

TYNWALD COMMISSIONER FOR ADMINISTRATION

REPORT ON CASE TCA 2116

Complaint

1. Mrs. I complained to the Tynwald Commissioner for Administration (referred to in this report as the “TCA”) on 31 October 2021 about an action or service failure by the Cabinet Office in respect of land in the parish of Marown which had been wrongly zoned as development land on the map accompanying the Area Plan for the East as laid before and approved by Tynwald in November 2020.
2. At the time of her complaint, Mrs. I had not complained to the Cabinet Office as required by section 10 of the Tynwald Commissioner for Administration Act 2011, so the complaint to the TCA was stayed whilst Mrs. I followed the Cabinet Office’s complaints procedure. She wrote to me again on 12 January 2022, having received a response to her complaint from the then Chief Secretary. She also provided me with a copy of the letter sent to her by the Executive Director of Policy Development. It is clear from both letters that the Cabinet Office accepted that an error had been made on the map and offered an apology, but Mrs. I considered the response inadequate, given the consequences for herself and her family.

Background

3. In my report in respect of TCA2003, I explained the background to the Area Plan for the East (“the Eastern Area Plan”) and I do not propose to repeat it. Suffice it to say that a draft Eastern Area Plan was published after the preliminary publicity period ended in May 2018 and this was followed by a consultation period. Thereafter, the Plan was refined and various alterations were made over the next 2 years. Work on the Plan and the mapping associated with it was still ongoing at the start of the first Covid lockdown and continued through it. Throughout the gestation period of the Plan, day to day planning continued with applications for permission to develop land being determined.
4. One such application was made to develop a site on the outskirts of Crosby by constructing 28 houses and a retail outlet on part of the area known as Ballaglonney on the main Douglas to Peel road. The original application was made on 14 September 2015 and was initially refused but allowed on appeal on 29 June 2016. Work had not begun when the draft Eastern Area Plan was published on 25 May 2018. On 10 October 2019 final planning approval was given for the construction of 28 houses and a retail outlet. The settlement is now known as

Crosby Meadows.

5. By February 2020, the Eastern Area Plan was well advanced. A map referred to as “PiP 4”, which I understand was in relation to active travel, had been revised in February 2020. The settlement boundary on that map appears to be incorrect as it did not extend to Crosby Meadows at all, although the marked boundary of that site was correctly shown on PiP4, and so did not reflect the Draft Plan Proposals Map. This was not noticed in PiP4 before publication. In February 2020, a decision was made to remove the field adjacent to the development site from its designation as strategic reserve. This was done because there was no perceived need for additional housing in the area. However, there was no change to the boundary of the development area. At some point between then and 10 June 2020 a change was made and the boundary was extended. The change was either not identified or not corrected by those in Cabinet Office responsible for the Eastern Area Plan.
6. Unaware of any change, Mrs. I decided to purchase a new build property and exchanged contracts in October before completing the purchase in December 2020.
7. Work on the Eastern Area Plan was completed during summer 2020 and was adopted on 21 September 2020 before being approved by Tynwald on 18 November 2020. At the time the Plan was approved no-one in the Cabinet Office with responsibility for the Plan, nor the MHKs for the constituency, nor the Marown Commissioners had noticed what has since been described as a “cartographical error” resulting in the expansion of the developmental area for which permission to develop 28 houses had been given. No application was made to the High Court to correct the Plan.
8. I should, at this stage, explain that both planning policy and what is now referred to as the “Planning and Building Control Directorate” were co-located in the Department for Local Government and Environment (DOLGE) but following changes to the structure of Manx government by a Transfer of Functions Order in April 2010, DOLGE ceased to exist and its functions in relation to planning were transferred to the Department of Infrastructure (“DoI”). Perhaps because of the likely conflicts which would arise between the DoI needing permissions to develop projects and its role as the planning authority, the Planning Directorate moved in June 2015 to the Department of Environment, Food and Agriculture (“DEFA”) whilst the Planning Policy Team became part of the Cabinet Office. The Cartographer remained in the Department of Infrastructure.
9. Section 5 of the Town and Country Planning Act 1999 provides the mechanism for making applications questioning the validity of a plan and seeking rectification. The basis for making such applications is limited and any application must be made within 6 weeks of the publication of the plan and the validity of a development, strategic or area plan “shall not be questioned in any legal proceedings except by an application to the High Court under section 5 of the Act.”

