

THE STATES assembled on Tuesday,  
19th November 1991 at 9.30 a.m. under  
the Presidency of the Bailiff,  
Sir Peter Crill, C.B.E.

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All Members were present with the exception  
of -

Senator Anne Baal - ill  
Senator John Stephen Rothwell - ill  
Jack Roche, Deputy of St. Saviour -  
ill  
Carlyle John Le Herissier Hinault,  
Deputy of St. John - out of the Island  
Graeme Ernest Rabet, Deputy of St.  
Helier - ill  
Terence Ahier Jehan, Deputy of St.  
Martin - out of the Island  
Margaret Anne Le Geyt, Deputy of St.  
Saviour - out of the Island

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Prayers read by the Greffier

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Subordinate legislation tabled

The following enactments were laid  
before the States, namely -

1. Health Insurance (Pharmaceutical  
Benefit List) (Amendment No. 10)  
(Jersey) Order 1991 R & O 8297
2. Pilotage (Dues and Fees)  
(Amendment No. 3) (Jersey) Order  
1991 R & O 8298.

Housing Strategy for the 90's  
(P.142/91): petition (P.172/91). R.C.29

The Housing Committee by Act dated  
8th November 1991, presented to the States  
a report on the Petition of the Jersey  
States Tenants Action Group and others

asking that the Housing Committee reconsider the proposals contained in paragraphs 6.67, 6.68, 6.84 and 6.85 of the Housing Committee's report entitled ``Housing Strategy for the 90's" (P.142/91) in the light of their impact on individual tenants.

THE STATES ordered that the said report be printed and distributed.

Teachers' Centre - relocation:  
supplementary vote of credit (P.163/91).  
R.C.30

The Island Development Committee by Act dated 7th November 1991 presented to the States a report on the relocation of the Teachers' Centre to temporary accommodation at Langford, Mont Millais, St. Saviour.

THE STATES ordered that the said report be printed and distributed.

Matters noted - land transactions

THE STATES noted an Act of the Finance and Economics Committee dated 11th November 1991, showing that in pursuance of Standing Orders relating to certain transactions in land, the Committee had approved -

- (a) as recommended by the Agriculture and Fisheries Committee, the lease from Mrs. Roselle Jelly, née Mollet and Mrs. Kathleen Minty, née Mollet, of Field No. 216, Le Clos de Haut, Trinity, measuring 6.0.0 vergées, for a period of three years nine months commencing 4th April 1991 until 25th December 1994 at an annual rent of #120 a vergée;
- (b) as recommended by the Public Services Committee, the purchase from Mr. Robert Collisson and Mrs. Kathleen Howard Compton Collisson, née Bean, of 445 square feet of land from Field No. 547, St. Peter for a consideration of #445 with that Committee being responsible for the payment of all legal fees and agreed accommodation works;
- (c) as recommended by the Public

Services Committee, the purchase from the St. Brelade's Bay Hotel, St. Brelade, of 1,634 square feet of land on the south side of the road in front of the Hotel for a consideration of #9,804, with the Committee being responsible for the provision of drainage and the cost of the accommodation works involved;

(d) as recommended by the Public Health Committee, the renewal of the lease from F. Le Sueur and Son Limited of the one-bedroomed flats, Nos. 2 and 8, Roseland Court, St. Aubin's Road, St. Helier, for a further period of six months from 1st October 1991 at a weekly rent of #75 for each unit;

(e) as recommended by the Public Health Committee, the renewal of the lease from Mr. Oscar Rive of the four-bedroomed property, Ronsville, Maufant, St. Saviour, for a period of six months from 25th December 1991, at a proportion of the annual rent of #7,363.

(f) as recommended by the Housing Committee, a Contrat de Bornement between the public of the Island as the owner of the property Les Nonnettes, St. Brelade and Mrs. Dawn Elizabeth Troy, née De la Haye, the owner of the adjoining property Southdale, with each side being responsible for its own legal costs.

#### Matters lodged

The following subjects were lodged  
``au Greffe" -

1. Les Landes Racecourse, St. Ouen.  
P.173/91  
Presented by the Island  
Development Committee
2. Draft Judgments (Reciprocal  
Enforcement) (Amendment No. 2)  
(Jersey) Act 199 . P.174/91  
Presented by the Legislation  
Committee

3. Draft Affidavits (Advocates and Solicitors) (Jersey) Law 199 .  
P.175/91  
Presented by the Legislation Committee
4. Draft Parish Rate (Jersey) Law 199 . P.176/91  
Presented by the Connétable of St. Helier
5. Haut de la Garenne, St. Martin: redevelopment. P.177/91  
Presented by the Housing Committee
6. Draft Motor Traffic (No. 3) (Jersey) Regulations 199 .  
P.178/91  
Presented by the Defence Committee.

