

## **POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL**

### **COMMENTS ON COUNSEL'S OPINION OF 19 JANUARY 2018**

**BY PETER SYMON**

I refer to counsel's opinion by Robert Sutherland, advocate, on the matter of the Pow of Inchaffray Drainage Commission (Scotland) Bill ("the Pow Bill") dated 19 January 2018. Counsel concisely identifies the purposes of the 1846 Act, what was done under it and the basis for assessment of increased value of land benefiting from the works (para.1). He correctly notes the lack of a consistent and clear 'red line' identification of boundaries of benefited land (para. 2). Notwithstanding that limitation, I would submit, a large number of plots have clear and unambiguous boundaries delimited by linear features such as roads, ditches and the Pow works.

I would offer support for, and clarification of, counsel's observations about "differences in the areas affected by the work, and in the valuations, between what had been originally proposed and what had been carried out" (para. 3). In regard to areas, a certain number of plots of land listed in the Book of Reference (1847) were excluded from the Estimate of Increased Value (1851). A list of these plots can be supplied to the promoters on demand. Of those plots which were deemed to have increased in value and therefore were included in the Estimate of Increased Value (1851), with what would appear to be one trivial exception, none of the mosaic of numbered plots of land differs in extent as recorded in the Book of Reference (1847) and the Estimate of Increased Value (1851). The extent of every numbered plot was identical in each, to one thousandth of an acre. The exception is plot number 263, the extent of which is recorded in the Book of Reference (1847) as 0.673 acres and in the Estimate of Increased Value (1851) as 0.670 acres, or a difference of 0.003 acre. It is submitted that the difference is probably due to a transcription error.

Regarding valuation, there was an overwhelming propensity for the increase in value of almost all plots of land to be lower in the out-turn Estimate of Increased Value (1851) than in the Book of Reference (1847). There is also a fairly wide variation in absolute and proportionate increase in value, over the benefited land.

On existing buildings, there are 12 existing buildings or groups of existing buildings shown on the plans. Of these 12 cases, it is submitted, seven are clearly shown as being not within the boundary of benefited land on the plans while one further case (Drumphin farm) is shown on the plan as almost completely distinct from plot 169 and so may be inferred to be outwith the benefited land. In three cases, with varying levels of ambiguity, plots 160, 237 and 245 may include an unnamed building. Finally there is the unusual case of the ruined Inchaffray Abbey.

While supporting Mr Sutherland's inference that an existing building would not reasonably be built on land with drainage problems and that there would be no direct benefit to the building from the drainage works, it is submitted that the extent of the plot may be measured in each case in order to test whether or not the plot extends to include the existing building or not. It is also submitted that the curtilage or garden ground associated with an existing building may reasonably be inferred to increase in value as a result of the drainage works and therefore be benefited land. I would therefore seek to qualify the opinion (para. 5) that the ground existing buildings were constructed

on would be unlikely to have benefited from the 1846 Act drainage works, to the extent that the ground associated with the building may have benefited (and been subsequently developed).

In regard to the Dollerie lands, I agree that the lands of Dollerie were not liable to assessment under the 1846 Act and would offer further support in the words written on the "Schedule of Final Assessment for the monies expended by the Commissioners acting under the Pow of Inchaffray Drainage Act 1846", against the Dollerie lands, and subscribed by the chairman and two other commissioners, dated 7 May 1852: "No assessment leviable from these lands as per agreement between commissioners and Mr. Murray previous to passing of Act of Parliament." The above Schedule recorded on 8 May 1852 in volume 45 of the Register of Entailed Estate Accounts at Perth Sheriff Court (SC49/59). A question that may arise is whether the agreement in respect of assessment of Dollerie lands exists in perpetuity or whether it expires on the date of repeal of the 1846 Act, if the present Bill receives Royal Assent.

Finally it is noted that the 1851 Plan, accompanying the Estimate of Increased Value (1851), remains, at the time of writing, unavailable for public consultation, pending conclusion of conservation assessment by staff of National Records of Scotland.