10. In contrast, the development company, who own a large property in the village, issued proceedings under section 5 in the High Court seeking an Order that Map 10, dealing with the Crosby village, be quashed insofar as it related to that property. The proceedings were issued on 13 January 2021 and Cabinet Office, represented by the Attorney General's Chambers initially argued that the application was out of time and that the 6 week time limit for issuing the application had expired. This was determined as a preliminary issue, in the Claimant's favour. The substantive matter was determined by Deemster Corlett. In his judgment of 19 November 2021, he held that, on the facts of the claim and applying common law principles of procedural fairness, the application should succeed. There had been a failure to consult the Claimant or a failure by the Department to hear the arguments of the Claimant or a failure by the Department to acquaint itself with the relevant information which amounted to a breach of the common law requirement of procedural fairness.
11. The developer also appears to have noticed the discrepancy in relation to the development site at Crosby Meadows. On 29 December 2020, it sought planning permission to erect a further 4 properties. The original properties were a mixture of 2, 3 and 4 bedroomed homes. These were all 4 bedroomed. The application was considered by the Director of Planning on 25 February 2021 and was rejected. It was accepted that the proposed development fell within the area designated for residential use, the development would be premature until such time as it was demonstrated how affordable housing, Public Open Space, drainage and access would be provided. Further the development would result in the loss of approved landscaping and there would be no opportunity for provision of a landscaped perimeter to the detriment of the character and appearance of the area. The application had been opposed by the Marown Commissioners and their reasons include a comment as follows: -

"The Eastern Area Plan recently adopted by Tynwald and following a Public Enquiry designated certain areas in Marown for residential use. The land subject to the application is not designated as Residential albeit it abuts such land. It would seem to make a mockery of the new Plan if such exceptions are permitted so soon after adoption."

This suggests that the Commissioners had not examined the Plan approved by Tynwald and were unaware of any change.

12. The developer appealed the decision. Planning appeals are administered by a unit of the Cabinet Office totally separate from the Planning Policy Team. They allocated a Planning Inspector from the list of those appointed by the Council of Ministers. The grounds of appeal were that "the decision was premature and crossed [*sic*] with approvals from both Highways and MUA drainage... The application was under the threshold for social housing as this site was not any part of the previous development. [There had been] no liaison from the Planning Officer on the issues raised in the decision notice as these could all have been resolved by condition."

13. The Marown Commissioners put in a submission dated 31 March 2021 for the Inspector's consideration, although they were not represented at the hearing. In it, the Commissioners supported the original decision and sought to argue that since Tynwald had adopted the report and recommendation in respect of the Eastern Area Plan from which the original land reserved for development had been removed, the map which accompanied the Plan was clearly an error. The site, the subject of the application under consideration, was not designated for residential use. The Inspector found that the site under appeal was partly within the proposed strip of open land and partly within the area which had originally been designated strategic reserve for housing. He observed that as a result of a "cartographical" error, "the settlement boundary in the Area Plan as adopted by the Cabinet Office and approved by Tynwald was modified." He concluded that section 5 of the Town and Country Planning Act 1999 indicated that the validity of an Area Plan could not be questioned in any legal proceedings with a single exception. A person who wanted to question the validity of the Plan could make application to the High Court within 6 weeks of the Plan's publication. The Marown Commissioners had not done this. Since the period, in which any application could be made, had expired, the Inspector concluded that the Area Plan had to be treated as valid, designating the site under appeal for residential use. The Inspector rejected the objections and allowed the appeal. The Inquiry took place on 28 July 2021 and the decision is dated 18 August 2021.
14. July 2021 was the month of the delayed local elections. Five candidates were nominated for election as Commissioners for Marown. A director of the developers was one candidate. The election was uncontested, and he was elected on 22 July and became a Commissioner on 1 August 2021. Candidates were also declaring for the election to the House of Keys to take place in September 2021. Among the known candidates were Mrs. Poole-Wilson, then a Member of the Legislative Council and Mrs. Alison Lynch, then Chair of the Marown Commissioners. Both became aware of the problem with the developmental boundary at Crosby Meadows. At about the same time the Planning Policy Team were also alerted because the Planning Inspector was seeking further information through the Planning Appeals Administrative Team. The Head of Planning Policy attempted to find out how the alteration occurred and there were emails between her and the Cartographer. From those emails it appears that the Inspector identified the error on about 7 July. On 14 July, the Cartographer emailed that he could not find any instruction to remove MM001, but it could be on a map sheet. It was on a map in December 2019 but had been removed by February 2020. The Head of Planning Policy referred to an email of 25 February asking for the removal of MM001 as strategic reserve. Also, on 14 July she drew up and circulated a draft response to the Planning Inspector. In her email to colleagues, she referred to the alteration of the map as "a mistake and unfortunate and I'm personally disappointed. I apologise on behalf of Planning Policy/CABO/Mapping."
15. On 20 and 28 July the Head of Planning Policy wrote respectively to the Chair of Marown Commissioners and to Mrs. Poole-Wilson MLC. That email attached the timeline of events which had been sent to the Planning Inspector and, having accepted that "the settlement