The following subject was lodged on 12th November 1991 -

The Budget 1992  
Presented by the Finance and Economics Committee

Arrangement of Public Business for the next Sitting on 26th November 1991

THE STATES confirmed that the following subjects should be considered at the next Sitting on 26th November 1991 -

Housing: strategy for the 90's.  
P.142/91.  
Lodged: 17th September 1991  
Housing Committee.

Housing: strategy for the 90's:  
amendment.  
Housing Committee.

Housing: strategy for the 90's:  
amendment.  
Senator C. Stein.

Housing: strategy for the 90's:  
amendment to amendment of Senator C. Stein.  
Deputy M.C. Buesnel of St. Helier.

Housing: strategy for the 90's  
(P.142/91): amendment. P.161/91.

Lodged: 22nd October 1991.  
Senator R.J. Shenton.

Housing: strategy for the 90's  
(P.142/91): amendment (P.161/91).  
Comments of the Finance and  
Economics Committee.

Housing: strategy for the 90's  
(P.142/91): petition. P.172/91.  
Lodged: 5th November 1991.  
Senator C. Stein.

Housing: strategy for the 90's  
(P.142/91): petition (P.172/91).  
R.C.29.  
Housing Committee.

Building Loans (Miscellaneous  
Provisions) (Amendment No. 21)  
(Jersey) Regulations 199 . P.159/91.  
Lodged: 22nd October 1991.  
Housing Committee.

Belle Vue Pleasure Park and Fields 91 and  
91A, St. Brelade - Statement

The President of the Island  
Development Committee made a statement in  
the following terms -

``The House will be aware that on 8th  
October I asked for the debate to be  
adjourned on Senator Shenton's  
Proposition to rescind the authority  
for the compulsory purchase given to  
my Committee on the Belle Vue Pleasure  
Park and Fields 91 and 91A, St.  
Brelade on 31st July 1990.

I wished to ensure that the House had  
available to it an authoritative  
statement of the law covering all the  
concerns expressed by its Members  
before it resumed debate. This will  
assist proper conduct of government in  
dealing with what is a complex issue.  
My officers have submitted questions  
to the Attorney General seeking  
guidance on the principles of land  
acquisition, compulsory purchase,  
valuation and the legal powers and  
duties of my Committee and we have had  
the opportunity to discuss his answers  
with the Attorney General and his  
staff. We have now obtained a clear  
statement of the law in Jersey and I

have arranged for a full copy of his opinion to be provided to you today, an opinion which I, my Committee and officers accept without hesitation.

As Members may appreciate, it does contain a new perspective and is the first time that my Committee has received this advice.

It is my Committee's view that this opinion should now be acted upon by the valuer appointed by the Policy and Resources Committee, and the acquisition should proceed without unnecessary delay to compulsory purchase and arbitration proceedings.

My Committee will be looking at the issues raised by the Attorney General's opinion, particularly the acquisition of agricultural land for housing development, to see whether Jersey's current law as expressed by the Attorney General is fully relevant to our circumstances, and whether it requires revision in the future."

The opinion of the Attorney General provided to Members was made in the following terms -

8th November 1991

President,  
Island Development Committee,  
States Greffe,  
Jersey.

Sir,

I have the honour to refer to the correspondence from your Department seeking my opinion of the valuation of land at St. Brelade owned by Lesquende Limited. This company owns 13.68 acres of land of which 5.93 acres are covered by Belle Vue Pleasure Park and 7.75 acres are scrub or agricultural land.

The brief history of this is that on the 31st July 1990, the States approved a proposition of your Committee which set out a scheme ("the scheme") for rezoning Belle Vue Pleasure Park and Fields 91 and 91A ("the site") for Category A housing and authorising the Committee to acquire the site by negotiation if possible and if not by compulsory

purchase. Negotiations have been proceeding between valuers appointed by the Committee and by the Company.

On the 10th September 1991, Senator Shenton lodged au Greffe a proposition calling for the rescission of the Act of the States of the 31st July 1990.

On the 14th October 1991, your Chief Executive Officer wrote to me asking for legal advice for the guidance of the members of the States on the question of the appropriate method of valuation of the site. He attached to his letter a series of nine questions.

