



- Mr Bell ✓
- Mr Hannigan
- Mr Burns
- Mr Gee
- Mr Barry
- Mr Davidson
- Mr McIlmoyle

M. P. [Signature]

PSE 966/79

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Minister (Mr Goodhart)

REPUBLICAN MONUMENT IN CROSSMAGLEN

1. Mr Harold McCusker MP, wrote to you on 17 September about what he described as an illegal monument in Crossmaglen and asked what you intend to do to have it removed. In your absence I wrote about this matter to the Private Secretary, Secretary of State on 20 September and he has indicated that the Secretary of State would like to have advice from you.
2. Mr McCusker says that the monument is causing great offence to the decent people of his constituency and no doubt is an affront to the soldiers and police serving in Crossmaglen - the inscription on the monument is "Glory to all praised and humble heroes who have willingly suffered for your unselfish and passionate love of Irish freedom".
3. Planning permission was given by Armagh County Council on 10 July 1973 for an 11 ft grey granite monument but what has been erected is a 15 ft bronze statue of a man astride a phoenix. The Planning Application was submitted by a solicitor on behalf of the Crossmaglen Memorial Committee and Armagh County Council when considering the Planning Application asked to be informed of the purpose of the monument, what it was commemorating and the wording to be inscribed on it. The Solicitor replied that the monument was to commemorate deceased patriots and that no decision had been taken as to the inscription but he asked for confirmation that this had no bearing on the matter. The Council then wrote confirming that permission would be recommended to the monument, whatever the wording of its inscription might be, provided that the inscription was not engraved or superimposed onto the monument in an unsightly or garish manner.
4. It is clear that the monument that has been erected is not in accord with that for which planning permission was given in July 1973 and that the Department would therefore be justified in taking the view that there has been a breach of planning control. Here I would like to refer briefly to the statutory position and to Mr McCusker's reference to an 'illegal monument'. It is not in fact correct to say that the monument that has been erected is illegal. The statutory position is that if any development is carried out without planning permission or does not accord with the planning permission granted that is, in planning law, a breach of planning control - a breach of planning control is not a criminal offence and does not of itself attract any penalties. When it appears to the Department that there has been a breach of planning control the Department may, if it considers it expedient to do so, issue an Enforcement Notice requiring the breach to be remedied; if after an Enforcement Notice has become effective the person concerned does not take the steps required by the Notice to be taken that person is guilty of an offence and liable on summary conviction to a fine. Thus, no question of a legal offence arises until after an Enforcement Notice has been served, become effective, and there has been a failure to comply with the terms of the Notice.

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5. In considering whether it is expedient to take Enforcement action in any case of a breach of planning control it is the practice of the Department to judge whether the development is acceptable in planning terms and whether planning permission would have been granted if sought. If such is the case there is no point in planning terms in serving an Enforcement Notice; it would be possible in theory to serve an Enforcement Notice requiring the submission of an application for planning permission but we are legally advised against such a course - the submission of a planning application could not be said in itself to remedy a breach of planning control. Where there has been a breach of planning control and where the development concerned is acceptable in planning terms we take no further action other than to request the submission of a planning application - this is no more than a request and if an application is not submitted we let the matter rest.
6. The professional planning view is that the monument that has been erected is acceptable in Planning (ie land use) terms, and in the light of the permission previously granted it would be difficult to refuse permission if a new application were to be received, or to justify Enforcement Action.
7. You are, of course, at liberty to decide that the wider public interest requires rejection of the professional planning arguments, having regard to the security and political connotations. This would mean asking for submission of a planning application and being prepared to reject the application if one was received or to issue an Enforcement Notice if our request was ignored. Either course could lead to an appeal - to the Planning Appeals Commission against a planning refusal or to the Court against an Enforcement Notice - and there must be a real risk that, in view of the permission previously given for a monument of some sort, the Department's decision would not be upheld. The outcome could well be a fiasco from the Government's point of view.
8. We have sought views from NIO and the Security Forces. While the Army's preference would be to see the monument removed, the RUC believe that an attempt to remove the structure could provoke disturbance out of proportion to any benefits likely to be obtained. The NIO would prefer us to find some defensible means of leaving the matter alone, and our District Development Officer, with his good local contacts, also commends this approach.

RECOMMENDATION

9. My recommendation, therefore, would be that you should reply to Mr McCusker's letter in the terms of the attached draft, and that you should so advise the Secretary of State. Before doing so, you may wish to discuss.

K.P. Bloomfield

K P BLOOMFIELD
16 October 1979

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