boundary around the edge of site MH021 was changed on Map 10 at some point between 14 February 2020 and 10 June 2020.”, the writer expressed the opinion that “the most likely reason why this happened is cartographical error.” The phrase (“cartographical error”) was first used in the same timeline which was submitted to the Planning Inspector on 13 July 2021. In the context of a general election campaign, it is not surprising that the possible reason was given publicity and was reported as the actual reason for the mapping change. The Head of Planning Policy also explained that as Tynwald had approved the Area Plan, of which the map was an integral part, the Eastern Area Plan could not be changed but suggested that the Commissioners contact “the Tynwald Commissioner for Arbitration” [sic]. Following a meeting of the Commissioners the following day, they determined to follow the suggestion of the Cabinet Office and wrote to the TCA on 23 July 2021. Section 10(4) expressly provides that a listed authority is not “a member of the public” and as local authorities are included as listed authorities under Schedule 2 of the Act, the TCA had no jurisdiction to investigate the complaint.

16. As indicated above, Mrs. I complained to the TCA on 31 October 2021. She was not alone, although she was the only one to go through the Cabinet Office complaints process to enable the TCA to consider the complaint.

Investigation

17. This investigation should have been straightforward, given that the Cabinet Office in its letter to Mrs. Poole-Wilson had admitted that an error had been made but, as will become clear, it has proved less so and at the time this Report was being drafted it was not possible to say with any certainty what went so seriously wrong in the process of preparing the Plan.
18. I saw Mrs. I in April 2022. She explained that she had bought the property in 2020, being already a resident of Crosby, with 2 children one of whom attended Marown School. She was attracted by the design of the estate with open space and landscaping. Its size made it safe for children to play and her child could walk straight from the estate onto the Heritage trail following the old railway to the school, without any need to use a road. She did not become aware of the planning and zoning issue until after she moved into her home. The application for planning permission to build 4 properties to the west of the estate, which had been an area which was to be landscaped on the plan for the estate, was made 3 weeks after she had completed the purchase. She did not observe that the required notices had been put up but, in any event, could do nothing, being prevented by a condition of her purchase from objecting to any further development. Permission to build the additional houses was finally granted on appeal on 8 September 2021 but at the time of the interview serious work on the houses had not begun.
19. Mrs. I was particularly worried about comments made by the Inspector in his report. The decision included conditions relating to any further applications for development of the

land to the south. This confirmed her concerns that the estate would be further extended. Whilst further construction work was proposed, the roads on the estate remained unmade and the DoI would not adopt them. The area was muddy in wet weather and very dusty when dry. If a further application was made in respect of the land to the south, which Mrs. I estimated could lead to construction of 10 or more houses, the roads would remain unadopted, which she considered intolerable.

20. Mrs. I also stated that there were a number of snagging issues in some properties which were unresolved and also, more seriously, sewerage problems for which the MUA did not accept responsibility.
21. A week after our discussion, Mrs. I contacted me to say that there was a great deal of activity at the site and both the site for the 4 houses and the land to the south were being cleared. Two days later she informed me that an application had been lodged to construct a further 18 houses. The yellow notices had been put up, but there had been no discussion with the existing residents. The area behind her house which was to be landscaped was being used by the developer as a builders' compound. The location for the proposed extension of the estate was directly to the rear of her property.
22. I have had 2 meetings with the Head of Planning Policy. On each occasion, the Assistant TCA, Mrs. Kent, was present and the Head of Planning Policy was accompanied by her line manager, who is the Executive Director of Policy Development. At the first meeting on 10 May 2022, I outlined the problem and explained that Marown Commissioners had complained to the TCA and why there was no jurisdiction to consider that complaint. The Cabinet Office confirmed that it accepted responsibility for the error because the Area Plan was its policy. Section 5 of the Town and Country Planning Act 1999 had not been invoked in respect of this error, so I enquired if there was any solution. The Head of Planning Policy explained that, in theory, the Eastern Area Plan could be revoked by Tynwald following the procedure laid down in Schedule 1 to the Act, but it could not then immediately adopt an amended Area Plan without then following the process, including consultation, set out in that Schedule. This would leave the East without an Area Plan until the corrected Area Plan was adopted and would result in uncertainty around earlier planning decisions. Legislative changes were being considered to allow for correction of errors but these could not be retrospective and could not help in respect of this error. The Attorney General's Chambers had not yet been instructed so a "legislative fix" was not imminent.
23. The Head of Planning Policy explained that the Area Plan was not determinative of the outcome of the planning application for 18 houses, but it would be influential. Other factors such as traffic, schooling and the capability of other infrastructure such as sewerage would be considered as would objections from other residents. I explained that the residents of the estate were prevented from objecting to the application because of a covenant imposed by the developer. She said that when the error was identified at the Planning Appeal stage, she had attended the hearing to give evidence to the Inspector but was not required to give

