

States of Jersey  
States Assembly



États de Jersey  
Assemblée des États

# Corporate Services Scrutiny Panel



## **Lime Grove House: Failure to Complete Transaction**

Presented to the States on 22nd September 2011

S.R.12/2011



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## 1. EXECUTIVE SUMMARY

After the purchase of Lime Grove House failed to be completed, the Corporate Services Scrutiny Panel formed a Sub-Panel to look into the matter further. It developed the following Terms of Reference for the review:

1. To examine the recent project to re-provide property accommodation for the Police Services, with particular reference to the events which have led to the failure by the States to conclude the transaction to acquire Lime Grove House;
2. To ascertain the financial implications for the States of the failure to acquire Lime Grove House, in particular the impact this may have upon the ability of States departments to deliver their planned Comprehensive Spending Review savings;
3. To determine the effect the failure to acquire Lime Grove has had, or is likely to have, on related development opportunities within the States property portfolio;
4. To identify if there has been, or is likely to be, any damage to the reputation of the States as a result of the way in which the Lime Grove House acquisition has been conducted, and if so, the consequential effect upon the States' ability to pursue future transactions in the private property sector;
5. To investigate the impact of the failure to acquire Lime Grove House on future plans to deliver benefits to the States through rationalisation and consolidation of the States office portfolio;
6. To examine any further issues relating to the topic that may arise in the course of the Scrutiny review that the Sub-Panel considers relevant.

The purchase of Lime Grove House was initially the first phase of the Office Strategy and has taken some 10 years to get moving. The organisation of the purchase was held with Property Holdings but in November 2010 the Treasury and Resources Department took responsibility.

In March 2010 a purchase price of £8.75 million was agreed but subsequent delays to proceed with the transaction resulted in the vendors becoming understandably impatient. After the Treasury and Resources Department had taken responsibility, it led to a renegotiation price of £8.25 million as the Minister maintained that the original agreed price was too high.

The result was that another interested party started to negotiate with the vendors around the time of the 15 day period after the Ministerial Decision to purchase Lime Grove House had been signed by the Minister for Treasury and Resources in July 2011.

The consequence of the failure to acquire Lime Grove House is that the Office Strategy has now been delayed further by at least 2-3 years. The situation is now critical as the Police Headquarters at Rouge Bouillon are no longer fit for purpose.

During the course of our review, we identified various issues which we were unable to investigate further. This was because some of the issues fell outside the remit of Scrutiny and as a result, the following questions remain unanswered:

1. Was the way in which this transaction was carried out in the best interests of the States?
2. Were procedures for the purchase of the property appropriate?

3. Was it acceptable for individuals with limited experience of property matters to take over the purchase of Lime Grove House?
4. Is it acceptable to base decisions on advice from shadow advisors rather than property professionals?
5. Are the allegations of poor performance by Property Holdings capable of being substantiated?
6. Were correct procedures followed when investigating the alleged misconduct of senior staff?
7. Were the procedures regarding the resignation of a senior officer followed correctly?
8. Is the current policy regarding confidentiality valid?
9. Should Ministers use modern media to justify their position whilst a review is in progress?

During the review, the Director of Property Holdings left his position within the civil service. This issue does not appear to have been reviewed by the States Employment Board. This is not something that the Sub-Panel would wish to comment on but at the same time it must be highlighted.

We have received a stream of information which we have reviewed in as much detail as possible. We have also held a number of Public Hearings to shed light on what happened with the failure to complete the transaction. Due to its sensitive nature, we have recommended that the review is referred to the Comptroller and Auditor General.

We circulated the draft report, as is the custom of Scrutiny, to all witnesses to ensure that we had reported the facts correctly. We received a document from the Minister for Treasury and Resources with further comments on the proposed transaction. In the interests of transparency, we have included this letter and email attachment in appendix one.

## 2. CHAIRMAN'S FOREWORD

This has been an interesting review. It all seemed very simple at first, merely a review of the processes of purchasing a property and an identification of the reasons why it fell through.

Sadly it turned out to be more complicated.

We are aware of the sterling efforts put in by the witnesses we have interviewed. Most of them have been extremely helpful in supplying us with the documentation to support their evidence in Hearings. The Treasurer and her staff have also put in a great deal of work to provide us with the relevant documentation, for which we thank her and her team. We were dismayed, however, that correspondence between various parties appears to have been omitted. We have also been unable to find documentary evidence of the rationale of the final offer price and the instructions to the external negotiator. This does raise questions as to the completeness of the documentation received.

