

Mr. Smell

Secretary of State (L&B)

cc:-PS/Mr Scott (L&B)
 PS/PUS (L&B)
 PS/Sir Ewart Bell
 Mr Bourn
 Mr Barry
 Mr Armstrong
 Mr McCann
 Mr Buxton
 Mr Merifield
 Mr Gilliland
 Mr Reeve
 Mr Coulson
 Mr Radcliffe
 Mr Beckett
 Mr Davidson
 Mr Mackenzie
 Mr McClelland
 Mr Allister

17 JAN 1984

WALKER'S MONUMENT, LONDONERRY

The purpose of this submission is to bring you up to date with progress in this case and to let you know how we propose to proceed.

Background

2. Walker's Monument, which used to stand on the walls of Londonderry overlooking the Bogside, was a statue of the Reverend George Walker (civil governor of the City during the siege of 1689) mounted on top of a 100 ft high doric column. It was erected in 1828 and blown up by the Provisional IRA in August 1973. Before its destruction, the monument was the property of the Apprentice Boys of Derry who have applied for and been granted outline planning permission - in April 1981 - to replace it. The Apprentice Boys have also instituted proceedings against the NIO for property compensation under the Criminal Injuries to Property (Compensation) Act (Northern Ireland) 1971 and applied in February 1983 to the Department of the Environment for detailed planning permission for the reconstruction of the monument. At the moment, the compensation case stands adjourned pending a decision on detailed planning permission.

3. Although the Apprentice Boys have sought detailed planning permission, we cannot be certain that they actually intend to

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rebuild the monument. We know that there are moderate elements within the Apprentice Boys who would prefer to use whatever compensation they can obtain to finance some less controversial scheme (such as rebuilding the local Orange Hall) and it may well be that they have merely sought detailed planning permission in the belief that armed with full planning permission (ie outline plus details) this would help them to obtain a higher compensation figure. On the other hand, their legal representatives insist that they will rebuild and we know that they have already started to raise funds for that purpose. At this stage therefore, we have to assume that the Apprentice Boys genuinely want to rebuild the monument and treat their application for detailed planning permission accordingly. In considering this problem we are looking for an outcome which:-

- (a) does not damage inter-communal relations in Londonderry;
- (b) avoids the risk of creating new security problems in the City; and
- (c) settles the compensation claim at an acceptable cost to public funds.

Political Considerations

4. There can be no doubt that the reconstruction of this huge obelisk on the walls overlooking the Bogside would make it the focus of considerable sectarian feeling. Recent events have demonstrated that Londonderry remains peculiarly sensitive to sectarian nuances and we know from our contacts in the City that attitudes on issues of this kind are deeply polarised. The re-erection of the monument on its original site would be seen by members of the minority community as an act of provocation and is likely to have a serious and lasting effect on community relations. On the other hand, we recognise that the monument has great symbolic effect amongst the Loyalist population of the City and that the Apprentice Boys in particular would regard any attempt by Government to prevent its reinstatement as a victory for "the terrorists".

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Security

5. There are also powerful security considerations. The Monument was blown up in 1973 because it was seen as a symbol of Loyalist domination and we could therefore expect the Provisional IRA to try to prevent its reconstruction either through intimidation of the workforce or by physical attacks on the site. Even if the Monument were eventually rebuilt, it would undoubtedly become a target for the terrorists. The Monument would therefore present a considerable security headache for the RUC both during its reconstruction and after it was rebuilt. Whilst the Chief Constable is obliged to take every possible measure within the limits of his resources to safeguard lives and protect property, such measures can never guarantee success against a determined and surprise attack. More importantly, it is the view of the RUC that the reinstatement of Walker's Monument would heighten tension in Londonderry and make their task of policing the city more difficult.

6. On balance, the political and security arguments point against reconstruction of the monument. We should also remember that Members of Parliament and opinion in Great Britain might become aware of a decision to allow reinstatement and the political repercussions might not therefore be confined to Northern Ireland.

