

POW OF INCHAFFRAY DRAINAGE COMMISSION (SCOTLAND) BILL

SUPPLEMENTARY WRITTEN SUBMISSION BY PROFESSOR ROBERT RENNIE

1 The Properties Affected

Originally the Pow simply drained agricultural land preventing it from turning into a swamp. Thereafter there were a number of houses around Balgowan Sawmill which I suspect no longer exist. However there is a Manor Kingdom Modern Estate comprising, I understand, 54 houses. There is no public sewage or drainage connection for these houses. They have a private sewage purification plant and I understand that the outfall from that plant drains into the Pow at which point of course it should be clear water. The Pow itself drains into the River Earn.

2 Title Provisions

While I have not seen any of the titles to houses served by the Pow I understand from my discussion with McCash & Hunter that Manor Kingdom set down a Deed of Conditions covering the whole Estate before they sold any of the houses. There is apparently a title condition to the effect that each house must pay a share amounting to 1/54th of the cost of maintaining the Pow. I have some doubts as to whether this would be a real burden as such because there is no benefited property. It might be a community burden. However it would be something which would put purchasers and their solicitors on notice that there was this extraordinary arrangement with the monetary liability. As far as I am led to believe however the owners of the Sawmill have been reluctant to contribute to the maintenance.

3 Public Bodies

No-one would dispute that the Inchaffrey Pow arrangement is unusual even in a rural area. There are many cases of individual houses where drainage is to a septic tank and thence to an outfall approved of by SEPA. In suburban and urban areas of course the sewers and drains are the responsibility of Scottish Water. I would make the obvious point that it would be preferable if responsibility for the Pow was taken over by a public authority but my understanding is that neither SEPA nor Scottish Water have any interest in assuming the responsibility for maintenance.

4 Property Enquiry Reports

In my previous Note I mentioned the difficulty that a purchaser or a purchaser's solicitor who relied on a property enquiry report from a local authority or a private provider would not necessarily be told that there was this additional liability in respect of drainage into the Pow. There is however a responsibility placed on sellers to disclose whether the drainage is

connected to the public system or not. This is contained in the property questionnaire. One would also expect a surveyor preparing a Home Report to note whether the drainage/sewage connection is public or not. McCash & Hunter indicated to me that if the Bill were to pass they would make contact immediately with all providers of property enquiry certificates with a view to the existence of the new statutory scheme being disclosed in any certificate or report.

5 Current Arrangements

I queried how charges were collected now under the 1846 arrangement. I was advised that solicitors contacted McCash & Hunter to advise them of a sale and to enquire as to any outstanding charges. These charges would then be apportioned as between seller and purchaser as at the date of entry.

6 Conclusion

The 1846 Act is still in force but its terms are certainly out of date. If responsibility for the power is not to be taken over by a public or local authority (and it appears that there is little appetite for this) then it would certainly be worthwhile to update the statutory provisions.