

**IN THE MATTER of the Application of  
the Port Erin Village Commissioners under  
Section 6 of the Local Government Act 1985  
to extend the boundary of Port Erin.**

**REPORT of G.F.Karran, M.B.E. T.H., Chairperson of a Public Inquiry held  
in Castletown on 4<sup>th</sup> March 2019.**

**To: The Honourable Minister of the Department of Infrastructure**

**1. Introduction**

**1.1 Under the Local Government Act 1985,S.6(1) (“the Act”) Port Erin Commissioners (“the Applicant”) made an application to the Department of Infrastructure, (“the Department”) , dated 16<sup>th</sup> October 2014 and 25<sup>th</sup> July 2016, requesting the Department to extend, by order, the boundary of Port Erin. The Application, which was considered in the Inquiry, is set out in Appendix 1 and the land the subject of the extension is shown on a map in Appendix 2 (marked Map 1) which shows the existing boundary of Port Erin and the new proposed boundary.**

**1.2 Under the Act the Department is required to consult with every Local Authority whose district is affected by the proposed order and in this case this was identified by the Department as the Rushen Parish Commissioners (“Rushen Commissioners”).**

**1.3 As a result the Department wrote a letter to the Applicant asking the Applicant to provide a written statement addressing the six criteria set out by the Council of Ministers in 2004 in a paper entitled “Criteria for the Consideration of Local Government Boundary Extensions 2004. As this became an important document at the Public Inquiry I attach a copy as Appendix 3. The aim of this letter from the Department was to assist it in the process of its required consultation with Rushen Commissioners. The second part of the application dated 25<sup>th</sup> July 2016 was the reply by the Applicant to comply with this request.**

**1.4 I must state at this time that I was very dissatisfied with time lapses on the part of the Applicant and indeed the Department in responding to communications and the general lack of any urgency to process this application in what I would have considered to have been an acceptable time frame. I will return to this point later in my report.**

**1.5 Consultation with Rushen Commissioners took place after receipt of the said letter of 25<sup>th</sup> July 2016 and responses dated 28<sup>th</sup> October and 14<sup>th</sup> November 2016 were received from them indicating that they would oppose the application for extension.**

**1.6 The second requirement imposed by the Act is the holding of a Public Inquiry. In preparation for the Inquiry the Department gave Public Notice on 3<sup>rd</sup> August 2018 inviting comment on the proposal contained within the application. Online submissions were also invited via the Government Consultation Hub. A further Public Notice was issued by the Department on 7<sup>th</sup> September 2018 advising of an extension to the deadline for submissions to be received. The first**

Notice had asked for responses by 14<sup>th</sup> September 2018 giving people 6 weeks but the extension asked for submissions to be made by 28<sup>th</sup> September 2018 granting a further 2 weeks.

1.7 80 submissions/comments were received. Certain of these responses had to be redacted because of Data Protection laws and rules and as a result people's personal data was removed. Also where stipulated by the person submitting, names and organisation details were anonymised. In fact 14 people stipulated that their responses were not even to be published and in submitting them to me any names or personal details were redacted. The submissions which I am able to publish from this consultation are contained in Appendix 4.

1.8 On 24<sup>th</sup> October 2018 I was appointed by the Department to conduct the Inquiry. I decided to hold a Pre Inquiry Meeting and gave Public Notice of this meeting on 2<sup>nd</sup> November 2018. I invited interested parties to meet with me in Castletown on 19<sup>th</sup> November 2018.

1.9 The Applicant was represented at the Pre Inquiry Meeting by its Clerk Jason Roberts and the Rushen Commissioners were represented by its Clerk Phil Gawne and a member Peter Vernon. The only 2 other persons present were Mrs Gillian Kelly a former Clerk to Rushen Commissioners and Mr & Mrs Barrie Clark representing their daughter Amy Jane Clark a resident of Ballakilley.

1.10 I indicated that I was granting Interested Party status under Section 3 of the Inquiries (Evidence) Act 2003 to the Applicant and Rushen Commissioners and if any person who was a resident of Port Erin or Rushen wished to apply for such status I would be prepared to grant that. At that hearing Mr Clark applied for such status for his daughter and this was granted and I also gave Mr Clark permission to represent his daughter at the eventual full Inquiry hearing. I would indicate that subsequently I received applications from Mrs Gillian Kelly, Mr Lorien Pilling and Mr Adrian Tinker for such status and these were granted. No other applications for Interested Party status were received.