On the 28th October 1991, the Director of Planning and Building Control wrote to me posing a further three questions on the same subject.

There are no legal principles governing the assessment of a purchase price where parties are negotiating. Negotiation, including the basis selected for assessing the price, is, by definition, a matter for agreement between the parties. If the price cannot be agreed by negotiation, and the Committee were to proceed to compulsory purchase, the assessment of compensation by a Board of Arbitrators is however a matter governed by legal rules. The rules for the assessment of compensation where land is purchased compulsorily are set out in Articles 9(1) of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, the relevant sub-paragraph of which in its amended form reads as follows -

“(b) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land might have been expected to realise if sold on the open market by a willing seller on the date on which the Inferior Number of the Royal Court made the order vesting the land in public”.

It is axiomatic, not a matter of law but as a matter of fact, that the price which a property would realise on the open market depends upon the use to which the land can be put, including any future development which could take place upon it. In order to decide what price land would realise

if sold on the open market, it is necessary to have regard not only to its actual size, but also to its potential for development.

Article 5(1) of the Island Planning (Jersey) law, 1964 provides that the permission of the Committee shall be required in respect of the development of any land. "Development" is defined by Article 5(2) to include the making of a material change in the use of the land. "Potential for development" thus means the development for which it appears that development permission would have been granted, and it is this which must be taken into account when assessing value. There are two possible methods of estimating the development potential of land in respect of which the States have approved a scheme similar to that which has been approved in the present case. The first method is to disregard the scheme, and to estimate the development potential as if the States had never approved the proposition. The second is to estimate the development potential in the light of the scheme.

There is no legal authority directly in point as to which of these methods should be employed under Compulsory Purchase legislation in Jersey. However our statute follows very closely some of the provisions of equivalent statutes of the United Kingdom and it is likely, in my opinion, that the Royal Court would regard decisions of English Courts interpreting identical statutory provisions as being of persuasive authority. In the case of the *Pointe Gourde Quarrying and Transport Company Limited v. Sub-Intendent of Crown Lands* (1947) AC 565 PC (the *Pointe Gourde* case) it was held that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition. This is consistent with the first method of assessment. If this method is followed, the valuers should ask themselves what development would have been permitted on the site if the States had not approved the scheme. In the case of *Le Gros v.*



Housing Committee (1974) JJ 77 ('The Le Gros Case'), the appellant was the owner of the land which the Housing Committee wished to acquire by compulsory purchase for the purpose of constructing States loan housing. The Board of Arbitrators who assessed the price did so on the basis that the development potential of the land was for high density housing. The appellant argued that the land had development potential for low density housing (i.e. that which would today be called 'Category B housing'). At page 89 of the Le Gros case the Court said -

'The kernel of the plaintiff's case is that the Board found that there was evidence to support two submissions made by his counsel. This is to say (1) that the land was suitable for development of a lower density even than that of the "Clifton" site and (2) that the Island Development Committee could reasonably have been expected to approve plans for such a development and that the Board thereafter proceeded to ignore that evidence.

In our view it is on that narrow point that this appeal succeeds. There is, we think, an error on the face of the record. Once the Board found that there was evidence to support those two submissions it had a duty to evaluate the evidence and to put a value on the probability or the possibility, as the case might be, of low density development being allowed.

Although there was no reason why we should be, we were told what that evidence was. We make no comment on the quality of the evidence but it was that had the States not acquired the land compulsorily the land would have eventually become land for the development of which permission would have been given at a density lower than the Housing Committee requirements demanded."

Applying the passage which I have quoted to the present case, it means

that if the compensation were to be assessed by a Board of Arbitrators, the Board would have to ask itself whether there was any evidence to suggest that, if the States had not decided to acquire the land, permission would have been given for any, and if so what, development. If the Board found that there was a probability or possibility that permission would have been given to develop the site, it would then have to put a value on that probability or possibility.

As stated above the site comprises some 13.68 acres. Of this, 5.93 acres are Belle Vue Pleasure Park ('the pleasure park'), and 7.75 acres are fields 91 and 91A ('the fields'). The pleasure park has an existing use for commercial purposes (i.e. as a pleasure park), and the fields are scrub/agricultural land. The site was, until the decision of the States of 31st July, 1990, situated in the sensitive landscape area of the agricultural priority zone. The policies of the Committee in respect of the sensitive landscape area of the agricultural priority zone are set out in sections 2.15, 2.16, 2.17 and 2.18 and policies C06, C07 and C08 of the Island Plan.

