedings were issued. However, Gough & Co had not contacted the Office of the Clerk of Tynwald subsequent to this.

3.2.3 Mrs Cannell, MHK, Caairliagh of the Select Committee, stated that your Committee was determined to set out to acquire all the evidence required to come to a fair conclusion. Other parties would be invited to make representations but the Select Committee would not delay the terms of the precept again. The Agreement was duly delivered subsequent to telephone calls made by the Clerk.

3.2.4 We have considered the detail of the Agreement and our findings are set out below. We received representations from both J G Kelly Limited and Jackson Homes (Southern) Limited that the Agreement should not be published. While we do not necessarily accept all the arguments put forward by them against publication of the Agreement, we have nevertheless decided not to publish it because we can fulfil our remit to Tynwald without doing so.

3.2.5 We took oral evidence in public:-

i) On 25th June 2009 from:-

- Mr Carl Hawker (Assistant Financial Controller of IOM Treasury) and
- Mr Ken Kinrade (Chief Executive Officer of the then Department of Local Government and the Environment)

ii) On 1st September 2009 from:-

- Mrs Felicity Kniveton (Senior Legal Officer from the Civil Division of the Attorney General's Chambers) and
- Mr Richard Senior (former Director of Estates and Housing with the then Department of Local Government and the Environment but at the date of the oral evidence was still employed on a consultancy basis).

Full transcripts of the oral evidence are available on the Tynwald website (www.tynwald.org.im).

3.2.6 The other written evidence referred to in this Report has been placed in the Tynwald Library.

3.2.7 We sought independent legal advice from Manx advocate, Mr John Wright.

PART 4:

THE AGREEMENT

4.1 Background

4.1.1 The pre-history of the Agreement with which we are concerned begins in 1991 when the Department of Local Government and the Environment purchased a piece of land (Land Registry reference 43-00315) adjoining the St Mark's Road and extending from there to the backs of the houses at Glashen Close. In 1999 the Department bought a smaller piece of land (Land Registry reference 43-00384) adjoining the first piece of land.

4.1.2 For many years potential for development has been recognised in a part of Glashen Farm running from the back of the Abbots Wood development off Crossag Road, passing round the back of Clagh Vane, and meeting the main Douglas Road either to the north or the south of Glashen Close. As the land is not all in the same ownership, various developers have been involved in trying to put together a significant area of land with access at either end.

4.1.3 An Agreement was entered into by the Department as part of an initiative to develop land at Crossag Farm, Ballasalla. The site has an extensive planning and litigation history. Ballasalla is identified in various development plans as a suitable site for additional housing but there is also a need for improved infrastructure to sustain any such housing. Development was for many years not allowed due to the lack of adequate foul and storm drainage, and there has also been strong local opposition. The drainage problems have to a large extent been resolved by the Department of Transport under the IRIS strategy, with the Santon to Castletown transmission main having been completed in 2004.

4.1.4 As part of the conveyance of the second purchase in 1999 the Department acquired an option to purchase, for the sum of £5,000, a 40-foot-wide strip of land lying between the centre of Glashen Farm and a point on the Douglas Road. In the event the option was not taken up and the 40 foot strip was not purchased *(Ref: 4.3.2)*

4.1.5 Because the land owned by the Department remained at this stage effectively land-locked, it was necessary for the Department to enter into negotiations with neighbours. They identified as potential development partners J G Kelly Limited, who appeared to own two pieces of land which would have permitted access to the Department's land. One of these "ransom strips" lay between the Department's land and the Douglas Road (Land Registry reference 43-00072), while the other lay between the Department's land and the Abbots Wood development (Land Registry reference 43-00139). (Negotiations also included two other neighbours, Heritage Homes and

Malew Football Club, but the arrangements made with these parties have no direct implications for our investigation.)

4.1.6 Members of Tynwald were invited to a private briefing on 11th November 2005. During the November 2005 sitting of Tynwald the following motion was moved by the then Minister for the Department, Mr Rimington:-

"That Tynwald approves the Department of Local Government and the Environment entering into land transactions at Crossag Farm, Ballasalla with Heritage Homes Limited, J G Kelly Limited and Malew Football Club which, subject to planning permission, will transfer 16.5 acres of Government land, zoned for development, to these bodies, provide a capital receipt, result in new drainage and road infrastructure and enable the two developers to provide at an early date a first phase of seventy-two affordable homes for first time buyers."

The motion was carried but not before it had been amended with the addition at the end of the following amendment as moved by Mr Speaker:

"A further 12.5 acres of fully serviced land will also be unlocked and remain in Government ownership to provide a future phase of forty-eight affordable homes for public sector tenants and first time buyers and a site for a new school, subject to budget approvals and further Tynwald motions."

4.1.7 On 16th October 2006 the following motion was moved by the Minister for the Department, Mr Rimington, and it was approved without amendment:

"That Tynwald approves the Department of Local Government and the Environment –

(1) *Entering into a land transaction and development agreement at Crossag Farm, Ballasalla with J G Kelly Limited.*

(2) *Transferring approximately 21.27 acres of Government land at Crossag Farm zoned for residential development and paying a capital sum of £3.0 million to J G Kelly Limited in return for the construction of 65 public sector houses and 102 first-time buyer houses and apartments, to be sold under the House Purchase Assistance Scheme 2004.*

(3) *Conveying 0.46 acres of land to Malew Football Club and paying £20,000 for easements to enable further expansion of the football pitches.*

(4) *All subject to contract and obtaining relevant planning permissions."*

4.1.8 Following Tynwald approval the Attorney General's Chambers advised the Department that J G Kelly Limited was part of a group of companies. We took evidence from Mrs Felicity Kniveton, Senior Legal Officer in the Attorney

General's Chambers and she stated in her evidence that:

"the property holding company and appropriate, essential, company in the group of companies to contract with the Department should be Jackson Homes (Southern) Limited".[1]

4.1.9 The Agreement was eventually signed on 22nd December 2006 by all parties - the Department of Local Government and the Environment and three other legal entities who formed part of a group of inter-related companies: Jackson Homes (Southern) Limited, Jackson Holdings Limited and J G Kelly Limited.

4.1.10 One of the conditions of the Agreement was that the Department would apply for planning permission for the development. The detailed history of the planning application which followed is not our concern. For the purposes of our investigation it is sufficient to note that a public inquiry was held on 11th and 12th July and 16th and 17th October 2007; the planning application was refused by the Council of Ministers in January 2008; the refusal was challenged by way of petition of doleance by J G Kelly Ltd and Jackson Homes (Southern) Limited but was later withdrawn.

4.1.11 Meanwhile, in the summer of 2007, Malew Parish Commissioners had asked the Department to provide them with a copy of the Agreement before the planning inquiry resumed in October of that year. The Commissioners were concerned about the fact that the land required for access was owned by Jackson Homes (Southern) Limited and not J G Kelly Limited as implied by the terms of the two Tynwald approved motions.

4.1.12 The Commissioners were concerned and took the view that it was necessary to consider the Agreement in order to look for guarantees that the development was in the best interests of the people of Ballasalla and the Island. The Department refused to release the Agreement. They argued that the Agreement was not relevant to the planning merits of the proposal and that it was not a material consideration for planning purposes whether the development would in fact be completed and by whom. They also attempted to provide the Commissioners with reassurances that the Agreement included appropriate safeguards for the Department.[2]

4.1.13 The planning inquiry was therefore completed without reference to the Agreement. As noted above, in January 2008 the application was refused but it was subsequently challenged by way of petition of doleance. In July 2008, at a time when the doleance proceedings were still underway, the question of the Agreement was brought to the attention of Tynwald by the constituency

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[1] Supplementary statement by Mrs Felicity Kniveton dated 2nd September 2009, paragraph 7 *(reference Appendix 1)*

[2] See written submission dated 20th August 2008 from Malew Parish Commissioners *(reference Appendix 2)*

MHK, Mr Graham Cregeen, through the tabling of the motion establishing the present Committee.

4.2 Complexities of the Agreement

4.2.1 The Agreement is a contractual document designed to underpin a complex development initiative involving the Department and a group of private companies. The three companies party to the Agreement were Jackson Homes (Southern) Limited; Jackson Holdings Limited; and J G Kelly Limited (the Group).

4.2.2 The inter-relationship between the companies is as follows:-

- The Jackson Family Trust has a controlling interest in Jackson Holdings Limited and Jackson Homes (Southern) Limited

- Jackson Holdings Limited has a controlling interest in J G Kelly Homes Limited and a controlling interest in J G Kelly Limited.[3]

4.2.3 In summary, provisions of the Agreement were:

(1) the Department and the three companies named in the Agreement would pool their resources to allow a mixed development on the land at Crossag Farm comprising a mix of social and private housing;

(2) the Department would apply for planning permission for the site;

(3) if permission was granted and certain other matters complied with, development would commence. Certain land would be conveyed by the Department to Jackson Homes (Southern) Limited;

(4) if planning was refused or certain other conditions were not complied with then the Agreement would come to an end;

(5) in the event that the land was conveyed then it would be subject to a charge to the Department and a clause provided that in certain extreme cases the land would be reconveyed to the Department.

Although the company structure is not in itself unusual, the development initiative underpinned by the Agreement was highly complex.

4.2.4 Mr Richard Senior joined the Department of Local Government and the Environment in 2001 and dealt with the Crossag Farm project as Director of

[3] See diagram of more detailed company connection analysis attached *(reference Appendix 3)*

Estates and Housing. He retired from that post in April 2008. Mr Senior told us in oral evidence:

"I am a quantity surveyor, a chartered surveyor by profession. It is the most complicated deal I have ever been involved in."

4.2.5 We found that the Agreement was negotiated as part of an extremely complex set of deals and that, as such, it necessitated the highest levels of attention to detail within all relevant parts of Government.

4.3 Ransom Strips

4.3.1 A key feature of the commercial deal which the Department needed to strike a balance, in order to develop the site referred to in the Agreement, was the fact that, whilst the Government owned a large proportion of the land needed for development, other companies owned the land needed for access. The pieces of land at each end of the site therefore acquired an inflated value and may legitimately be referred to as "ransom strips".

4.3.2 The Department did have, between 1999 and 2002, an option to purchase a narrow strip of land which could have given a limited form of access from the proposed development site to the Douglas Road. This option was not taken up. Although the Department stated that they had intended to take it up but conceded that the notice was not sent by recorded delivery and so could not be enforced. The Department advised us that whilst in their view this was unfortunate, this did not impact on the overall proposals for the development because the 40-foot-wide strip was both inadequate and unsuitable for access. Whilst acknowledging that the 40-foot-wide strip may not in itself have solved all the problems of access to the site, **we regard the failure to take up the option in a competent manner as worse than unfortunate.** [4]

4.3.3 We therefore make the following recommendation.

RECOMMENDATION 1

That in its long-term planning for all future land deals the Government should do everything in its power to avoid reliance on any "ransom strip" held by another party.

[4] See second letter from the Department of Local Government and the Environment dated 17th July 2009 *(reference Appendix 4)*

4.4 Due Diligence on the Contracting Parties

4.4.1 Turning again to the specific Agreement of 2006 which we have investigated, one of the very first details to which we would expect any Government Department or Statutory Board to give a great deal of attention to in such a contract would be: "**With whom are we dealing and do they have a financially stable background?**"

4.5 The Understanding of the Department

4.5.1 On this point, the Department's written evidence was as follows:

"The Department consulted the Treasury prior to the Agreement being concluded in order to verify the companies' credentials and financial standing.

[The Attorney General's] Chambers also carried out Company Searches to verify incorporation, registered office, Directors, Company Secretary, shareholders, charges, and to check there was no appointment of a receiver/liquidator. If a shareholder was a Company, Chambers would have carried out a search for that as well, and did in this case (J G Kelly Limited, Jackson Homes (Southern) Limited & Jackson Holdings Limited).
Officers of the Department were familiar with the companies headed by Jamie Jackson, a member of the Jackson Family Trust, and J G Kelly Limited/Jackson Homes Limited, which are well-established development companies on the Island.

I am confident that the Department's officers were familiar with whom they were dealing and that the companies' credentials were checked in accordance with "Know Your Customer" guidelines as far as reasonably possible." [5]

4.5.2 We asked for further details of the Department's consultation with Treasury, and the Department responded as follows:

"I understand that our staff received confirmation from Mr Clive McGreal at the Treasury that Jackson Holdings had a sound balance sheet for their size of company and for the type and scale of the development they were intending to progress. It is also usual for Treasury to advise if there are any outstanding debts to Government prior to such agreements being made but no issue was raised on this occasion." [6]

4.5.3 On the question of the financial status of the companies' party to the Agreement, we have no evidence to second-guess the Treasury's confidence in Jackson Holdings Limited as reported by the Department. To that extent we

[5] Letter from the Department of Local Government and the Environment dated 13th February 2009 *(reference Appendix 5)*

[6] Letter from the Department of Local Government and the Environment dated 12th March 2009 *(reference Appendix 6)*

find that reasonable steps were taken by the Department to assess financial risk, once the true structure of the Group was understood. We also consider, however, that this part of our investigation revealed shortcomings in the way in which the different parts of Government worked together to assess potential business partners and we return to this in section 7 below. *(Ref: 8.3)*

4.5.4 As mentioned previously, the evidence of Mrs Kniveton of the Attorney General's Chambers is that she advised the Department as to the company structure and that a correct understanding of that structure should be reflected in the drafting of the Agreement. She advised the Department to include all the companies. Unfortunately, this advice was not provided until after the second Tynwald motion of October 2006.

4.5.5 Mrs Kniveton said in her oral evidence on 1st September 2009 that:-

"the Department should pursue the 'know-your-customer' provisions, the due diligence checks which are actually set out on the Government website and that is their responsibility and financial references should be pursued by the Department with the help of Treasury because they obviously have the experts to pursue those."

and

"There is no point having an agreement with a company where you need to use a piece of land when they do not own that piece of land." [7]

4.5.6 Unfortunately, the advice of the Attorney General's Chambers (given after Tynwald approval in October 2006) that all the parties involved should be included in the Agreement, was not communicated to Tynwald.

4.5.7 We conclude that, while the Department acted in good faith in the preparation of the Tynwald motions in November 2005 and October 2006, the Department should have ensured that Tynwald was informed about the precise identity of the parties to the Agreement at the earliest opportunity and in particular before the Agreement was signed. In connection with this conclusion we make the following recommendation:

RECOMMENDATION 2

That where Tynwald authorisation is sought for a Department entering into a contract, the Department seeking such authorisation should ensure that Tynwald is accurately informed as to the identity of the other party or parties to the proposed contract. Any error in the terms of the motion for authorisation should be brought back to the attention of Tynwald Members as soon as possible.

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[7] Oral Evidence on 1st September 2009, page 21 TCF *(reference Appendix 7)*

PART 5:

POTENTIAL RISKS FOR GOVERNMENT

5.1 Malew Parish Commissioners' written submission dated 20th August 2008

5.1.1 Quote: *"On 28th February 2008, the Commissioners received notification that a Petition of Doleance had been filed challenging the decision of CoMin by J G Kelly Limited and Jackson Homes (Southern) Limited. During the preparation of an Answer to the Petition, the Commissioners carried out company searches on the Petitioners. It was discovered that Jackson Homes (Southern) Limited appears to have an outstanding mortgage and debenture on the land that was to be developed as part of the Crossag Farm development...*

In view of the existence of the apparently undischarged Debenture registered against Jackson Homes, one therefore has to question what safeguards are in place to protect the Government's funds and proposed expenditure bearing in mind that upon the land being transferred to Jackson Homes, the land becomes a security of the Debenture holder. In the event the Department provides J G Kelly Limited £3,000,000 to erect the 102 first time buyer properties and 65 public sector properties in accordance with the Tynwald Resolution on land in the ownership of a private entity Jackson Homes if the transfer of the Department's land takes place, such properties on the face of it, would also be held as security for the Debenture holder."

5.1.2 To put the Commissioners' concerns another way: they had become aware, through company searches, of an undischarged debenture registered against Jackson Homes (Southern) Limited. They thought this might mean that, if the Department's land was transferred to the company and if there was a problem later - for example, in the unfortunate event that the company went bankrupt - then under the terms of the Debenture the land might revert to a third party and as a result the Department would not be able to get the land back without paying well over the odds.

5.1.3 In answer to the Commissioners' concerns, the Department had already written to them in August 2007 quoting:

"There is a Guarantor company which is liable for the developer's obligations (including completing the development), a Mortgage Debenture in favour of the Department secured on the Department's transferred land and a schedule in the Agreement which provides that if the developer fails to complete the development then the Department can buy back its land and complete its development." [8]

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[8] Letter from the Department of Local Government and the Environment dated 24th August 2007, included as Appendix 1 within the submission of Malew Parish Commissioners dated 20th August 2008 *(reference Appendix 2)*

5.1.4 Similarly, the Minister for Local Government and the Environment had stated in the House of Keys on 24th June 2008:

"in the event that the development is not completed by J G Kelly, due to planning not being granted, then the Department retains the right to buy back the land at cost plus the value of any infrastructure or other works that have been completed."

5.1.5 It is important to appreciate that the debenture referred to by the Department in the letter quoted above is not the same as the debenture identified by the Commissioners in company searches. The debenture identified by the Commissioners was a pre-existing arrangement between the company and its financial backers. The debenture referred to by the Department was a draft arrangement between the company and the Department which would have been signed if the conveying of land from the Department to the company had gone ahead. The Department submitted a copy of this draft arrangement to us at the same time, and on the same terms, that they submitted a copy of the principal Agreement itself.

5.1.6 As a Parliamentary Committee we took the decision to obtain independent legal advice on the question of what would happen to the Department's land if the development failed. The advice confirmed that the debenture identified by Malew Parish Commissioners would not stop the land reverting to the Department.

5.1.7 The further debenture, the one between the Department and the company which had not been signed and was not therefore registered, was drafted as a first exclusive charge. Any debt owed by the group of companies to other creditors would not be secured on the land in question. This debenture would have been signed and registered upon receipt of planning permission which remained an outstanding condition of the terms of the contract.

5.2 What would happen if the development failed: risk of losing access?

5.2.1 A related concern was identified by Mr Cregeen MHK in the debate establishing the present Committee, when he said:

"my concern is that, if for any reason the development went wrong, the Government land could still be landlocked, and part of our land, which was going to be handed over to J G Kelly Ltd, could have been developed and we could be in a worse situation by having lost some of our land and still having no access." [9]

5.2.2 We took evidence from Mr Ken Kinrade, Chief Executive of the Department of Local Government and the Environment, to explore any potential risk. The following is an extract from that discussion:

[9] Tynwald Court, 16th July 2008, page 1262 *(reference Appendix 8)*

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

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

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

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

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

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

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

***Mr Kinrade:** The open market.*

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

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

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

Mr Kinrade: *That was, as I understand it, again, I do not believe that was... Well, you may wish to check with the Attorney General's Chambers, or indeed with Richard Senior, when he gives evidence, because that was not my understanding of how that would work. I was quite clearly on the understanding that that land would actually be... The value of that land was actually balanced by the cost of the infrastructure works that would have to be done to enable the development to take place; accepting that there was still the possibility that we would be landlocked.*

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

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

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

Mr Kinrade: *Potentially, yes."*

5.2.3 We sought opinion of our independent legal adviser. The advice we received was that under the Agreement, Jackson Holdings Limited is the Guarantor. If the builder, J G Kelly Limited, got into difficulty during the building works, the Department would have a claim for breach of contract against J G Kelly. In the case of default by J G Kelly, the Department had a potential claim against Jackson Holdings Limited.

5.2.4 Therefore, whilst the Department would have a legal claim, such litigation could be costly and there would be no cast-iron guarantee of success in pursuance of this claim.

5.2.5 We conclude that the Agreement contained sufficient safeguards to ensure that the Department's land would revert to the Department in the event of the development not being completed but any built or part built house and the remainder of the Department's land should have access over any ransom strip. Such a deal may not always be achievable but we think that it is important for those negotiating on behalf of the Government at least to make every reasonable attempt to achieve it. Accordingly we make the following recommendation:

RECOMMENDATION 3

That in negotiating any future land deals, the Government should make every effort to mitigate as far as possible any risk of losing access to part-developed land.

5.3 Phasing

5.3.1 The development initiative underpinned by the Agreement was to have been a mixed development comprising private sector housing, first time buyer housing and local authority housing. A central feature of the concerns expressed by the constituency MHK and Malew Parish Commissioners was the order in which these three elements were to be constructed. As public representatives they naturally place great importance on the social housing elements of the package and they wished to know what was to prevent the Group from completing the private sector properties and failing to complete the rest.

5.3.2 In terms of the Agreement, the primary safeguards were in terms of the whole initiative being cast as one deal - hence any failure to complete the whole package could amount to a potential breach of contract. Another possible safeguard identified by the constituency MHK would have been if the Group had been required under the Agreement to complete the infrastructure and the social housing before even starting on the private sector housing.

5.3.3 We were advised by the Attorney General's Chambers that:

> *"the actual phasing of the Development, to ensure that all the properties were built on the Department's land with due despatch, could have been dealt with in the planning conditions and/or by way of Section 13 with a Section 13 Agreement of the Town and Country Planning Act 1999 by reference to a phasing plan, and the infrastructure and access roads would have had to be connected for the whole development, not just the private sector housing."* [10]

5.3.4 It is of some reassurance to note that the planning legislation allows for a "phasing plan".

5.3.5 It is possible that a developer, if faced with a proposal such as this by the Department to complete the infrastructure and the social housing first, might identify certain disadvantages with it. For example, it may have implications for practicalities of accessing different parts of the site at different times, or for the developer's cashflow. We acknowledge that such matters would need to be taken into consideration. Nevertheless, we consider that many of the concerns of the neighbouring communities and their political representatives might have been assuaged by a "phasing plan" which saw the first time buyers and local authority housing completed first.

5.3.6 We consider that in this case the phasing plan should not have been left to a later stage but should have been part of the negotiations before the Agreement was signed. Accordingly we make the following recommendation:

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[10] Statement by Mrs Felicity Kniveton dated 2nd September 2009, paragraph 3 of no. 3 *(reference Appendix 1)*

RECOMMENDATION 4

That in negotiating the construction of mixed housing developments, the Government should consider ensuring that the social housing be developed concurrently with the private element of the development proposals and that all roads and sewers are in place before the building of any houses commences.