In addition, issues arose which are outside the remit of Scrutiny and, whilst we have noted these, we have avoided, where possible, being drawn into these. This is not to say that we have ignored them. We have included a list of questions regarding those issues which must be answered at the conclusion of our Executive Summary.

As can be seen, the issues raised range well beyond the mere mechanics of purchasing a building. Questions are raised as to the conduct of States business, ensuring that the interests of the States are best served, the management and treatment of employees and the conduct of the Ministerial team.

Because of the variety of additional issues, we have but one recommendation in this review. We have recommended that the files should be turned over to the Comptroller and Auditor General for his investigation.

Finally, I would like to pay tribute to the Sub-Panel and the Scrutiny team for their hard work and support throughout this review, without which this report would not have been possible.



Senator S. C. Ferguson  
Chairman – Corporate Services (Lime Grove House) Scrutiny Sub-Panel

### 3. CHRONOLOGY

The project to relocate the police started in 1999. Property Holdings had been talking with the agents for Lime Grove House since the autumn of 2009 and in January/February 2010 negotiations took place.

Subsequently, on 25th March 2010 an offer letter was issued by the Assistant Director of Property Holdings for the sum of £8.75 million<sup>1</sup>. The offer was made on a conditional basis and was an in principle price which had been agreed. An exclusivity agreement of 6 weeks had also been agreed. From February to July 2010 various email exchanges and meetings took place which included the Minister for Treasury and Resources, the Acting Chief Executive<sup>2</sup> and the then Assistant Minister for Treasury and Resources as well as others. By this time, the vendors had also extended the period of exclusivity. During this period the Minister for Treasury and Resources required an independent valuation and also for the scheme to be self financing<sup>3</sup>.

A draft Business Case was produced which included cost plans. A meeting took place on 19th July 2010 at which the police project was discussed as phase one of an Office Strategy. The Acting Chief Executive requested an independent financial appraisal of phase one to support the draft Business Case.

On 13th October 2010 the Business Case was sent to the Acting Chief Executive for him to sign off formally as Accounting Officer.

Around this time political pressure mounted and concerns were raised that the Lime Grove House acquisition might be lost through unnecessary delay. The Acting Chief Executive responded on the 22nd October 2010 with concerns to de-risk the project and wanted to know where the net present value calculations were. He also suggested that the project should be carried out by the States of Jersey Development Company (which had not been formed at that time). On 27th October 2010 he stated in an email that he was unable to sign off the Business Case as there were too many uncertainties around property values, however, the valuations were supported by external professionals.

By November 2010 the acquisition of Lime Grove House was at risk because the vendors were becoming impatient with the delays.

A risk workshop took place on 16th November 2010.

In a memorandum dated 19th November 2010, the Acting Chief Executive informed the Director of Property Holdings that, at the request of the Minister for Treasury and Resources, all further proposals to finalise the acquisition of Lime Grove House would be conducted through his office and would be for his approval only. Furthermore, it stated *“to protect your position would you please take this as a formal instruction that no one in Property Holdings is to have any further correspondence or communication with the vendor, his agents or anyone in connection with the Lime Grove property”*.

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<sup>1</sup> It emerged that the vendor was in discussion with a U.S bank and they hardened their negotiating position, looking for offers in excess of £10 million. Buckley & Co requested Property Holdings to make a best and final offer.

<sup>2</sup> For convenience, Mr Richardson is referred to as Acting Chief Executive throughout the report, but it is noted that he was Deputy Chief Executive until May 2011.

<sup>3</sup> Public Hearing with Mr D. Flowers, Friday 9<sup>th</sup> September 2011

In January 2011 Deputy John Le Fondré was dismissed and Connétable John Refault became Assistant Minister for Treasury and Resources. The Assistant Chief Executive was also appointed as Project Manager for phase one of the strategy.

In April 2011 Mr G. Gothard of Gothard and Company was appointed to renegotiate with an offer of £8.25 million which was eventually accepted. An exclusivity agreement was sought, but refused by the vendor. After the price was agreed the Heads of Terms were drawn up. The transaction then went through the 15 day political process<sup>4</sup> and legal preparations. It was around this time that another interested party had come in and was negotiating with the vendor.

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<sup>4</sup> The 15 day rule under Standing Order 168 is the requirement that there is a Ministerial Decision before any binding agreement is entered into and a Report about the proposed transaction must be presented to States members.