As a matter of law, the fact that a site has an existing use does not confer a right to develop permission for the site see *Western Fish Products v. Penwith DC* (1981) 2 ALL ER 204. As was said in that case at 226 -

``The ``right' is to use an existing building for a particular purpose, not to have another building for that use."

On the basis of the above, the existing use of the pleasure park would not give the owners a right to permission to carry out other developments on that part of the site, whether for the purposes of the pleasure park or for any other purpose. On the other hand, as was said in the same case, an existing use is relevant consideration which must be taken into account when considering an application for permission to develop the site. In his letter of

28th October 1991, the Director of Planning and Building Control said -

``Both the valuers acting in the Lesquende case ... approached the Planning Department to establish the basis on which to value the pleasure park land. The Department advised them that, setting aside the States decision to zone and acquire it for Category A housing, it would, if an application had been made to the owner, have recommended the further development of the site for leisure purposes or in the alternative, have recommended housing. That housing would be category B housing as, in the absence of Category A zoning, the developer would have been able to sell the houses for their market value (i.e. not being constrained by a ceiling sales price as he would have been for States loan housing)."

The position therefore with regard to the pleasure park is that if compensation were to be assessed by a Board of Arbitrators it would, following the Le Gros case, have to assess compensation on the basis that the land had a potential for development for Category B housing.

So far as the fields are concerned it appears to have been agreed that they should be valued on the basis that their development potential is for Category A housing. This is not however supported by the Le Gros case and is in conflict with the Pointe Gourde case. The proper test for the valuers in relation to the fields is to determine what, if any, development would have been permitted if the scheme had not been approved. The fields are scrub/agricultural land situated in the sensitive landscape area of the agricultural priority zone. No approach has apparently been made by the valuers to the Planning Department to find out whether any, and if so what, development permission would have been likely to have been granted in the absence of the scheme approved by the States. However, in my view, it appears clear from the relevant part of the Island Plan that

the likelihood of the Committee's giving permission for any development of the fields if the scheme had not been passed would have been so slight that a Board of Arbitrators would have been neither obliged nor entitled to take it into account.

I stated above that there were two possible ways of estimating the development potential of land in respect of which the States have approved a scheme similar to that which has been approved in the present case. The first was to disregard the scheme and to estimate the development potential as if the States had never approved the proposition. The second was to estimate the development potential in the light of the scheme.

Applying the first basis of assessment, therefore, compensation should be assessed on the basis that the pleasure park had a development potential for the construction of Category B houses and should be valued accordingly, and that the fields had not development potential at all and should be valued as scrub/agricultural land. In my opinion this is, as a matter of law, the better course and is consistent with the Pointe Gourde principle, in that it disregards the scheme in pursuance of which the purchase is to take place.

The alternative method is to take the scheme into account. On that basis both the pleasure park and the fields should be valued as having development potential for Category A housing because that is the scheme approved by the States.

It appears from the papers that what has been done is to apply hybrid of the two alternative methods of valuation. The pleasure park has been valued on the basis that it has a development potential for Category B housing (i.e. disregarding the scheme), and the fields have been valued on the basis that they have development potential for Category A housing (i.e. taking the scheme into account).

In my opinion this approach is legally invalid. The valuers should opt for one basis or the other. What they have done is to apply one basis to one half of the site and a difference basis to the other, in each case choosing the basis which is most beneficial to the company. In my opinion this is the wrong approach; putting it in more homely language, it is to allow the owners to have their cake and eat it.

I have the honour to be,  
Sir,  
Your obedient servant,

Signed P.M. Bailhache  
Attorney General"

St. Ives, Green Street/Regent Road,  
St. Helier: contract of rectification.

THE STATES, adopting a proposition  
of the Public Services Committee -

- (a) agreed to enter into a contract of rectification with Mrs. Gladys Ethel Ricketts, née Furse in respect of a Contract of Exchange registered in the Royal Court on 25th April 1969, in order to confirm Mrs. Gladys Ethel Ricketts, née Furse as the owner of an area of land measuring 205 square feet at Regent Road;
- (b) to authorise the Attorney General and the Greffier of the States to pass the necessary contract.

St. Saviour's School, St. Saviour:  
extension

THE STATES, adopting a proposition  
of the Education Committee -

- (a) approved Drawings Nos. 2877/14, 2877/15, 2877/16 and 2877/17 showing the construction of the new nursery unit and infants block at St. Saviour's School';
- (b) authorised the Greffier of the States to sign the said Drawings on behalf of the States.