5.4. Formal Rescission following failure

5.4.1 When we began our investigation, in July 2008, the planning application associated with the Agreement was the subject of petition of doleance proceedings but in December 2008 those proceedings were concluded. By early 2009 it therefore appeared that any further consideration of the Agreement was a purely academic exercise. However, this was not the case.

5.4.2 Our independent legal advisor advised that, although the Agreement did not come into force unless planning permission was obtained, it did not rely on the success of the particular planning application which had now fallen. The Agreement may have looked dead, but there remained a possibility that it could be brought back to life by the success of a fresh planning application. This advice was in contrast to the view given by Mrs Felicity Kniveton of the Attorney General's Chambers, who said to us in her oral evidence: *"either party can rescind the agreement and in effect it is frustrated in any event because it is in respect of that particular development"*. [11]

5.4.3 We consider that, given the serious concerns identified by this investigation, it is important that this Agreement should not be allowed to form the basis of development under any fresh planning application. Rather, any new development should be subject to a new Agreement, and this should be put beyond doubt. The Department wrote to Jackson Homes (Southern) Limited on 29th July 2009 to that effect but we do not know if the other parties have accepted that the Agreement is rescinded.

5.4.4 On a related matter, there should have been an equal balance of opportunity for all parties to such agreements to have the power of rescission, and we do not think that the Agreement with which we are concerned was so balanced. Accordingly we make the following recommendation:

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[11] Oral evidence on 1st September 2009, page 21 TCF *(reference Appendix 7)*

RECOMMENDATION 5

That contracts entered into by the Government should be drafted to ensure equal opportunities for all parties to rescind with the objective of achieving a fair deal for the taxpayer and all parties thereto and that, if it has not already done so, the Government should formally rescind the Agreement referred to in this report.

PART 6:

WHETHER, AND IF SO TO WHAT EXTENT, TYNWALD WAS MISLED

6.1.1 The Tynwald motions of November 2005 and October 2006 both authorised the Department to enter into land transactions with J G Kelly Limited. They made no reference to the other companies forming part of the Group. It was not until after the October 2006 motion had been agreed by Tynwald that the Attorney General's Chambers advised the Department as to the structure of the Group. The company within the Group which held land, and to which it was appropriate to transfer land, was not J G Kelly Limited but Jackson Homes (Southern) Limited.

6.1.2 The discrepancy between the terms of the Tynwald motion and the terms of the Agreement as ultimately signed was put to the Minister for Local Government and the Environment by way of an oral question in the House of Keys on 24th June 2008 by the Hon Member for Malew and Santon, Mr Cregeen MHK asked the Minister, *"Are you aware of any agreement between your Government and Jackson Homes (Southern) Ltd?"*

The Minister for Local Government and the Environment (Mr Shimmin) replied (viz. *Hansard* report):

"I can confirm that an agreement exists between the Department of Local Government and the Environment, Jackson Holdings Ltd, J G Kelly Ltd and Jackson Homes (Southern) Ltd for the development of housing in Crossag Farm, Ballasalla, subject to planning approval being granted.

I am not aware, Mr Speaker, of any other agreement involving Jackson Homes (Southern) Ltd and the Manx Government."

Mr Cregeen asked, *"Is the Minister happy with that situation regarding Crossag Farm, as the Tynwald motion specifically mentioned J G Kelly and not Jackson Homes Ltd?"*

The Minister responded, *"Yes, Mr Speaker, I can understand the Hon. Member wishing to represent some of the views of his constituent parties in the area. However, the publicly identifiable company, which is J G Kelly Ltd, is indeed the public recognised face of the deal that is being attempted to be worked in with my Department.*

Certainly there is a significantly complex set of legal mechanisms within the agreement which would have actually led to some more confusion rather than clarification, so this has been verified by the Attorney General's Chambers and that the contract is in order, sir." [12]

[12] House of Keys on 24th June 2008, page 636 K125 *(reference Appendix 9)*

6.1.3 The position adopted by the Minister is, in other words, that the distinction between J G Kelly Limited and Jackson Homes (Southern) Limited does not matter. He is arguing that because J G Kelly Limited is "the publicly identifiable company", it was appropriate to construe the Tynwald motion as permitting an Agreement with J G Kelly and other companies within the Group.

6.1.4 We discussed this question with Mrs Felicity Kniveton of the Attorney General's Chambers. She explained that she was not instructed until after the Tynwald motion of 2006; that when she discovered that it would be more appropriate to contract with Jackson Homes (Southern) Limited she had notified the Department; and that she had been told by the Department that "*it had been sorted out*". We asked her if the distinction did not matter. The following was her response:

"***The Acting Chairman:*** *So, did it not matter that these other two companies who would be involved in this and had the guarantees, that Tynwald did not know about this then?*

Mrs Kniveton: *I would not have said it did not matter, I would have said it was up to the Department to raise it as far as it thought it should do with Tynwald which is what I left them to do. That is not one of my functions. My function is to provide as much legal security as possible, which is what I did.*" [13]

6.1.5 We put the same issue to Mr Richard Senior. In his oral evidence to us he accepted responsibility for the decision not to take the issue back to Tynwald, saying:

"*I could turn round and say also it was the Chief Executive and the Minister signed off a document on 22nd December, but realistically I would accept responsibility for saying in, I think it was September or October, that the Heads of Terms had got a different company on them, then really was there a way of binding those companies together with a parent company guarantee.*" [14]

6.1.6 Mr Senior explained to us that in all the negotiations the Department had held over three years, all the letters had been under the name of J G Kelly Limited; that at the time of the Members' briefing in 2006 he had been under the impression that the proper contracting party was J G Kelly, although this had not been the main focus of his attention; and that when the company structure became clear later on, he thought that the terms of the Tynwald motion were met because the three companies were so closely linked:

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[13] Oral evidence on 1st September 2009, page 20 TCF *(reference Appendix 10)*
[14] Oral evidence on 1st September 2009, page 25 TCF *(reference Appendix 11)*

*"**The Acting Chairman:** ... It was said that J G Kelly owned the access to the site at that time. That turned out not to be correct, didn't it?*

***Mr Senior:** That is absolutely true. I would not for a moment dispute that. All my negotiations were with J G Kelly. I had numerous reports to the Department and as you know, Tynwald briefing papers, but it is when I got the Heads of Terms that it became clear that it was Jackson Homes who actually owned the land. I think there were two issues then: how important is that, and can you resolve it by a parent company guarantee? My view in this case was that by tying all the companies together and having Jackson Holdings being the guarantor on this, it was actually quite a strong agreement with very few risks in terms of the company.*

***The Acting Chairman:** And the fact that Tynwald did not know that you would have felt was not important then, given that they approved this deal with Kelly's?*

***Mr Senior:** By binding the three parties together in one agreement... My view was that that tied J G Kelly Ltd in with the holding company and the owner of the land. They all became the same company in terms of the development agreement. In retrospect, yes we could have gone back to Tynwald. I think my view is it probably would not have made any difference."* [15]

6.1.7 Looking back at the debates in November 2005 and October 2006, it is easy to see why Mr Senior might have thought the precise company structure of the contracting parties "would not have made any difference". The majority of the debate on both occasions focused on planning aspects of the proposed development - matters such as the density of the proposed housing, the education proposals, the provision of playgrounds etc. There was no indication that Tynwald Members were concerned about the ability of the other contracting parties to deliver their side of the deal.

6.1.8 That said, we can now see with hindsight that what may have looked like a mere technicality - whether the Agreement was to be with J G Kelly Limited or with a group of companies of which J G Kelly Limited was only one member - does matter. It matters in principle because Tynwald should be accurately informed about what Government Departments are proposing to do and how they are proposing to spend public money. And it matters in practice because even an apparently small discrepancy, such as that between the terms of the Tynwald motions and the eventual terms of the Agreement, can have a detrimental impact on levels of trust between communities (in this case, Malew Parish Commissioners) and central Government.

[15] Oral evidence on 1st September 2009, page 25 TCF *(reference Appendix 11)*

6.1.9 We are of the opinion that Tynwald was misled in that the motion stated:-

"That Tynwald approves the Department of Local Government and the Environment –

(1) *Entering into a land transaction and development agreement at Crossag Farm, Ballasalla with J G Kelly Limited.*

(2) *Transferring approximately 21.27 acres of Government land at Crossag Farm zoned for residential development and paying a capital sum of £3.0 million to J G Kelly Limited in return for the construction of 65 public sector houses and 102 first-time buyer houses and apartments, to be sold under the House Purchase Assistance Scheme 2004.*

(3) *Conveying 0.46 acres of land to Malew Football Club and paying £20,000 for easements to enable further expansion of the football pitches.*

(4) *All subject to contract and obtaining relevant planning permissions."*

Tynwald was led to believe that the Agreement was between DoLGE and J G Kelly Limited. This proved not to be the case as the Attorney General's office discovered that the Agreement should have been between DoLGE and a group of companies as J G Kelly Limited did not own the land. It is the view of this Committee that Members of Tynwald should have been advised that J G Kelly Limited was not capable of contracting with DoLGE as the land was owned by Jackson Homes (Southern) Limited.

Any change to the contracting parties should have been notified to Tynwald. Legal advice should have been sought prior to the motion being delivered to Tynwald.

(Ref: Recommendation 2)

PART 7:

HOW GOVERNMENT DEPARTMENTS AND OFFICES WORKED TOGETHER ON THE AGREEMENT

7.1 The Departments involved

7.1.1 In the course of our investigation we have received evidence from three main areas within Government: the Department of Local Government and the Environment, HM Attorney General's Chambers, and the Treasury. All three had a role to play in the preparation of the Agreement. A key question in our investigation was who was responsible for finding out about the Group with whom the Agreement was signed, and what guidance was in place to help them do this. The response of the three different parts of Government illustrates a distinct lack of co-ordination and co-operation.

7.2 The Theory

7.2.1 The Department told us that they relied on the Treasury for some things and on the Attorney General's Chambers for others. The Chief Executive of the Department wrote:

"The Department consulted the Treasury prior to the Agreement being concluded in order to verify the companies' credentials and financial standing.

[The Attorney General's] Chambers also carried out Company Searches to verify incorporation, registered office, Directors, Company Secretary, shareholders, charges, and to check there was no appointment of a receiver/liquidator. If a shareholder was a Company, Chambers would have carried out a search for that as well, and did in this case (J G Kelly Limited, Jackson Homes (Southern) Limited & Jackson Holdings Limited)." [16]

7.2.2 On the face of it, this arrangement looks to be in order. The Department was in the lead on the negotiations and was to be the ultimate signatory to the Agreement on behalf of Government. The Department recognised that it was a significant Agreement and they therefore sought the expert advice where appropriate of colleagues within Government: on financial matters, from Treasury, and on legal matters, from the Attorney General's Chambers.

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[16] Letter from the Department of Local Government and the Environment dated 13th February 2009 *(reference Appendix 5)*

7.3 The Reality

7.3.1 Unfortunately this orderly impression is at odds with the statement given by way of letters submitted to us by the Treasury:

"Treasury have reviewed the background to the approval of the Crossag Farm development, and have no views or comments that they would like to make to the Committee on this. The details of the subsequent contractual agreement between J G Kelly Limited and the Department of Local Government and the Environment were not shared with Treasury prior to the appointment of the Select Committee." [17]

7.3.2 The Attorney General, similarly, appeared keen to establish the limitations of his Chambers' input when he wrote:

"Chambers does not carry out or become involved in business/financial checks on behalf of a Department, these are for [the] Department to ensure and verify, although Chambers would carry out company searches to check incorporation details, registered office, company officials ie; directors, company secretary and shareholders.

This procedure did not differ in respect of Crossag Farm. Chambers would not expect, and would not have the expertise, to check the financial credibility and accounts of a developer and it is within the Department's remit to carry out "know your customer" checks, obtain business and financial references and to have them verified, before any documents are completed." [18]

7.3.3 In her oral evidence, Mrs Kniveton from the Attorney General's Chambers expanded on this point:

"...the Department should pursue the "know-your-customer" [See letter from the Department of Local Government and the Environment dated 13th February 2009 *(reference Appendix 5)*] *provisions, the due diligence checks which are actually set out on the Government website and that is their responsibility and financial references should be pursued by the Department with the help of Treasury because they obviously have experts to display those... We do not have the expertise in respect of financial checks or the manpower to do so. We do company checks to make sure that the company is solvent and we check the officials and the registered office, but that is as far as it goes."* [19]

7.3.4 We examined the "know-your-customer" provisions referred to in 7.3.3 above and concluded that they are not sufficient for their intended purpose.

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[17] Letter from the Treasury dated 18th September 2008 *(reference Appendix 12)*

[18] Letter from HM Attorney General dated 20th January 2009 *(reference Appendix 13)*

[19] Oral evidence on 1st September 2009, page 21 TCF *(reference Appendix 7)* and "know your customer" Guidance *(reference Appendix 5)*

7.3.5 We also discussed the issue of checks with Mr Richard Senior, formerly of the Department:

> ***Mr Cregeen:*** *... surely you should have carried out the checks on each of the companies on their balance sheets and the directors of that company as well, because that is the understanding that we were given, that it should have been carried out on each individual.*
>
> ***Mr Senior:*** *It may be quite difficult for the Department to actually carry out checks because quite often it is a legal and a Treasury sort of...*
>
> ***Mr Cregeen:*** *We are led to believe that it is actually up to the Department to carry out these checks.*
>
> ***Mr Senior:*** *I think there is potential for passing things around from one Department to another, saying, 'Well, we've said these should be carried out,' but how do you carry them out? If you are looking at the Companies Register and somebody's balance sheet, it is very much a Treasury sort of function to do that. Certainly if, out of this Committee you feel these things should be done, I think it will be quite useful to pick the best Department to carry out these checks.*
>
> ***Mr Cregeen:*** *Because we are getting this thing that everybody thought somebody else was going to do the checks on it.* [20]

7.3.6 On the basis of discussions such as these we consider that there was a serious lack of co-ordination between different parts of Government responsible for putting the deal together and, in particular, for assessing the risk it entailed.

7.4 How the situation might be improved

7.4.1 A number of suggestions were made or occurred to us during the course of our investigation as to how to improve the capability of Government - across the board - to understand who they were dealing with. For example, Mr Carl Hawker from the Treasury commented that the existing know-your-customer requirements were more concerned with individuals and that there might be merit in introducing additional guidance for the benefit of officers dealing with companies.[21] Mrs Felicity Kniveton from the Attorney General's Chambers suggested that *"it would be a very good idea for Treasury to have maybe a risk assessor who passes large transactions and states that they are satisfied that there is enough security to be provided"*.[22]

7.4.2 At the same time we acknowledge the importance of Mr Hawker's concluding comments that:

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[20] Oral evidence on 1st September 2009, page 26 TCF *(reference Appendix 14)*

[21] Oral evidence on 25th June 2009, pages 6–7 TCF*(reference Appendix 15)*

[22] Oral evidence on 1st September 2009, page 23 TCF*(reference Appendix 17)*

"there is a balance to be struck, obviously, between checking significant transactions and significant risks and allowing Departments to get on with the job of actually doing the job and not having to go through long processes of checking this, that and the other... we might have to make sure that the changes we make to areas such as the financial regulations to deal with risks are appropriate in relation to the size of the risk. So, they do not just become a blanket – you cannot do anything without coming to Treasury, or to the Attorney General's or wherever."

7.4.3 It is essential that any initiative to improve Government's performance in this respect looks at the position across the whole of Government and addresses not only the types of checks which need to be done, but also the question of who is going to be required to do them and at what stage in the development of an initiative. Accordingly we make the following recommendation:

RECOMMENDATION 6

That the Council of Ministers review, in the light of this report, the procedures and guidance which are in place across the whole of Government for assessing the identity and financial status of individuals and companies with whom contractual development proposals are being contemplated, and report on this matter to Tynwald with recommendations by no later than the July 2011 sitting of Tynwald.

PART 8:

SUMMARY OF FINDINGS AND RECOMMENDATIONS

8.1 The negotiation of this Agreement was extremely complex and required the highest levels of attention to detail within all relevant parts of Government.

(Ref: 4.2.5.)

8.2 We regard the failure of the Department to take up the option to purchase a 40 ft wide strip of land (a ransom strip) in a competent manner as **worse than unfortunate**.

(Ref: 4.3.2)

RECOMMENDATION 1

That in its long-term planning for all future land deals the Government should do everything in its power to avoid reliance on any "ransom strip" held by another party.

(Ref: Section 4.3)

We conclude that, while the Department acted in good faith in the preparation of the Tynwald motions in November 2005 and October 2006, the Department should have ensured that Tynwald was informed about the precise identity of the parties to the Agreement at the earliest opportunity and in particular before the Agreement was signed. In connection with this conclusion we make the following recommendation

(Ref: 4.5.7)

RECOMMENDATION 2

That where Tynwald authorisation is sought for a Department entering into a contract, the Department seeking such authorisation should ensure that Tynwald is accurately informed as to the identity of the other party or parties to the proposed contract. Any error in the terms of the motion for authorisation should be brought back to the attention of Tynwald Members as soon as possible.

(Ref: Section 4.5)

8.3 Whilst the Department would have a legal claim, litigation could be costly and there would be no cast-iron guarantee of success in pursuance of this claim. The safeguards put in place within the Agreement did not extend to giving the Government a cast-iron guarantee against the worst case scenario that the development was left incomplete and a claim against the Group could not be enforced.

(Ref: 5.2.4)

8.4 We conclude that the Agreement contained sufficient safeguards to ensure that the Department's land would revert to the Department at cost in the event of the development not being completed but any built or part built house and the remainder of the Department's land should have access over any ransom strip. Such a deal may not always be achievable but we think that it is important for those negotiating on behalf of the Government at least to make every reasonable attempt to achieve it.

(Ref: 5.2.5)

RECOMMENDATION 3

That in negotiating any future land deals, the Government should make every effort to mitigate as far as possible any risk of losing access to part-developed land.

(Ref: Section 5.2)

8.5 It is possible that a developer, if faced with a proposal such as this by the Department to complete the infrastructure and the social housing first, might identify certain disadvantages with it. For example, it may have implications for practicalities of accessing different parts of the site at different times, or for the developer's cashflow. We acknowledge that such matters would need to be taken into consideration. Nevertheless, we consider that many of the concerns of the neighbouring communities and their political representatives might have been assuaged by a "phasing plan" which saw the first time buyers' and local authority housing completed first.

(Ref: 5.3.5)

RECOMMENDATION 4

That in negotiating the construction of mixed housing developments, the Government should consider ensuring that the social housing be developed concurrently with the private element of the development proposals and that all roads and sewers are in place before the building of any houses commences.

(Ref: Section 5.3)

8.6 We consider that, given the serious concerns identified by this investigation, it is important that this Agreement should not be allowed to form the basis of development under any fresh planning application. Rather, any new development should be subject to a new Agreement, and this should be put beyond doubt. The Department wrote to Jackson Homes (Southern) Limited on 29th July 2009 to that effect but we do not know if the other parties have accepted that the Agreement is rescinded.

(Ref: 5.4.3)

RECOMMENDATION 5

That contracts entered into by the Government should be drafted to ensure equal opportunities for all parties to rescind with the objective of achieving a fair deal for the taxpayer and all parties thereto and that, if it has not already done so, the Government should formally rescind the Agreement referred to in this report.

(Ref: Section 5.4)

8.7 While the Department have acted in good faith in the preparation of the Tynwald motions in November 2005 and October 2006, the Department should have ensured that Tynwald was informed about the precise identity of the parties to the Agreement before the Agreement was signed.

(See Section 4.5.7)

8.8 On the basis of discussions such as these we consider that there was a serious lack of co-ordination between different parts of Government responsible for putting the deal together and, in particular, for assessing the risk it entailed.

(Ref: Section 7.3.6)

RECOMMENDATION 6

That the Council of Ministers review, in the light of this report, the procedures and guidance which are in place across the whole of Government for assessing the identity and financial status of individuals and companies with whom contractual development proposals are being contemplated, and report on this matter to Tynwald with recommendations by no later than the July 2011 sitting of Tynwald.

(Ref: Section 7.4)

Mrs B J Cannell MHK (Caairliagh)

Mr D A Callister MLC

Mr G D Cregeen MHK

Appendix 1

Supplementary statement by Mrs Felicity Kniveton dated 2nd September 2009

Footnote 1 *Page 10* refers
Footnote 7 *Page 14* refers
Footnote 10 (paragraph 3 of no. 3) *Page 19* refers

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STATEMENT

DEPARTMENT OF LOCAL GOVERNMENT AND THE ENVIRONMENT ("DEPARTMENT") (1)
JACKSON HOMES (SOUTHERN) LIMITED ("PURCHASER") (2)
JACKSON HOLDINGS LIMITED ("GUARANTOR") (3) and
J G KELLY LIMITED ("BUILDER") (4)

DEVELOPMENT AGREEMENT ("Agreement")
22 December 2006
Crossag Farm, Ballasalla, Malew

I was instructed by the Department to act on it's behalf following it's negociations with the proposed developer,land owners,Department of Transport and service providers to draft a Development Agreement with ancillary documents to progress the proposed development of residential units including open market houses, FTB houses and public sector houses together with roads and other infrastructure within the negociated parameters.
An essential element of the development was indentified as the need for co-operation and the combined efforts of the parties to progress the matter, each party holding required facets which on their own,or without any of the other parties,would mean that the proposed development could not proceed.

A business plan had been prepared by DOLGE in respect of the financial arrangements and,as far as I was aware,this had been submitted to Treasury.

Security For DOLGE

1. The above three Companies were joined into the Agreement as the Property Holding Company ("the Purchaser"), the Builder (J G Kelly Limited) and the Guarantor parent company (Jackson Holdings Limited).

The Guarantor under Clause 11 covenanted and agreed that the Builder and Purchaser would undertake the Development of the site under the terms of the Agreement, complete the conveyances of the first time buyers' houses and perform the Purchaser's covenants and conditions under the Agreement and the conveyance.