oral evidence.

24. The Head of Planning Policy explained the process for mapping Area Plans and how it had been affected by the lockdown at a crucial stage. She described the arrangements which had been put in place. Because of the equipment he used, the Cartographer could not work from home and was one of the limited number of public servants who were permitted to work in their office. She had worked from home, but there were socially distanced meetings to exchange drafts supplemented with emails containing additional instructions. She said that Map 3 had shown the correct boundaries. She suggested that the wrong shape file (which is an electronic file with geometric and attribute information), which probably showed an earlier settlement boundary, was used in the creation of PiP4 which continued to be used as the version to be modified at the Public Inquiry.
25. The explanation given above is not the same as that given to Mrs. Poole-Wilson following the initial enquiries. Earlier in the year I had a meeting with a Planning Policy Officer. The purpose of that meeting was to discuss the Eastern Area Plan as it applied to another village within the Eastern Area Plan (TCA2003) but, being already aware of the Marown problem, I took the opportunity to ask him about it. He gave me broadly the same reason as was given to Mrs. Poole-Wilson, stating that the Cartographer would have been confused by the aerial view which suggested a larger site. This was because spoil and other building debris had been “dumped” outside the development site.
26. At the suggestion of the Head of Planning Policy, Mrs. Kent and I agreed to see the Cartographer. We met him at his office at the Sea Terminal on 30 June and, at his suggestion, the meeting was held in the late afternoon to avoid disturbing his colleagues in the open plan office. For that reason, we also began the meeting in a conference room where maps could be properly viewed, before looking at how the maps were generated on his computer.
27. The Cartographer began by explaining that Mapping Services were physically located within DoI but are a Shared Service for Government providing survey, technical and mapping services not only to Government Departments for projects such as Area Plans but also to the public, which generated income. Prior to the 2015 transfer of government functions, the Mapping Unit had worked collaboratively with all the Planners. The Cartographer’s team had worked very closely with both the Head of Planning Policy and the Director of Planning and Building Control over many years. The Island’s Cartographer had been in post for 18 years. He was a surveyor before working as a cartographer for the UK Agriculture Department and in the oil industry. The maps produced for the Isle of Man government included detailed footpath maps and those for leisure purposes.
28. The Cartographer explained that the mapping process involved building up digital maps from a blank outline adding features taken from various data sources, including aerial photography and site visits. Planning required pre-determined maps. The first map was

prepared in 3 different versions, each with a different “constraint” – environmental, infrastructure and community. The next map was a landscape assessment and this was followed by one containing proposals. These maps covered the entire area of the particular plan. More detailed maps of the main settlement areas were also produced, in the case of Marown this was Map 10 of the Area Plan.

29. The Cartographer explained that for the Area Plan, his “client” was the Planning Policy Team in the Cabinet Office. They fed him information and data and he would produce and print in draft for sign off by the Planning Policy Team. Asked how the collaborative process had worked during the first lockdown in 2020, the Cartographer said that he could not work on the maps on a laptop from home as he needed access to the specialised equipment in the office. As other members of staff were able to work from home, he was able to attend the office, working in isolation. Most of the work on the Plan had been done prior to lockdown but he produced draft maps and delivered them to the home of the Head of Planning Policy and would then collect them marked up with any changes. The mark-ups were made on the draft maps in abbreviated form using colour coding which both he and the Head of Planning Policy understood, after working together for so long. The Cartographer produced an example. This showed handwritten notes made by two people on opposite sides of a table. It served as a good example of how instructions for change were identified. The Cartographer subsequently provided a scanned copy. It is clear that the notes on the map were made at a meeting at which both the Cartographer and the Head of Planning Policy were physically present. The date I had been given for the meeting is 10 June 2020, which was still during lockdown but I am told the working from home restrictions were being relaxed by that date. The Cartographer subsequently provided me with a scanned copy of the annotated map.
30. The Cartographer also handed to me a witness statement from one of the Directors of the company provided in respect of the section 5 Court proceedings referred to in paragraph 10 above. That statement referred to a “cartographical error”¹. He said he was not consulted and felt that he had been treated as a scapegoat in that statement and he felt the same way about this. As far as he was concerned, there had been no error on his part and the use of the word “cartographical” (which he said is not found in the OED, although it does appear in the Cambridge English Dictionary and in Merriam-Webster) pointed the finger at him as the only Cartographer on the Island. He worked on instructions given to him by Cabinet Office and any changes made were on instructions. The explanation which had been given had been the subject of comments in the press and on social media. He himself did not use social media but others did and made sure he knew. He had been on holiday when he was