The Planning Position

7. Where building works are involved, developers normally approach the business of planning permission in two stages. Firstly, the principle of the development is cleared with an outline application and, secondly, if outline permission is granted, the detailed plans are drawn up for approval - otherwise known as "approval of reserved matters" or detailed planning permission. It is a clear principle of planning law that in considering the detail of a proposed development a planning authority cannot challenge the whole principle of the development since that is an issue which is already settled at outline stage. One may only refuse detailed permission if there is something unacceptable in the details. If one wishes to challenge the principle of a development the only course available under planning

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law is to revoke the outline planning permission - and to pay compensation for any loss caused by the revocation. A planning authority cannot refuse an application for detailed permission in order to defeat an outline permission. If, therefore, the details of the proposed reinstatement of Walker's Monument are acceptable in design terms - and they are - the Department has no alternative but to approve them.

8. The security and political arguments clearly point against the reconstruction of the Monument, but, if the planning process is to be used as the mechanism to achieve this objective, this can only be done by means of revocation. I have to advise that we would be on extremely shaky legal ground in trying to effect a revocation of the outline permission here, to say nothing of the political repercussions that would surround the inevitable public inquiry (as provided by the Planning Order) into the revocation proposal. I cannot recommend, therefore, that we proceed with revocation.

9. The Planning Service of the Department of the Environment has been in a position for some time to take the Apprentice Boys' application for detailed planning permission to the Londonderry City Council for the purpose of the statutory consultation which normally is the last step in the procedure prior to the issue of a planning decision. In fact, a decision is long overdue and the applicants are threatening legal action to force the Department to undertake its statutory duty. The clear planning advice is that there are no grounds for refusing this application for approval of details and I therefore recommend that the Divisional Planning Officer of the Department now consult the Council on the basis that approval should be given.

10. The granting of detailed planning permission does not mean that reinstatement of the monument may automatically proceed. The Department of the Environment is under a statutory obligation to maintain the walls of Londonderry as an historic monument and is bound to look critically at any proposals which might affect them. If, as seems likely, reinstatement would require the sinking of piles my Department might be able to withhold permission for

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reconstruction because of the risk of damage to the walls. This is a matter which cannot finally be determined until the Apprentice Boys submit details of the necessary sub-structure for the reconstructed monument but it remains a major obstacle for them to overcome before rebuilding can take place.

11. In consulting the Council the Planning Officer would make it clear that the granting of the planning permission would not automatically mean that reinstatement would take place because of the potential building difficulties and the need for the Department of the Environment to be satisfied that any works undertaken would not cause unacceptable damage to the walls. Framed in this way, it is anticipated that no strong objections would be raised and the way would be clear for the issue to the Apprentice Boys of the detailed planning consent.

Compensation

12. The granting of full planning permission will reopen the compensation claim lodged by the Apprentice Boys against the Northern Ireland Office. At the moment, this claim stands adjourned at the applicant's request pending a decision on planning permission. Our standing offer of compensation amounts to £42,000 and is based on the estimated cost of demolishing the remains of the Monument, clearing the site and erecting a new stone plinth and memorial plaque of modest proportions. Armed with full planning permission the Apprentice Boys can be expected to seek a settlement at a very much higher figure based on the cost of rebuilding the Monument in accordance with the building specifications in the planning application. This would mean a column of re-inforced concrete, clad with fluted sandstone (100 mm thick), which is a much more costly proposition than an earlier design using only modern materials which was the basis of previous compensation negotiations and was costed at about £175,000. Renewed attempts have been made recently by the NIO to secure an out of court settlement of the compensation claim before the planning decision is made public. These efforts have failed because of the Apprentice Boys' persistent refusal to entertain any offer which is significantly less than the rebuilding cost; they believe

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there is little to be lost by letting the Court determine the claim. There is no indication that the Apprentice Boys will relax their attitude and it seems therefore that the claim will end up in Court for determination.

