

**LA SIRENE GUEST HOUSE, ST. HELIER (P.155/99): REPORT**

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**Presented to the States on 30th November 1999  
by the Housing Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

175

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## REPORT

The Housing Committee has considered the report and proposition "La Sirene Guest House, St. Helier" (P.155/99) lodged by Deputy Simon Crowcroft on 12th October 1999, and it has reviewed the decisions taken by the previous Housing Committee in regard to this matter.

### Background

As stated in the report, the current proprietor of La Sirene, Mr. Lawrence Hitchmough, has run the business since 1989 and has been successful despite "the rat-infested ruin" which was Kent Lodge before redevelopment commenced. It was inevitable that some disruption would be caused when redevelopment took place and the proprietor would have been well aware of this. Within the existing built-up area, similar situations arise on a regular basis, with all manner of building works taking place in close proximity to business premises.

The view of the Solicitor General was sought by the Housing Committee as to whether the proprietor of La Sirene would be legally entitled to compensation if the building works had an effect on his business. In October 1998, the Solicitor General gave the opinion that -

"It is an inevitable result of building operations that for their duration they cause some degree of inconvenience arising out of noise, dirt, dust, etc. Provided that the degree of inconvenience is not of an excessive level or unreasonably protracted, it will not give rise to a cause of action on the part of any neighbouring property owner."

In the case of Kent Lodge, specific restrictions on working hours were introduced into the building contract in order to minimise the amount of disturbance.

### The offer to consider making an ex gratia payment

Having established that it had no legal liability in respect of a claim for compensation, the Housing Committee, on 27th November 1998, nevertheless declared some sympathy for the proprietor's position and agreed that a report should be prepared on the potential loss he had suffered. The Committee did not give any assurance that a payment would be made nor, if a payment was made, that it would cover all potential losses.

### The assessment of the claim

On 22nd March 1999 the Housing Committee considered a claim from Mr. Hitchmough for the period 6th November 1998 to 16th February 1999. (On 16th February 1999 substantial damage occurred to a party wall of La Sirene and insurers took over responsibility for any business or other losses which resulted.) Mr. Hitchmough submitted a claim for £10,484 for losses incurred by the business during the period in question.

The Committee, having previously been advised that compensation was not payable, approached the claim on the basis that it would be making an ex gratia payment. Unlike compensation, which would have been related to actual loss, an ex gratia payment is of its nature discretionary, and the Committee felt it appropriate to fix a maximum, which it did in the sum of £5,000, subject to evidence that loss had occurred. The Committee did not agree to pay a higher sum and at the time was not prepared to consider any claim for the period prior to building works starting on 11th January 1999.

On 1st April 1999, the Housing Department's Finance Manager attended at La Sirene and, under rather unsatisfactory conditions, attempted to assess the loss of earnings claimed by the proprietor. Deputy Crowcroft has argued that there were errors in the assessment, and indeed this would be almost inevitable given the conditions under which it had to be carried out. That is, in the view of the Committee, immaterial. Whether the assessment was erroneous or not, it verified a loss of £5,903 for the period 1st November 1998 to 16th February 1999. The Committee accordingly made an ex gratia payment in the maximum amount which it had previously been prepared to pay, even though the period to which the [SA1] loss related was greater than that which the Committee had previously been prepared to consider.

If the financial assessment had fallen below the maximum ex gratia payment which the Committee had been prepared to make, the Committee would accept that there might be some merit in a revised financial assessment which might bring the payment up to the full amount which it was prepared to pay by way of ex gratia payment. As it is, the Committee is of the opinion that no useful purpose will be served by a revised assessment because the Committee has already paid out, on the basis of the previous assessment, the maximum amount which it was prepared to pay by way of ex gratia payment.

### The Jersey Homes Trust

The Jersey Homes Trust, having commenced the building contract on 11th January 1999, with certain working restrictions in place, has been able to make some small savings on the contract following the relaxation of building restrictions by Mr. Hitchmough. However, the restrictions were only lifted after 16th February 1999 when structural damage occurred and therefore, any savings accruing have no link to the claim for loss for the period prior to that date. If the Hitchmoughs had agreed to waive restrictions on building works from the date of the start of the building contract, the Jersey Homes Trust might have had reason to contribute to an ex gratia payment.

### **Summary and conclusion**

The Committee believes that the proprietor of La Sirene Guest House is not unique in suffering some form of financial loss as a result of building activity being carried out close to their business base. The advice of the Solicitor General is that in circumstances such as this, there is no likelihood of a legal claim for compensation being successful. The previous Housing Committee, despite there being no requirement to make any payment whatsoever, took a sympathetic viewpoint and agreed to make an ex gratia payment of £5,000 to Mr. Hitchmough.

The Committee, having reviewed the action and decision taken by the previous Committee, sees no justification for making any further payments and, therefore, does not accept that there is any need to appoint independent auditors to establish business losses suffered by Mr. Hitchmough prior to 16th February 1999.

19th November 1999