¹ The witness statement to which he referred is that of one of the Directors which itself refers to explanations offered by the Cabinet Office, but the statement is not (apparently) a direct quotation of the explanation offered by the Cabinet Office. The witness statement says “[The Head of Planning Policy] claimed that an error had been made whereby the Cartographer followed the line of the boundary.”. As this statement was made in section 5 proceedings in respect of a different site, its only relevance is to show that the Cartographer was allegedly identified as the source of the error.

contacted by a stranger about his error and comments were made to him by a neighbour. He had found the intrusion into his private life upsetting as he was not used to being exposed in this way and had felt unsupported. As I subsequently learnt, senior management in DoI were unaware of the problem with the Plan.

31. The Cartographer then took us to his workspace to demonstrate on the computer how the Eastern Area Plan was constructed. The Plan is built up over time as he had described. He also commented that his present working environment was not really suitable for work of this kind. He has no space for map cupboards or a large table on which a map could be physically laid out and the maps are rolled up in a box. The large printer which he needs to use is not on the same floor and he can only print securely if his assistant goes downstairs and stands by the machine to retrieve the maps as they are printed.
32. The Cartographer explained that he would not and did not construct the map relying solely on aerial photographs. They were just one of the tools but he certainly would not have marked the boundary for residential development on that evidence alone. He again stressed that he only acted in accordance with the instructions given to him. In response to the alternative suggestions that he has used the “wrong shape”, he was dismissive. That was not how he worked. In subsequent correspondence, he stated that he and his assistant had access to the programme from which the shapes were taken as did a Planning Policy officer. No-one else had access. Cabinet Office was asked about this and stated that no officer in the Planning Policy Team had access to view files until a PC upgrade in late 2020 and still has no knowledge of the location of the definitive shape files for the Area Plan because, despite requests, the Government Technology Service has yet to include this in a web map application.
33. I was concerned about a number of issues raised by the Cartographer, so I arranged a further meeting with the Cabinet Office. This took place on 23 August and was again attended by the Head of Planning Policy and her line manager, the Executive Director of Policy Development. Mrs. Kent was also present. Prior to the Meeting, the Head of Planning Policy had helpfully prepared a “Timeline of Events”. This confirmed that after the Cabinet Office were alerted to the query by the Planning Inspector as to the Settlement Boundary, the Head of Planning Policy carried out an investigation and concluded that the settlement boundary was altered at some point between 14 February 2020 and 10 June 2020. In her view “the change was made in good faith, because the aerial photography which was available at the time was relied upon to update the settlement boundary rather than the outline of MH021.” She also suggested that “having looked at the aerial photograph, which was available at the time to the Cartographer, an assumption may well have been made – given the level of topsoil removal and ground disturbance – that this equated to the extent of the development site. Unfortunately, this was not the case but was not picked up during later checking stages.” The Cabinet Office did circulate a timeline in July 2021. The Cartographer was a recipient, pointing out that he was on leave and would want to research further, but he did give initial comments, including the phrase “looks good to me”. The

timeline was then circulated more widely.

