

STATES OF JERSEY



LES QUENNEVAIS PARK FLATS LOAN SCHEME (P.19/2021) – RESCINDMENT (P.54/2021): AMENDMENT

Lodged au Greffe on 22nd June 2021
by Deputy M. Tadier of St. Brelade
Earliest date for debate: 29th June 2021

STATES GREFFE

LES QUENNEVAIS PARK FLATS LOAN SCHEME (P.19/2021) –
RESCINDMENT (P.54/2021):AMENDMENT

1 PAGE 2, PARAGRAPH 1 –

After the word ‘Act’ at the end of the paragraph, insert the following words:

“and to agree that the full cost of the repair of the balconies shall be met by Jersey Property Holdings”

DEPUTY M. TADIER OF ST. BRELADE

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

To refer to their Act of 22nd April 2021, in which they approved, in accordance with the Public Finances (Jersey) Law 2019, a variation to the purpose and terms of the 99 Year Leaseholders Fund to enable monies from the Fund to be lent to property owners in Les Quennevais Park Flats for the repair of balconies, and to rescind that Act, and to agree that the full cost of the repair of the balconies shall be met by Jersey Property Holdings”.

REPORT

I am asking the Treasury to meet the costs of the repairs to the Les Quennevais Balconies because it was a building error with the original build that led to the defects with the said balconies. It was either an act of oversight or negligence on the part of the States that such an error was allowed to happen unchecked, and in many cases, for the flats to be sold (from 99 year lease to freehold), whilst this fundamental fault had still not been picked up. Put simply, it was a States error and today the States has an opportunity and a moral duty to put right that error, which could and should have been picked up much sooner.

This is evidenced on page 3 of the report of the Environment, Housing and Infrastructure Scrutiny Panel in their [Comments to P.19/2021](#), submitted on 16th April 2021: *The Panel questioned whether any legal obligation existed on the Government to provide assistance regarding the repairs outlined. It was explained that there was no legal obligation on the Government to provide support, however, as the fault was resultant of the original construction method, it was felt that a moral duty existed to provide a means of assistance to rectify the issues.*

So, to reiterate, the Panel were told by Government that it was felt that a moral duty existed for *them* (the Government) to at least help rectify the issue.

There is also an acknowledgement in the report Housing and Communities Minister P.19 report that today's problems stem from an original build fault:

'Following a recent maintenance inspection of the flats, it was found that their balconies require certain repairs arising from a problem with the original construction method.'

It goes on to say:

'It is not known exactly what took place in c1964 during the build contract that led to the balconies being built with precast beams. It may have been an approved design or it may have been the contractor's decision. It is considered that even in the 1960s, the expertise of the architect, engineer and contractor should have highlighted the risks and swayed the decision away from using such beams on the balconies.'

Furthermore, it states:

'Accordingly, the Minister for Housing and Communities believes that the States should assist the residents with the cost of the repairs because the flats were built with a fundamental defect that ought to have been reasonably avoided.'

This is an area where the Minister and I agree. I also believe that the States should assist the residents with the cost of the repairs – they should assist them by paying for them in full.

The Minister speaks of a **moral responsibility** however, his offer of financial assistance is limited to the form of a *means-tested* loan, repayable with interest.

There is also a clear acknowledgment in the report that this was something that *could have easily been avoided*; as such, his arguments and reasoning actually point to a moral responsibility of the States to put right that wrong and *pay* for the repair works themselves.

In short, the residents did nothing wrong, yet they are being asked to pay for the States's historic mistake. This is neither fair nor just. They bought the leases or the flats in good faith, and many do not even own the flats in question – they are simply leaseholders of apartments that will revert in to States ownership at some future point.

Who are the real people who own and live in these flats?

In decisions such as these, it is easy for debates to focus on the *figurative* accountant's ballot sheet and lose focus of the real people behind each of these 96 homes in the densely populated heart of St Brelade. It is tempting for us to focus on questions of legal liability rather ask whether a moral responsibility exists.

So let us look at some of the people affected.

One of the residents in question is a leaseholder. This means he does not own the property he lives in. That notwithstanding, he pays a mortgage on the property to the tune of almost £900 pcm. Where a homeowner can reasonably expect the value of his/her home to increase every year, this person knows that the value of his leasehold is diminishing over time.