## 4. LIME GROVE HOUSE: THE ISSUES

We have identified a number of issues relating to Lime Grove House and what led to the failure to complete the final transaction.

### 4.1 Offer letter

The offer letter dated 25th March 2010 (sent by the Assistant Director of Property Holdings) to Buckley & Company (the vendor's agent) detailing an offer in the sum of £8.75 million stated "*Without prejudice – subject to contract. Subject to Ministerial and States Approval.*"

During our Public Hearings the status of the offer letter was discussed. Since there were so many different opinions as to its status, we took legal advice. As a result of that advice we hold the view that the letter was neither unequivocal nor incapable of withdrawal.

### 4.2 Valuations

The status of the valuations produced by CB Richard Ellis (refreshed by Property Holdings<sup>5</sup>), BNP Paribas and Drivers Jonas Deloitte was not understood. We were advised by a property expert, Mr R. Law, that these are Open Market valuations and that these are in accordance with the Royal Institute of Chartered Surveyors Red Book of the building as it stands. This was also a shell and core building. There are no Category A (Landlord's fitting out) fittings to deteriorate and become obsolete. It is not unknown for developers to construct a building to the shell and core stage and then hold it vacant until a suitable tenant is found. In the opinion of Mr. Law the building was not dilapidated or, furthermore, distressed<sup>6</sup>.

The Acting Chief Executive required significant additional work, which included the third valuation by Drivers Jonas Deloitte. The three valuations indicated the market value of Lime Grove House to be between £8.45 and £9.05 million<sup>7</sup>, which supports the assessment of value made by Property Holdings in March 2010.

At the request of the Minister for Treasury and Resources, the Acting Chief Executive also engaged the services of the Managing Director of the Waterfront Enterprise Board<sup>8</sup> (later to become SoJDC) as an unofficial advisor in October 2010.

Within the documentation we note that the Acting Chief Executive had expressed the opinion that such large property projects should be handed over to SoJDC<sup>9</sup>. Since the remit of SoJDC is to be a developer of new buildings, it is unclear as to why this suggestion was made<sup>10</sup>.

The Acting Chief Executive appointed Mr. G Gothard to support him in progressing negotiations as it was believed Property Holdings were conflicted.

Negotiations were re-opened on the 20th April 2011 and a revised offer of £8.25 million was made to the vendor. Following the vendor's response, two options were defined before a meeting on the 18th May 2011 took place:

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<sup>5</sup> The practice of refreshing previous valuations is an accepted procedure of the Royal Institute of Chartered Surveyors.

<sup>6</sup> Public Hearing with Mr. R. Law, 14th September 2011, page 8

<sup>7</sup> Lime Grove Acquisition – Interim Report by Project Manager, February 2011, page 13

<sup>8</sup> The States approved SoJDC Membership on 7th June 2011. The Greffier of the States and the Treasurer of the States attended a WEB extraordinary general meeting to represent the shareholder to make the changeover from WEB to SoJDC on Monday 20th June and the SoJDC came into being on that day

<sup>9</sup> Public Hearing with the Minister for Treasury and Resources, 8th September 2011, page 42

<sup>10</sup> It was also said in a Public Hearing with the Managing Director of SoJDC that this was not within the company's remit

1. to maintain an offer of £8.25 million and be prepared to risk the vendor walking away or;
2. to revert to the original offer of £8.75 million

It is clear from the file note of the meeting held on 18th May 2011 that all parties to the transaction, except for the Minister for Treasury and Resources, were anxious to proceed. The Minister maintained that the price (£8.75 million) was too high.

The Minister for Home Affairs estimated that the cost of losing Lime Grove House could be in the region of £8 million<sup>11</sup> for his department. He had consistently, since October 2010, been warning that the savings of £500k against the savings of some £8 million were not a good risk reward ratio. Even the briefing note for the 18th May 2011 meeting pointed out that sticking to the lower offer was a risky strategy. However, Minister for Treasury and Resources maintained his stance of £8.25 million.

It should also be noted that Mr R. Law, a property expert<sup>12</sup> explained the various approaches taken in negotiations. It is essential to establish the parameters to which the vendor is working and then to consider the Royal Institute of Chartered Surveyors (RICS) Open Market valuation. It is also necessary to consider the value of the property to the purchaser. This is all evaluated against the background of the market.