34. The Head of Planning Policy recalled the meeting on 10 June 2020 and agreed that, from the appearance of the map, it had been conducted in the usual way where there was a face-to-face meeting. Both she and the Cartographer had made annotations on the map in respect of changes to be made. She stressed that the Cartographer had control over the mapping. The Cabinet Office gave directions either by describing the change to be made or a drawing. These changes were then checked. The implication was that the Cabinet Office would only check the requested changes and would not review the entire map. I asked the Head of Planning Policy to explain a notation she had made on the map. She thought that this was likely to extend the shading within the settlement boundary which was already in the wrong place on the map considered on 10 June. She explained that the instruction was to remove MM001 from the strategic reserve. She thought the error was that an incorrect settlement boundary had been applied from the reserve. She was of the view that the aerial photograph made it harder to see the error.
35. The Head of Planning Policy agreed that the DoI Mapping Service was effectively acting as an agent for Cabinet Office, which was a substantial user of the service and certainly would be so for the All-Island Plan. She commented that since the move of the Planning Policy Team from DoI, the process had been more difficult with reliance on one Cartographer and his trainee. There were poor technical facilities within Cabinet Office, although they had now acquired a printer which enabled them to print maps themselves. Going forward, Cabinet Office recognised that the Planning Policy Team needed more appropriate technical facilities and to have more access to the mapping data to be able to control it under a Service Level Agreement or similar arrangement. There were inherent risks in a single person, the Cartographer, having control over the mapping data. If Cabinet Office were to be held responsible for the maps, it should have more control. The Director was conscious of the budgetary constraints which would limit what could be achieved in the short-term, but the Head of Planning Policy mentioned more advanced technical equipment and methods being used elsewhere which were not available in the Isle of Man.
36. I told the Cabinet Office that the Cartographer had been personally affected by the adverse comments in the media. He had been plainly identifiable, being the only Cartographer and I wondered how the term “cartographical error” came to be used. The Head of Planning Policy stated that she would look for earlier correspondence but pointed out that she had been in correspondence with the Cartographer as soon as the error was brought to her attention to establish how it had happened and she thought that he would have been fully aware of the likelihood of adverse comments in the press and on social media. She would let me have copies of relevant emails.
37. Shortly after the meeting I received copies of a number of emails which make interesting reading. I do not intend to refer to each one but the first in time is an email to the Cartographer of 7 July 2021 which alerted him to problems over the mapping of Crosby.

The emails have been redacted to exclude extraneous matters but the Head of Planning Policy states:

"I am still trying to find something specific. Any ideas? Looks perhaps like it was following the aerial photography. Turns out the applicant is now trying to get housing round the edge of the original development and I've got to work out how the mapping was changed."

The Cartographer responded:

"Regarding the Crosby site – I vaguely remember it but I'll have to go and get out the box of changes and have a look through. I'll have a look in the morning."

The next email is on 12 July when the Head of Planning Policy emails the Cartographer wishing to speak to him. He responds stating that he will be in the office later to which she replies that it can wait. I assume some discussion took place but if a note was made, it has not been disclosed. The Cartographer was sent a "Timeline" the next day for him to review. He replied that "It looks good to me.", which was taken to be agreement to the Timeline.

38. In an email of 14 July, the Head of Planning Policy refers the Cartographer to instructions emailed on 25 February 2020 suggesting the removal of MM001. She also stated:

"If we are going to escalate the issue, one or both of us will have to raise it in writing to line managers. Let me know how you want to do this. I'll probably send my views off today."

In an email of the same day with a wide circulation, and into which the Cartographer was copied, she alerts her line manager to the possibility that the issue might be picked up by the press or social media and enquires whether senior management in "the Department" should be made aware." She has since clarified that this was a reference to the Cabinet Office.

39. In the memorandum which the Head of Planning Policy sent me with the emails, she stated that she had checked early letters and correspondence where the references are to mapping errors. In her view the expression "cartographical error" was merely another way of saying "mapping error" and did not imply "that the Cartographer made the error." She went on to point out that she had anticipated adverse publicity in the email of 14 July. She had no prior warning of the intention to print an article on 14 August 2021 or that the headline would be "Blunder on Blueprint".

40. I remained concerned about how the Cabinet Office had handled the error, so I wrote to the Interim Chief Executive of DoI to find out what discussions had taken place between that Department and the Cabinet Office. Her response surprised me. She told me that neither she, nor the Director of Highway Services, the Division in which the Cartographer is based, were aware of any issue in respect of the Marown map for the Eastern Area Plan. There was no contact at Director level before the letter was sent to Mrs. Poole-Wilson and Mrs. Lynch.

At the time in July 2021, Mr. Nick Black was the Chief Executive and a search was made of his inbox which revealed no communication on the subject. It was possible that he had been told something orally in the margins of other meetings, although, from my dealings with Mr. Black, I think it unlikely that on receipt of such information he would not have made further enquiries within the DoI.

41. The Interim Chief Executive had been present at meetings discussing the Area Plans for the North and West but believed that this was after Cabinet Office had already decided to prepare them at the same time, and she was unaware of discussions held with the Department before that decision was made. She commented that Area Plan preparation involved input and resource commitment from a number of parts of the DoI. Her understanding had been that the timings and delivery of support was open for discussion, and it was thought that the input required for the Area Plans for the North and West would be less intense than had been required to support the Eastern Area Plan. Finally, she asked to see the Report in due course so that the DoI could take any appropriate action.