Further, in default of such performance or observance by the Purchaser and/or the Builder of their obligations the Guarantor covenanted to use all reasonable endeavours to procure the completion of the Development in accordance with the Agreement and pay and make good to the Department on demand all losses damages costs and expenses (including legal costs) whatsoever of the Department arising from or incurred as a result of default.

2. Further security was obtained by way of a covenant to enter into a mortgage debenture on completion of the Conveyance of the Department's Land (edged red on Plan A) to the Purchaser as a first charge on the Department's Charged Land, as defined in the Agreement and coloured turquoise on Plan A attached thereto. The whole of the Department's Land was not included in the mortgage debenture as the company, as part of the overall negotiations, required to raise finances from banking sources and charging the whole of the Department's Land would not allow for the same also, given the Developer's financial input into the building of the houses, the infrastructure and acquisition of the

Ransom Strip (coloured yellow on Plan A) under a conditional contract for purchase by the Purchaser.
In this respect earley negociations at DOLGEs meeting on 18th October 2005 with the DOT,Treasury,Heritage Homes Ltd,JG Kelly Ltd and the Architects showed that without a co-ordinated and co-operative approach by the land owners,developer and other interested parties the land could not be developed in this way.

The Conveyance of the Department's Land to the Purchaser was for a consideration of 25p and the Purchaser carrying out the development described in the Agreement Part 3 obligations at its expense which included:-

(i) development of the Site with all necessary roads, sewers, mains, services, street lighting, footpaths and landscaping in accordance with the Building documents which included such roads, sewers, mains, services and footpaths as were necessary to support the proposed development of the Site as a whole development

(ii) the Purchaser contributing (subject to Planning Approval) the sum of £25,000 to be paid to the Trustees of Malew Football Club as a contribution towards the acquisition by the Department of certain freehold land area 12 coloured yellow on Plan B from the Club to enable the Department to provide the necessary access rights and services in respect of the Development

(iii) the installation cost of the Clagh Vane Sewers with a contribution to the cost of the same of £100,000 from the Department. The Clagh Vane Sewers being installation of a new storm water and foul drains for the purposes of taking storm water and foul sewage from the Site

(iv) the Attenuation Works to be carried out at the Purchaser's sole cost and expense, the Attenuation Works being works required to construct the storm water attenuation facility to support part of the proposed development of the Site and connecting to the sewers, drains and watercourses running through the Site in accordance with a design prepared in accordance with the the Department of Transport design requirements and as shown within area 8 hatched blue on Plan B and in the Building Documents

(v) the construction within Area X and across the Ransom Strip up to and abutting the Department's Land construction at the sole cost and expense of an extension of the roadway and footpath presently constructed within Area X to be provide an unrestricted right of way and access to and from the Department's Land to the Crossag high road as shown cross-hatched pink on Plan A

(vi) a drainage bond which the Purchaser would enter into with the Department of Transport's Drainage Division to enable the same to be adopted by the Department of Transport in due course.

(vii) the construction of roads and footpaths in accordance with Manx Road II to be carried out by the Purchaser after completion of sale of the Department's Land to the Purchaser to be completed prior to the occupation of any dwelling house being served by such road and footpaths

(viii) the Purchaser to enter into a road bond with the Department of Transport, Highways Division with regard to the phasing of the Development to enable such roads to be adopted by the Department of Transport, Highways Division, in due course

(ix) the Purchaser to be responsible for installation costs of the Crossag Water Course Improvements being the improvement and up-grading of the existing water course receiving storm water from the Site as indicated by Area 5 on Plan B and in the Building Documents

(x) the Purchaser to be responsible for the installation costs of the Culverts Remedial Works and to use all reasonable endeavours to obtain the necessary consent of Jonathan Dean Developments Limited and Malew Commissioners to complete such works presently under the ownership of Jonathan Dean Developments Limited and/or the Commissioners. The Culverts Remedial Works being the improvement and up-grading of the existing culverts receiving storm water from the Site indicated by Area 6 hatched orange on Plan B and as set out in the Building Documents

(xi) the Purchaser to be solely responsible for the installation costs of the Douglas Road Works being the proposed formation of a junction installation of traffic lights on Douglas Road indicated within shaded Area 1 on Plan B to enable the Department of Transport to provide or grant all necessary rights and services to implement the terms of the Development Agreement as set out in the Building Documents

(xii) the Purchaser to be solely responsible for the installation costs of the Purchaser's Works in respect of the Crossag Road Works being the installation of traffic calming measures to Crossag Road indicated within shaded Areas 2 hatched purple on Plan B and to enable the Department of Transport to provide or grant all necessary rights and services to implement the terms of the Development Agreement more particularly detailed in the Building Documents

(xiii) the Purchaser to be solely responsible for the installation costs of the Sewer Diversion being diversion of the existing foul sewer within shaded Area 4 hatched yellow on Plan B and all necessary works in that regard details of which are contained in the Building Document

(xiv) the purchase of the Ransom Strip under a conditional contract with the owner.

Accordingly, the Conveyance was not simply for 25p, but was in consideration of substantial infrastructure work to be carried out by the Developer for the whole of the Development, funding of the initial construction of the houses before sale and acquisition of the essential Ransom Strip

3 The Second Schedule to the Agreement regulated the actual Development and monitoring thereof. Specifically paragraph 12 of the Second Schedule allowed for the Department to serve a Defects Notice if felt necessary and require Remedial Measures if the Development was wholly or substantially suspended or the Builder had not proceeded to regularly and diligently proceed with the Development . It also provided for termination should the Purchaser have a petition presented for its winding-up, entered into liquidation whether compulsory or voluntary, had a receiver appointed over all or any of its assets, or entered into composition with its creditors either before completion of the sale of the Department's Land to the Purchaser in which case the Department could rescind the Agreement or, if after completion of the sale by the Department to the Purchaser of the Department's Land, but before completion of the Development then paragraph 12. 6 would take effect.

Paragraph 12.6 provided for the Department to have an option to purchase back the Department's Charged Land (other than any part already sold by the Purchaser) free from encumbrances at a purchase price equal to any buildings erected or partially erected on the Department's Charged Land.

Further, the actual phasing of the Development, to ensure that all the properties were built on the Department's Land with due despatch, could have been dealt with in the planning conditions and/or by way of Section 13 with a Section 13 Agreement of the Town & Country

Planning Act 1999 by reference to a phasing plan, and the infrastructure and access roads would have had to be connected for the whole development, not just the private sector housing.

4. Under Part 2 of the Agreement, subject to the satisfaction of the Conditions referred to below (in particular obtaining Planning Approval) and in consideration of the obligations of the Purchaser under Part 3 of the Agreement, as referred to above, and the Second Schedule thereto the Department covenanted to sell the Department's Land (edged red on Plan A attached thereto) excluding the Excluded Public Sector House Land (shown coloured green on Plan A). In return the Purchaser through its Builder to develop the site with all necessary roads, sewers, mains, services, street lighting, footpaths and landscaping in accordance with the Building Documents and subject to the sale of the first time buyers' houses (shown on Plan B attached to the Agreement) and securing the purchase of the "Ransom Strip" necessary for access pursuant to a conditional contract with the Purchaser, at no cost to the Department.

It was a specific covenant that the Department's Charged Land could not be used by the Purchaser as any security to a third party Lender and the Department's mortgage debenture would be a first charge on the Department's Charged Land.

Exclusion of the whole of the Department's Land from the charge was specifically acknowledging the funding required for the Development and infrastructure by the Purchaser requiring financial assistance to be raised by it by security on the remainder of that land, and the Purchaser's conditional contract to purchase the Ransom Strip

As I understand it, a business plan was prepared by DOLGE and submitted to Treasury which confirmed that, if the Department had required the whole of the Department's Land to be subject to a first charge, then the Purchaser would not have been able to raise the funding to carry out the Development and purchase the Ransom Strip, and that this was the best method of progressing the Development.

Company and due diligence checks

Chambers would usually carry out company searches in respect of a party contracting with a Government Department when instructed and this was done in this particular case.

The Company Search establishes the officials authorised to sign documents, registered office and that no receiver/liquidator has been appointed at the time.

The companies were Isle of Man based and well established as property owners and builders of various developments on the Island.

'Know Your Customer' and due diligence searches should be carried out by the instructing Department and in this case in conjunction with Treasury and a Department should have set procedures in accordance with Government guidance on the website. In this instance, I believe that a business plan had been submitted to Treasury with regard to the financing and parties and presumably any concern with regard to the financial viability and good standing of the companies involved would have been raised by Treasury at that time.

Chambers expects such checks to have been carried out at the time of instruction to prepare documents and it does not carry out due diligence checks as it does not have the resources or expertise in this area, the Department and Treasury having financial experts and resources to check accounts and references.

From recent checks, the companies are still operating and the pursuance of a Petition of Doleance, no doubt at a substantial cost to Jackson Homes (Southern) Limited, would seem to substantiate the company's commitment to the Development.

Conditions of the Agreement

1 The Agreement was conditional on three matters specified under Clause 3:-

1.1 the Department obtaining planning approval in respect of the proposed development of the site

1.2 the Department entering into a Department of Transport Agreement in respect of the Crossag Road DOT works

1.3 the Department entering into the Football Club Agreement in respect of land exchange, which was in fact completed

2 The definition of "Planning Approval" was the grant of planning approval by the Governor in Council which is incapable of being overturned and subject only to such conditions as may be acceptable to the parties to this Agreement in respect of the site

This would allow for the Department to insist upon conditions in respect of phasing of the Development and/or a Section 13 Agreement.

In fact the route for Planning Approval has now been exhausted with the withdrawal of the Petition of Doleance by the Purchaser.

Mrs FA Kniveton

Date: 1st September 2009

SUPPLEMENTARY STATEMENT

DEPARTMENT OF LOCAL GOVERNMENT AND THE ENVIRONMENT ("DEPARTMENT") (1)
JACKSON HOMES (SOUTHERN) LIMITED ("PURCHASER") (2)
JACKSON HOLDINGS LIMITED ("GUARANTOR") (3) and
J G KELLY LIMITED ("BUILDER") (4)

DEVELOPMENT AGREEMENT ("Agreement")
22 December 2006
Crossag Farm, Ballasalla, Malew

In response to the question with regard to Treasury approval and the Tynwald Motion, I have now checked my file,as I had not received advance notice of the questions so all of the dates and information were not to hand, and would say as follows:-

1. Although I was in fact instructed in July 2005 before the Tynwald Motion was made, at the time the title to the properties had not been investigated and it in fact only transpired after the Tynwald Motion that J G Kelly Limited did not own the land required to facilitate the development but was the building arm of the group of companies Jackson Homes (Southern) Limited being the property holding arm with the conditional contract to purchase the Ransom Strip and ownership of the crucial area of land known as Area X.

2. A letter was sent by DOLGE to J G Kelly Limited on 26th August 2005 with proposed development details which was copied to the Treasury prior to submitting the proposal formally to Treasury for consideration.

3. DOLGE confirmed to me by e-mail on 15th September 2005 that, at a Treasury Committee meeting on 14th September 2005, the Treasury Committee considered the development proposals and that the feedback from the Treasury Officers and Members was very positive, subject to approval of the Treasury Minister.

4. On the 3rd October 2005, DOLGE confirmed to me that Treasury had requested that the Department sought approval at the November 2005 Tynwald sitting to the Subject to Contract Heads of Agreement reached with Heritage Homes Limited and J G Kelly Limited for the development of the land.

5. By e-mail from DOLGE dated 9th November 2005, DOLGE confirmed to me that "the Treasury has been kept fully abreast of the negotiations with all interested parties and has approved the final wording of the Tynwald Motion". This was in respect of the disposal and development of the land at Crossag Farm.

   The Tynwald Motion was subsequently carried on the 16th November 2005.

6. On the 12th December 2005 there was a meeting between the Department, the Department of Transport and Treasury with regard to the proposed requirements to provide a road link between Crossag Farm and Abbots Way. The e-mail from DOLGE to various interested parties, including Treasury, also referred to earlier Tynwald

approval of the proposals following briefing to Treasury, COMIN and Tynwald Members.

7. Following discussions with JG Kelly Ltds Advocate,on the 15th November 2006 I sent an e-mail to DOLGE with regard to the draft Heads of Agreement and raised the issue of the Tynwald Motion referring to J G Kelly Limited when in fact it had now transpired from the Advocates that the property holding company and appropriate,essential, company in the group of companies to contract with the Department should be Jackson Homes (Southern) Limited and asked whether the Department intended to go back to Tynwald with any revised proposals.

I subsequently received an e-mail on the 29th November 2006 from DOLGE stating that the Department will have to resolve the issue with regard to the Tynwald Motion referring to J G Kelly Limited, not Jackson Homes (Southern) Limited but stated that it should not be a problem.

8 In an e-mail dated 4th December 2006 from myself to the Purchaser's advocate copied to DOLGE. I stated that the Department would need to check whether reference to Jackson Homes (Southern) Limited as the Purchaser was acceptable given the Tynwald approval in respect of J G Kelly Limited only and this was left with the Department and, in a subsequent e-mail dated 19th December 2006 from myself to the Department, I stated that the Department would have to take a view in respect of the Tynwald Consent by reference to J G Kelly Limited only rather than including Jackson Homes (Southern) Limited.
I had,subject to the above. endeavoured to cover the Department's position as far as possible,and to achieve as much security as possible, in the Agreement by referring to all of the parties by reference to their different functions, ie. Jackson Homes (Southern) Limited being the property arm of the group of companies holding the land Area X and conditional contract to purchase the Ransom Strip. J G Kelly Limited being the building arm of the company with the resources to carry out the development and Jackson Holdings Limited being the parent company to provide the guarantee,which was correct and necessary legally to achieve the development and provided the maximum possible security given the terms negociated with the companies.

I hope the above assists in clarification of the issue with regard to the contracting parties and also with regard to the involvement of Treasury and its approval of the disposal and development by reference to its approval of the Tynwald Motion and provision of information to Treasury prior to any contractual arrangement being finalised,when there was ample opportunity to raise any issues of concern.

....

Mrs F A Kniveton

Date: 2nd September 2009

Appendix 2

Written submission dated 20th August 2008 from Malew Parish Commissioners

Footnote 2 *Page 10* refers
*Footnote 8 *Page 15* refers

*Footnote 8 refers to letter from the Department of Local Government and the Environment dated 24th August 2007, included as Appendix 1 within the submission of Malew Parish Commissioners dated 20th August 2008

Malew Parish Commissioners

Main Road
Ballasalla
Isle of Man
IM9 2RQ

Clerk: Mr B.J.Powell

Telephone: (01624) 823522
Fax: (01624) 822053
Email address: malewcommissioners@manx.net

20th August 2008

Marie Lambden
Office of the Clerk of Tynwald
Legislative Buildings
Douglas
Isle of Man
IM1 3PW

Dear Marie

Re: Select Committee on Crossag Farm

Please find attached written submission of evidence for the Select Committee on behalf of Malew Parish Commissioners.

Yours sincerely

Barry Powell
Clerk

Select Committee of Tynwald on Crossag Farm

Submission of Evidence

of

MALEW PARISH COMMISSIONERS

Honourable Members of the Select Committee appointed by Tynwald Court to take and consider evidence, and to investigate the details of the contractual agreement between J G Kelly Limited and the Department of Local Government and the Environment ("the Department") and thereon to report to Tynwald. Malew Parish Commissioners make the following comments, view and information.

Detailed in Hansard volume 123 dated 16th October 2006, the then Minister for Local Government and the Environment put forward a motion:

That Tynwald approves the Department of Local Government and the Environment –

(1) Entering into a land transaction and development agreement at Crossag Farm, Ballasalla with J G Kelly Ltd;

(2) Transferring approximately 21.27 acres of Government land at Crossag Farm zoned for residential development and paying a capital sum of £3.0 million to J G Kelly Ltd in return for the construction of 65 public sector houses and 102 first-time buyer houses and apartments, to be sold under the House Purchase Assistance Scheme 2004.

(3) Conveying 0.46 acres of land to Malew Football Club and paying £20,000 for easements to enable further expansion of the football pitches.

(4) All subject to contract and obtaining relevant planning permissions.

During the debate (recorded on page 1807 of Hansard) the Minister stated that "*My Department has also worked closely with J G Kelly Ltd which now owns the proposed accesses on to the Douglas Road and across Abbot's Way*". However, it is in fact, Jackson Homes (Southern) Limited who owns the access to the site from the Douglas Road, not J G Kelly Ltd. With this in mind and to safeguard the Government and to look for guarantees that the development was in the best interests of the people of Ballasalla and the Isle of Man, the Commissioners requested a copy of the contractual agreement from the Department, prior to the resumption of the planning inquiry for application 06/02245/B, but this was not forthcoming (see appendix 1). Our subsequent request for a copy of the Agreement, even in a redacted form, has still been refused by both the Department and the Petitioners J G Kelly Limited and Jackson Homes (Southern) Limited to a Petition of Doleance against the Council of Ministers refusal of the Department's Planning Application for development of the Department's land despite the Minister for the Department assuring the Keys on 24th June 2008 that the "information" which one assumes also included the Agreement, would be made available to the Court and appropriate parties.

Notification of the decision of the Council of Ministers ("CoMin") in respect of planning application 06/02245/B was received on 12th January 2008. This notification concurred with the application in that the application for planning permission was in the sole name of the Department. CoMin's decision was to uphold the Planning Inspector's recommendation that the application be refused. (See appendix 2)

On 28th February 2008, the Commissioners received notification that a Petition of Doleance had been filed challenging the decision of CoMin by J G Kelly Limited and Jackson Homes (Southern) Limited. During the preparation of an Answer to the Petition, the Commissioners carried our company searches on the Petitioners. It was discovered that Jackson Homes (Southern) Limited appears to have an outstanding mortgage and debenture on the land that was to be developed as part of the Crossag Farm development.

The Commissioners are aware that an Agreement was executed on 22nd December 2006, the parties being the Department, Jackson Homes (Southern) Limited as the Purchaser, and Jackson Holdings Limited as the Guarantor with J G Kelly Limited defined as the Builder.

Contrary to the assertions of the Minister for the Department in a Keys Debate on the 24th June 2008, searches undertaken in respect of the land indicate that the registered title to the land remains in the name and ownership of the Department, and was last amended on 28th July 2008.

Further, the existence of the Agreement and the involvement of Jackson Homes (Southern) Limited ("Jackson Homes") impacts upon resolutions which in fact Tynwald had authorised. The 16th October 2006 Tynwald Debate makes no mention of Jackson Homes, nor does it appear that Tynwald was given an opportunity to scrutinise the involvement of Jackson Homes on that occasion.

In view of the existence of the apparently undischarged Debenture registered against Jackson Homes, one therefore has to question what safeguards are in place to protect the Government's funds and proposed expenditure bearing in mind that upon the land being transferred to Jackson Homes, the land becomes a security of the Debenture holder. In the event the Department provides J G Kelly Limited £3,000,000 to erect the 102 first time buyer properties and 65 public sector properties in accordance with the Tynwald Resolution on land in the ownership of a private entity Jackson Homes if the transfer of the Department's land takes place, such properties on the face of it, would also be held as security for the Debenture holder.

We also raise the issue as upon completion of the 65 public sector properties, will such properties be transferred back into the ownership of the Department or will such properties remain on land effectively in the ownership of a private entity which raises the question as to whether they can properly be classed as public sector housing.

We further note that Jackson Holdings, as Guarantor to the Agreement, also have a Debenture over its assets which in turn are held by a company holding the same registered address as the Guarantor.

We have considered the previous Tynwald Debates held on 15th and 16th November 2005 for a previous proposal to develop the Crossag Farm land where it was stated that in 1991 and 1999 the Department acquired two parcels of land at Crossag and Glashen Farms in Malew amounting to over 29 acres. It was noted that the land was zoned for residential development and within an area earmarked for a new school. The Department then proposed for the site to include affordable housing for sale to first time buyers, public sector housing for rent mixed with high price open market properties. It was raised during the Debate between 15th November 2005 and 2006 that access to the site was proving difficult with the Department negotiating with two developers namely Heritage Homes and J G Kelly Limited. It was raised that negotiations were predominately around access by way of ransom strips and it was noted that the land was purchased for £2.347 million in the 1990's and confirmed to be worth £10.5 million in November 2005 (page 307 of the Tynwald Debate of 15th November 2005). In view of the fact that the proposed first time buyer houses are to be sold under a Government scheme, one then has to question the amount of profits that is anticipated to be made by the Government to which payment for a ransom strip may be ordered by the Courts based upon the proposed profits to be made by the Department. Further, taking into account the 65 public sector houses, it is not envisaged that any profit would be forthcoming for the foreseeable future generated from rents imposed upon the tenants. Accordingly, one would question a significant compensation order being imposed for access over the ransom strip in the ownership of Jackson Homes. Bearing in mind the £10.5 million valuation of the land by the then Minister responsible for the Department in 2005, one has to question why the land is being transferred to Jackson Homes and at what consideration is the land being transferred for. Was it the true valuation of the land?

One must ask the question would Tynwald have approved the Contractual Agreement had they been aware of the above facts and details. (See Appendix 3).

One is therefore bound to ask whether the Agreement is in accordance with the Tynwald Resolution of 16th October 2006, was Tynwald materially misled in approving such Resolution, is the Agreement in the interest of the Government and the people of the Isle of Man and the residents of Ballasalla.

Why is a significant proportion (in the region of 40%) of the Department's land being used to erect 90 private dwellings? This would equate to compensation to the owner of the ransom strip in the region of £4 million at 2005 quoted prices and considerably more if the land is now valued at £15 million. If the agreement affords Jackson Homes or J G Kelly the land for predominately private dwellings on exchange for use of the land bordering Douglas Road, was this envisaged by Tynwald and is this a good bargain for the Manx Government?

In the event Jackson Homes sought to develop their land in their own right, they would have had to create an access to Douglas Road. The road could then be extended through a ransom strip and an appropriate monetary compensation paid, which would usually be based upon the percentage profits envisaged by the developer (i.e. the Department would make if the court considered it appropriate to grant compensation in this situation).

Further, one cannot imagine Jackson Homes being able to construct or be authorized to construct 90 large private dwellings on the land that it owns. One therefore has to seriously question the efficacy of the Agreement in light of Tynwald's Resolution and the submitted and refused planning permission that was sought by the Department.