1.11 I then outlined the procedure I intended to adopt at the Inquiry. I indicated that it was a Public Inquiry and therefore members of the press could attend and report on anything stated. I set out a timetable indicating that the Inquiry would commence at 9-30am on 21<sup>st</sup> January 2019 in Castletown. No-one raised any objection to that date and so I went on to indicate that I intended to view the site in question and its surrounding lands on the 18<sup>th</sup> January 2019. I indicated that Interested Parties could accompany me, not to discuss any aspect of the Application, but to point out to me anything which could be relevant to me at the Inquiry. I indicated that if anyone wished to make any further submission it should be submitted to me by 5-30 pm on 14<sup>th</sup> December 2018. I also asked for proofs of evidence from any Interested Party intending to give evidence at the Inquiry to be submitted to me by 5-30 pm on 11<sup>th</sup> January 2019.

1.12 Application was made to me by Rushen Commissioners for disclosure to Interested Parties of all submissions made. I indicated that I would do everything within my power to do this and I requested the Department to attempt to do this whilst still complying with Data Protection Rules. I subsequently ascertained that the majority of submissions were made available to Interested Parties and these included the 11 new submissions received by me within the deadline of 11<sup>th</sup> January 2019.

1.13 Rushen Commissioners submitted within the deadlines set by me a very detailed submission and copies of all new submissions received by me are contained in Appendix 5.

**1.14 No further submission was received from the Applicant within the deadlines set by me but on 16<sup>th</sup> January 2019 a new detailed submission was received from it and distributed to Interested Parties on 17<sup>th</sup> January 2019. A copy is contained within Appendix 5 herein.**

**1.15 As planned I carried out a visit to the site and surrounding land on 18<sup>th</sup> January 2019 and was accompanied by representatives of the Applicant and Rushen Commissioners and Mrs Kelly.**

**1.16 I opened the Inquiry on 21<sup>st</sup> January 2019 and Rushen Commissioners immediately made an application to me to adjourn the hearing because of the late delivery of the submission by the Applicant. Other interested parties present made similar requests. As this was the first time a very detailed submission had been submitted by the Applicant, I considered it was only fit and proper to give all parties the opportunity to properly study this submission and so reluctantly granted the applications. I adjourned the hearing until Monday 4<sup>th</sup> March 2019.**

## **2 The Inquiry Hearing**

**2.1 This took place and was concluded on Monday 4<sup>th</sup> March 2019. All interested Parties appeared with the exception of Mr Lorien Pilling who sent no apology and made no representation to me other than an original submission to the first consultation by the Department in which he had indicated that he did not want the submission published.**

**2.2 The Applicant was represented by Mr N Watterson, its Chairman, and Mr J Roberts, its Clerk. Rushen Commissioners were represented by its members Mr P Gunn and Mr D Radcliffe and its Clerk Mr P Gawne. Evidence was given to the Inquiry under Oath by Mr Roberts for the Applicant, Mr Gawne for Rushen Commissioners, and from Mrs Kelly, Mr Clark and Mr Tinkler. 4 other people attended the hearing and during the session, after a request was made, I permitted one of these, a Mrs D Sykes a resident of Ballakilley, to make a comment on a point raised by one of the parties to the hearing. After hearing all the evidence I permitted all Interested Parties to address me on the Application. Certain documents were submitted to me during the Inquiry hearing by Interested Parties. Copies of these documents are contained within Appendix 6.**

## **3. The Site in Question.**

**3.1 The land, the subject of the Application, is situate in the Parish of Rushen and forms part of land collectively called Ballakilley. It adjoins other land part of Ballkilley Estate which is within the Parish of Rushen but also within the Village District of Port Erin. I attach in Appendix 2 a second map of the area (marked Map2) which shows hatched blue the area of Ballakilley solely within the Parish of Rushen and the subject of this Application, and hatched red the area of Ballakilley within the Parish of Rushen but also within the District of Port Erin.**

**3.2 In 2013 a Planning Application was made by Heritage Homes Limited under application no. 13/00777/B. This one application sought approval for the erection of 155 residential dwellings, with highway and drainage infrastructure, public Open spaces and landscaping. The dwellings were to be erected on the areas of Ballakilley shaded blue and red on Map 2 whilst the Open spaces, situate within the Parish of Rushen only, included land for recreational use and was situated on lands adjoining the blue shaded area of Ballakilley.**