#### 4.3 Risk

The risk workshop held on 16th November 2010 identified that the biggest financial risk to progress with phase one of the Office Strategy was the loss of the purchase of Lime Grove House with a potential increase in cost of just under £8 million<sup>13</sup>. From the Public Hearing with the Director of Property Holdings it appeared that the Minister for Treasury and Resources had made up his mind by November 2010 that he would not pay the price (£8.75 million) recommended by Property Holdings<sup>14</sup>.

There has been a great emphasis on the fact that the acceptance of the headline offer of £8.75 million was accompanied by a counter offer regarding the responsibility for dealing with dilapidations and snagging. The dilapidation figures produced by the Treasury and Resources Department were between £200,000 and £700,000<sup>15</sup> with an interim figure of £400,000. However, evidence from the vendor states that the figure was between £23,000 and £25,000<sup>16</sup>.

#### 4.4 Business Case

One of the reasons why the project was halted and referred to the Treasury and Resources Department was because the Acting Chief Executive was unhappy with the Business Case produced by Property Holdings. We are not qualified to comment on the Business Case, however, the Sub-Panel received evidence from a professional who considered that it was a robust document<sup>17</sup>.

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<sup>11</sup> Email exchange between the Minister for Home Affairs and the Acting Chief Executive, 20th April 2011 - The Minister has since commented on his reference to the £8 million figure, and has put forward to the Sub-Panel that it was in the context of the difference in cost between demolishing the Summerland buildings and re-building a Police Headquarters compared with buying and fitting out Lime Grove House to be £8 million

<sup>12</sup> Public Hearing with Mr. R. Law, property expert, 8th September 2011

<sup>13</sup> Risk Workshop: Property Holdings' Phase 1 Office Strategy Project, Turner & Townsend, page 7

<sup>14</sup> Public Hearing with Mr. D. Flowers and Mr J. Richardson, Acting Chief Executive, 9th September 2011

<sup>15</sup> Public Hearing with the Minister for Treasury and Resources, 8th September 2011, page 26

<sup>16</sup> Email exchange between Senator S.C. Ferguson and vendor, 12th September 2011

<sup>17</sup> Public Hearing with Mr S. Rowney of Rowney Sharman, 1st September 2011, page 4

It would appear that some subsequent work carried out by the Treasury and Resources Department confirmed the conclusions reached in the Business Case. An interim report<sup>18</sup> was produced by the Project Manager in February 2011. The report set out the rationale and further information to support the Business Case and Property Holding's recommended purchase price of £8.75 million. We do not understand how the Minister came to his decision that the negotiator should be instructed to offer £8.25 million.

#### 4.5 Shadow Advisors

The Sub-Panel fail to understand why, with an internal Property Holdings Department staffed with highly qualified professionals, it has been necessary to engage with external advisors such as WEB and others. Without visiting the building, WEB provided a range of values relating to the purchase price which was based on its current condition. As the Managing Director of WEB explained in his Hearing, this was not a valuation<sup>19</sup>.

#### 4.6 Ministerial Decisions

The decision recorded in the exempt Ministerial Decision (MD-TR-2011-0036) to approve the purchase of Lime Grove House was at a price up to £8.75 million. The evidence is that Mr G. Gothard was instructed to offer £8.25 million, but was allowed to negotiate around the conditions<sup>20</sup>.

#### 4.7 Communications

Claims have been made that there had been poor communication between the Minister for Treasury and Resources and Property Holdings regarding the value and details of the deal. The Minister claimed he knew nothing of these until October 2010<sup>21</sup>. Our evidence showed that this was incorrect and the Minister has since confirmed that he was made aware of the offer between the end of April and the beginning of May<sup>22</sup>.

Likewise, the Acting Chief Executive maintained in the Public Hearing that he had not received the requested update on progress March 2010. Initially, this appeared to be incorrect because at the first Public Hearing he said *"On the 31st March 2010 I did receive a briefing on progress and I was advised at that time that negotiations were ongoing with the acquisition for Lime Grove, but at no time, like the Minister, at no time, until I saw that file, which is that is the file that was presented to me in October 2010, was I ever made aware that a letter had been sent to formally make an offer on behalf of the public for that building"*<sup>23</sup>.

In a subsequent Hearing, there was a certain amount of disagreement as to when the Acting Chief Executive was given the briefing, as it emerged that he attended before the Corporate Services Panel at 10:30.a.m on 31st March 2010. The file note produced from Property Holdings on the other hand, does state that he received the briefing on the 31st March 2010, but it does not specify a time.