Department of Local Government and the Environment

Rheynn Reiltys Ynnydagh as y Chymmyltaght

Appendix 1

Murray House,
Mount Havelock,
Douglas,
Isle of Man,
IM1 2SF.
email: richard.senior@dlge.gov.im
Tel: (01624) 686304
Fax: (01624) 686250
Director of Estates and Housing
Richard C. Senior F.R.I.C.S.

Please reply to Mr. R.C. Senior, Director, F.R.I.C.S

24 August 2007

Your ref: WDT/JH/M002460019
Our ref: RCS/SMK/42PROP/9407

Simcocks Advocates,
Ridgeway House,
Ridgeway Street,
Douglas,
IM99 1PY.

Dear Sirs,

Re: Crossag Farm Planning Appeal

I refer to your letter dated 22nd August which refers to the Department's refusal to supply Malew Commissioners with a copy of the legal agreement between the Department and JG Kelly. The reasons for refusal were given in the original response and in addition I make the following comments:-

1. The development agreement and its contents are not relevant to the determination of the planning merits of the Department's planning application. Indeed, your letter does not disclose any basis on which the Department or the Inspector should take a different view.

2. In those circumstances, it is difficult to envisage how the Commissioners' ability to address the planning merits is prejudiced by the non-disclosure of the agreement.

3. It is not a material consideration for the Inspector to determine whether the development will be completed and if so by whom. If planning permission is granted then:-

   (a) it will run with the land (section 12(1) TCPA 1999), not the land owner; and

   (b) will be subject to a condition that it shall be implemented before the expiry of a specified period of time.

4. If the Commissioners are concerned about the development being commenced, then they can take comfort from the fact that the Department will need to start on site within a specified time frame, if it is not to lose the benefit of the planning permission. Further, the Inspector (and the Council of Ministers) may add conditions which require the development of the site to take place in certain phases or which otherwise control its development.

5. It is difficult to understand the basis of your belief that the Department's refusal to disclose an agreement regulating the development of land comprises a breach of Article 6 ECHR. Your letter does not particularise the alleged breach of Article 6 or cite any relevant jurisprudence of the European Court of Human Rights or of the United Kingdom higher courts. In any event, the Department refutes any assertion that Article 6 is breached in circumstances where the Commissioners have been provided with all of the relevant information to present a case on the planning merits of the scheme and where the competing arguments and evidence will be evaluated by an independent and impartial Inspector.

6. As you are aware, there is no freedom of information legislation on the Island. Even if there was, the Department would probably be able to refuse to release the agreement on the grounds of commercial sensitivity.

7. As stated in the previous response the legal agreement has been the subject of scrutiny by the Attorney General and Treasury. Tynwald Members were fully briefed on the contents of the agreement prior to Tynwald approving a motion to progress with the development in accordance with the arrangements in the legal agreement, subject to planning approval.

Entirely without prejudice to the above position, the Department is prepared to state the following in regards to the legal agreement and your queries:-

a) The relationship between the Department and JG Kelly Ltd is one of landowners and developer to facilitate the development of a site comprising land owned by different parties and for a mixture of types of housing as referred to in the planning application. The developer is to carry out the development within a specified timescale, standard and with the required infrastructure.

b) There is a Guarantor company which is liable for the developers obligations (including completing the development), a Mortgage Debenture in favour of the Department secured on the Department's transferred land and a schedule in the Agreement which provides that if the developer fails to complete the development then the Department can in effect buy back it's land and complete it's development.

We trust that this now brings this particular matter to a close and look forward to receiving by the deadline of 31st August any further evidence or representations as to the planning arguments that the Inspector will address at the resumed Inquiry.

Yours faithfully,

R.C. Senior
Director

APPENDIX 2

CHIEF SECRETARY'S OFFICE

Oik yn Ard-Scrudeyr

Isle of Man Government

Reiltys Ellan Vannin

Estates and Housing

14 JAN 2008

PLANNING APPEALS OFFICE
Government Office
DOUGLAS
Isle of Man IM1 3PN
Direct Line: (01624) 685204
Fax Number: (01624) 685710
E-mail: andy.johnstone@cso.gov.im
CHIEF SECRETARY
M Williams, CPFA

11th January 2008

Our Reference : L09NEW/DF07/0001

Office Of Architecture
FAO Mr J P Halliwell
Department Of Local Government And The Environment
Murray House
Mount Havelock
Douglas

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING (DEVELOPMENT PROCEDURE) ORDER 2005

Planning Application: **06/02245/B**
Applicant: **Department Of Local Government And The Environment**
Proposal: **Construction of 257 dwellings comprising 2, 3, 4 & 5 bed properties and apartments with associated infrastructure, landscaping and new access of Douglas Road and Abbots Way, Land Between Douglas Road And Crossag Road Ballasalla Isle Of Man**

In accordance with Article 10 of the above Order, the person appointed by the Council of Ministers to consider the application has submitted his report.

After consideration the Council of Ministers has accepted the recommendations contained in that report and the application is refused.

However in accepting this recommendation Council took particular cognisance of the following conclusions within the Inspectors report:-

Para 133 - the residential use of the land would be in accord with the development plan

Para 134 - there is a need for First Time Buyers (FTB) and public sector housing within Ballasalla

Para 139 - the adverse effects could be overcome through revised proposals

Council further considers that the need for FTB and public sector housing extends to the wider strategic need as set out in the all Island Strategic Plan and the Government Strategic Plan and is a relevant consideration.

For the above reasons this refusal is therefore without prejudice to any revised proposals.

In accordance with Article 10.3(a) and (b), a copy of the appointed person's report is enclosed.

Yours faithfully,

A. Johnstone

A Johnstone
Planning Appeals Administrator

Public Documents

Company Type	IOM Company
Company Number	111686C
Company Name	JACKSON HOMES (SOUTHERN) LIMITED

Your Information

Logged off

View Cart
Empty

Purchase History
Edit User Details
Change Password
Logon

Document Groups All documents

37 documents listed

1 2

Document Type	Document Description	Date Received	Price	Purchase
SR6	RESOLUTION-MISCELLANEOUS	07/05/2008	£1.10	
AR	ANNUAL RETURN	19/10/2007	£1.10	
ARL	ANNUAL RETURN FILED LATE	04/12/2006	£1.10	
49	MEMORANDUM OF SATISFACTION	23/08/2006	£1.10	
49	MEMORANDUM OF SATISFACTION	23/08/2006	£1.10	
MR	MORTGAGE REGISTER	23/08/2006	£1.10	
9N	CHANGE IN DIRECTOR/SECRETARY	07/10/2005	£1.10	
47	PARTICULARS OF MORTGAGE	27/09/2005	£1.10	
MR	MORTGAGE REGISTER	27/09/2005	£1.10	
CRTCHG	CHARGE CERTIFICATE	27/09/2005	£1.10	
AR	ANNUAL RETURN	26/09/2005	£1.10	
47	PARTICULARS OF MORTGAGE	13/06/2005	£1.10	
47	PARTICULARS OF MORTGAGE	13/06/2005	£1.10	
CRTCHG	CHARGE CERTIFICATE	13/06/2005	£1.10	
CRTCHG	CHARGE CERTIFICATE	13/06/2005	£1.10	
MR	MORTGAGE REGISTER	13/06/2005	£1.10	
MR	MORTGAGE REGISTER	13/06/2005	£1.10	
47	PARTICULARS OF MORTGAGE	02/06/2005	£1.10	
47	PARTICULARS OF MORTGAGE	02/06/2005	£1.10	
47	PARTICULARS OF MORTGAGE	02/06/2005	£1.10	

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Logon to Purchase

Public Documents

Company Type	IOM Company
Company Number	111686C
Company Name	JACKSON HOMES (SOUTHERN) LIMITED

Your Information

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Document Groups All documents

37 documents listed

1 2

Document Type	Document Description	Date Received	Price	Purchase
CRTCHG	CHARGE CERTIFICATE	02/06/2005	£1.10	
CRTCHG	CHARGE CERTIFICATE	02/06/2005	£1.10	
CRTCHG	CHARGE CERTIFICATE	02/06/2005	£1.10	
MR	MORTGAGE REGISTER	02/06/2005	£1.10	
MR	MORTGAGE REGISTER	02/06/2005	£1.10	
MR	MORTGAGE REGISTER	02/06/2005	£1.10	
M4	CERT OF APPROVAL-NAME CHANGE	31/05/2005	£1.10	
9N	CHANGE IN DIRECTOR/SECRETARY	31/05/2005	£1.10	
SR1	RESOLUTION-NAME CHANGE	31/05/2005	£1.10	
CCN	CHANGE OF NAME CERTIFICATE	31/05/2005	£1.10	
9N	CHANGE IN DIRECTOR/SECRETARY	01/12/2004	£1.10	
9N	CHANGE IN DIRECTOR/SECRETARY	26/11/2004	£1.10	
4	CHANGE IN REGISTERED OFFICE	24/11/2004	£1.10	
MA	MEMORANDUM OF ASSOCIATION	08/09/2004	£1.10	
AA	ARTICLES OF ASSOCIATION	08/09/2004	£1.10	
1	DIRECTORS, SECRETARY,REG. OFF.	08/09/2004	£1.10	
INC	CERTIFICATE OF INCORPORATION	07/09/2004	£1.10	

1 2

Logon to Purchase

REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of Jackson Homes (Southern) Limited - 111686c

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge £	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	Particulars relating to the Issues of Debenture of a series: (8) Total Amount secured by a series of Debentures	(9) Date and Amounts of each issue of the series: Date	(9) Amount	(10) Dates of the Resolutions authorising the issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount	(15) Amount or Rate per cent of the Commission Allowance or Discount	(16) Receiver or Manager: Name and Date of Appointment	(16) Date of ceasing to act
02/06/2005	5	01/06/2005		see below	see below	HSBC BANK PLC											
		Deed of				of HSBC House											
		Conditional				Ridgeway Street											
		Bond and Security				Douglas											
						Isle of Man											

Amount secured by the mortgage or charge

(i) all present and/or future indebtedness of the Company to the Bank (in whatever currency denominated) on any current and/or other account with interest and bank charges whether incurred solely severally or jointly and whether as Principal or Surety;
(ii) all other liabilities whatsoever of the Company to the Bank present future actual and/or contingent and whether incurred solely severally or jointly and whether as Principal or Surety;
(iii) all costs charges and expenses howsoever incurred by the Bank in relation to this Mortgage and such indebtedness and/or liabilities on a full indemnity basis and for the payment of interest on the foregoing day by day demand until full discharge such interest to be chargeable at the rate of interest payable or deemed to be payable by the Company (whether before or after judgement) as calculated and compounded in accordance with the practice of the Bank from time to time and shall continue to accrue and be due and owing after any judgement bankruptcy liquidation arrangement or composition with creditors until such timed as all moneys herby secured shall have been paid in full and as if no such event had taken place but which interest shall not exceed the rate legally payable. And if at the time when the said account current shall be stopped by the death of the Company or by notice or otherwise a balance thereon shall be owing to the Bank the company with forthwith pay such balance with interest computed from time to time when the same shall be ascertained. The costs and expenses referred to herein shall include (for avoidance of doubt) all amounts the Bank may from time to time require to compensate it for its internal management and administrative costs and expenses incurred in connection with the enforcement of this Mortgage and recovery of the liabilities secured by it. A certificate signed by an offer of the Bank as to the amount of such costs and expenses incurred by the Bank from time to time shall for all purposes be conclusive evidence against and binding upon the Company.

Short particulars of the property mortgaged or charged

ALL and SINGULAR that land lying to the East of Crossack Road in the Village of Ballasalla and Parish of Malew to which the Company became entitled by Deed of Conveyance from Jonathan Dean Developments Limited dated the 1st day of June 2005 and for identification purposes being represented by the portion delineated and edged red on the plan annexed to a Deed of Conveyance dated the 14th day of December 2001 from the said Jonathan Dean Developments Limited to Calderon Consultants Limited

and

by way of a floating security all moveable plant machinery implements utensils furniture and equipment now and from time to time placed on or used in or about the Mortgaged Property with the discharge on demand of all moneys costs and interest as aforesaid and the expression "the Mortgaged Property" shall be construed accordingly.

REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of Jackson Homes (Southern) Limited - 111686c

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge £	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	Particulars relating to the Issues of Debenture of a series: (8) Total Amount secured by a series of Debentures	(9) Date and Amounts of each issue of the series: Date	(9) Amount	(10) Dates of the Resolutions authorising the issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount	(15) Amount or Rate per cent of the Commission Allowance or Discount	(16) Receiver or Manager: Name and Date of Appointment	(16) Date of ceasing to act
02/06/2005	10	01/06/2005		see below	see below	HSBC BANK PLC											
		Deed of				of HSBC House											
		Conditional				Ridgeway Street											
		Bond and Security				Douglas											
						Isle of Man											

Amount secured by the mortgage or charge

(i) all present and/or future indebtedness of the Company to the Bank (in whatever currency denominated) on any current and/or other account with interest and bank charges whether incurred solely severally or jointly and whether as Principal or Surety;
(ii) all other liabilities whatsoever of the Company to the Bank present future actual and/or contingent and whether incurred solely severally or jointly and whether as Principal or Surety;
(iii) all costs charges and expenses howsoever incurred by the Bank in relation to this Mortgage and such indebtedness and/or liabilities on a full indemnity basis and for the payment of interest on the foregoing day by day demand until full discharge such interest to be chargeable at the rate of interest payable or deemed to be payable by the Company (whether before or after judgement) as calculated and compounded in accordance with the practice of the Bank from time to time and shall continue to accrue and be due and owing after any judgement bankruptcy liquidation arrangement or composition with creditors until such timed as all moneys herby secured shall have been paid in full and as if no such event had taken place but which interest shall not exceed the rate legally payable. And if at the time when the said account current shall be stopped by the death of the Company or by notice or otherwise a balance thereon shall be owing to the Bank the company with forthwith pay such balance with interest computed from time to time when the same shall be ascertained. The costs and expenses referred to herein shall include (for avoidance of doubt) all amounts the Bank may from time to time require to compensate it for its internal management and administrative costs and expenses incurred in connection with the enforcement of this Mortgage and recovery of the liabilities secured by it. A certificate signed by an offer of the Bank as to the amount of such costs and expenses incurred by the Bank from time to time shall for all purposes be conclusive evidence against and binding upon the Company.

Short particulars of the property mortgaged or charged

ALL and SINGULAR a certain parcel of land part of the Estate of Whitestone situate abutting on the North-West side of the main highroad leading from Douglas to Ballasalla in the Parish of Malew and being represented on the plan annexed to a Deed of Conveyance from Arundel Holdings Limited to Price Bros. (Rode Heath) Limited date the 15th day of October 1975 by the smaller of the two portions delineated and edged red and to which parcel of land the Company became entitled by a Deed of Conveyance bearing date the 1st day of June 2005 from Derek John Ayres...

and

by way of a floating security all moveable plant machinery implements utensils furniture and equipment now and from time to time placed on or used in or about the Mortgaged Property with the discharge on demand of all moneys costs and interest as aforesaid and the expression "the Mortgaged Property" shall be construed accordingly.

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REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of Jackson Homes (Southern) Limited - 111686c

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge £	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	Particulars relating to the Issues of Debentures of a series: (8) Total Amount secured by a series of Debentures	(9) Date and Amounts of each Issue of the series: Date	(9) Amount	(10) Dates of the Resolutions authorising the issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount	(15) Amount of Rate per cent of the Commission Allowance or Discount	(16) Receiver or Manager: Name and Date of Appointment	(16) Date of ceasing to act
02/05/2005	11	01/06/2005		see below	see below	HSBC BANK PLC.											
		Mortgage				of HSBC House											
		Debenture				Ridgeway Street											
						Douglas											
						Isle of Man.											

Amount secured by the mortgage or charge

all moneys and liabilities which shall for the time being (and whether on or at any time after demand) be due owing or incurred to the Bank by the Company whether actually or contingently and whether severally or jointly with any other person and whether as principal or surety and including interest discount commission and other lawful charges and expenses which the Bank may in the course of its business charge in respect of any of the matters aforesaid or for keeping the Company's account and so that interest shall be computed and compounded according to the usual mode of the Bank as well after as before any demand made or judgment obtained hereunder.

Short particulars of the property mortgaged or charged

3.2.1 by way of first fixed charge all of the freehold and leasehold property of the Company (if any) and which is described in Schedule 1 hereto and/or the proceeds of sale thereof;

3.2.2 by way of first fixed charge all other freehold and leasehold property of the Company now and at any time during the continuance of this security vested in it and/or the proceeds of sale thereof;

3.2.3 by way of first fixed charge:

(a) all fixtures (including trade fixtures), fittings, plant and machinery now or in the future owned by the Company and its interest in any plant or machinery in its possession;

(b) its present and future interest in all stocks, shares, warrants, debentures, bonds or other securities and investments (including the Securities);

(c) all moneys (including interest) from time to time standing to the credit of each of its present and future accounts with any bank, financial institution or other person in any jurisdiction and all rights in relation thereto and the debts represented thereby;

(d) all rights, interests and benefits to and in respect of the Insurances and all claims (and proceeds thereof) and returns of premiums in respect thereof to which the Company is now or may at any future time become entitled;

(e) all of the Company's present and future book and other debts, the proceeds of the same and all other moneys due and owing to the Company or which may become due and owing to it at any time in the future and the benefit of all rights, securities and guarantees of any nature whatsoever now or at any time enjoyed or held by it in relation to any of the foregoing including, without limitation all liens, reservations of title, rights of tracing and other rights enabling the Company to enforce such debts;

(f) the Company's present and future goodwill including, but not limited to, goodwill connected with the Company's present and future patents, trade marks, brand names, trade names, service marks, logos, topographical rights, know-how, technical and confidential information, copyrights (including rights in computer software), database

REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of Jackson Homes (Southern) Limited - 111686c

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	Particulars relating to the issues of Debentures of a series: (8) Total Amount secured by a series of Debentures	(9) Date and Amounts of each issue of the series: Date	(9) Amount	(10) Dates of the Resolutions authorising the issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount	(15) Amount or Rate per cent of the Commission Allowance or Discount	(16) Receiver or Manager: Name and Date of Appointment	(16) Date of ceasing to act
02/06/2005	11 CONT 2			£													

rights, domain names, designs, utility models, inventions and similar assets and rights (whether or not registered or the subject of an application to register and including improvements, extensions and rights to apply therefore) existing anywhere in the world ("the Intellectual Property Rights")

(g) the benefit of all present and future licences, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any of the Secured Assets and the right to recover and receive all compensation which may at any time become payable to it in respect thereof;

(h) its present and future uncalled capital; and

(i) all its Intellectual Property Rights including all fees and royalties relating to licences granted by the Company to any third party and other rights therefrom or incidental thereto; and

(j) the right to sue third parties for past, present and future infringements of any of the Intellectual Property Rights (and proceeds thereof).

3.2.4 by way of assignment, the Company assigns to the Bank:-

(a) all its benefits in respect of the Insurances and all claims and returns of premiums in respect thereof to which the Company is now or may at any future time become entitled;

(b) all of its present and future book and other debts, the proceeds of the same and all other moneys due and owing to it or which may become due and owing to it at any time in the future and the benefit of all rights, securities and guarantees of any nature whatsoever now or at any time enjoyed or held by it in relation to any of the foregoing including, without limitation, all items, reservations of title rights of tracing and other rights enabling it to enforce such debts;

and (to the extent the same do not fall within any other sub-paragraph of this sub-clause 3.2.4) all of its rights and benefits under any letters of credit issued in its favour and all bills of exchange and other negotiable instruments held by it;

3.2.5 by way of first floating charge the Company charges all its undertaking and assets whatsoever and wheresoever both present and future not otherwise effectively mortgaged or charged or assigned pursuant to this clause 3.

SCHEDULE 1

1. **ALL and SINGULAR** a certain parcel of land part of the Estate of Whitestone situate abutting on the North-West side of the main highroad leading from Douglas to Ballasalla in the Parish of Malew and being represented on the plan annexed to a Deed of Conveyance from Arundel Holdings Limited to Price Bros. (Rode Heath) Limited dated the 15th day of October 1975 by the smaller of the two portions delineated and edged red and to which parcel of land the Company became entitled by a Deed of Conveyance bearing date the 1st day of June 2005 from Derek John Ayres...

2. **ALL and SINGULAR** that land lying to the East of Crossack Road in the Village of Ballasalla and Parish of Malew to which the Company became entitled by Deed of Conveyance from Jonathan Dean Developments Limited dated the 1st day of June 2005 and for identification purposes being represented by the portion delineated and edged red on the plan annexed to a Deed of Conveyance dated the 14th day of December 2001 from the said Jonathan Dean Developments Limited to Calderon Consultants Limited ....