**3.3 The Planning Application stated that the site was an area of land lying on the north eastern edge of the village of Port Erin within the Parish of Rushen and the Village District of Port Erin although in actual fact only part of the site was then within the Village District of Port Erin. It further stated that the site comprised of 4 fields: i) field 414532 adjacent to Ballafesson Road containing 9.8 acres, ii) field 414214 adjoining the recent extension to Rushen Parish Church burial**

grounds containing 5.5 acres iii) field 411529 situate within Port Erin and iv) field 414546 situate within Rushen and containing 17 acres. These latter 2 fields are the areas shaded blue and red on Map 2 within Appendix 2.

The Planning application asked for the development of land for residential purposes in the form of 155 dwellings of varying sizes and styles all with access from Church Road via two new accesses. The number of houses erected changed during development and eventually ended up with 90 houses erected within the existing boundary of Port Erin and 78 houses erected outside the boundary of Port Erin. All houses were of course within the boundary of the Parish of Rushen. I consider it very relevant that the erection of houses partly within Port Erin and partly outside Port Erin was made under one application, by one developer, with the houses supplied by services through the same means.

#### **4. The Case for the Applicant**

**4.1** I do not consider it necessary to set out in any great detail the cases for any of the parties as I have included as appendices to this report all submissions made in answer to either consultation notices or in response to requests made by me. In dealing with the evidence therefore I will merely set out what I consider to be the most salient points raised by parties.

**4.2 Fairness.** The Applicant considered that the development of the land under the aforesaid planning application is clearly one estate built onto the side of Port Erin Village. It is difficult to argue with that statement. They considered that it is unfair to have the same specification houses on the same estate paying differing amounts for local authority services. They considered the disparity on the same estate is grossly unfair. There would be different bye laws applied to each section of the same estate and different lighting times. There would be a fortnightly refuse collection within Rushen and a weekly one within Port Erin.

**4.3 Precedent.** The Applicant referred to the growth of Port Erin over the last 100 years with the approval of several Boundary Extensions with houses being erected as overspills of the sides of Port Erin. They accepted that previous applications have not sought to encompass existing dwellings. The application they state is to extend into the last green field between the existing settlements on this edge of Port Erin.

**4.4 Marketing of house sales.** The Applicant stated that the developer promoted the sales by reference to the advantages of Port Erin e.g the beach, the railway station, the golf course the shops and cafes. It quoted from the marketing literature "Port Erin has a unique charm and appeal, making it the perfect location for families or those seeking a more relaxing pace of life". The Applicant produced a marketing brochure advertising "Ballakilly Port Erin" In fairness Rushen Commissioners then produced a marketing brochure advertising "Ballakilly Church Road Rushen".

**4.5 House Pricing and Rateable Values** The Applicants stated that there was no significant difference in the sale value of properties or their rateable value whether within the existing boundary of Port Erin or not.

**4.6 Postal Addresses.** The developers originally arranged for all houses within the Ballakilly development to receive a Port Erin Post Code. It was only following representations by Rushen Commissioners, after they had knowledge of Port Erin's intention to apply for a boundary extension, that this was changed to Port St Mary post codes. There is no separate post code for Rushen Parish itself.

**4.7 Existing Boundary.** The existing boundary between Port Erin and Rushen actually runs through the front gardens of those houses built on Ballakilley that now have the address Kitterland Lane. Therefore byelaws to the front of the properties will be different to byelaws affecting the rest of the properties.

**4.8 Phased Incremental Rate Increase over 5 years.** The Applicants proposed that if the extension went ahead the rate increase to be suffered by Rushen Residents should be smoothed over a 5 year period.

**4.9 Southern Area Plan and Planning Policy.** The Applicant quoted various comments from the plans and planning documents in existence. Comments confirm the Ballakilley site sitting on the edge of Port Erin, the development giving the opportunity to soften the present abrupt edge to the Ponyfield development within Port Erin, and the provision of service areas ( which included Port Erin) to provide regeneration, and choice of location for housing, employment and services. It also referred to new developments within the defined existing settlements. It quoted “ new development will be located primarily within existing towns and villages in sustainable urban extensions of these towns and villages”. The Applicant therefore considered that the Ballakilley development as a whole met the requirements of these plans and documents highlighting that the development is intended as an extension of Port Erin.