Great play has been made of an internal email of 12th April 2011 in which the Director of Property Holdings is rebuking his officers for not taking specific actions in relation to the dilapidations. It became clear in a Public Hearing with the Director of Property Holdings that the reason he described the situation as *"All in all very messy and totally unsatisfactory"* was

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<sup>18</sup> Lime Grove Acquisition – Interim Report by Project Manager, February 2011

<sup>19</sup> Public Hearing with Mr. S Izatt, Managing Director of SoJDC, 6th September 2011, page 6

<sup>20</sup> Public Hearing with Mr G. Gothard, 1st September 2011, page 13

<sup>21</sup> Public Hearing with the Minister for Treasury and Resources, 1st September 2011, page 6

<sup>22</sup> Submission by the Minister for Treasury and Resources, 8th September 2011

<sup>23</sup> Public Hearing with the Minister for Treasury and Resources, 1st September 2011, page 17

because the Acting Chief Executive was now requiring a £500,000 reduction in the principal price as well as pushing back on the snagging and power supply at a time when he had been warned that an alternative buyer was back in the market<sup>24</sup>. Within the same email, the Director recommends actions which could be taken to retrieve the situation.

A meeting took place on the 19th November 2010 to which the Director of Property Holdings was invited but then was told it was cancelled<sup>25</sup>. It was confirmed in a Public Hearing with the Minister for Home Affairs that the meeting did go ahead at Cyril Le Marquand House<sup>26</sup>.

Evidence has shown that there was a significant breakdown of communication between the Treasury and Resources Department and Property Holdings. This was not in the best interests of the Office Strategy and therefore appeared to contribute to the failure to acquire the property.

#### 4.8 Financial Implications and Effects on Comprehensive Spending Review

The Minister for Treasury and Resources has consistently maintained that he has saved the States from capital overspends and that phase one of the Office Strategy was incredibly complex. Whereas the Director of Property Holdings, given his experience, maintained that phase one was a relatively simple operation<sup>27</sup>.

The Minister also maintains that the loss of Lime Grove House will have no effect on the Comprehensive Spending Review savings. This is despite the admission by the Minister for Home Affairs that if Lime Grove House was lost and if no other similar property at a similar price becomes available then the additional cost of having to build everything, plus the temporary relocation cost to another site, is estimated in the region of £8 million<sup>28</sup>.

#### 4.9 Management Issues

We note that the Minister for Treasury and Resources is not an expert on property matters<sup>29</sup>. However, he requested a review of the Property Holdings files by the then interim Treasurer who was also not an expert in property matters. In the preface of his (the Interim Treasurer) report he explained that the review was based on two large lever arch files of documentation and a briefing note, both produced by the Acting Chief Executive. Within the main body of his report the Interim Treasurer casts aspersions on the integrity of Property Holdings, aspersions which were believed to be spurious, but refused to withdraw these.

There have clearly been management issues regarding this situation which are outside the remit of scrutiny but do require further investigation.

#### 4.10 Hospitality

A meal described by the vendor's agent as a 'blowout lunch' was made reference to during the Public Hearings. This was a lunch with a senior member of Property Holdings, the vendor and the vendor's agent, approximately three months after the initial £8.75 million offer was made. After investigating the matter, it emerged that the 'blowout' lunch had been at Bohemia for a cost of £17.50 per person and the officer had returned to Property Holdings by 2:15p.m. In

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<sup>24</sup> Public Hearing with Mr. D Flowers and Acting Chief Executive, 9th September 2011, page 41

<sup>25</sup> Public Hearing with Mr D. Flowers and Acting Chief Executive, 9th September 2011, page 21

<sup>26</sup> Public Hearing with the Minister for Home Affairs 30th August 2011, page 16

<sup>27</sup> Public Hearing with Mr D. Flowers and Connétable J.M. Refault, 2nd September 2011, page 8 and Public Hearing with Mr. R. Law, 14th September 2011, page 19

<sup>28</sup> Public Hearing with the Minister for Home Affairs 30th August 2011, page 14 - The Minister has since commented on his reference to the £8 million figure, and has put forward to the Sub-Panel that it was in the context of the difference in cost between demolishing the Summerland buildings and re-building a Police Headquarters compared with buying and fitting out Lime Grove House to be £8 million

<sup>29</sup> Public Hearing with the Minister for Treasury and Resources, 1st September 2011, page 3

accordance with the Human Resources code of conduct<sup>30</sup> this was logged in the hospitality register within Property Holdings.

