

LA SIRENE GUEST HOUSE, ST. HELIER: EX GRATIA PAYMENT TO PROPRIETORS

**Lodged au Greffe on 17th July 2001
by Deputy A.S. Crowcroft of St. Helier**



STATES OF JERSEY

STATES GREFFE

180

2001

P.119

Price code: A

PROPOSITION

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

to refer to their Act dated 7th December 1999 in which they charged the Housing Committee to authorise the assessment by an independent firm of auditors of the business losses suffered by the proprietors of La Sirène Guest House, 23 Clarendon Road, St. Helier prior to 16th February 1999 as a result of the redevelopment of the neighbouring property known as Kent Lodge, and -

- (a) to agree that the sum of £2,212.63 plus interest should be paid to the proprietors of La Sirène Guest House by the Housing Committee, this sum being the difference between the amount of the *ex gratia* payment already made by the Committee to the proprietors in April 1999 and the amount which has been shown to be appropriate following the independent assessment of the proprietors' business losses as set out in the report of the Committee presented to the States on 3rd July 2001;
- (b) to request the Housing Committee to pay this sum to the proprietors of La Sirène Guest House forthwith without requiring them to accept that the sum is being paid in full and final settlement of all and any claims against the States.

DEPUTY A.S. CROWCROFT OF ST. HELIER

Note: The Finance and Economics Committee's comments are to follow.

Report

The history of the difficulties experienced by the proprietors of La Sirène Guest House, St. Helier, is set out in P.155/99 and need not be repeated here. Suffice it to say that in April 1999, the Housing Committee made an *ex gratia* payment of £5,000 to the proprietors in view of the problems that had been caused during the development of the former Kent Lodge site for housing. On 7th December 1999, the States debated P.155/99 and requested the Committee to carry out an independent assessment of the proprietors' business losses. On 3rd July 2001, the Committee proposed in their report, R.C.24/2001, to make up the amount of the original *ex gratia* payment to the higher figure which had been shown to be a fair assessment of the actual losses following the independent assessment carried out by KPMG.

While I commend the Housing Committee's decision to increase the total amount of the *ex gratia* payment being made to the people concerned, I believe that it is unfair of the Committee to stipulate that the additional payment should only be made 'in full and final settlement of all and any claims against the States, any Committee of the States and any department of the States arising out of the redevelopment of the Kent Lodge site.' (R.C.24/2001, page 2).

The President of the Committee explained the reason for the imposition of such a condition in his answers to a Question in the States on 19th June 2001 -

"The Committee has been advised by the Law Officers' Department that it is standard practice when making a payment in respect of a particular matter to make it in full and final settlement of all claims by the same claimant arising out of the same matter. Part at least of the rationale for this is that the person who is offering the payment should be able assume that that is the end of the matter. If a payment is not in full and final settlement, there is nothing to prevent a claimant from accepting a payment which has been made in good faith and then coming back for more as often as he feels inclined."

This argument appears reasonable enough but it fails to address the unusual set of circumstances in the case of La Sirène Guest House. These, as outlined in P.155/99, are what led both the Tourism and Housing Committees to indicate their willingness to consider giving financial assistance to the guest house proprietors in the first place, instead of leaving the aggrieved parties to seek redress in the usual way through a civil action.

The suggestion made in the final sentence quoted above cannot in all seriousness be taken to apply to the proprietors of La Sirène Guest House, whose contention that the size of the *ex gratia* payment made in April 1999 was inadequate has been amply demonstrated by the independent assessment carried out by KPMG. On what reasonable basis could they keep 'coming back for more'?

The President of the Housing Committee went on to say that -

"The settlement provision has been expressed to cover the States, any Committee of the States and any department of the States because Committees are bodies of the States and departments are executive arms of the Committees. To restrict the settlement of (sic) the Housing Committee would leave it completely open to ask for a payment from some other Committee."

The proprietors of the guest house happen to believe that they have been let down very badly by the States in this whole affair, and, in particular, by the Planning and Environment and the Employment and Social Security Committees, who are responsible for the Building Byelaws and Health and Safety at Work law respectively. The Housing Committee's decision to impose a new condition upon the proposed additional *ex gratia* payment effectively debars the proprietors from taking any action against either or both of these Committees, should it be alleged that they have failed to fulfil their statutory duties. I do not believe that it is fair, considering the circumstances of this case, to seek to tie the hands of the proprietors of La Sirène Guest House in this way.

Finally, if the Committee accepts that there is a good case for increasing the amount of the payment, which R.C.24/2001 suggests it clearly does, then surely the extra payment should be made on the same basis on which the original payment was made in April 1999, i.e. without admission of any legal liability whatsoever.

The financial implications are set out above and there are no additional manpower implications for the States.