**4.10 In relation to the 2004 Criteria for dealing with boundary extensions as determined by the Council of Ministers the Applicant stated as follows:-**

- a) The site at Ballakilley is one development by one single developer under a single planning application and the site was also noted as a single development site within the Southern Area Plan of 2013.
- b) The whole Ballakilley development will make use of the same schools, doctors, dentists, community halls and recreational areas. The closest retail outlets including a bank and post office are within Port Erin.
- c) The area is an overspill or outgrowth of Port Erin within fields which adjoin current housing in Port Erin.
- d) The proposed boundary extension would ensure that there is a clear physical boundary as a defined green gap complying with Planning Policies.
- e) The extension will not be injurious and there are limited sites within Port Erin for housing development.
- f) The balance of advantage lies in acceptance of the scheme, creating a sense of place, a sense of community and creates the green gap to differentiate between settlements.

**4.11** The Applicant therefore concluded that the boundary extension should be accepted. The overall development would create an obvious green belt between Port Erin and Rushen which would not be possible if refused. Refusal would create the inequitable position of two local authority rates applying over a single community.

## **5 The Case for Objectors.**

**5.1** In reviewing the case for objectors I will again not set out all points raised but merely concentrate on the important issues. I will also not differentiate between Rushen Commissioners and other objectors as they all raised similar issues.

5.2. Invariably the difference in rates applied in Port Erin to those applied in Rushen was raised particularly by many of the aggrieved residents of that part of the Ballakilley Estate who will be faced with rate increases if the extension of boundaries goes ahead. I made it clear at the outcome that the 2004 criteria set out by the Council of Ministers specifically stated that the financial impact on an Authority either beneficially or negatively through the rateable income of a boundary extension should not be considered by any Inquiry. As this referred to the impact on an Authority I did allow individual objectors to refer to the impact on themselves if the extension was permitted. One objector stated that the Rushen rate in the £ was 98p whereas the Port Erin rate in the £ was 302p. One also had to take into account the difference in the treatment of a sewerage rate by the two authorities. One objector stated that the Port Erin rate in the £ was 304p and if using an example of properties in each Authority having a rateable value of £200 the total rates payable in Rushen including the sewerage rate would be £392 whereas the total payment in Port Erin would be £1,216. Whilst different figures were submitted to me by various parties in correspondence and at the hearing these latter calculations do give a fair estimate of the substantial difference to be faced by residents if the extension goes ahead.

5.3 As can be seen by reading all the documents submitted by Rushen Commissioners it is obvious that they carried out a great amount of work in preparing a robust objection to the application and I am very grateful to them for this.

5.4 Rushen Commissioners referred to the fact that this was the fourth attempt, in living memory, by the Applicant to take over land from Rushen. They referred to a general view of some that Central Government must continue to expand and grow and the larger local authorities must also grow their boundaries and take over smaller ones. They allege that this large municipal bureaucratic nirvana is being challenged and replaced by smaller smarter government.

5.5 They challenged the argument by the Applicant that the extension was justified on grounds of fairness. They alleged that the Applicant could do more to reduce their expenditure and effectively reduce the rates charged. They accepted that its ratepayers have to a certain extent enjoyed the benefits of their larger municipal neighbours but as a result they have for some years contributed to services provided by Port Erin, Castletown and Douglas Councils. They are committed to try and work with Port Erin and other authorities to provide additional help. They stated that their plan is to develop play and recreational facilities on the undeveloped part of Ballakilley. They planned to spend £50,000 to develop a first phase recreational scheme on the Church field, adjoining the field coloured blue on Map 2 within Appendix 2, and are working with a Rugby team to provide pitch and changing facilities on the Barrack field, which is the field also within Rushen and adjoining the latter field. Subject to having the finances available for these schemes it is their wish to fulfil their obligations. In their view the Ballakilley development for which planning permission was given relies on the open space being provided and administered by Rushen Commissioners and into which they will have to invest heavily. In their eyes this is where the issue of fairness can be found. If the extension is granted Port Erin gain rateable income, Rushen lose rateable income and Rushen have to invest to provide the recreational facilities. The development could not have taken place under Planning Rules without the public open space. I have great sympathy with that argument by Rushen Commissioners but as the 2004 criteria of the Council of Minister states I am not to consider the rateable impact on either authority.