The Treasurer of the States seemed to indicate that there was a specific separate code of conduct relating to staff involved with contractual negotiations<sup>31</sup>. The Sub-Panel can find no evidence to support this.

#### 4.11 Confidentiality Agreements

The Director of Property Holdings could only speak freely in the Public Hearings we had with him, and was forbidden to talk to the media. This is a management issue, and is not for the Sub-Panel to examine in detail.

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<sup>30</sup> States of Jersey Human Resources Department: Code of Conduct

<sup>31</sup> Public Hearing with the Minister for Treasury and Resources, 8th September 2011, page 5

## **5. CONCLUSION**

As a direct result of the analysis of the evidence put before the Sub-Panel, it became obvious that there were serious concerns that impacted far beyond the Sub-Panel's remit. It became apparent that some of the issues impacted on the integrity of the States and, as a result, it was decided that all evidence be presented to the Comptroller and Auditor General for investigation and comment.

## 6. METHODOLOGY AND EVIDENCE CONSIDERED

The following documents are available to read on the Scrutiny website ([www.scrutiny.gov.je](http://www.scrutiny.gov.je)) unless received under a confidential agreement.

### 6.1 Documents

- Correspondence from Buckley & Co to Mr G. Gothard of Guy Gothard Company dated 11th April 2011
- Email correspondence received from the Minister for Home Affairs
- Jersey Property Holdings, Statement by the Comptroller and Auditor General, September 2011
- Draft statement of the Minister for Treasury and Resources, 1st September 2011
- Draft statement of the Minister for Treasury and Resources, 8th September 2011
- Two folders of email correspondence received from Deputy J.A.N. Le Fondré
- Three lever arch files containing various documentation from the Treasury and Resources Department:
  - Lime Grove key event file
  - Interim Report and Valuation file
  - Office Estate Rationalisation: October 2010
  - Risk workshop documentation
- Four lever arch files containing various documentation from the Property Holdings Department via the Treasury and Resources Department:
  - Jersey Property Holdings: Lime Grove House 2007 – 2009
  - Jersey Property Holdings: Lime Grove House Feb 2010 – Aug 2010
  - Jersey Property Holdings: Lime Grove House Sept 2010 – Dec 2010
  - Jersey Property Holdings: Lime Grove House Jan 2011 – Aug 2011
- One folder of email correspondence from the States of Jersey Development Company
- Valuation Report, Lime Grove House, Green Street, St Helier, Jersey. Report date 2nd June 2010 – supplied by BNP Paribas

### 6.2 Public Hearings

#### **Tuesday 30th August 2011**

##### **Session one:**

- Senator B.I. Le Marquand, Minister for Home Affairs
- Mr B. Taylor, Deputy Chief Officer of Police

##### **Session two:**

- Mr S. Buckley of Buckley & Co

- Mr R. Lock of Buckley & Co

#### **Wednesday 31st August 2011**

- Mr P. Harvey of BNP Paribas

#### **Thursday 1st September 2011**

##### **Session one:**

- Mr S. Rowney of Rowney Sharman

##### **Session two:**

- Mr G. Gothard of Guy Gothard Company
- Mr J. Richardson, Acting Chief Executive of the States of Jersey

##### **Session three:**

- Senator P.F.C. Ozouf, Minister for Treasury and Resources
- Mr J. Richardson, Acting Chief Executive of the States of Jersey
- Ms L. Rowley, Treasurer of the States of Jersey
- Mr M. Heald, Assistant Chief Executive of the States of Jersey seconded as Project Manager

#### **Friday 2nd September 2011**

##### **Session one:**

- Mr D. Flowers, former Director of Jersey Property Holdings
- Connétable J.M. Refault, Assistant Minister for Treasury and Resources
- Mr J. Richardson, Acting Chief Executive of the States of Jersey

##### **Session two:**

- Deputy J.A.N. Le Fondré, Former Assistant Minister for Treasury and Resources

#### **Tuesday 6th September 2011**

- Mr S. Izatt, Managing Director, States of Jersey Development Company
- Mr L. Henry, Finance Director, States of Jersey Development Company

#### **Thursday 8th September 2011**

##### **Session one:**

- Mr. R. Law, property expert

##### **Session two:**

- Senator P.F.C. Ozouf, Minister for Treasury and Resources
- Connétable J.M. Refault, Assistant Minister for Treasury and Resources
- Ms L. Rowley, Treasurer of the States of Jersey
- Mr J. Richardson, Acting Chief Executive of the States of Jersey

#### **Friday 9th September 2011**

- Mr D. Flowers, former Director of Jersey Property Holdings
- Mr J. Richardson, Acting Chief Executive of the States of Jersey

## **7. APPENDIX ONE: RESPONSE FROM THE MINISTER FOR TREASURY AND RESOURCES**

Dear Senator Ferguson,

Thank you for letting me have sight of part of your draft report. In the interests of openness and transparency and in an effort to assist you in concluding this matter, I am happy to respond within the two working days requested.