Airport Terminal Building, St.  
Peter: lease of accommodation

THE STATES, adopting a proposition  
of the Harbours and Airport Committee -

- (a) approved the renewal of the lease to British Airways Plc of 3,978 square feet of accommodation at the Airport, at an annual rent of #45,202 for a period of three years with effect from 1st April 1991, with annual cost of living reviews based on the Jersey Retail Price Index;
- (b) authorised the Greffier of the States to sign the necessary agreement with the company; and
- (c) authorised the Treasurer of the States to receive the payments as they become due.

Belle Vue Pleasure Park and Fields  
91 and 91A, St. Brelade, rezoning -  
rescission. P.140/91

THE STATES, acceded to the request of Senator Richard Joseph Shenton that his proposition to rescind paragraph (d) of the States Act dated 31st July 1990 regarding the rezoning and purchase of land at Belle Vue Pleasure Park and Fields 91 and 91A, St. Brelade be withdrawn.

Field 77, Grouville: transfer of  
administration. P.164/91

THE STATES, adopting a proposition of the Housing Committee approved the transfer of administration from the Housing Committee to the Public Health Committee of an area of land measuring about 5000 square feet at Field 77, Grouville, for the construction of a day care centre.

Grouville Hospital Site: transfer of  
administration. P.165/91

THE STATES, adopting a proposition of the Public Health Committee approved the transfer of administration from the Public Health Committee to the Housing Committee of land at the Grouville Hospital site as outlined in the Public Health Committee's report dated 2nd October 1991.

Compulsory Purchase of Land  
(Procedure) (Amendment No. 4) (Jersey) Law  
1991 (Appointed Day) Act 1991. P.166/91

THE STATES, in pursuance of Article  
3 of the Compulsory Purchase of land  
(Procedure) (Amendment No. 4) (Jersey) Law  
1991 made an Act entitled the Compulsory  
Purchase of Land (Procedure) (Amendment No.  
4) (Jersey) Law 1991 (Appointed Day) Act  
1991.

Housing (Amendment No. 6) (Jersey)  
Law 1991 (Appointed Day) Act 1991.  
P.167/91

THE STATES, in pursuance of Article  
3 of the Housing (Amendment No. 6) (Jersey)  
Law 1991 made an Act entitled the Housing  
(Amendment No. 6) (Jersey) Law 1991  
(Appointed Day) Act 1991.

Island Planning (Amendment No. 4)  
(Jersey) Law 1991 (Appointed Day) Act  
1991. P.168/91

THE STATES, in pursuance of Article  
2 of the Island Planning (Amendment No. 4)  
(Jersey) Law 1991 made an Act entitled the  
Island Planning (Amendment No. 4) (Jersey)  
Law 1991 (Appointed Day) Act 1991.

Motor vehicles: display of insurance  
discs. P.169/91

THE STATES, adopting a proposition  
of the Defence Committee agreed that  
legislation should be prepared on the basis  
of the proposals contained in the report,  
dated 27th August 1991, of the Defence  
Committee, to provide that all Jersey  
registered motor vehicles (except as  
outlined in paragraph 3.1.1. of that  
report), should display insurance discs  
with effect from 1st January 1994.

Kensington Chambers, St. Helier:  
lease. P.170/91

THE STATES, adopting a proposition of the Public Health Committee -

- (a) approved the lease from Judolia Limited of 6,465 square feet of office space at Kensington Chambers, 46-50 Kensington Place, St. Helier for use as the Department of Health offices, for a period of two years and six months from 1st January 1992, with an option to renew on an annual basis, at an initial annual rent of #81,600 until 24th December 1992 when the annual rent will be assessed in the line with fair market rents;
- (b) authorised the Attorney General and the Greffier of the States to sign the necessary contracts;
- (c) authorised the Treasurer of the States to pay the rent as it becomes due.

St. Helier Waterfront Plan. P.86/91

THE STATES, commenced consideration of paragraph (a) of a proposition of the Island Development Committee regarding the St. Helier Waterfront Plan and the St. Helier Waterfront Plan - Master Plan.

The States having acceded to the request of the President of the Island Development Committee to defer consideration of paragraph (b) to a later date, the debate on paragraph (a) was adjourned with no question thereon being proposed to the States by the Bailiff.

THE STATES rose at 4.55 p.m.

R.S. GRAY

Greffier of the States.