5.6 In relation to the Applicant's reference to planning documents Rushen Commissioners stated that all 3 Rushen MHK's voted against the Southern Area Plan and the Applicant was originally against the Ballakilley development. They contended that the access to the development is through a road within Rushen and it is surrounded on two and a half sides by Rushen. It is

therefore in their view an overspill of Rushen. They were alarmed by the Applicant's reliance on planning views being used to make a case for boundary extensions as planners have neither the authority nor the expertise to comment on such matters. At present they stated there is no green gap between the Rushen's part of the Four Roads Community or Port Erin's. There is no green gap between Port Erin and Port St Mary with the boundary running through the middle of the old Southlands building. In their view administrative boundary lines could be drawn anywhere amidst the mass of housing and buildings in the Four Roads area. Rushen Commissioners are happy to manage the boundary where it is but if it is shifted by the extension the boundary between Rushen and Port Erin will become less clear on its south eastern corner. In the opinion of Rushen Commissioner planning documents and policies are merely to govern planning matters and should not be relied upon in any way to support a boundary extension.

5.7 Rushen Commissioners did not share the concern of the Applicant about differing waste solutions, byelaws, grass cutting and street lighting. They would be happy to work with the Applicant to minimise any real concerns and try and adopt a joint management approach and reduce costs. Rushen Commissioners stated that they only found out of the Applicant's desire to seek a boundary extension in October 2014 and they made it clear they would oppose such an application. I was concerned to discover during the hearing that Rushen Commissioners did not disclose to prospective purchasers of properties within the Rushen section of Ballakilly, in reply to an Advocates standard property search, that they had received notification of the intention of the Applicant to seek a boundary extension. As planning was only granted in 2013 I would imagine that the majority of residents buying houses in the Rushen section of Ballakilly would have made their searches after Rushen Commissioners became aware of the Applicant's intentions.

5.8 Several of the objectors took issue with the view of the Applicant that the nearest retail outlets to the site were in Port Erin and alleged that the site was just as close to the outlets in Port St Mary.

5.9 With regard to the use of the Port St Mary post codes for the houses the Rushen Commissioners stated that it was unlikely that the code was changed at the behest of the Rushen Commissioners Clerk as it makes sense from an operational point of view for all houses to have the same postal address as all letters are delivered by the Port St Mary postman, and items for collection go to the Port St Mary Post Office.

5.10 In dealing with the 2004 criteria for a Boundary extension the Rushen Commissioners commented as follows:

a) Community. They regard the whole of the Four Roads as one community. Only a small part of this community is in Port Erin and the community has been equally and happily split between Port St Mary and Rushen for many decades. The fact that Ballakilly Estate was one development, one planning application and developed by one Developer does not in their opinion mean that its residents automatically become part of any one community. The fact that the Southern Area Plan refers to the site as a single development is largely irrelevant. They believe Rushen residents are happy to live in Rushen but would not be averse to broader discussions of community by either the establishment of one large Southern Authority or the Rushen Commissioners contributing more to the Applicant's services used by Rushen residents.

b) Community of interest. They state that the school is in Rushen, the doctor's surgery is in Rushen, the nearest Dentist is in Rushen, and the nearest recreation area will be in Rushen provided at Rushen ratepayer's expense. In the evidence it became clear to me that the School is

partly in Rushen and partly in Port St Mary. They also stated that the shops of Port Erin and Port St Mary are equidistant from Ballakilly. The nearest recycling centre is in Rushen, the nearest Church is in Rushen, the health centre at Thie Rosien is partly in Port St Mary and partly in Port Erin and the nearest residential home is in Rushen. In evidence it became clear to me that the recycling centre is administered by Port St Mary with Local Authorities all contributing to its cost. The largest amount is paid by the Applicant because of the size of its population. The fact that Planners describe the area as a settlement does not in the opinion of Rushen Commissioners justify any boundary extension. They continued by saying that Rushen, Port St Mary and Port Erin have existed together for many years and the authorities have managed their separate lands reasonably well individually, showing a weakness in the Applicant's argument for extension.