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REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of JACKSON HOMES (SOUTHERN) LIMITED - 111686C

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge £	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	Particulars relating to the Issues of Debenture of a series: (8) Total Amount secured by a series of Debentures £	(9) Date and Amounts of each issue of the series: Date	(9) Amount £	(10) Dates of the Resolutions authorising the issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount £	(15) Amount or Rate per cent. of the Commission Allowance or Discount	(16) Receiver or Manager: Name and Date of Appointment	(16) Receiver or Manager: Date of ceasing to act
13/06/05	12	02/06/05 Deed of Bond and Security		EIGHT HUNDRED AND SIXTY SIX THOUSAND SIX HUNDRED AND SIXTY SEVEN POUNDS £866,667.00 together with interest costs and charges as provided for in an Agreement for Sale dated 1st June 2005	ALL and SINGULAR that land lying to the East of Crossack Road in the Village of Ballasalla and Parish of Malew to which the Company became entitled by Deed of Conveyance from the Mortgagee dated the 1st day of June 2005 and for identification purposes being represented by the portion delineated and edged red on the plan annexed to the Deed of Conveyance dated the 14th day of December 2001 from the Mortgagee to Calderon Consultants Limited	Jonathan Dean Developments Limited Balthane Works Balthane Industrial Estate Ballasalla Isle of Man											

ISCHARGED

REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of JACKSON HOMES (SOUTHERN) LIMITED - 111686C

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge £	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	(8) Total Amount secured by a series of Debentures £	(9) Date and Amounts of each issue of the series: Date	(9) Amount £	(10) Dates of the Resolutions authorising the issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount £	(15) Amount or Rate per cent. of the Commission Allowance or Discount	(18) Receiver or Manager: Name and Date of Appointment	(18) Receiver or Manager: Date of ceasing to act
13/06/05	13	02/06/05 Deed of Bond and Security		ONE MILLION TWO HUNDRED THOUSAND POUNDS £1,200,000.00 together with interest costs and charges as provided for in an Agreement for Sale dated 1st June 2005	ALL and SINGULAR a certain parcel of land part of the Estate of Whitestone situate abutting on the North-West side of the main highroad leading from Douglas to Ballasalla in the Parish of Malew and being represented on the plan annexed to a Deed of Conveyance from Arundel Holdings Limited to Price Bros. (Rode Heath) Limited dated the 15th day of October 1975 by the smaller of the two portions delineated and edged red and to which parcel of land the Company became entitled by a Deed of Conveyance bearing date the 1st day of June 2005 from the Mortgagee.	Derek John Ayres Lyncroft Minorca Hill Laxey Isle of Man											

X

DISCHARGED

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REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of JACKSON HOMES (SOUTHERN) LIMITED - 111686C

							Particulars relating to the Issues of Debenture of a series										
(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	(8) Total Amount secured by a series of Debentures	(9) Date and Amounts of each issue of the series		(10) Dates of the Resolutions authorising the Issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction	(15) Amount or Rate per cent. of the Commission Allowance or Discount	(16) Receiver or Manager	
								Date	Amount					Amount		Name and Date of Appointment	Date of ceasing to act
				£			£		£					£			
27/09/05	17	27/09/05		See Below	See Below	HSBC Bank plc											
		Conditional				HSBC House											
		Bond and				Ridgeway Street											
		Security				Douglas											
						Isle of Man											

Amount secured by the mortgage or charge

all moneys and liabilities which shall for the time being (and whether on or at any time after demand) be due owing or incurred to the Bank by the Company whether actually or contingently and whether severally or jointly with any other person and whether as principal or surety and including interest discount commission and other lawful charges and expenses which the Bank may in the course of its business charge in respect of any of the matters aforesaid or for keeping the Company's account and so that interest shall be computed and compounded according to the usual mode of the Bank as well after as before any demand made or judgment obtained hereunder.

Short particulars of the property mortgaged or charged

ALL and SINGULAR a plot of land being part of the Estate of Whitestone and situate abutting on the North-Western side of the main highroad leading from Douglas to Ballasalla in the Parish of Malew and being part of the Holmfield Estate and containing 1616 ½ square yards of land or thereabouts the same being represented on the plan annexed to a Deed of conveyance bearing date the 27th day of September 2005 from John Kendal Greenaway and Enid Catherine Raafe Greenaway to the Company ("the Conveyance") by the portion delineated and edged in red thereon TOGETHER with the dwelling house called and known as Grianane and all other buildings thereon erected to which said hereditaments and premises the Company became entitled by the said Deed of Conveyance bearing date the 27th day of September 2005 from John Kendal Greenaway and Enid Catherine Raafe Greenaway

and

by way of a floating security all moveable plant machinery implements utensils furniture and equipment now and from time to time placed on or used in or about the Mortgaged Property with the discharge on demand of all moneys costs and interest as aforesaid and the expression "the Mortgaged Property" shall be construed accordingly.

REGISTER of Mortgages and Charges and of Memorandums of Satisfaction of - Jackson Homes (Southern) Limited - 111686c

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Mortgage or Charge and Description thereof	(4) Date of the Acquisition of the Property	(5) Amount secured by the Mortgage or Charge £	(6) Short particulars of the Property Mortgaged or Charged	(7) Names of the Mortgagees or Persons entitled to the Charge	Particulars relating to the Issues of Debenture of a series: (8) Total Amount secured by a series of Debentures £	(9) Date and Amounts of each issue of the series: Date	(9) Amount £	(10) Dates of the Resolutions authorising the Issue of the series	(11) Date of the Covering Deed	(12) General Description of the Property Charged	(13) Names of the Trustees for the Debenture Holders	(14) Memorandums of Satisfaction: Amount £	(15) Amount or Rate per cent. of the Commission Allowance or Discount	(16) Receiver or Manager: Name and Date of Appointment	(16) Receiver or Manager: Date of ceasing to act
23-Aug-06	24													(12) In Full			
23-Aug-06	25													(13) In Full			

Company Number 111686C Schedule 4 **Form 49**

THE COMPANIES ACTS 1931 TO 2004

DECLARATION VERIFYING MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE
Pursuant to Section 84 of the Companies Act 1931

Please complete legibly in black type or bold, block lettering

Name of company:	Jackson Homes (Southern)	Limited/~~PLC~~*

*Delete as appropriate

We:	KEVIN CHRISTIAN	
Of:	12 CHOKE QUINE	
	PEEL ISLE OF MAN	As director of the above company
And:	BRETT WOODS	
Of:	RIVERSIDE HOUSE, MAIN ROAD,	
	UNION MILLS, I.O. MAN	As director or secretary thereof

Do solemnly and sincerely declare that the particulars contained in the Memorandum of Satisfaction annexed hereto and dated:

Day:	Month:	Year:
22	AUGUST	2006

Are true to the best of our knowledge, information and belief. We make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Evidence Act 1871.

Declared at: Douglas

Before me: [signature]
Commissioner of Oaths/Notary Public/Justice of the Peace*

Claire Emily Marie Quine
Commissioner for Oaths

FINANCIAL SUPERVISION COMMISSION
23 AUG 2006
COMPANIES REGISTRY ISLE OF MAN

Director Signature: [signature]	Name: KEVIN CHRISTIAN	Date: 23 August 2006
Director ~~or Secretary~~** Signature: [signature]	Name: Brett Woods.	Date: 23/8/06.

**Please delete where appropriate

02308200600044

Presented by: Gough & Co.
5th Floor
Anglo International House
Bank Hill, North Quay
Douglas IM1 4QE

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Company Number | 111686C | Schedule 4 | **Form 49**

THE COMPANIES ACTS 1931 TO 2004

MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE

Name of company: Jackson Homes (Southern)	Limited/~~PLC~~*

*Delete as appropriate

Hereby gives notice that the registered charge being**:
A Deed of Bond and Security dated the 2nd day of June 2005 for securing the sum of £1,200,000.00 and passed to Derek John Ayres

Of which particulars were registered with the Financial Supervision Commission	Day: 13th	Month: June	Year: 2005
And was satisfied on:	Day: 26th	Month: May	Year: 2006
To the extent of:	IN FULL		
In witness whereof the common seal of the company was hereunto affixed on:	Day: 22	Month: August	Year: 2006

Director Signature: V. Lanter

Director Signature:

Secretary Signature:

Companies Registry
The Common Seal of the Company was affixed here on the original document.

seal

** *A description of the Instrument(s) creating or evidencing the Charge eg. "Mortgage", "Charge", "Debenture", etc., with the date thereof should be given. If the registered charge was a "Series of Debentures" or "Debenture Stock" the words "authorized by Resolution" together with the date of the Resolution should be added.*

Note

You must attach a letter or some other form of evidence from the lender to state that the charge in question has now been satisfied and to what extent

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Isle of Man Government

Isle of Man Land Registry
Discharge of the whole registered charge(s)
Rule 57

Form 15

REGISTRY USE ONLY
Application number

Note: This form must be accompanied by Form 100. When the same charge affects several titles a single form may be used.

1.1 Title Number	43-00072		
Registered Owner(s)	Jackson Homes (Southern) Limited	Index of names no.	5356
1.2 Title Number			
Registered Owner(s)		Index of names no.	

Please continue on Appendix I if required.

2. Registered Property *Enter the address.*

Land adjacent to Douglas Road
Ballasalla
Malew
Isle of Man

3. Registered Charge *Please provide details of the charge to be discharged.*

Date of Charge	Date of Registration	Application Number
2 June 2005	06 January 2006	200501358

3.1 Full Name of Lender. *This must be the lender named in the registered charge or the person now entitled to the benefit of the registered charge.*

Name/Company Name	Derek John Ayres
Address	Lyncroft Minorca Hill Laxey
Country	Isle of Man
Postcode	IM4 7DN
Company No.	

4 Discharge

Date 26th May 2006

The Lender acknowledges that it has received from the Registered Owner all sums due under the Registered Charge and that the Registered Property is no longer charged as security for the payment of sums due under the Registered Charge.

Executed as a deed
Enter appropriate format for each signatory
by DEREK JOHN AYRES

WITNESSED BY
PAUL DOLAN
WOOLADON FARM
LIFTON
DEVON
PL16 0DD.

Version 4 - November 2003

Company Number | 111686C | Schedule 4 | **Form 49**

THE COMPANIES ACTS 1931 TO 2004

DECLARATION VERIFYING MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE

Pursuant to Section 84 of the Companies Act 1931

Please complete legibly in black type or bold, block lettering

Name of company: Jackson Homes (Southern)	Limited/~~PLC~~*

*Delete as appropriate

We:	KEVIN CHRISTIAN	
Of:	12 CLOSE QUAYNE	
	PEEL, ISLE OF MAN	As director of the above company
And:	BRETT WOODS	
Of:	RIVERSIDE HOUSE, MAIN ROAD.	
	UNION MILLS. I. O. MAN.	As director or secretary thereof

Do solemnly and sincerely declare that the particulars contained in the Memorandum of Satisfaction annexed hereto and dated:

Day:	Month:	Year:
22	AUGUST	2006

Are true to the best of our knowledge, information and belief. We make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Evidence Act 1871.

Declared at: Douglas

Before me: Claire Emily Marie Quine Commissioner for Oaths

Commissioner of Oaths/Notary Public/Justice of the Peace*

FINANCIAL SUPERVISION COMMISSION
23 AUG 2006
COMPANIES REGISTRY ISLE OF MAN

Director Signature:	Name: KEVIN CHRISTIAN	Date: 23 August 2006
Director ~~or Secretary~~** Signature:	Name: Brett Woods	Date: 23/8/06.

**Please delete where appropriate

02308200600043

Presented by: Gough & Co.
5th Floor
Anglo International House
Bank Hill, North Quay
Douglas IM1 4QE

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A

Company Number | 111686C | Schedule 4 **Form 49**

THE COMPANIES ACTS 1931 TO 2004

MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE

Name of company: Jackson Homes (Southern) Limited/~~PLC~~*

*Delete as appropriate

Hereby gives notice that the registered charge being**: A Deed of Bond and Security dated the 2nd day of June 2005 for securing the sum of £866,667.00 and passed to Jonathan Dean Developments Limited

Of which particulars were registered with the Financial Supervision Commission	Day: 13th	Month: June	Year: 2005
And was satisfied on:	Day: 26th	Month: May	Year: 2006
To the extent of:	IN FULL		
In witness whereof the common seal of the company was hereunto affixed on:	Day: 22	Month: August	Year: 2006

Director Signature: K. Leuten

Director Signature: [signature]

Secretary Signature:

Companies Registry
The Common Seal of the Company was affixed hereon the original document.

seal

** *A description of the instrument(s) creating or evidencing the Charge eg. "Mortgage", "Charge", "Debenture", etc., with the date thereof should be given. If the registered charge was a "Series of Debentures" or "Debenture Stock" the words "authorized by Resolution" together with the date of the Resolution should be added.*

Note

You must attach a letter or some other form of evidence from the lender to state that the charge in question has now been satisfied and to what extent

WHEREAS:

1. **JACKSON HOMES (SOUTHERN) LIMITED** a company registered in the Isle of Man having its Registered Office situate at 3rd Floor 19-21 Prospect Hill Douglas Isle of Man (hereinafter called "the Mortgagor") did on the 2nd day of June 2005 grant and pass their Bond and Security (hereinafter called "the said Deed of Bond and Security") unto **JONATHAN DEAN DEVELOPMENTS LIMITED** a company incorporated in the Isle of Man and having its registered office situate at Balthane Works, Balthane Industrial Estate, Ballasalla, Isle of Man (hereinafter called "the Mortgagee") for the principal sum of EIGHT HUNDRED AND SIXTY SIX THOUSAND SIX HUNDRED AND SIXTY SEVEN POUNDS **(£866,667.00)** together with the interest costs and charges as therein set forth and secured upon ALL and SINGULAR that land lying to the East of Crossack Road in the Village of Ballasalla and Parish of Malew to which the Mortgagor became entitled by Deed of Conveyance from the Mortgagee dated the 1st day of June 2005 and for identification purposes being represented by the portion delineated and edged red on the plan annexed to the Deed of Conveyance dated the 14th December 2001 from the Mortgagee to Calderon Consultants Limited

2. **KNOW ALL MEN** by these presents that the Mortgagee **DOTH HEREBY** own and acknowledge to have received and been paid the full amount of principal interest costs and charges now due and owing under and in respect of the said Deed of Bond and Security

AND in consideration thereof **DOTH HEREBY** order and direct that the said Deed of Bond and Security may be and do stand **CANCELLED** upon record...

IN WITNESS WHEREOF the Mortgagee hath executed these presents this 26th day of MAY Two Thousand and Six

EXECUTED by the Mortgagee in the presence of:-

Abbots Close

Appendix 3

Diagram of more detailed company connection analysis

Footnote 3 *Page 11* refers

06/02/09

COMPANIES AND STRUCTURE

TRUSTEES OF THE JACKSON FAMILY TRUST
Private Family Trust

Controlling Interest

Controlling

Since 01/07/08 Barclays has made 1st charge on assets

J G KELLY LIMITED
General Building and Contracting

J G Kelly hold
150/1000 shares in
JG Kelly Homes

J G KELLY HOMES LIMITED

Controlling Interest

Jackson Holdings Ltd
hold 820/1000 shares
in JG Kelly Homes
Limited

Noble Investments Limited
Directors: H W Jackson
J H Jackson
M J Sims

Noble Investments has
1st charge re property etc

JACKSON HOLDINGS LIMITED
Investment Holding Company

JACKSON HOMES (SOUTHERN) LIMITED

Property Company

Nov/Dec 2006 mortgages
created on other property

Jackson Holdings own 50% of
Charterhouse issued shares

Capital Holdings Ltd
Directors:
James Henry Jackson
Richard Paul Daly*
*owns all 100 shares issued in
Capital Holdings, also
Company Secretary

Charterhouse Capital Venture Limited

Capital Holdings own 50% of
issued shares Charterhouse
Capital Venture Ltd

01/08/07
Capital Holdings transfer their shares of
Charterhouse Venture to *Capital Partnerships
Ltd

Appendix 4

Letter from the Department of Local Government and the Environment dated
17th July 2009

Footnote 4 *Page* 12 refers

Isle of Man
Government
Reiltys Ellan Vannin

Department of Local Government and the Environment
Rheynn Reiltys Ynnydagh as y Chymmyltaght

Murray House,
Mount Havelock,
Douglas,
Isle of Man, IM1 2SF.
Tel: (01624) 685859
Fax: (01624) 685945
E-mail: ceo@dlge.gov.im
Chief Executive
K. A. Kinrade

Please reply to the Chief Executive

Our ref: KK/MC/

17th July 2009.

Mrs. Marie Lambden,
Third Clerk of Tynwald,
Legislative Buildings,
Douglas,
Isle of Man, IM1 3PW.

Dear Mrs. Lambden,

Select Committee on Crossag Farm

I write in response to your letter dated 5th May and apologise for the delay.

When the second part of Crossag Farm was purchased in 1999 the conveyance included an option to purchase a 40 foot wide strip of land between the centre of Glashen Farm to a point on Douglas Road.

At an early stage in the design process it became obvious that this strip would be totally inadequate for the provision of a major road access. In any case the subsequent "Registration" of Glashen Farm made the 40 foot strip and indeed adjacent land unsuitable for access, hence the decision to proceed with a new junction by the blue roof house.

Nevertheless the Department decided to proceed with purchasing the option for the agreed sum of £5,000. This was done prior to the cut off date of 31st December 2002 but unfortunately the notice was not served by recorded delivery and therefore could not be enforced.

Whilst this oversight was unfortunate, it did not impact on the proposals for the development of Crossag Farm. Tynwald Members were informed of the option situation at the briefing prior to the first Tynwald approval for the transaction with JG Kelly and Heritage Homes.

Please do not hesitate to contact me if the Select Committee requires any further information.

Yours sincerely,

K. Kinrade

Chief Executive.

Appendix 5

Letter from the Department of Local Government and the Environment dated
13th February 2009
"Know Your Customer" Best Practice Guidance Notes attached

Footnote 5 *Page 13* refers
Footnote 16 *Page 26* refers

Isle of Man
Government
Reiltys Ellan Vannin

Department of Local Government and the Environment
Rheynn Reiltys Ynnydagh as y Chymmyltaght

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Isle of Man, IM1 2SF.
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Fax: (01624) 685945
E-mail: ceo@dlge.gov.im
Chief Executive
K. A. Kinrade

Please reply to the Chief Executive

Our ref: KK/MC/

13th February 2009.

Mrs. M. Lambden,
Third Clerk of Tynwald,
Office of the Clerk of Tynwald,
Legislative Buildings,
Douglas,
Isle of Man,
IM1 3PW.

Dear Mrs. Lambden,

Select Committee on Crossag Farm

Thank you for your letter of the 3rd February 2009 in the above matter.

The Department consulted the Treasury prior to the Agreement being concluded in order to verify the companies' credentials and financial standing.

Chambers also carried out Company Searches to verify incorporation, registered office, Directors, Company Secretary, shareholders, charges and to check there was no appointment of a receiver/liquidator. If a shareholder was a Company, Chambers would have carried out a search for that as well, and did in this case (JG Kelly Limited, Jackson Homes (Southern) Limited & Jackson Holdings Limited).

Officers of the Department were familiar with the companies headed by Jamie Jackson, a member of the Jackson Family Trust, and JG Kelly Limited/Jackson Homes Limited, which are well-established development companies on the Island.

I am confident that the Department's officers were familiar with whom they were dealing and that the companies' credentials were checked in accordance with "Know your Customer" guidelines as far as reasonably possible.

A copy of the guidelines is **enclosed** for your information.

Yours sincerely,

K. Kinrade.

Chief Executive.

Isle of Man Government

"KNOW YOUR CUSTOMER" BEST PRACTICE GUIDANCE NOTES

Endorsed by the Chief Officer Group and the Council of Ministers - February 2004

Issued by:-

K C McGreal, Chief Internal Auditor

10th December 2005

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Introduction

This document has been developed as part of the Isle of Man Government's continuing commitment to modernisation and is a proactive approach designed to keep pace with the changing business environment.

During the past few years there has been a marked increase in stolen identification and/or falsified documentation being used for the procurement of Government services and benefits throughout the United Kingdom. The Island has not suffered from the same degree of exposure in its public service delivery yet remains a potential target which does not permit complacency. With the increasing diversification of the local population it is vital that appropriate verification and validation procedures are in place to ensure the authenticity of personal identification and entitlement to services and benefits.

The Residence Act 2001 legislates for the introduction of a control of residency on the Isle of Man to assist shape the economic development of the Island. Residency control, if activated, would introduce the need to confirm residency status together with individual identification for the supply of some benefits and services offered by Government.

It can therefore be seen that accurate confirmation of an individual's identity is recognised as an aim of Government. The main purpose of this document is to provide best practice guidance to Government bodies in order to mitigate the risk associated with the provision of Government services and benefits.

Terminology

The meaning of the terms validate, verify and identity are as follows:

a) **Validate**, to demonstrate that a claimed identity exists (i.e. that a person, who has certain attributes, exists);

b) **Verify**, to demonstrate that the person is who they claim to be (i.e. that the person purporting to hold these attributes is not impersonating the actual owner of the identity).

c) **Identity** means a set of attributes which together uniquely identify an individual.

"Know Your Customer" Requirements

Many Government services require the service user to properly identify him/herself before access is granted. As identity fraud is a global concern Internal Audit Division, Treasury, has undertaken a review of practices adopted elsewhere. The best of these practices have been incorporated into the Isle of Man Government's "Know Your Customer - Best Practice Guidance Notes" resulting in the identification of three registration levels. Each level represents the degree of trust required in the asserted identity and for completeness a level zero was assigned where no authentication is required.

These registration levels allow each Isle of Man Government body to assign different levels to the various services or benefits they provide, based upon the extent of assurance required to establish a person's identity. It is the responsibility of each department to decide which level of assurance is appropriate based on the risk of a fraud being perpetrated and the potential financial, political or reputational loss to Government. The levels of assurance have been summarised below:

a) Level One

On the ***balance of probabilities***, the applicant's real world identity is verified. For example, a transaction that may merit level 1 assurance is the issue of a library card.

b) Level Two

There is ***substantial assurance*** that the applicant's real world identity is verified. Encashment of a benefit voucher at the Post Office or registration with a General Practitioner are examples of transactions, which may merit level 2 assurance.

c) Level Three

The applicant's real world identity is verified ***beyond reasonable doubt***. An example of a transaction, which may require level 3 assurance, is the application for a passport.

The higher the "Level", the greater the assurance that is required in the validation and verification of the applicant. Credentials used for Level Two transactions may also be used for Level One transactions, and those obtained for Level Three transactions may also be used for Level One and Level Two transactions.

Attributes to be Validated and Verified

In almost all cases, an individual will have a set of attributes, which uniquely identify that person across time to a wide range of parties.

The minimum set of attributes acceptable to Government for specifying the identity of an individual is therefore:

a) Full names or names by which a person is or has been known (including other names used);

b) Residential address at which he/she can be located;

c) Date of Birth.

Verification involves collecting supporting evidence to verify that these attributes genuinely belong to the applicant. Each department/public body must verify these attributes with a degree of assurance appropriate to the Level assigned to the service/benefit provided.

There is no single form of identification, which can be fully guaranteed as genuine, or representing correct identity, the verification and validation process will in principle be based on the review of various types of evidence, which in combination can confirm the identity of the applicant with a greater or lesser degree of certainty, in a **"cumulative process of identification"**.

There may also be other attributes that are relevant to the use of credentials, but which must be associated with a combination of the other attributes outlined above and evidence adduced to demonstrate that association.

