

**QUESTION TO BE ASKED OF THE PRESIDENT OF THE HOUSING COMMITTEE ON TUESDAY,
29th APRIL 2003 BY SENATOR E.P. VIBERT**

Question

In view of the recent publicity regarding contamination on the Waterfront site from toxic ash dumped there during the reclamation process and the possible adverse reaction by lending institutions in this regard, will the Committee be prepared to insert a clause into the contract of sale of the flats which guarantees to purchasers that in the event of the value of their property falling in the future as a direct result of problems with the toxic ash issue, the States will re-purchase the properties from them at the current market value?

Answer

For reasons which I will expand on below, such a clause is not necessary. If it were, it is not one which the Housing Committee could, as a matter of law, include in the contracts of sale.

The first reason for this is that the clause would require the Housing Committee to give a commitment that the Public would in certain circumstances buy the flats. (The question refers to the States, but all such transactions are carried out in the name of the Public). Only the States can decide to acquire property in the name of the Public unless the transaction comes within Standing Orders Relating to Certain Transactions in Land.

The acquisition of any of these flats by the Public in pursuance of such a clause is not a transaction which would fall within the Standing Orders. This means that any such transaction could only be undertaken following a decision of the States as a body, and it would be ultra vires the Housing Committee to purport to commit the Public to buying the flats back.

Even if such transactions fell within Standing Orders, which they do not, there would be a further problem arising out of the provisions of Article 20 of the Public Finances Administrations (Jersey) Law, 1967. This Article provides, so far as it is relevant, that it shall not be lawful for any Committee of the States, on behalf of the States, to commit and defray any amount if it would cause the aggregate of the amounts committed and defrayed to exceed the sum of any credits being made available to the Committee for the time being.

It would be impossible for the Committee to enter into a future potential financial commitment of this kind when it does not know what credits would be available to it at the date when the liability might materialise.

The fact that the Committee has no legal power to include such a clause would of itself be a sufficient answer, but for the sake of completeness I feel that I should explain why such a clause is not necessary anyway.

The recent publicity stems from the remarks made by the President of the Health and Social Services Committee which were reported in the Jersey Evening Post. As was also reported, extensive remedial work has been carried out at the site. This was done in accordance with the advice of the Head of Health Protection, the section of the Health and Social Services Department which has specific responsibility for such matters.

The Head of Health Protection has now given formal confirmation in writing that the development has been undertaken in accordance with current best practice and that the final groundwork which has been undertaken will ensure that there is no completed exposure pathway by which critical receptors such as residents and end users of the site may be exposed to any residual contaminants.

The Head of Health Protection is prepared to provide all prospective purchasers with written confirmation to this effect, which will include a statement that in the opinion of the Health Protection Section the development site is a remediated area and fit for the purpose of residential use.

The Housing Committee accepts, however, that interested parties have been alarmed by the recent publicity, and following constructive discussions between officers of the Housing Committee, the Health and Social Services

Committee, the Jersey Homes Trust and legal advisers representing conveyancing of both sides, it has been agreed that the areas of land which are said to give rise to any concern will not be sold on to third parties.