c) **Overspill.** To justify this Rushen Commissioners state that the Applicant rely on comments made by the Planning Officer in submitting his report on the planning application to the Planning Committee. They state that Ballakilly adjoins three previously developed areas in Rushen, Port Erin and to a lesser extent Port St Mary. They state that the Planning Officer ignored the much longer established community and residential development at the Four Roads and so this does not benefit the Applicant's case. In their eyes Port Erin is a newcomer to this area and only because it won previous boundary extensions. They also state that the Planning Officer has no authority to speak in relation to the 1985 Act.

d) **Clear Physical boundaries.** The Rushen Commissioners consider the present boundaries between Port Erin and Rushen are clear. The whole site is accessed through Rushen and adjoins the recreational areas which will remain within Rushen. They consider that the proposal will make for a very untidy and uncomfortable boundary between the two authority districts. They state that there is a clear straight boundary which marks the boundary between the two authorities. The red paved road together with clear and distinct signage in the estate leaves little doubt over where the boundary is sited.

e) **Insufficient acreage left for development.** Rushen Commissioners state that the Applicant has no significant case on this point. They argue that there are sites where development could take place and do not accept that these could not house families as argued by the Applicant. The Applicant they say has just received 90 new houses in their section of Ballakilly which will cater for demand. The only significant site in Rushen accepted by Planners for development was Ballakilly and they have rejected the Rushen Commissioners plea for more residential areas to be allowed in Rushen. They argue that the Applicant has not been constrained by lack of property development within its existing boundaries and is not likely to be for some time to come.

f) **Balance of Advantage.** The Rushen Commissioners does not accept that the balance of advantage lies in accepting the scheme. If allowed Rushen would be left with insufficient acreage for development with significant injury being suffered by Rushen whereas Port Erin have considerable opportunity for development. In other areas of the Island boundaries have been respected even where boundaries have sliced through residential developments e.g. Mount Murray. They state it was unfair for authorities to shift the goal posts after residents made a conscious choice to move to Rushen. Rushen Commissioners see no advantage in accepting the scheme and indeed many residents of Rushen will suffer financial harm. It may also jeopardise the ability of Rushen Commissioners to afford to provide the recreational facilities included in the Planning development consent. Rushen Commissioners stated that the development would not have been granted approval without the Recreational facilities planned although they could not confirm it would be considered a breach of planning if those facilities were not now provided.



In conclusion therefore Rushen Commissioners stated that Port Erin had failed to make a coherent case for the extension of boundaries.

The 2004 Criteria did state that the 6 points set out should not appear to be exhaustive or exclusive and other points could be considered in deciding on the application. Port Erin Commissioners did not submit any additional points for consideration. I did ask Rushen Commissioners if there were any other points I should consider in deciding upon my recommendation and the only one they submitted was the question of fairness. Rushen Commissioners felt that the criteria prevented Rushen complaining over the loss of rate income and so there was nothing they could do about that. The Applicant however could reduce rate burden on residents by altering the provision of services they provide.

## **6 The 2004 Criteria Consideration.**

**6.1** Following comments made in previous Inquiries on Boundary Extensions the Council of Ministers adopted Guidelines on Procedure for future applications including the Guidelines on Criteria for consideration of such matters. As stated above these are referred to in Appendix 3. Before I consider them in relation to this specific matter I must refer to the Note in the document which states that all of the 6 points are important and should be addressed by an Applicant Authority. They are not intended to be exhaustive and an applicant can raise additional issues in support of an application. Port Erin chose not to raise any additional point with me. I did as stated above ask Rushen Commissioners if there were any additional points they felt should be considered by me and they raised the issue of fairness. I am not entitled under the criteria to consider the financial impact on an Authority either beneficially or negatively through the rateable income of a boundary application. Rushen Commissioners suggested that the Applicant has the power to alter the services they provide rate payers so as to reduce the rates charged. This might well be the case but I do not consider it is relevant to the issue of a boundary extension. I do believe however that there is an argument over fairness to the residents of the new houses in the Rushen part of Ballakilly. This application for a boundary extension can be distinguished from some of the other applications that have been made as although the Applicant started the process for the extension in 2014 it only reached a Public Inquiry in March 2019 and by that time all houses on Ballakilly whether in Port Erin or Rushen had been completed and apart from the show house had been sold. As shown by the evidence of Miss Clark she had no knowledge of the proposed application when she decided to buy the property. Rushen Commissioners did not notify prospect Purchasers in response to Advocates Property Enquiries, and I can therefore presume that a great many of those property buyers also had no knowledge of the proposed application. As I stated the main objection from individual residents to the application is the substantial increase in rates that will be applied if this extension is passed. I do therefore agree with them that because this application took nearly 5 years to reach an Inquiry and nothing was done to really warn buyers of the likely Inquiry there is a great degree of unfairness to those buyers. In my opinion this does not justify refusing the application but can be dealt with under Section 6 (3A) of the Act which states that an order may be made for such period not exceeding 10 years with respect of the rates to be levied by any authority. I will refer to this later with a recommendation. The final points to highlight in relation to the criteria are the sections which state that the List has been placed in order of Priority and that there is no requirement that all the 6 points must be satisfied and one combination or another may be used. I interpret that to mean that point one the issue of one community must be taken as the top priority.