Records of Identification Evidence

Reference numbers and other relevant details of the identification evidence obtained should be recorded to enable the documents to be obtained again. Where a higher degree of recording is deemed appropriate an image (photocopy or electronic scan) of the relevant evidence should be retained in order to demonstrate that due care has been undertaken in the issuance of the identification document or the supply of a service.

Types of Evidence to Validate and Verify an Identity

The following types of evidence contribute to validating and verifying an individual's identity, and should be used by Government departments / bodies.

Table 1: Illustration of Evidence to Validate and Verify an Identity

<table>
<tr><th>Types of Evidence</th><th colspan="2">Description</th></tr>
<tr><td>Personal Statement</td><td colspan="2">Information supplied by the applicant "in his/her own words" or by completing a questionnaire (or supplied by the applicant's trusted agent in cases where the applicant cannot do so in person)</td></tr>
<tr><td rowspan="3">Documents</td><td colspan="2">Documents issued by a third party and in the applicant's possession</td></tr>
<tr><td rowspan="2">Main types (not necessarily mutually exclusive)</td><td>Evidence of identity per se (normally with photograph and signature) e.g. passport (see appendix II, FSC "False Identity Documents"), driving licence.</td></tr>
<tr><td>Evidence of being "Active in Community" (recent document; shows Applicant's address) e.g. utility bill, TV licence etc.</td></tr>
<tr><td>Other third-party corroboration from a "Trustworthy Third Party"</td><td colspan="2">Information (as in a reference) obtained by contact between the Government department and corroborator, or published information.</td></tr>
<tr><td>Existing Relationship</td><td colspan="2">Where the applicant is already formally known to the Government department and has had an official relationship over a substantial period of time.</td></tr>
</table>

Documentary Evidence

This is defined as documents in the possession of the applicant, which are of a nature to confirm the identity and / or biography of the individual.

Examples of documentary evidence include the following:

<u>Personal identity:</u>

1. Current signed passport (see appendix II FSC "False Identity Documents");
2. Current Isle of Man or UK photo card driving licence;
3. Current full UK driving licence (old version) – old style provisional driving licences are not acceptable;
4. Current benefit book or original notification letter from the Department of Health and Social Security confirming the right to benefits;
5. Building industry sub-contractor's certificate issued by Income Tax Division;
6. Recent income tax notification;

7. Current firearms certificate;
8. Birth certificate;
9. Adoption certificate;
10. Marriage certificate;
11. Divorce or annulment papers;
12. Police registration document;
13. Certificate of employment in HM forces.

Active in the community:

1. Record of home visit;
2. Confirmation from an Electoral Register search that a person of that name lives at that address;
3. Recent utility bill or certificate from a utility company confirming the arrangements to pay for the services at a fixed address on prepayment terms (note that mobile telephone bills should not be accepted as they can be sent to different addresses);
4. Local authority rates bill (valid for current year);
5. Current Isle of Man or UK photo card driving licence (if not used as evidence of name);
6. Current full UK driving licence (old version)(if not used for evidence of name);
7. Bank or building society statement or passbook containing current address;
8. Recent original mortgage statement from a recognised lender;
9. Current local authority rent card or tenancy agreement;
10. Current benefits book or original notification letter from Department of Health and Social Security confirming rights to benefit;
11. Court order.

Checking a local or national telephone directory can be used as additional collaborative evidence, but should not be used as a primary check.

Not all documents are of equal value, the "ideal" is a document that is issued by a trustworthy and reliable source, is difficult to forge, is dated and current, contains the owner's name, photograph, and signature, and itself requires some evidence of identity before being issued (e.g. a passport).

"Active in the community" documents should be recent (at least one should be within the last six months unless there is a good reason why not) and should contain the address and name of the applicant.

To guard against forged or counterfeit documents only originals or notarised copies should be accepted. To guard against the dangers of postal intercept and fraud, applicants should be encouraged to send personal identity documents by a postal service that offers guaranteed delivery. Alternatively a copy certified by a legal representative, banker or other regulated professional person could be requested.

Third Party Corroboration

This shall be information supplied normally by a known and trustworthy organisation or person that can confirm (parts of) the biographical statement presented by the applicant. These should be bodies or persons with whom the applicant has recently had a formal, documented relationship. The third party must be independent of the applicant (i.e. **not** be related to the individual). Where the third party is not known to the Government department / body, suitable checks should be undertaken to confirm the legitimacy of the organisation or person to ensure that the assurance provided by third party corroboration is not diminished.

The distinguishing feature of the third party corroboration is that it should be obtained by bilateral contact between the Government department and the third party, without direct involvement of the applicant other than to give consent and in many cases to propose the identity of the corroborator.

Where practicable such corroboration should include confirmation by the third party of some dynamic information or ***de facto*** "shared secret" which is unlikely to be readily known to anyone other than the applicant and the third party.

Third party corroboration can be obtained on-line (in particular, through a digitally signed e-mail), in writing, or by telephone to a published number, or by face-to-face contact.

Each source may be used separately as an alternative to one or more documentary checks. Care must be taken when using a combination of electronic and documentary checks that different original sources of information are used. For example, a physical check of a mortgage statement and an electronic check of the same mortgage account are based on the same source information.

Consent will usually be required when seeking to process personal data, especially where the data will be disclosed to someone that the data subject did not themselves provide the information. Some examples of third party corroboration are detailed below:

1. Government Departments, Statutory Boards etc.
2. Isle of Man Constabulary;
3. Utility companies;
4. Banks or other financial organisations regulated by FSC or IPA;
5. Medical practitioner with whom the applicant has a formal relationship (e.g. his her GP);
6. Practising legal representative with whom the applicant has a client relationship;
7. Practising Justice of the Peace or Deemster.

Examples of commercial organisations providing acceptable electronic identity services include:

1. Credit Industry Fraud Avoidance System;
2. Dun and Bradstreet Ltd;
3. Equifax Europe Ltd;
4. Experian Ltd;
5. MCL Ltd.

Existing Relationship

Where the Government department through an existing business relationship already knows an individual, that knowledge may be used in lieu of, or in conjunction with, other evidence to verify identity.

Requirements for Assurance Levels

This section provides guidance as to the type and variety of evidence that is considered suitable for each of the three Assurance Levels.

In reality, there is no single piece of evidence, or combination of evidence, that can conclusively verify an identity. All things being equal, the more pieces of evidence that are adduced which confirm an applicant's attributes, and the greater the trustworthiness of the sources of evidence, the greater the potential degree of certainty.

The requirements for each level are described in the table below, with the different columns showing possible permutations of evidence.

Table 2: Illustration of Documentation Required at Relevant Assurance Levels

Application Requirements for Individuals

Authentication Levels		Level One*			Level Two		Level Three	
Degree of assurance as to identity appropriate to the Level		Balance of probabilities			Substantial Assurance		Beyond Reasonable Doubt	
Mode of application**		Face to Face			Face to Face		Face to Face	
Evidence adduced to verify identity (each ☐ represents one separate item or source of evidence)		Possible permutations of evidence			Possible permutations of evidence		Possible permutations of evidence	
		Option 1	Option 2	Option 3	Option 1	Option 2	Option 1	Option 2
Personal Statement (should not be relied upon as evidence of identity		☐	☐	☐	☐	☐	☐+	☐+
Documents	Identity	☐			☐	☐	☐☐	☐
	Active in the Community		☐		☐		☐	☐
Third Party Corroboration				☐		☐	☐	☐☐

Note:

* Requiring this information will help discourage the casual misappropriation of identities / creation of bogus identities.

** Where postal applications are made, additional evidence to confirm identity should be sought.

☐+ A higher level of detail required.

Availability of Documentation

There may be a small number of individuals who for a variety of reasons may not have access to a wide range of identification documents. For example, someone who does not drive, has not travelled abroad for many years if ever, does not own or rent property in their own name, is not in employment and does not hold a bank account, may find it difficult to provide many of the kinds of documentary evidence suggested as proof of identity.

This difficulty may be particularly acute with some social groups e.g., the homeless and other "dispossessed" or socially excluded persons which in the Island context represent relatively few. However, a wide segment of the population will lack at least some of the documentation. Furthermore, some groups (e.g. some elderly people) and those with certain types of disability or illness who may find it difficult to present in person, may also be disproportionately likely to lack much documentation.

Potential Solutions

In these cases Government departments / bodies may need to use visiting staff and/or agents to determine applications as appropriate. A vigilant but pragmatic approach to the acceptability of "non-standard" documentary evidence will be needed, plus full use of third party corroboration. The very absence of documents may add credence to an applicant's story (but of course, one cannot prove that the applicant is not withholding documents). Alternatively, it may be appropriate to accept as identification evidence a letter or statement from a person in a position of responsibility who knows the client, that tends to show that the applicant is who he/she says he/she is and to confirm his/her permanent address if he / she has one. Examples of persons in a position of responsibility include legal representatives, doctors, Ministers of religions, teachers, and social workers.

It may be noted that visiting the applicant at home is of itself a useful technique in giving assurance to the claimed identity (at the least, it strongly indicates that the purported applicant has access to the applicant's home address).

Storage and Processing of Information

As a result of application and authentication activities, Government departments will come to hold personal data on applicants. Government departments are required to adhere to the requirements of all relevant legislation such as the Data Protection Act 2002 (refer to appendix I, Data Protection Principles), in their administration of this data. In particular, the privacy and security of all personal information obtained during the application process is paramount.

APPENDIX I

Data Protection Act 2002

Summary of the Principles

Personal data must be:

1. Used fairly and lawfully;
2. Used for specific and lawful purposes, in a manner that is compatible with those purposes;
3. Adequate, relevant and not excessive;
4. Accurate and where necessary kept up to date;
5. Kept no longer than necessary;
6. Used in accordance with the rights of individuals under the Act;
7. Kept secure to avoid unauthorised access or unlawful use and accidental loss, destruction or damage;

Personal data must NOT be:

8. Transferred to another country unless that country has an adequate level of protection.

   See Schedule 1 of the Data Protection Act 2002 for the list of jurisdictions to which transfer disclosure may be made.

Schedule 1 of the Act defines how these principles are to be interpreted while Schedules 2 and 3 sets out conditions for processing of personal data. For processing to be lawful one of the conditions must be met.

With regard to the seventh principle, Schedule 1 refers to appropriate security measures and the reliability of staff.

Further information is available from:-

- Data Protection and Information Security Coordinator for Government Tel 686522
- Data Protection Supervisor Tel 693260

APPENDIX II

Press Release Issued by The Financial Supervision Commission (5 January 2003)

FALSE IDENTITY DOCUMENTS

This notice is issued by the Financial Supervision Commission in accordance with the powers conferred upon it under Section 22 of the Financial Supervision Act 1984.

An important aspect of the international efforts to combat financial crime such as money laundering is the "Know Your Customer" principle. In many circumstances this places an obligation on financial institutions to obtain and verify the identity of prospective customers, and it is a common measure to obtain a copy of the applicant's passport. Customers may attempt to use camouflage and fantasy passports to circumvent the "Know Your Customer" procedures concerning evidence of identity.

Such passports may increase the risk to institutions of being unwittingly used for money laundering, but may also expose them to increased settlement, credit or lending risk.

Institutions should treat with extreme suspicion any customer attempting to use a camouflage or fantasy passport as evidence of identity.

Camouflage Passports

For the purposes of criminal activity or other dubious activity, some applicants may wish to conceal their true identity and background. The Commission is aware that certain companies offer over the Internet or through mail order what are known as "Camouflage Passports." These are often supplied as part of a package which may also include a driving licence, membership cards of societies or professional associations, or identity cards for national schemes such as health services, all of which are bogus.

Camouflage passports, although generally marketed as novelty items, are generally professionally produced using sophisticated printing and laminating techniques, bearing photographs, registration numbers and even entry and exit stamps of other countries. Therefore, in terms of quality, there is often no reason to believe that the passport is not genuine.

The aim of camouflage passports is to provide a seemingly genuine document from a seemingly genuine country. **However, the "country" supposedly issuing the passport does not exist or does not issue passports**, although to the casual observer they may seem plausible, and in many cases will sound familiar:

Camouflage name	Real name
British Guiana	**Guyana**
British Honduras	**Belize**
British West Indies	**Does not exist**
Burma	**Myanmar**
Ceylon (Republic of)	**Sri Lanka**
Dutch Guiana	**Surinam**

Eastern Samoa	**American Samoa**
Netherlands Antilles	**Collection of islands e.g. Aruba, Curacão, etc., that do not issue passports. Citizens of the islands have full Dutch passports.**
Netherlands East Indies	**Indonesia**
Newfoundland and Labrador	**Canada**
New Grenada	**Does not exist, although Grenada does.**
New Hebrides	**Vanuatu**
Rhodesia (Republic of)	**Zimbabwe**
South Vietnam	**Vietnam**
Spanish Guinea	**Equatorial Guinea**
Upper Volta	**Burkina Faso**
Zanzibar	**Amalgamated with Tanganyika to become Tanzania. Exists but does not issue passports.**

NOTE

Soviet Union passports

There is widespread abuse of Soviet Union (USSR) passports. Although the Soviet Union ceased to exist as a political entity some years ago, the authorities in the Russian Republic are still issuing Soviet Union passports, and have stated that they will continue to do so until remaining stocks are exhausted. It is not known when this is expected to happen. However, the only type still being issued are ordinary passports, and any official or diplomatic passports purporting to be issued after October 1996 should be treated with suspicion and caution.

Additional difficulties surrounding Soviet Union passports are that it is believed (although not confirmed) that as many as 130,000 passports were misappropriated, with the inevitable conclusion that some may have fallen into criminal hands, and despite there being genuine Soviet Union passports, camouflage Soviet Union passports can also be bought.

Given the growing influence of organised crime within the former Soviet Union, and the level of uncertainty surrounding passports, it is recommended that extra care is taken regarding customers using Soviet Union passports as evidence of identity.

Spurious (or Fantasy) Passports

Spurious passports have the appearance of a passport, but are issued by organisations with no authority and to which no official recognition has been given. Such passports are therefore not an acceptable statement of either nationality or identity. Spurious passports and other documentation known to the authorities are:

Passport	Comments/issued by
A.D.E.H.	Association D'Entrade Humanitaire International (International Humanitarian Society)
Anishinabek	Ojibway American Indian nation
Antigua (State of)	
Carolingian Bernician States and Dynasty	
Castellania	Grand Master of the Order of Free Templars and Prince of Castellania
Centre d'Information Corps Diplomatique et Consulaire	
Colonia (Kingdom of)	
Conch Republic	
Confederate States of America	
Confederation Mondiale des Correspondants Diplomatiques	
Cornish passports	
Corps Diplomatiques of the United States	
Corterra (Republic of)	
Department of Foreign Affairs Silver Card	
Ecumenical World Patriarchate	
Empire Washitaw de	

60
A

Dugdahmoundyah	
Haudenosaunee	Mohawk American Indian nation
Hutt River	Hutt River Province and Principality originally claimed to be an independent American Indian nation in Canada, but now claims to be an independent state in South West Australia.
Imperial Constantinian Military Order of St. George	
International Biographical Association	
International Humanitarian Society	
International Parliament for Safety and Peace	
International Society for Krishna Consciousness	
International Solidarity Centre	
Iroquois Nation	held by some American Indians who are also American or Canadian citizens
Khalistan	used by some Sikhs seeking the separation of the Punjab from India. Issued by persons claiming to be the "Khalistan Government in Exile" based in Gravesend, Kent.
Knights of Malta	also known as The Sovereign Principality of St John
Koneuwe (Republic of)	KOmmunist NEUtral WEst is someone's back garden in Zurich, Switzerland
Kosmopolitan passport	
Maori Kingdoms of Tetiti and Polyaesiea	the Titi or Mutton Bird Islands off the South Island of New Zealand, declared "independent" in 1985 by their "King and Absolute Ruler"

Melchizedek (Dominion of)	claims to be a transnational state with no definable national borders
Mohawk Nation	held by some American Indians who are also American or Canadian citizens
Nation of Israel	
Neue Slovenische Kunst (NSK)	Slovenian Art Collective
Nishnawbe-Aski	held by some American Indians who are also American or Canadian citizens
North American Indian Nation Government	
Oceanus	
Organisation of African Unity	
Paisos Catalans	Catalunya/Cataluña is a region of Spain
Palmerya (Principality of)	believed to be an uninhabited Hawaiian island
Parliamentary passports	
Patriarchate of Antioch	
Planetary passports	
Romano or Roma passports	
Romano Jumako Khetanipe	
San Cristobal (Republic of)	
Sealand (Principality of)	in the North Sea off the coast of Harwich, it is a concrete gun tower built in 1942
Service d'Information	
Symbolic European	

Texas passports	
Trust Territory of the Pacific Islands	
UNO (United Nations Office, Inc.)	
Vera Cruz (Free and Independent State of)	
Wikingland/Vikingland	Furstentum Wikingland (the Viking Principality)
World Parliamentary Confederation of Chivalry	
World Service Authority	available in both standard and diplomatic versions, these documents are so popular even counterfeit copies of them have been identified

Financial institutions or other businesses which place regular reliance on passports as evidence of identity should take all steps to ensure that they obtain copies of more than just the page bearing the applicant's photograph, e.g. also the front cover and inside page, so that there is proof of the country that has issued the passport.

In the event of any suspicion about the validity of a passport being used as evidence of identity, or in the event of any queries about this Public Warning, please contact:

For further information, please contact:

Head of Enforcement
Financial Supervision Commission
PO Box 58
Finch Hill House
Bucks Road
Douglas
Isle of Man
IM99 1DT

E-mail: paul.heckles@fsc.gov.im

Appendix 6

Letter from the Department of Local Government and the Environment dated 12th March 2009

Footnote 6 *Page 13* refers

Isle of Man
Government
Reiltys Ellan Vannin

Department of Local Government and the Environment
Rheynn Reiltys Ynnydagh as y Chymmyltaght

Murray House,
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E-mail: ceo@dlge.gov.im
Chief Executive
K. A. Kinrade

Please reply to the Chief Executive

Our ref: KK/MC/
Your Ref: C/CrF/01/ml

12th March 2009.

Mrs. M. Lambden,
Third Clerk of Tynwald,
Office of the Clerk of Tynwald,
Legislative Buildings,
Douglas,
Isle of Man,
IM1 3PW.

Dear Mrs. Lambden,

Select Committee on Crossag Farm

Thank you for your letter dated 23rd February 2009 in respect of the above matter.

I am not aware of any other guidance that is available in addition to the "Know Your Customer" Best Practice Guidance Notes mentioned in my previous letter.

I understand that our staff received confirmation from Mr Clive McGreal at the Treasury that Jackson Holdings had a sound balance sheet for their size of company and for the type and scale of the development they were intending to progress. It is also usual for Treasury to advise if there are any outstanding debts to Government prior to such agreements being made but no issue was raised on this occasion.

Nevertheless, Treasury expected the Department and the Attorney General's Chambers to ensure that the legal agreement provided adequate safeguards to protect Government against default. We believe that the agreement, which was similar to several other previous agreements which had led to successful developments being completed, did provide the necessary safeguards.

I hope this assists the Committee.

Yours sincerely,

K. Kinrade.

Chief Executive.

Appendix 7

Transcript from Oral Evidence on 1st September 2009, page 21 TCF

Footnote 7 *Page 14* refers
Footnote 11 *Page 20* refers
Footnote 19 *Page 27* refers

would be Jackson Homes (Southern) Ltd because they were the property holding arm and because that was the company that had the rights over the ransom strip and over the other area X that was needed for the development, they actually owned it.

Mr Cregeen: Were you aware of the indebtedness of Jackson Homes (Southern) Ltd on and all the loans, mortgages that they had on their properties already?

Mrs Kniveton: Yes, well on that particular area they would have had, I am sure, charges, yes.

Mr Cregeen: So there was already a first charge on the land that they already owned which was the ransom strip getting in –

Mrs Kniveton: Well, they did not own the ransom strip, it was a conditional contract.

Mr Cregeen: This is on the Douglas Road side.

Mrs Kniveton: Yes, the little strip that ran –

Mr Cregeen: No, no, the main –

Mrs Kniveton: Oh, the main strip, area X, yes.

Mr Cregeen: Area X, so you were aware of the mortgage that they had out on that and you still deemed that it was preferential to have Jackson Homes (Southern) Ltd even though they were in mortgage for that land as security?

Mrs Kniveton: Well yes, because that land was needed as part of the development and part of the access arrangement and they owned it, that was the link, not so much whether it was charged or not because obviously they would have the agreement of the bank to carry out the development, even though it was charged, it was the fact they owned it. There is no point having an agreement with a company where you need to use a piece of land when they do not own that piece of land.

The Acting Chairman: The second question we have down here relates to all of this. In fact, it is a lengthy question so I think I can summarise it to some extent in that the arrangement that had been made later with Jackson Homes (Southern) Ltd to be the purchaser was not known to Members of Tynwald. It was not your responsibility and you are not aware whether that responsibility for perhaps making Members aware of these changes, that that was done by the Department of Local Government at all and may not have happened?

Mrs Kniveton: It may not, I was told that they had pursued it and that they were comfortable to proceed.

The Acting Chairman: They were comfortable. And they did not come back for further assistance from you in what they had arranged?

Mrs Kniveton: No. I think Treasury was aware of that as well because they were kept up to date with everything, so had they had any concerns they should have raised them as well.

The Acting Chairman: Right. When did this contract... Do you know when this contract ceased to be active? That it in fact ...

Mrs Kniveton: The development agreement?

The Acting Chairman: Yes, this agreement in fact, yes.

Mrs Kniveton: DoLGE informed me recently they were writing to formally rescind it. The provisions of the agreement allow for rescission once the planning process has been exhausted, which is taking it through appeal and Petition of Doleance. Then either party can rescind the agreement and in effect it is frustrated in any event because it is in respect of that particular development. If there is no permission for it, it cannot go ahead.

The Acting Chairman: But there was no provision in the agreement for either side to rescind it, was there? There was nothing within the agreement?

Mrs Kniveton: 2.5 allows for the agreement to be rescinded once the planning process has been exhausted.

The Acting Chairman: But in your view then, it has not been rescinded by another party at this stage?