There are three key topics which I think it is appropriate for the Panel to reflect upon in their final report which I deal with below. My further detailed comments have been incorporated in your draft report which is attached as an Appendix to this letter.

### **Valuations**

This issue is critical to understanding the lack of confidence felt by the Acting Chief Executive and myself in the proposals that were being advanced.

Each of the valuations was prepared on the basis of an assumption that the buildings would be let not on the basis of a vacant building. Once a building is let, it is relatively straight forward to ascribe a value to it. One is effectively valuing an income stream. A valuer will determine the amount of the rental, the length of the lease and the strength of the tenant – all with a view to determining the amount and certainty of the income that the landlord will receive. This is then converted into a capital value by applying a yield to the rental income. It is similar to the methodology used for valuing a bond.

This was not appropriate in the case of Lime Grove. There was, at the time, no rental income. The owners had been seeking to let the building since it had first been constructed and had failed to do so. Once a tenant is found a value can be ascribed – there was at the time, no tenant in the market who was likely to take a lease and therefore provide that value.

The Drivers Jonas Deloitte valuation expressly states: “As there is lack of evidence of sales of vacant office buildings, we have followed the market valuation approach of considering the rental value of the building and then capitalising it at an appropriate rate.”

Effectively, the States of Jersey were being asked to pay for the building on an incorrect basis – i.e. that there was or would soon be a tenant in place. This was clearly wrong and would have resulted in a premium being paid over the proper price. The valuations should have been carried out to reflect the status of the building at the time and the lack of alternative demand. At no time did this happen.

The Panel has made much of the property expertise of the Director of Property Holdings. On the basis of this expertise, I would question why instructions were given to carry out the valuations on the bases that were used for the purpose of negotiating a purchase price. They were clearly inappropriate to the circumstances.

I have given evidence that I received informal advice from a number of sources that the price that was being discussed for the States to pay for Lime Grove was too high. All of this advice related to the fact that the States were being asked to pay for their own covenant and that this was wrong. Such an opinion did not require a detailed inspection of the building – simply an understanding of the market and the circumstances. Examination of the valuations reveals that they were prepared on a basic incorrect premise and this explains why the concerns that were being raised with me were appropriate.

### **Plan B**

It is also important to bring to the attention of the Panel a matter which I did not really focus on in my statements or hearings. I repeatedly asked Property Holdings to ensure that a “Plan B” existed - a second option that would represent a viable alternative strategy for the States of Jersey. This was important to me. Not only did I want a comparison that I could compare the proposed purchase of Lime Grove against but I also wanted to make such that in negotiating with the owners of Lime Grove they were not in a position in which they held the only viable option available to the States of Jersey. Despite frequent requests, I was never provided with one.

### **Business Case**

Although Property Holdings made an offer of £8.75 million for Lime Grove in March 2010, no detailed business case existed at that time. The Business Case that was eventually presented in October 2010 was itself fundamentally flawed. It contained no costing of dilapidations and remedial works and it formed part of a complex series of transactions that were not capable of delivery. Importantly, it failed to demonstrate that the project could be delivered within budget.

Now that another option is starting to emerge I consider that I was right to have doubts about what was being presented to me in 2010. To have gone ahead with a purchase at £8.75 million in 2010 would have been wrong. I was prepared to compromise in June 2011 at £8.25 million in the interest of a more speedy solution for the States of Jersey Police. This transaction did not proceed for well documented reasons. The option now emerging is significantly better for all concerned. It is regretful that I was not provided with such an option by Property Holdings much earlier.

In conclusion I must inform you that I will reserve the right to publish this letter and the attachments in order that the public and other users see a balanced picture of how events unfolded and the respective views of all parties involved. I look forward to receiving your final report.

Yours sincerely

Philip Ozouf

Minister for Treasury and Resources

Message

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**Fiona Bryans**

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**From:** David Flowers  
**Sent:** 12 April 2011 22:01  
**To:** Ray Foster; Mark Grant  
**Subject:** FW: Lime Grove

Mark, Ray,

Can we please discuss in the morning before 10.30am

I am disappointed that this somewhat murky situation has emerged at the 11th hour, as in my view this has the potential to further tarnish the reputation of JPH.