**6.2** Issue of one community. The criteria states that this is a straightforward matter of judgement. I do not consider anyone can say that the position of the lands around Four Roads is

straightforward. I heard evidence of a Four Roads Community. I did hear evidence of how the 3 Local Authorities controlling land in this area have worked well together over the years. The existence of the recycling centre is firm evidence of that. It is within Rushen Commissioners lands, it is administered by Port St Mary Commissioners and the biggest contributor to its costs is the Applicant. The School is partly in Rushen and partly in Port St Mary and the building Thie Rosien is partly in Port St Mary and partly in Port Erin. One could therefore argue there are several communities in this overall area. What then is a Community for the purposes of the Act and the Criteria? The word is not defined in either document. I could not find a legal definition of the word Community. The dictionary contains several definitions of the word; people living in one locality: locality in which they live: a group of people having cultural, religious, ethnic or other characteristics in common: the public in general: common ownership or participation: similarity or agreement: It may be argued that the 90 houses within Port Erin on the Ballakilley estate are not part of the Community of Four Roads which is mostly in Rushen and partly in Port St Mary but they are within the community of Port Erin. If that is the argument I cannot see how the 78 houses in Ballakilley within the Parish of Rushen could be considered to be solely within the community of Four Roads and Rushen. I could very well make a good argument that the whole of Ballakilley is part of an overall community of Four Roads as all children from the 168 houses will go to the one school at Four Roads. All people from the houses can get medical health from buildings within Rushen. All people can use the recycling centre situate within Rushen. There may well be a very strong argument for a single Southern Authority. Then it would be clear that there is one community in the South of the Island. That however is not for me to advise on or make any recommendations. I have to decide if the Promotors area and the area of Rushen in Ballakilley are really one community. Are the people in these 168 houses living in one locality? Is there common ownership or participation? Is there similarity or agreement? In making my recommendation on this I take note that Applicant extended its boundaries when the housing development on the Ponyfields was approved. Whilst Planners are not experts on boundary extensions there are many planning documents and reports that treat Ballakilley as one development, one settlement. There was only one planning application made for the houses that are now erected. Whilst there are architectural differences in the houses there is a basic theme behind them. They are connected to mains services in a similar way and very importantly in my opinion there is a row of houses which if the application failed will remain partly in Port Erin and partly in Rushen. In my judgement therefore it would be ridiculous to allow the development of Ballakilley to remain in two authorities. I am firmly of the view that the 168 houses of Ballakilley are really one community.

6.3 Community of interest issue. In the 2004 criteria it gave assistance by giving examples of schools, doctor's surgeries recreation areas and community halls. There is no doubt that the majority of those specified examples are situated not in Port Erin even if the boundary is extended but are situated in a mixture of Port St Mary or Rushen. The document also refers to residents of the area under consideration having the use of facilities of the Applicant and that catchment areas for schools may be extended. As I have stated already this is an unusual application where residents of Port Erin already use the facilities in Rushen and Port St Mary and the residents of the 78 houses in Ballakilley Rushen use these same facilities as well. I am sure residents of all the 168 houses can use retail shops in Port St Mary as well as use the facilities in Port Erin. This has clearly been recognized by the financial assistance that has been given by Rushen Commissioners to the Applicant in the past and their willingness to consider other ventures together. There will be no change in the catchment area for schools as all children from the 168 houses will go to Rushen Primary School at Four Roads. Regardless therefore of whether or not this application succeeds you can argue that there is already a community of interest in all or most of the services and social