Mrs Kniveton: I was informed by the Chief Executive of DoLGE that they were sending a letter – it should have been about a fortnight ago – to all three companies, formally rescinding the agreement.

The Acting Chairman: Do we have that information? We will investigate that and make sure we get that correct then, thank you.

I think you have probably in the past suggested that the 'know-your-customer' rules, regulations, whatever you call them, are of little value in a case of this kind, that they are more related to banking matters than to contracts of this nature?

Mrs Kniveton: No, I would not have said that. What I meant was the Department should pursue the 'know-your-customer' provisions, the due diligence checks which are actually set out on the Government website and that is their responsibility and financial references should be pursued by the Department with the help of Treasury because they obviously have the experts to pursue those.

In this particular case they were well-known, Manx-based companies of good standing, but it would not negate from the fact that the due diligence checks should have been done and that is the responsibility of the Department. The Chambers view is, we highlight the fact that these checks should be done, but we leave it to the Department in conjunction with Treasury to carry them out because we do not have the expertise in respect of financial checks or the manpower to do so. We do company checks to make sure that the company is solvent and we check the officials and the registered office, but that is as far as it goes.

The Acting Chairman: Right. Mr Cregeen? No.

Had consideration been given to the possibility that the developers might be able to secure a bank loan on the land

Appendix 8

Tynwald Court, 16th July 2008, page 1262

Footnote 9 *Page 16* refers

Crossag Farm
Investigation of contract between
J G Kelly Ltd and DoLGE
Motion carried
Committee of three Members appointed

65. The Hon. Member for Malew and Santon (Mr Cregeen) to move:

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 details of the contractual agreement between J G Kelly Limited and the Department of Local Government and the Environment and report thereon with recommendations as soon as practicable.

The President: Hon. Members, having completed up to Item 64, we are now left with the remaining Items and the Supplementary Agenda. So dealing first then, Hon. Members, with Item 65, I call on the Hon. Member for Malew and Santon, Mr Cregeen, to move.

Mr Cregeen: Thank you, Mr President.

From the start, I would like to make it clear my position on this. On Crossag Farm, in principle, I was in favour of development of the site; in the detail, when it came forward, I was opposed to it.

I would like to remind Members of the motion that was brought to Tynwald in October 2006 by the Minister for Local Government at the time, Mr Rimington:

'That Tynwald approves the Department of Local Government and the Environment –
(1) Entering into a land transaction and development agreement at Crossag Farm, Ballasalla with J G Kelly Ltd;
(2) Transferring approximately 21.27 acres of Government land at Crossag Farm zoned for residential development and paying a capital sum of £3.0 million to J G Kelly Ltd in return for the construction of 65 public sector houses and 102 first-time buyer houses and apartments, to be sold under the House Purchase Assistance Scheme 2004.
(3) Conveying 0.46 acres of land to Malew Football Club and paying £20,000 for easements to enable further expansion of the football pitches.
(4) All subject to contract and obtaining relevant planning permissions.'

At the time, Mr Rimington stated:

'My Department has also worked closely with J G Kelly Ltd which now owns the proposed accesses on to the Douglas Road and across Abbot's Way.'

The Douglas Road access is in fact owned by Jackson Homes (Southern) Ltd, which has a debenture over its assets. Effectively, it becomes a bank security with first charge over it. My concern is what protection is there to protect the Government asset, which in 2005 was valued in excess of £10 million, and at today's prices could be in excess of £15 million?

Last month, the Minister for Local Government and the Environment stated in another place that, in the event of the development not being completed by J G Kelly Ltd, due to planning not being granted, then the Department retains the right to buy back the land at cost, plus costs for any infrastructure or other works that have been completed. On further examination and going through the Registry, understand that this land has not been transferred over to J G Kelly Ltd.

I am deeply concerned, Mr President, that when we have been looking at the details of this agreement, the Tynwald motion at no time mentioned Jackson Homes (Southern) Ltd, who are the owners of the access onto the Crossag Farm site. J G Kelly Ltd are the owners of the access onto the Abbotswood site and my concern is that, if for any reason the development went wrong, the Government land could still be landlocked, and part of our land, which was going to be handed over to J G Kelly Ltd, could have been developed and we could be in a worse situation by having lost some of our land and still having no access.

I understand that Jackson Homes (Southern) Ltd, which was previously called Blue Hat Ltd and changed its name in September 2004, is a special vehicle for purchase. I understand from the Registry that they have borrowings... They have a mortgage of £4 million out. There may not be any problem with this, but what I would like is a committee to look into the security of our land and to ensure that, if any future development does go ahead, it is for the benefit of the Isle of Man and that we are not disadvantaged by it.

That is as short as I would like to make it, Mr President, and I beg to move the motion standing in my name.

The President: Hon. Member, Mr Malarkey.

Mr Malarkey: I would like to second the motion, Mr President, and reserve my remarks.

The President: Hon. Member, Mr Shimmin.

The Minister for Local Government and the Environment (Mr Shimmin): Thank you, Mr President.

I would remind everybody that this matter is still subject of a legal challenge. I do not think that anything the Hon. Member has already said or I intend to say now is going to bring that into question, but if the select committee does go ahead, I would expect that the legal advisers of that committee would look into making sure that that was all done appropriately.

I have several concerns. I will limit them. The reality is: how many times do we go over the same land, the same area, the same job? I am tasked in my Department, as Minister for Local Government and the Environment, to do a job, to get on and do it. For that, I have professional officers and I have professional legal advisers.

The Hon. Member for Malew and Santon talks about, 'If things went wrong, could we be in a worse situation?' I think I could safely say that every Member of this Hon. Court would feel the same way. Therefore we all have those concerns. I would say it has already gone wrong, based on the opposition caused by a small number of very vocal individuals who have brought the current situation to an impasse, but that is for another day.

The reality is that certain individuals are continuing to try and use this Court inappropriately. By raising the spectre of something mysterious going within the legal arrangements of the companies involved in this, by putting enough smoke out there, it tends to cause concern, and I am left as the Minister: do I oppose this, which makes it look as if I have something to hide; or do I go along with it, because if there is another

Appendix 9

House of Keys on 24th June 2008, page 636 K125

Footnote 12 *Page* 22 refers

The Speaker: Hon. Member for Ramsey, Mr Bell, Treasury Minister.

The Minister for the Treasury (Mr Bell): Mr Speaker, the Government welcomes consultation with the Island's community and is actively seeking to improve and develop these communications. I am therefore very pleased to inform the Hon. Member that the Council of Ministers has recently agreed a Code of Practice on Consultation which is to be issued in early July. This new Code has been determined after being subject itself to public consultation.

Copies of the Code will be sent to all Members of Tynwald and other bodies. It will also be available in the Tynwald Library and on the Government website. The Code clearly identifies six principles which will guide our consultation. The Code is designed for use for the development of primary legislation, but Council has also endorsed it as a template for best practice by Departments, Boards and Offices when considering major policy decisions where consultation may be appropriate.

The Speaker: Hon. Member for Onchan.

Mr Karran: Vainstyr Loayreyder, would the Shirveishagh Tashtee make sure that lessons have been learned over the imbalance as far as the public consultation as far as fluoride is concerned, so that we do not end up with a situation where public documents are put out skewed one way or the other?

The Speaker: Mr Bell to reply.

The Minister: Mr Speaker, I am confident that the new guidelines, which will be available I think from 1st July, will cover that point.

Jackson Homes (Southern) Ltd
Government agreement

2.2. The Hon. Member for Malew and Santon (Mr Cregeen) to ask the Chief Minister:

Are you aware of any agreement between your Government and Jackson Homes (Southern) Ltd?

The Speaker: Question 2 and I call on the Hon. Member for Malew and Santon, Mr Cregeen.

Mr Cregeen: Thank you, Mr Speaker.
I beg leave to ask the Question standing in my name.

The Speaker: I call on the Hon. Member for Douglas West, Mr Shimmin, to answer the Question on behalf of the Chief Minister.

The Minister for Local Government and the Environment (Mr Shimmin): Thank you, Mr Speaker.

I can confirm that an agreement exists between the Department of Local Government and the Environment, Jackson Holdings Ltd, J G Kelly Ltd and Jackson Homes (Southern) Ltd for the development of housing in Crossag Farm, Ballasalla, subject to planning approval being granted.

I am not aware, Mr Speaker, of any other agreement involving Jackson Homes (Southern) Ltd and the Manx Government.

The Speaker: Supplementary, Mr Cregeen.

Mr Cregeen: Thank you, Mr Speaker.

Is the Minister happy with that situation regarding Crossag Farm, as the Tynwald motion specifically mentioned J G Kelly and not Jackson Homes Ltd?

The Speaker: Mr Shimmin to reply.

The Minister: Yes, Mr Speaker, I can understand the Hon. Member wishing to represent some of the views of his constituent parties in the area. However, the publicly identifiable company, which is J G Kelly Ltd, is indeed the public recognised face of the deal that is being attempted to be worked in with my Department.

Certainly there is a significantly complex set of legal mechanisms within the agreement which would have actually led to some more confusion rather than clarification, so this has been verified by the Attorney General's Chambers and that the contract is in order, sir.

The Speaker: Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, could the Shirveishagh reassure this House that we do not end up with a situation like we had where there was no investigation over the agreement that was supposed to give the opportunity of road access from the main road onto this development, where no-one was held responsible for it – it was worth well over £1 million to us as landowners; that there is not another agreement being given by people who have overstepped the mark as far as their responsibility is concerned, as far as Civil Service, and allowed a situation where we can become hostage to fortune to some litigation later, that we will have to then fund through the taxpayer to defend and protect the public assets?

The Speaker: Mr Shimmin to reply.

The Minister: I congratulate the Hon. Member for Onchan for once again being able to bring in some form of condemnation of previous – in his version – faults in this area. Of course, no Hon. Member in this Chamber, nor Department, nor officer would willingly go into something which caused cost or damage to the rights of the Government or the public of the Isle of Man.

I am advised, as we all are, by the legal representatives who work with them for Government that in the event that the development is not completed by J G Kelly, due to planning not being granted, then the Department retains the right to buy back the land at cost plus the value of any infrastructure or other works that have been completed. If the lessons have been learnt from previous situations, then I think we should all be reassured by that.

Can I give an unequivocal guarantee? None of us ever can, Mr Speaker.

The Speaker: Mr Cregeen.

Mr Cregeen: Thank you, Mr Speaker.

Is the Minister aware who the parent company of J G Kelly is, as J G Kelly is not the parent of Jackson Homes

Appendix 10

Transcript from Oral Evidence on 1st September 2009, page 20 TCF

Footnote 13 *Page* 23 refers

had with Mr Kerruish and Mr Jackson of Jackson Homes. J G Kelly, Jackson Homes (Southern) and Jackson Holdings Ltd are all the same group of companies, owned by the same Jackson family trust. J G Kelly is the building arm, it does not own property. It did not have any rights over the ransom strip or area X which is owned by the purchaser, Jackson Homes (Southern), so that had we contracted with J G Kelly Building, it was simply a building firm, it had no property assets, it had no rights over the land that was required to complete the development, so it would not have made legal sense.

I raised this with the Department and I asked them to get approval for it to be changed so that the transaction was with Jackson Homes (Southern) Ltd, being the property holding arm of the group of companies and what in fact we decided was the best route was to join all of the companies in to give maximum security. So you had Jackson Homes (Southern) Ltd as the property holding company with the rights over the ransom strip and area X which was crucial to the development, you had J G Kelly Ltd being the building arm which would own the infrastructure and any bank charge would be over that and you had Jackson Holdings Ltd which was the overall parent company. So it gave more security but also made legal sense because as I say, if it had just been with J G Kelly Ltd, they would have had no rights over the other areas of land which were required to complete the development.

The Acting Chairman: It is clear to see that, but nevertheless, in Tynwald in October 2006, they approved this contract would be with J G Kelly Ltd and no mention of these other companies –

Mrs Kniveton: I did in fact raise that with DoLGE and DoLGE were supposed to be going back to clarify that, what approvals they needed to clarify that at the meeting in – I think it was 2006 – the minutes of which you have.

The Acting Chairman: Did you follow up then as to how they clarified it and sorted that out?

Mrs Kniveton: I was told it was sorted out.

The Acting Chairman: By whom?

Mrs Kniveton: By – well it would have been Kevin Barber at the time, in DoLGE.

The Acting Chairman: The change was made – we can understand the reasons why the change was made – but it was made, you could almost say on the last minutes following the Tynwald decision to go ahead with the project.

Mrs Kniveton: On the last minute, as far as I was concerned –

The Acting Chairman: Well, I mean there was only a couple of months between the time at the dating of this agreement in December 2006 and the Tynwald sitting in October.

Mrs Kniveton: Well, I was not instructed before the Tynwald sitting so when I was instructed that was the time that the decision was made and in fact the agreement was with J G Kelly Ltd, it was simply with them and with other companies which gave more security.

The Acting Chairman: Companies within companies were giving guarantees within this group. Is that standard practice that one subsidiary of a head company can then give guarantees to other subsidiaries? Is that normal?

Mrs Kniveton: It can be, yes, depending on what function that company is making within the group. As I say, in this particular case, Jackson Homes (Southern) Ltd is the property holding wing of the group of companies, so that is why it made sense.

The Acting Chairman: You see, in the end, according to your statement, the purchaser was Jackson Homes (Southern), the buyer, as it were, was the Department of Local Government and yet Tynwald said, 'No, this is with J G Kelly'. Could that not have been seen by some people to be *ultra vires*?

Mrs Kniveton: Oh, it was with J G Kelly as well, J G Kelly were joined in as the building arm.

The Acting Chairman: So, did it not matter that these other two companies who would be involved in this and had the guarantees, that Tynwald did not know about this then?

Mrs Kniveton: I would not have said it did not matter, I would have said it was up to the Department to raise it as far as it thought it should do with Tynwald which is what I left them to do. That is not one of my functions. My function is to provide as much legal security as possible, which is what I did.

The Acting Chairman: Mr Cregeen.

Mr Cregeen: When did you first become involved in the contractual details?

Mrs Kniveton: It would have been about mid-2006. It was after the Tynwald motion, I cannot remember the exact date.

Mr Cregeen: The Tynwald motion was October 2006.

Mrs Kniveton: Yes, so it would have been around that time.

Mr Cregeen: So it would have been as soon as it went through Tynwald then the Department contacted you –

Mrs Kniveton: Yes, it would have been at that time.

Mr Cregeen: – so you had nothing to do with the motion that came to Tynwald in 2005?

Mrs Kniveton: No.

Mr Cregeen: Did you put it to DoLGE that it may have been better to have it with Jackson Holdings as the main parent company rather than have it linked through the subsidiaries?

Mrs Kniveton: I put it that the best contracting party

Appendix 11

Transcript from Oral Evidence on 1st September 2009, page 25 TCF

Footnote 14 *page* 23 refers
Footnote 15 *page* 24 refers

> Derek Ayres, although I do not have a document as such to evidence that but presumably you will accept my assurance that this is the case as my office handles the completion and payment of various stated payments.'

Somewhere in here... Yes, here we are. I have got a... From the Isle of Man Registry:

> 'Jackson Homes (Southern) paid £1.8 million for the parcel of land on Douglas Road...'

which would have an element of ransom strip value in it as well.

The Acting Chairman: Nevertheless, going back to the question that Mr Cregeen put, the fact that... It was said that J G Kelly owned the access to the site at that time. That turned out not to be correct, didn't it?

Mr Senior: That is absolutely true. I would not for a moment dispute that. All my negotiations were with J G Kelly. I had numerous reports to the Department and as you know, Tynwald briefing papers, but it is when I got the Heads of Terms that it became clear that it was Jackson Homes who actually owned the land.

I think there were two issues then: how important is that, and can you resolve it by a parent company guarantee? My view in this case was that by tying all the companies together and having Jackson Holdings being the guarantor on this, it was actually quite a strong agreement with very few risks in terms of the company.

The Acting Chairman: And the fact that Tynwald did not know that you would have felt was not important then, given that they approved this deal with Kelly's?

Mr Senior: By binding the three parties together in one agreement... My view was that that tied J G Kelly Ltd in with the holding company and the owner of the land. They all became the same company in terms of the development agreement. In retrospect, yes we could have gone back to Tynwald. I think my view is it probably would not have made any difference. The development of this land, or trying to develop this land, had been going on for several years and there was certainly... The agreement that went to Tynwald got almost unanimous approval.

The Acting Chairman: Mr Cregeen.

Mr Cregeen: Whose decision was it not to take it back to Tynwald? Tynwald was told J G Kelly's and once that error was made aware –

Mr Senior: It was my decision. I could turn round and say also it was the Chief Executive and the Minister signed off a document on 22nd December, but realistically I would accept responsibility for saying in, I think it was September or October, that the Heads of Terms had got a different company on them, then really was there a way of binding those companies together with a parent company guarantee.

The Acting Chairman: Just let me pause there for a second because we are just having difficulty with our recording in that there have been some mobile phone intrusions. Do we have any phones switched on here at the moment?

Mr Senior: I am sorry, I...

The Acting Chairman: I am sorry, I did ask, when members first came in, but you were not here at that time, Mr Senior.

Mr Senior: I am very sorry about that.

The Acting Chairman: No, that is alright.

Mr Senior: I was walking across and I thought, 'I must switch this off.' You have probably saved me a lot of money there, in fact.

Mr Cregeen: It is surprising how if it is switched on to 'meeting' or 'silent' it still comes through.

Mr Senior: I am very sorry.

The Acting Chairman: Can we move on to the issue of ransom strips, then. Why didn't the Department of Local Government proceed with the purchase of the ransom strip, because the cut-off date for that, as you say, was 31st December. Why didn't the Department of Local Government proceed with that?

Mr Senior: We were not in a position to purchase the ransom strip. We were not being offered the ransom strip.

Mr Cregeen: I think the Chairman is talking about the option that was taken on the top side. In the initial purchase there was an option.

Mr Senior: Yes, I really can only repeat, I think, what has been put in the letter to you, that when the land was bought in... I think it was the 1999 land... there was a 40-foot strip across the Douglas Road which would never have been suitable for an access, and in the event Crossag Farm was registered anyway, so it would have been a useless piece of land. But saying that, the option to purchase... We thought we would still serve notice because the land was just a few thousand pounds and you might as well buy the land, but the notice was not served by registered letter. It was served by hand and it was deemed by the Attorney General's that that was not suitable. It did not comply with the terms of the option.

The Acting Chairman: So you are saying really that ransom strip would not have been worth very much in any case.

Mr Senior: Certainly not for this development. It was before my time and I do not know who decided. If you wanted access to the land you needed a proper piece of land that you could get side splays on. Forty foot is actually quite narrow, and in the event it went through the middle of the farm anyway, which has now been retained.

The Acting Chairman: Where did the pressures come from to have it registered? Was that in your time as well?

Mr Senior: Certainly not from Estates and Housing, although we own the farm.

The Acting Chairman: Was that a problem within the Department?

Appendix 12

Letter from Treasury dated 18th September 2008

Footnote 17 *Page 27* refers

Isle of Man
Government
Reiltys Ellan Vannin

The Treasury
Yn Tashtey

Chief Financial Officer
Mark Shimmin CPFA

Corporate Strategy
Government Office,
Douglas,
Isle of Man, British Isles.
IM1 3PX

Telephone: (01624) 685666
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E-mail Clive.McGreal@treasury.gov.im

Mrs Marie Lambden
Third Clerk of Tynwald
Legislative Buildings
Douglas
Isle of Man

Please Contact: C. Hawker

Our Ref: CH/Crossag

Your Ref: C/CrF/01/ml

Date: 18th September 2008

Select Committee on Crossag Farm

Dear Mrs Lambden,

I refer to your letter of the 24th July 2008 to the Treasury Minister. Can I apologise for the length of time taken to reply. The Minister has asked that I respond on his behalf.

Treasury have reviewed the background to the approval of the Crossag Farm development, and have no views or comments that they would like to make to the Committee on this.

The details of the subsequent contractual agreement between JG Kelly Limited and the Department of Local Government and the Environment were not shared with Treasury prior to the appointment of the Select Committee.

Acting on concerns raised by one of your Committee members, I have since had sight of the agreement, and can, if required, provide information on this to the Committee, or discuss any further matter of concern that the Committee may have, once it has investigated the details contained therein.

Yours sincerely

Carl Hawker
Assistant Financial Controller
Treasury

RECEIVED
18 SEP 2008
OFFICE OF THE
CLERK OF TYNWALD

Appendix 13

Letter from HM Attorney General dated 20th January 2009

Footnote 18 *Page 27* refers

Telephone: (01624) 685452
Fax: (01624) 629162

ATTORNEY GENERAL'S CHAMBERS
3RD FLOOR, ST MARY'S COURT
HILL STREET, DOUGLAS
ISLE OF MAN IM1 1EU

Your ref: C/CrF01/ml
Our ref: WJHC/FAK/JR/19/1
(Please quote reference on all correspondence)

20 January 2009

RECEIVED
20 JAN 2009
OFFICE OF THE CLERK OF TYNWALD

Mrs M Lambden
Third Clerk of Tynwald
Office of the Clerk of Tynwald
Legislative Buildings
Douglas
ISLE OF MAN IM1 3PW

Dear Mrs Lambden

Re: Select Committee on Crossag Farm

Thank you for your letter dated 13th January 2009.

Felicity Kniveton, Legal Officer (Civil) in Chambers was directly involved in the preparation of the legal documentation in respect of this matter.

Instructions were received from the Department of Local Government and the Environment detailing the transaction arrangements for Crossag Farm which had been agreed during negotiations between the Department, in consultation with the Treasury, and the developer.

Chambers does not carry out or become involved in business/financial checks on behalf of a Department, these are for Department to ensure and verify, although Chambers would carry out company searches to check incorporation details, registered office, company officials ie; directors, company secretary and shareholders.

This procedure did not differ in respect of Crossag Farm. Chambers would not expect, and would not have the expertise, to check the financial credibility and accounts of a developer and it is within the Department's remit to carry out 'know your customer' checks, obtain business and financial references and to have them verified, before any documents are completed.

In respect of signatories, documentation is signed on behalf of a Department by the Minister, or a person duly authorised by the Minister (usually the Chief Executive) in accordance with the Government Departments Act 1987, and signatures witnessed, usually by a member of the Department. There is no authority for the Attorney General or Chamber's Legal Officers to sign an agreement on behalf of a Department.