13. Liability is not at issue but, if the application goes to court the NIO will vigorously argue, with some justification, that it is unreasonable to pay compensation based on reinstatement cost. Apart from other considerations, the Monument was erected some 150 years after the event it commemorated and had nothing like the same historical value as the Walls on which it stood nor had it a market value as such. The potential difficulties which might arise with piling the foundations and getting a contractor willing to undertake the work of reconstruction with its attendant risk are other factors which the Court is bound to take into account when considering compensation. The expectation is that a court award would be much lower than the actual cost of reinstatement, leaving a considerable shortfall which would be difficult to make up by fund raising, but this cannot be guaranteed.

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14. It is essential that when the Apprentice Boys are told that detailed planning permission has been granted they are simultaneously informed of the need to seek the approval of the Department of the Environment to the actual building works involved in reconstruction. A draft letter which it is proposed should accompany the notification of the planning decision is attached. If the Apprentice Boys are unable to satisfy the Department that reconstruction poses no threat to the stability of the walls, there will be a solution to the problem which will defuse a potentially emotive issue and enable us to settle the compensation claim at a much lower cost to public funds.

15. There is, however, the possibility that the Apprentice Boys may be able to find a way of reconstructing the monument which overcomes the piling difficulties. If they are determined to go ahead and present us with plans which would not affect the stability of the walls we would have to consider whether to forbid the monument's reconstruction on security grounds. Powers do

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exist under the Emergency Provisions Act to prevent reconstruction by requisitioning the site on which the monument would stand. Clearly the use of such powers in this case would have considerable political implications and we should have to think very carefully if we were to go down a path of this kind. But it is worth recording the Chief Constable's present view that, in the last resort, the security implications of forbidding reinstatement of the monument would be less than those stemming from its re-erection.

Summary

16. The Apprentice Boys have applied for detailed planning permission to rebuild Walker's Monument and a decision is long overdue. Despite the political and security arguments, there are no planning reasons which would justify the withholding of detailed approval - having already granted outline permission - and a decision will have to be announced soon. I recommend that - assuming a satisfactory consultation with the Council - we should grant detailed planning approval subject to the proviso that any works of reconstruction will not adversely affect the structure of the Walls as an Historic Monument. In practice, this will probably mean that the Apprentice Boys will have to abandon their plans to reinstate the monument enabling us to settle their compensation claim at a relatively low cost. If, however, the Apprentice Boys can find a way around the building difficulties we will need to consider very carefully whether to forbid reconstruction on security grounds. Powers which would enable us to do so are available under the Emergency Provisions Act.

17. I should be grateful for your agreement that we proceed as outlined above.



CHRIS PATTEN

16 January 1984

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E.R.

DRAFT

General Committee
Apprentice Boys of Derry

REINSTATEMENT OF WALKER'S MONUMENT

A notice has been issued to you conveying the Department's decision to approve your planning application to reinstate the Walker Monument. The purpose of this letter is to advise you of the additional steps which you must take should you decide to proceed with the project and before any works commence.

The Old Walls of Londonderry became the responsibility of this Department under a Deed of Guardianship concluded with the Hon The Irish Society in 1955. This Deed lays a statutory obligation on the Department to maintain the Walls as an Historic Monument and to exercise proper control and management with respect thereto; the Department will accordingly need to be satisfied that any works of reconstruction will not adversely affect the stability of the City Walls. If, for example, piling operations are contemplated the likely effect of these should be carefully considered beforehand.

Details of your proposals for reconstruction, including an assessment of the effect the works are likely to have on the fabric of the Walls and the Royal Bastion, should therefore be submitted for approval by the Department before any works commence.

If, in order to determine what method of reconstruction should be employed, it is considered that some site investigation is necessary the Department will be prepared to permit this to be done provided it is carried out under archaeological surveillance. In this regard you should contact the Department's Historic Monuments and Buildings Branch at 1 Connsbrook Avenue, Belfast, Telephone Number Belfast 653251.

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