Discussion

42. As I indicated, the Cabinet Office accept that there was an error on Map 10 which has resulted in some land on the perimeter of Crosby Meadows being classified as developmental land. As the Department responsible for the Eastern Area Plan, they accept responsibility for the error. At the outset of my investigation, they said that they did not know how the error occurred, but had put forward some possible explanations, all of which implied that the Cartographer made a mistake, which the Head of Planning Policy did not notice when reviewing the map. She had not asked for the change to be made and she was checking the map against her instructions. I do not know whether it is significant that one of the Planning Policy Officers was not involved in the mapping of Marown (where he was a resident) and was not present at the Inquiry when Marown was being discussed. Two serious discrepancies had arisen in the same area, one in relation to Crosby Meadows and the other in respect of the section 5 application to Deemster Corlett which raises a question as to the resources available to provide a “second pair of eyes” in order to check the Marown map fully. That officer’s exclusion did not extend to the investigation into the error because, in one of her emails to the Cartographer, after the Planning Inspector asked questions, the Head of Planning Policy states “(X) has done some digging...”.
43. For his part, the Cartographer has always maintained that he had made no mistake and that there was no “cartographical error”. He had followed instructions provided by the Cabinet Office and, in respect of Map 10, these came solely from the Head of Planning Policy. He has rejected the possible explanations which have been suggested which are contrary to good practice for a professional Cartographer. Others who use the Cartographer’s services have described him as a hardworking, conscientious and meticulous professional, acutely aware of the importance of accuracy. That does not mean that he did not physically make

the alterations, but I had thought it unlikely he would have done so without instructions.

44. Surprisingly, it was only after the Cabinet Office was sent the draft Report that the metadata and the draft Maps were thoroughly examined. I am told that the Head of Planning Policy has identified a map which she had annotated and which the Cartographer collected on 16 April 2020. This contains the instruction “to follow MH021”. In her annotations on the draft Report, she identified the error and pointed out that she would have expected any discrepancy in the Instructions to have been checked by the Cartographer. This belated explanation gives rise to further questions. Initially, the Head of Planning Policy had indicated that each iteration of a map was checked. This was later refined by her to checking maps to ensure that the requested alterations had been made. If the map had been checked, even limited to the changes that had been requested, it would have shown that the requested alteration had not been made in relation to Crosby Meadows. That was the function of the Cabinet Office and if it had been carried out properly, the error would have been identified. The Cartographer, after years of working with the Planning Policy Team, could reasonably have expected that any misunderstanding of his instructions would be identified and corrected.
45. It was the responsibility of the Cabinet Office to publish accurate maps when adopting the Eastern Area Plan. They did not do so, and the failure to do so amounts to maladministration. That, however, is not the end of the matter. As so often happens, the action of the Cabinet Office after the mistake was identified, compounded that initial omission. The email of 14 July 2021 quoted in paragraph 14 above sets the tone. The Head of Planning Policy is not taking ownership. She expresses “personal” disappointment and apologises “on behalf of Planning Policy/CABO/Mapping”. Since “Mapping” was part of another Department, I am unsure of her authority to apologise on their behalf, particularly as neither the Chief Executive nor the Director had been consulted. The Head of Planning Policy had suggested to the Cartographer that he should alert his Senior Managers, which he seems not to have done, but I would have expected there to have been discussions at least at Director level between the two Departments before letters were sent to the Planning Inspector, Mrs. Poole-Wilson and Mrs. Lynch.
46. In her letter to the complainant of 8 December 2021, the Executive Director of Policy Development referred to the mistake as “one of genuine human error”, a contributory factor to which might have been the aerial photograph. She accepted that the explanation might offer little comfort but confirmed that “there is no power to stop an application being made on the land to the south of your property as the time has passed for legal challenges.”. She concluded –

“I would offer you a sincere apology for this error and I understand your anger that a mistake of this manner has been made. I share your disappointment and it is not demonstrative of the high standards the Cabinet Office holds itself to.”.

The response from the Chief Executive is short and provides no further insight.