Mark, you have consistently represented the Lime Grove deal to Ray and myself as £8.75m for a completed shell and core with no outstanding defects and a power supply suitable for the building for normal office use, and we have based the business case costs on that premise

It would appear the vendors' view is that our allowance of £1.5m for the Cat A fit out should absorb the costs of any snagging and increased electrical supply. However, it is unclear as to whether the States are taking the risk on that cost assumption being correct or the Vendors are.

If in simple terms the Vendors complete Cat A and the snagging and electrical works for £1.5m, then in essence the deal is £9.25m for a completed building to Cat A.

However, is the Vendors' expectation that the States complete the Cat A and snagging and they will meet any costs over £1.5m. The latter cannot be correct as we have maintained throughout that we will not do the snagging as it negates any liability to the vendor for inherent defects.

If the vendors take the view that they have been misled by JPH our position may be untenable particularly as there is now a move by Gut Gottard (under instruction) to reduce the £8.75m figure. In that situation I fear that the reason for any failure to close a deal on Lime Grove will fall squarely on JPH's shoulders.

The Vendors' view that snagging etc, and Cat A could be completed for £1.5m required verification and that is possibly what is being referred to in subsequent correspondence.

Moving forward, it would appear that the only acceptable deal for both sides should involve rolling in the Cat A works with the snagging and power supply upgrade and the Vendors providing a building to Cat A standard. Although this would result in a higher headline figure, even £9.25m would compare favourably with the external valuations, as in each case £1.7m was assumed for Cat A fit out. The BNP Paribas valuation for a Cat A building is £9.5m, and Drivers Jonas £9.15m. Our current estimates for Cat A including fees is circa £1.6m, so there would be no net increase in the total costs.

The worst case scenario is if the vendors' expectations are that they simply walk away at £8.75m leaving snagging etc as our risk - on the basis that they have told us (and we (in their view) have agreed) that both Cat A and snagging etc can be done for £1.5m.

All in all very messy and totally unsatisfactory.

25/08/2011

Message

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Regards

David

**David Flowers | Director, States of Jersey Property Holdings  
Treasury & Resources Department | Jersey Property Holdings  
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Think of the environment...do you need to print this e-mail?

-----Original Message-----

**From:** Mark Grant  
**Sent:** 12 April 2011 20:46  
**To:** David Flowers  
**Subject:** Re: Lime Grove

David

Initial draft below

Dear John

We discussed this morning the offer for Lime Grove House and the potential difference of opinion that may have arisen in respect of the snagging and electrical works.

The offer in march 2010 was clear as to our position and needs no additional comment except that we believe that this remains our position and as such forms part of the business case

At the date of the offer the extent of any costs in respect of snagging and electrical works were unknown and as such the offer was made on the assumption that the building albeit shell and core would be fit for purpose

A figure of £1.5m was applied to reflect the cost of the cat a fitout works which was discussed at a meeting with drumcoille in 31 march 2010 when the offer and the basis was discussed

Drumcoille sought to increase the offer price but were informed that we had put forward as requested our best and final offer

The snagging and electrical works are a matter of fact rather than value and in essence will be what they will be.

Drumcoille suggested, a position that they have clearly restated that the cost of cat a works, the snagging and electrical works can all be accommodated within the £1.5m sum

This has not yet been demonstrated as being the case

Clearly if the vendor can deliver all those works within that price there is merit in them potentially doing so.

It has not been agreed that the states would bear the costs of as yet un established costs

The snagging works have been identified but not costed as they were to be borne by the vendor and as such jph are not in a position to agree to wrap these costs into the cat a fit out costs

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It is clearly unfortunate if the vendors believe that jph would commit to bear unidentified costs but we remain firmly of the opinion that the basis of the offer was as originally made

Attached is correspondance to both the agent and drumcoille in may and july 2010 which confirms that the issues were being investigated and required discussion

Yours etc

Regards

Mark

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**From:** David Flowers  
**Sent:** Tuesday, April 12, 2011 07:05 PM  
**To:** Mark Grant  
**Subject:** Lime Grove

Mark,

Where are you with the draft note for John Richardson? I need to see this before tomorrow morning

Regards

David

**David Flowers | Director, States of Jersey Property Holdings  
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