agencies. This is the reason that makes this particular application unusual but as all the Ballakilley residents will have the same community of interest it supports in my judgement the sensibility of having them all within one authority. Rushen Commissioners raised the issue of the recreational areas part of Ballakilley but which will remain in Rushen. I do accept that there will be a cost of providing these facilities and at present it falls on Rushen Commissioners which does seem unfair. I do not consider I have any power to recommend contribution from the Applicant but as these facilities will benefit all Port Erin residents I would hope that what appears to be a working relationship between the Applicant and Rushen Commissioners on many issues will continue and the Applicant could be persuaded to give some financial support to that recreational development.

**6.4 Overspill or outgrowth issue.** Again the criteria states that this is a straightforward matter of judgement. The extension of Port Erin to incorporate the Ponyfield Development results in the Ballakilley development clearly being an overspill or outgrowth of Port Erin, and so I have no hesitation in saying that in my judgement this overspill development supports the application.

**6.5 Clear Physical boundaries issue.** I have considered issues of the green gap, I visited the site and studied all plans, of the area. Certainly if the application is refused it would create difficulties over the boundaries of the houses where the authority boundaries run through gardens. I am satisfied that if the application is granted there will then be clear physical boundaries between Port Erin and Rushen taking into account matters of topography such as roads, walls and hedges.

**6.6 Insufficient Acreage left for development issue.** There are clearly areas of Port Erin that could still be developed but an examination of the relevant plans show that these sites are mainly for apartment development and not for residential estates. I accept totally that Rushen does not have many sites where development could take place particularly no other site where there seems to be a desire on the part of planners to allow an estate of housing. The criteria does however state that injury is to be suffered by the promoter. I am not convinced that if the extension did not go ahead injury would be suffered by the Applicant. The 168 houses are completed. The development presumably helps the demand for housing in this area whether or not it is in Rushen or Port Erin. As a result I do not believe this particular criteria has been met by the Applicant to support their case.

**6.7 The Balance of advantage issue.** This is again stated to be a matter of judgment. Certainly it can be argued that the 78 houses in Rushen provide a benefit to Rushen Commissioners from a rating point of view but I am told to ignore that factor. For the reason that I describe Ballakilley as one community then in my judgement the balance of advantage lies in acceptance of this extension scheme.

## **7. Section 6 (3A) Local Government Act 1965.**

In the draft order prepared for this Inquiry provision was made in section 5 for differential rating to be applied to properties in the extended area if the extension scheme went ahead. The table submitted showed as follows: Financial Year 2020-21 a factor to be applied of 0.2; 2021-22 a factor of 0.4; 2022-23 a factor of 0.6; 2023-24 a factor of 0.8 and 2024.-25 a factor of 1.0. In view of the way this matter has been handled I have already stated that it has been very unfair on the new residents of the 78 houses in Ballakilley Rushen. They can in my opinion be compensated by increasing the equalisation factor to be applied and because of all factors prevailing in this case I would recommend a factor of 0.1 to be applied each year so that the maximum period of 10 years permitted by Tynwald is applied to this provision rather than the 5 years as drafted.

**8 Recommendation.**

Therefore in view of the fact that I consider the Applicant has satisfied me on 5 of the 6 points within the criteria document my recommendations are that:

- 1 the alteration in its boundary proposed by the Applicant and shown on the Maps attached to Appendix 2 should be implemented by order.
- 2 The draft order submitted to the Inquiry should be approved save and except in relation to Section 5 with regard to the transitional compensatory adjustments. The amendments proposed in Section 7 of this report should replace the table in Section 5 of the draft order.

**9 Costs.** Under the Inquiries (Evidence) Act 2003, under which this Inquiry was held, I am entitled under section 5 to order the payment of costs of the Inquiry to be paid by any Local Authority interested in the subject matter of the Inquiry. I am also entitled to order that the expenses incurred by any Interested Party shall be paid by any other Interested Party. I am aware that the Applicant did state it would be prepared to pay the costs of the Inquiry.

In accordance with Section 5 of the Inquiries (Evidence) Act 2003 I order that the Applicant Commissioners shall pay the costs of the Inquiry held under my Chairmanship and shall also pay the expenses incurred by any Interested Party in appearing at the Inquiry.

This 23rd day of May Two Thousand and Nineteen.



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