47. I accept that the withdrawal of the Eastern Area Plan would have led to confusion over the status of some planning applications and considerable uncertainty. Given the time which had elapsed between its approval by Tynwald and the identification of a mistake, its withdrawal, which would also have had to be approved by Tynwald was not a viable option. If a similar problem is to be avoided in the future, legislation is the only option. I am not confident that the additional safeguards, which I am told are now in place, will prevent a similar situation arising in the future. I understand that the Attorney General's Chambers has been instructed in respect of amendments to the Town & Country Planning Act 1999 but the Bill is not due to be introduced until the 2023/24 session of Tynwald, according to the Legislative Programme to be found in "Our Island Plan". I was concerned at what appears to be a lack of urgency in amending the legislation. I thought that it should have been possible to carve out from much larger proposed amendments to the Town and Country Planning legislation a short Bill to close the lacuna but that had not been the chosen route. Since there was little prospect of the proposed legislation receiving Royal Assent by December 2023, the Area Plans for the North and West would, if approved by Tynwald, come into effect without the ability to correct mistakes. That was unsatisfactory and a risk. For that reason, I sought a mechanism which might reduce the risk, but none seemed feasible in the short-term. However, I now understand that on 6 December 2022 Cabinet Office confirmed that it was going to pursue a short Bill to overcome the problem. While that cannot correct the error on the Marown map, it may provide a means of rectification to any errors on the Area Plans for North and West.
48. The Cabinet Office has taken the view that the Planning Policy Team need to be strengthened with more technical expertise. The reason for this which was provided by the Head of Planning Policy was that if Cabinet Office had to accept responsibility, they had to have greater control over the mapping. Her Director was more realistic about achieving this in the short term, given budgetary constraints. None of this seems to have been discussed at a senior level with DoI. Lines of communication at that level need to be established. The Acting Chief Executive was aware of the resources being provided for the North and West Area Plans because she had previously had oversight of the Local Government Unit. The All-Island Plan is going to require much more of the Cartographer's time, yet he will also have work for other clients not least within DoI. Cabinet Office have mentioned a Service Level Agreement and that might be the best way to manage this project and ensure that he can fulfil his other obligations.

Conclusions

49. I have no hesitation in finding that the Cabinet Office's failure to identify the change on Map 10 of the Area Plan for the East, extending the area zoned for development at Crosby Meadows amounted to maladministration.

50. Believing that it was unlikely that changes in legislation would be made before the Area Plans for the North and West are placed before Tynwald, I discussed with DOI the possibility of local authorities checking maps of their areas, either in the short time before a Plan is approved by Tynwald, or during the 6 weeks period allowed for appeals. The Interim Chief Executive was of the view that most local authorities would not have the resources or the capacity to carry out this task and it would be wrong to place the responsibility on them. On reflection, and based on my interactions with the local authorities, I understood her concern. She suggested that DEFA might be best placed to undertake this, but given the shortage of planners, I think this unlikely. I therefore concluded that the responsibility for checking the accuracy of Area Plans must remain with the Cabinet Office, but I would hope that there will be sufficient resources to ensure that a “second pair of eyes” check can be undertaken on each map before it is incorporated into an Area Plan. Any legislation which enables changes to be made to a Map because of administrative error is welcome and, in my view, essential but it is a backstop.
51. None of this provides any comfort to Mrs. I, who has been denied enjoyment of her new property by the Cabinet Office’s omission. On reading the draft of this Report Mrs. I has commented:
- “...we have been and will continue to be denied enjoyment of our property through ongoing building works on the estate. Over the past couple of weeks a new contractor has been on the site putting in services to the yet to be constructed 4 house and also on the land at the back of our property in anticipation of the application for 18 houses being approved.....
- The roads remain incomplete and unadopted. If the application for 18 houses is successful, the period in which we will be denied enjoyment of our property could further extend to many years. Our children will have grown up living on a building site which is not what we anticipated when making our purchase. If the land was not zoned for residential development the application would not meet planning policy and there would be strong grounds for refusal. On that basis Cabinet Office are responsible for the position we find ourselves in and it is unacceptable that there is no recompense for this.”
52. In other jurisdictions Mrs. I would be entitled to compensation, although not for pure economic loss such as loss of value of the property. The Tynwald Commissioner for Administration Act 2011 makes no express provision enabling the TCA to make such an award. The legislation in England and in Scotland, on which the 2011 legislation is based, would not require express provision, but I understand that the long-standing advice of the Attorney General’s Chambers is that Departments have no *vires* to make extra statutory payments of this nature. This surprises me because such payments elsewhere are usually described as “extra-statutory” precisely because they have no specific basis in statute, but it may be that the Government Departments Act 1987 determines the position or has otherwise

influenced the advice. This is an egregious case of maladministration and, but for the doubt as to my power to do so, I would have been making recommendations for compensation.

Angela Main Thompson
Tynwald Commissioner for Administration
8 January 2023