This leaseholder in question is a single parent to a young person with complex needs; he works hard and has raised his son, now a young adult, with little support. He is on a modest income (lower than the median wage), with the usual costs associated with an expensive island. He is not in a position to be able to afford to buy his flat outright, as the bank will not lend him the money based on his earnings and on top of his current mortgage. He cannot see how he can afford to take out the loan offered by the Housing Minister. When I asked him whether he would not take the *interest only option*, he (quite understandably and half-expectedly) asked '*how would I afford to pay the capital back in 10 or 15 years' time?*'. By that time he would be in retirement and would have no property of his own to fall back on. He has told me he cannot afford the loan and so has not applied for it. I am not sure what he will do. He did tell me that a few years ago, when the problem was first discovered, he had started putting some money aside. But back then, the cost of the project was mooted to be in the region of £3,000 – not the £10-12,000+ that is being asked of residents today.

He is not the only leaseholder. Of the 96 flats, 25* are still on the 99 year leases (which are due to expire in 2055). Many of these residents are what we might normally call *vulnerable*. They are in homes which were conceived as a form of *affordable*, if not *social* housing at a time when affordable home-buys or shared equity did not necessarily exist. They are, effective, tenants who have paid their rent in advance to the States; their monthly mortgage payments, also effectively a monthly rental payment for a property they do not own.

Yet, for the purposes of the repairs, they are considered equally liable; for the purposes of the loan, they are considered the same as the freeholders.

The Freeholders

Whilst it might be thought the freeholders are in a better position – they have either converted their leaseholds to freeholds for an additional cost or bought the freehold off someone who has previously converted – it should be remembered that they also bought the properties in good faith; properties which were *fundamentally defective*, in the words of the current Housing and Communities Minister.

* Exact figure to be confirmed

One of the owners explained to me how they paid in the region of £28,000 to convert from leasehold to flying freehold. And they had to take an additional mortgage out to do this.

In their words, they explained:

'It was soon after everyone bought the leases that the problems arose - surprise, surprise!

We have had to pay a large sum of money across when the problem arose with the Lintels & then no sooner as that was finished we now have this huge debt over us for the balconies. Which is going to leave everyone in a huge debt.'

These residents are owner occupiers. They explained to me that they do not qualify for the loan scheme because they have some modest savings of c. £10, 000. This is money they had been saving for their retirement *to help subsidise their poor pension.*

They continued:

'Some people have suggested selling our flats & getting something else, however these are one of the cheapest flats you can get, nobody can afford to move. Everyone is already facing years longer before retirement than they should be, how much more can people be expected to work?'

They have also raised the following queries, which many of other residents have also pointed out:

1) *The original building work was signed off by somebody from the States, who signed off that the structures were in solid concrete.*

2) *None of this was picked up by a surveyor when we had our mortgages approved, they have advised that this was not visible. But the point is there have been problems with the places for years & nothing was investigated until most people had purchased their leases.*

Summary and Conclusion

Firstly, I would like to thank those members who have read this far.

The evidence of the both the Minister and the Scrutiny panel is that:

- 1) ***The flats were built with a fundamental defect that ought to have been reasonably avoided (P.19/2021)***
- 2) ***the fault was resultant of the original construction method***
- 3) ***And it was felt that a moral duty existed to provide a means of assistance to rectify the issues. – Scrutiny Panel Comments.***

It will be argued by the Minister that tax payers money should not be used to pay for a repairs to privately owned property. Notwithstanding the fact that some of the properties are still owned by the States anyway, this ignores two key factors: (i) that the money being requested from Treasury is far less that the monies already handed to the Treasury by those who have converted from Leasehold to Flying Freehold, and as such, it should be seen as a repatriation of funds to the owners to (ii) pay for works for which the States are morally liable.

In requesting Members to support this amended proposition I would ask two simple questions:

- *Who caused this problem?*
- *Who is being asked to pay for this problem?*

I also ask Members to consider two of the principles of *natural justice*:

Audi alteram partem or ***Hear the other party***

Up until now, the voice of the *other party* - the residents - has **not** been properly heard. It is important, particularly for we who are local representatives, to take on board all of the points raised by the residents in the last two months and make sure they are properly vocalised and considered.

Nemo iudex in causa sua or ***No-one should hear his/her own cause***

The Minister is likely to oppose this proposition and in doing so, will effectively be judging his own cause. On the one hand, he has clearly told us, the States were to blame for the defective building, yet he will *strongly urge* members to vote against this request for redress that only arises from the defective build.

I ask members to do what is right and to effectively refund the residents of Les Quennevais Park Flats some of the money they have paid so that it can be used to repair the faulty balconies which the States build in 1965.

Financial and manpower implications

The total cost will be in the region of £1.25m.