In the case of Crossag Farm, the documentation was signed on behalf of the Department of Local Government and the Environment as the documentation was in the name of that Department.

I hope that the above answers your queries.

Kind regards.

Yours sincerely

W J H Corlett
Attorney General

Appendix 14

Transcript from Oral Evidence 1st September 2009, page 26 TCF

Footnote 20 *Page 28* refers

Mr Senior: No, there were external people who believed the farm had architectural merits and historical merits and should be retained, so I think Minister Rodan at the time was asked then to consider the application. It was taken out of the Department and it was decided that it should be registered.

The Acting Chairman: Any more questions, Mr Cregeen?

Mr Cregeen: Not on that point.

The Acting Chairman: The next one we have is: how did you manage to resolve the issue of Tynwald consent having been given to the motion with reference to J G Kelly, rather than Jackson Homes? I think we have already asked this question, essentially. You were content then to go ahead, I think as you have said, with the development agreement as it had been changed virtually as far as those people, the named companies were involved. So I think we have covered that, probably.

Mr Senior: If I could just say, no development is without risk. Even if you own the land and go out with traditional procurement, if say a contractor defaults, mainly by going into liquidation or does not continue works, it is always difficulty anyway, so the more complicated the development is the greater the risk will be, but I did not feel that in this case who the parties were, as long as they were bound together, made any difference to the risk. If anything, it actually strengthened the agreement because it brought the holding company into the agreement.

Mr Cregeen: Who carried out the statutory checks on Jackson Homes (Southern) Ltd and its parent company?

Mr Senior: I wrote to Treasury and asked them to carry out a check, but it was really on their accounts of Jackson Holdings, I think. Clive McGreal wrote to me saying that their accounts and balance sheets were satisfactory for a company that size and for a company… I certainly could… I cannot quickly find it now. I can certainly get you a…

Mr Cregeen: One of the points that… We were told earlier that it was up to the Department to carry out. The Attorney General's Chambers would not normally carry out these and it would be up to the Department to carry out any know-your-customer checks.

Mr Senior: Certainly we… Yes, I have found it now. On 22nd December, Clive McGreal –

Mr Cregeen: Which year, 2006?

Mr Senior: Sorry, 2006:

'As discussed, the attached extract is representative of a sound balance sheet for a medium-size enterprise and it has been filed timeously within year end and provides a comfort factor for the agreement being entered into at Crossag Farm.'

Mr Cregeen: Which company is this on?

Mr Senior: This is Jackson Holdings Ltd, who were the –

Mr Cregeen: It was not carried out on Jackson Homes (Southern) Ltd –

Mr Senior: No.

Mr Cregeen: – which is one of the companies that you were entering into an agreement with.

Mr Senior: Jackson Holdings are the guarantor of the whole development.

Mr Cregeen: But it was Jackson Homes (Southern) Ltd which had the purchase of the land, which had mortgaged the land, which you were entering into the agreement. I understand it may be the parent, but surely you should have carried out the checks on each of the companies on their balance sheets and the directors of that company as well, because that is the understanding that we were given, that it should have been carried out on each individual.

Mr Senior: It may be quite difficult for the Department to actually carry out checks because quite often it is a legal and a Treasury sort of…

Mr Cregeen: We are led to believe that it is actually up to the Department to carry out these checks.

Mr Senior: I think there is potential for passing things around from one Department to another, saying, 'Well, we've said these should be carried out,' but how do you carry them out? If you are looking at the Companies Register and somebody's balance sheet, it is very much a Treasury sort of function to do that. Certainly if, out of this Committee you feel these things should be done, I think it will be quite useful to pick the best Department to carry out these checks.

Mr Cregeen: Because we are getting this thing that everybody thought somebody else was going to do the checks on it.

Mr Senior: I am being very honest here about the process we went through and, as I say, in hindsight, I think it would have been easier to say, 'Well, hey, go back to Tynwald.' Personally, I still do not think it would have made any difference to the outcome of the development agreement, but certainly if more checks need to be carried out then I think it would be helpful certainly if Treasury could carry out those checks.

Mr Cregeen: Do you know where the Jackson Trust is based?

Mr Senior: No, I do not.

The Acting Chairman: The Department contracted with J G Kelly in the past to do other developments, didn't they?

Mr Senior: Yes.

The Acting Chairman: Baldrine and elsewhere?

Mr Senior: I was just going to say that a second ago. This is not the first successful agreement or development that we have had with J G Kelly.

Appendix 15

Transcript from Oral Evidence on 25th June 2009, pages 6 and 7 TCF

Footnote 21 *Page 28* refers

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

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

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

The Chairman: You haven't?

Mr Hawker: No.

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

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

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

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

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

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

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

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

The Chairman: I just wonder whether or not our Clerk could perhaps pass a copy to Mr Hawker to refresh his memory. I am sure you will agree, once you refresh your memory, that really those know-your-customer are basically to do with the individual, where they come from and whether or not they should be legitimately here and impinges upon immigration-type questions.

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

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

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

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

Mr Hawker: Not to my knowledge, no.

The Chairman: Mr Callister.

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

Mr Hawker: Yes.

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

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

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

Mr Hawker: Yes, because –

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

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

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

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

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

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

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

The Chairman: They should come to Treasury?

Mr Hawker: Yes, absolutely.

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

Mr Hawker: Yes.

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

Mr Hawker: Yes, it could.

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

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

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

The Chairman: Mr Cregeen.

Mr Cregeen: You will be aware that part of the agreement was a £3 million transfer for the public-sector first-time-buyer housing.

Mr Hawker: Yes.

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

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

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

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

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

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

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

The Clerk: Thank you.

The Chairman: Anything further, Mrs Lambden?

The Clerk: No, thank you.

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

Appendix 16

Correspondence from DoLGE (Mrs Yvette Mellor)

Paragraph 3.2.2 *Page 6* refers

Department of Local Government and the Environment
Rheynn Reiltys Ynnydagh as y Chymmyltaght

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Reiltys Ellan Vannin

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E-mail: ceo@dlge.gov.im
Chief Executive
K. A. Kinrade

Please reply to the Chief Executive

Our ref: YAM/MC/

30th September 2008.

Mrs. M. Lambden,
Third Clerk of Tynwald,
Legislative Buildings,
Douglas,
Isle of Man, IM1 3PW.

Dear Mrs. Lambden,

Select Committee on Crossag Farm

Further to your letter of the 15th September 2008, I would like to ask the Chairman of the Select Committee, Mrs. Brenda Cannell, MHK, for an extension of time to supply the additional information requested in your letter, for the following reasons.

Firstly, the two members of staff within the Department who have dealt with the Contractual Agreement are not available to answer the points raised in your letter. Mr. Ken Kinrade, Chief Executive, is on annual leave, and Mr. Richard Senior, former Director of Estates & Housing, is off ill, following admission to hospital.

Secondly, the Agreement and Contract between the Department and J. G. Kelly Limited (or Jackson Homes (Southern) Limited and/or any other related parties) contains a Confidentiality Clause and we will have to seek the consent of the other parties before the Contract and Agreement can be released.

I should be grateful if the deadline for the response to your request could be extended until the 10th October 2008, to accommodate the above actions.

Yours sincerely,

Y Mell

Yvette Mellor, ACA,
Deputy Chief Executive.

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Reiltys Ellan Vannin

Department of Local Government and the Environment
Rheynn Reiltys Ynnydagh as y Chymmyltaght

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Chief Executive
K. A. Kinrade

Please reply to the Chief Executive

Our ref: KK/MC/

3rd October 2008.

Mrs. M. Lambden,
Third Clerk of Tynwald,
Office of the Clerk of Tynwald,
Legislative Buildings,
Douglas, ISLE OF MAN, IM1 3PW.

Dear Mrs. Lambden,

Select Committee on Crossag Farm

With regard to the above-mentioned matter, I refer to your letter of the 2nd October 2008 written on behalf of the Select Committee which was received by hand at the Office of the Department of Local Government and the Environment at 3.55 pm on the 2nd of October 2008. As you are no doubt aware, the letter was forwarded with a precept issued by Mrs Cannell, the Chairman of the Select Committee of Tynwald on Crossag Farm in purported exercise of the powers conferred upon her by section 3 of the Tynwald Proceedings Act 1876 by virtue of the Resolution of Tynwald Court made on the 15th of July 2008 for the effective purposes of disclosure of the contractual agreement between J G Kelly Limited and the Department of Local Government and the Environment in relation to Crossag Farm to be produced by no later than 5.00 pm on the 6th of October 2008 to the Clerk of Tynwald at the Clerk of Tynwald's Office, Legislative Buildings, Bucks Road, Douglas, IM1 3PW.

I write to express my concern as to the manner in which the procedure has been undertaken and to request the Select Committee to consider its position in the light of the contents of this letter and correspondence from Gough and Co.

As you are no doubt aware, by letter of the 15th September 2008, you wrote to the Department on behalf of the Select Committee requesting a copy of the Agreement and any contract between the Department and J G Kelly Limited (or Jackson Homes (Southern) Limited and/or any other related party) in relation to land at Crossag Farm.

By letter dated the 30th day of September 2008, I responded to advise that as there is a confidentiality clause in the document, the Department could not voluntarily release the document without the consent of the other party to it. I wrote to

Continued/....................

request time to obtain the consent from the parties to the release of the document and to advise you as to what was being done. That request was denied by the Select Committee. It is the normal practice of Select Committee's to grant such an extension of time. I must also point out to you that it is the normal procedure of a Select Committee upon the issuing of a precept to permit the party receiving it to give notice to any party who may wish to object to the release of the document, for example, any party who would have the benefit of a confidentiality clause contained in the documentation sought. In serving the precept in the manner it has, in the opinion of the Department, the Select Committee could be seen to be acting procedurally unfairly, potentially in breach of the rules of natural justice and Article 8 of the European Convention on Human Rights, being the right to respect for private and family life. In so doing it does not respect the effect of the confidentiality clause, the rights of the Department and the other parties to the agreement and further the conduct of the Select Committee could be seen to be both oppressive, procedurally unfair, and unreasonable.

Other matters are also cause of concern. As you are no doubt aware, J G Kelly and Jackson Homes (Southern) have issued a Petition of Doleance challenging the decision of COMIN to accept a recommendation of an independent planning inspector to reject the application of DOLGE to develop Crossag Farm. Additional parties active in the litigation are the Council of Ministers, the Malew Parish Commissioners, my Department and a number of third parties comprising members of the Ballasalla and District Residents Association. I understand that a member of your Committee, Mr Cregeen, MHK, was initially a noticed party having been active in the planning inquiry in opposition to the proposed development but has since opted to take no further part.

In the report of the inquiry, at paragraph 72, there is a reference to a verbal submission made by Mr Cregeen who took an active part in the proceedings -

"72. *Mr Cregeen considered that the proposal was premature as the by-pass should be built first in order to relieve traffic congestion. The proposal was overdevelopment of the site, effectively in 2 developments; one of private housing with access from Crossag Road; and the other smaller houses mainly public sector and affordable with access from Douglas Road. There was a need for housing but "not at any cost". It was important to examine the options and find the best scheme for Ballasalla, which would include the primary school, by-pass and other infrastructure. He was against shared service residential roads and preferred streets with footpaths, which he considered safer. The football club could move. He had not submitted detailed written submissions."*

Quite clearly, Mr Cregeen took part in the planning process and, quite clearly, had an interest in the matter which casts doubt upon whether he is a suitable, unbiased member of the Select Committee.

As you may very well be aware, the substantive Petition of Doleance is due to be heard over the first 3 days of December but there has recently been an interlocutory

Continued/....................

hearing (in which the Council of Ministers did not participate) where the Deemster considered an application by the Commissioners to obtain disclosure of the agreement which has been cited in the Petition. My understanding per our advocates is that J.G. Kelly Limited and Jackson Homes (Southern) Limited opposed the disclosure of the agreements on the grounds of commercial sensitivity. The Commissioners, on the other hand, alleged that they needed sight of the agreement to establish for themselves that Kelly and Jackson had the standing to bring the Petition in the first place.

Apparently, my understanding is that the Commissioners' application had been partially successful in that, on the 29th September (the date of the hearing), Deemster Kerruish ordered that Kelly and Jackson had to provide the Commissioners with a précis of the agreement's contents. However, notably disclosure of the agreement itself was not ordered and to this extent the Commissioners' application was not wholly successful. The final Order is presently in the process of being drafted. In the light of the findings of the Deemster we require confirmation that in the circumstances of the case the Committee will not release the agreement to the Commissioners or any third party.

In this regard, I must draw to your attention to the fact that a precept or witness summons may only be used for the purpose of the proceedings in which it is served, it cannot be used to obtain documentation for collateral use.

I would also draw your attention to the fact that collateral use of the document is not permitted as the document is subject to a duty of confidentiality. That confidentiality remains as neither the Department nor J G Kelly, the parties to the agreement, have consented to its release to the Select Committee. The release of the document will only made in compliance with the precept if no legal challenge is forthcoming.

I must point out to you that information provided to the Committee under force of precept by the Department is to be treated as provided only for the purpose of the Committee's investigation and not further or otherwise. Collateral release of that documentation, particularly to any party involved in the ongoing Doleance proceedings, may very well render the Committee liable to legal action.

I further note that the Committee has been served a letter before action by Gough and Co acting on behalf of JG Kelly Limited and Jackson Homes (Southern) Limited indicating that in the light of the procedure adopted by the Committee that a

Petition of Doleance may be issued and requesting an extension of time in which to produce the development agreement, to the 16th October 2008. Emergency injunctive relief is also indicated as being applied for against the Select Committee which in the circumstances of the case could well be successful.

Under the circumstances, the Department would request the Committee to provide an undertaking that in the event that no legal action is issued that the document will remain confidential.

Continued/............................

Our ref: KK/MC/ 3rd October 2008.

I look forward to hearing from you with your confirmation that Gough and Co's request has been granted.

Yours sincerely

Y Mellor

Yvette A. Mellor, ACA,
Deputy Chief Executive.

Copy to: Gough and Co. (ref CC/08-021/nb)

Appendix 17

Transcript from Oral Evidence 1st September 2009, page 23 TCF

Footnote 22 *Page 28* refers

Were you aware that Treasury had not given approval for the disposal –

Mrs Kniveton: I was told Treasury had and Treasury certainly knew or... You mean the disposal of the Department's land?

Mr Cregeen: Yes.

Mrs Kniveton: I was not aware they had not given formal approval, I was under the impression they had and certainly Treasury were very well aware of it, so I am surprised.

Mr Cregeen: Well, we have a paper that Mr Carl Hawker sent to the Treasury regarding this matter and they were unaware.

Mrs Kniveton: They were given the business plan, I am certainly aware they were given a business plan by DoLGE setting out exactly what was proposed, so to say they were not aware of it, I am very surprised.

The Acting Chairman: Mrs Lambden, any points?

The Clerk: I do not think so, thank you.

The Acting Chairman: No. Right I think that is all we have to ask. Is there anything else that you feel that you would like to say to the Committee at this stage?

Mrs Kniveton: Only that I have to say from the Department's point of view that I do feel that the officers acting for the Department worked extremely hard on this case and tried to get as good and secure a deal as possible and I think it would be rather harsh to criticise them in any way. I think that as far as I am aware, they acted very well and worked very hard on this matter.

As far as Treasury is concerned, I think they would have been well aware of what was going on and if they are now saying in hindsight that they were not, then I find that surprising.

Mr Cregeen: Just one final. Would you consider in the future that, when we were going back to the financial checks, before you continue to draw up any contracts, there should be a checklist to make sure that the Department has fulfilled all its agreements to carry out financial checks and 'know-your-customer'?

Mrs Kniveton: We do always ask that they do confirm – just by e-mail – but in fact we are at the moment putting together a form which we will have as a checklist because we have had this sort of problem with other Departments where we are told checks have been done and subsequently find that they are somewhat lacking, but as I say it is not part of our job and we could not take that on, so we can only ask the question.

I would certainly think that it would be a very good idea for Treasury to have maybe a risk assessor who passes large transactions and states that they are satisfied that there is enough security to be provided, I think that would be a very good idea.

The Acting Chairman: Well, thank you very much. We are grateful for your statement, which could be very useful to us, thank you. If you would be good enough to let us have a dated and signed copy of that, it would be very helpful. Mrs Kniveton, thank you very much indeed.

Mr Senior was called at 2.53 p.m.

EVIDENCE OF MR R SENIOR

The Acting Chairman: Now, Mr Richard Senior, please.

Thank you for attending, Mr Senior. I gather you are the former Director of Estates and Housing in the Department of Local Government and the Environment –

Mr Senior: That is correct.

The Acting Chairman: – and you are now still with the Department in one way or another.

Mr Senior: I am just doing project work and I just get paid on an hourly basis.

The Acting Chairman: Were you with the Department throughout the whole process of the Crossag Farm negotiations and so on?

Mr Senior: In terms of the negotiations, not in terms of the original land purchase. When I started in the Department in 2001, the land had already been purchased.

The Acting Chairman: And when did you retire full time from...?

Mr Senior: In April 2008.

The Acting Chairman: Let me ask you first then what you would consider to be the reason the motion that went to Tynwald in October 2006, that there should be a development agreement between the Department of Local Government and J G Kelly, did not include Jackson Homes (Southern) and Jackson Holdings Ltd in that motion that went to Tynwald?

Mr Senior: All the negotiations that I had held over three years... We have sent you a schedule of all the main actions, and this really was the second major go at trying to get the site developed, but all the letters we had had from J G Kelly were under the name of J G Kelly Ltd. It is always easy in hindsight to think maybe you should have asked more questions about did they actually own the land or was it another company, but it was when the first heads of agreement came through that it was clear that J G Kelly did not actually own the land.

The Acting Chairman: But as far as Tynwald was concerned, they thought, when they agreed to this, that the agreement was with J G Kelly and not with a whole group of companies. Were any Members of Tynwald then later informed of this change, because it happened within a couple of months after Tynwald's approval.

Mr Senior: Two development proposals went to Tynwald.

The very first one, which still included J G Kelly, I think just about every Tynwald Member attended that briefing session and asked questions.

The Acting Chairman: Was this the one that was approved in 2006?

Mr Senior: That is right.

The Acting Chairman: So you were at that presentation?

Mr Senior: Yes, and –

The Acting Chairman: And more or less most of the Members?

Mr Senior: – at that time I was under the impression that it was J G Kelly, but I have to say that that was not my main focus of attention. My main focus of attention was trying to get the financial and technical arrangements sorted out, because any agreement that we were going to have was subject to contract and subject to planning approval. If you look at the schedule of main actions, there is a vast amount of work gone into it. As I say, in hindsight, I would accept that maybe I should have asked more questions about real land ownership, but I just saw that coming later in the process.

The Acting Chairman: If you can remember anything of that presentation then, was a question asked about, or was any information provided to the Members that it was not J G Kelly that they would be signing up to?

Mr Senior: No. In both presentations... The first presentation, there was virtually a hundred-per-cent attendance by Tynwald Members and there were a lot of questions asked, but for the second presentation, which was to do with this final agreement, probably only about 15 Tynwald Members attended.

Mr Cregeen: In your briefing paper to Treasury of 9th August, you state in here:

> 'It is evident that J G Kelly now own the land that could provide the main access.'

Who gave you the information that J G Kelly now owned it?

Mr Senior: From two sources, really, because we had been trying to... In fact, there are more than two deals. There is a previous deal with Derek Ayres, a direct deal, and we had two agreements there, which he rescinded at the last moment. So we were aware that Derek Ayres, while he was in discussion with us, was also in discussion with developers and ultimately it was J G Kelly who came to us and said they had now bought some land and entered into an option agreement with him, and I certainly spoke to Mr Ayres' accountant, who said that was the case.

I think the other thing is that no developer is going to put so much time and effort into an agreement – and a vast amount of time and effort has gone into this – if they do not own the land or have the options to follow the agreement through. I do not know how much this has cost J G Kelly, but an awful lot of money, to progress this development agreement, and it was all subject to contract and subject to planning permission in any case.

I think that is a point I would like to make: that this is a development agreement. It is not the final set of contracts. When you do the conveyances, then there would be all the checks through the Registry. So there is an issue about how many checks do you carry out on companies and the land while you are trying to negotiate the actual deal itself. Certainly the focus was on the deal. There has to be some trust in this.

Mr Cregeen: As we just heard earlier, the Attorney General's Chambers deemed that you had carried out all these checks to your satisfaction for when you –

Mr Senior: I was satisfied that J G Kelly companies owned the option and some of the land because they had actually been developing the land. It was there to be seen. But I actually did write to the Attorney General's in probably December 2006, I think it was, just asking them to have sight of the option agreement and the land transaction for the land on Douglas Road, which they did do. So they were checked. In fact, in my files I do have a copy of the Registry agreement of the sale of the land to J G Kelly.

Mr Cregeen: To J G Kelly or to Jackson Homes (Southern)?

Mr Senior: It is probably to Jackson Homes (Southern).

The Acting Chairman: The letter that you refer to, I do not think we have that, the letter you sent to the Attorney General's office. Would you be able to supply us with a copy of that in due course?

Mr Senior: Yes, I can. I know it was close to Christmas. That was another issue in that Derek Ayres had been very keen, when we were trying to enter into an agreement with him, to set deadlines for everything, so there was an issue here that the agreement with J G Kelly... What he actually wanted was the planning approval. If we were to get the planning approval for 31st March 2007, which was not feasible, but it was certainly feasible to submit the planning application before that date, and that is what we did, so we set 31st December as being the deadline for getting the planning application to our planning directorate. That is not the actual submission of the application but at least the process has started.

The Acting Chairman: So the subject of the letter to the Attorney General then would be... What was it you were asking for from the Attorney General's department?

Mr Senior: Just for them to have sight of the confirmation of the agreement. I am just putting my specs on. I have just started wearing specs and now I cannot read without them. Paul Kerruish from Gough and Co. wrote to Elizabeth Smith in the Attorney General's Chambers and copied her e-mail in to me:

> 'I can confirm that all considerations, save for the consideration of the ransom strip itself is being paid under the 27th May agreement with

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