

What follows are the notes used by the speakers at the Land Reform Public Meeting held at the Island Hall on 2nd February 2016.

Accompanying these notes are the following two documents:

- Hand out 2nd February 2016.pdf – a sheet to accompany the presentation by Antony
- Property Law Issues.pdf – an aide memoire for public meetings, this was provided by the Law Officers.

William

LAND REFORM SALIENT POINTS

WELCOME AND THANKS TO THOSE WHO WROTE AFTER OUR LAST MEETING. VERY HELPFUL VIEWS, BUT WE NEED MORE.

PAPERS ON SEATS. EG MAP FOR LAND USE

RESPONSES COME FROM BOTH ENDS OF SPECTRUM ALL THE WAY FROM STATUS QUO TO COMPULSORY ENFRANCHISEMENT

ALL RESPONDENTS FAVOUR FBT'S MOVE FORWARD AS A PRIORITY. CHRIS TO SPEAK LATER. MOST AGREE ON LAND REGISTRY.

RESPONSES INDICATE THAT SOME RESPONDENTS BELIEVE THAT IT IS EITHER OR BETWEEN LEASEHOLD REFORM AND DIVISIBILITY. IT IS NOT IT CAN BE BOTH AT THE PARTICIPANTS OPTION.

NEED FOR CONTROL OF DEVELOPMENT. TONY TO SPEAK.

POINTS ON THE LAW OFFICER PAPER WHICH MAY NEED TO BE ADDRESSED:

DIVISIBILITY

CHARGES/MORTGAGES

LEASES AND LEASEHOLD LAW

LEASEHOLD ENFRANCHISEMENT

LAND DEVELOPMENT

LAND REGISTRY

RETRAIT

REMINDER OF THE LEGISLATION 1565 TO REMAIN UNDISTURBED. 1611 INTRODUCED PROHIBITION ON CHARGING, DIVIDING AND OCCUPATION BY ALIENS.

1611 HAS BEEN CHANGED IN PART ALREADY. BY A PROJET ENABLING MORTGAGING.

LAW OFFICER PAPER ALSO MENTIONS ESCHEAT. EXPLAIN.

MENTION POSITION OVER RETRAIT.

LAND REFORM PART 2

HAVE HEARD ABOUT DEVELOPMENT CONTROL – AGRICULTURAL LEASES – LEASEHOLD LAW.

GO BACK TO ORIGINAL 1611 LEGISLATION TO MAINTAIN AGRICULTURAL VIABILITY OF TENEMENTS TO PROVIDE MEN FOR THE DEFENCE OF THE ISLAND.

AGRICULTURAL TENANCIES LEGISLATION IF ENACTED WILL MAINTAIN AGRICULTURAL VIABILITY, BUT DETACH FROM THE TENANT. SO WHERE DOES THIS SIT WITH 1611.

LEASEHOLDERS ARE NOW BUILDING LONGER LASTING HOUSES, RATHER THAN PORTABLE UNITS. AT THE END OF THE LEASE THOSE BUILDINGS PASS TO THE TENEMENT OWNER. THAT PARTICULAR

CLASS OF LEASEHOLDER DOES NEED CONSIDERATION, PERHAPS BY A RIGHT TO AN EXTENSION OF THE LEASE.

LEASES OF EXISTING HOUSES ARE MORE OF A PROBLEM AS THE REPAIR OBLIGATIONS ARE MORE OBVIOUSLY REASONABLE. IN THE UK A SCHEDULE OF CONDITION AT THE START OF THE LEASE IS SOMETIMES PREPARED AND THE PROPERTY CAN BE RETURNED IN THAT CONDITION.

WE HAVE TO REACH A DECISION ON DIVISIBILITY INTRODUCED IN 1611. I AM PERHAPS ALONE AMONGST THE TEAM IN BELIEVING THAT INDIVISIBILITY IS NO LONGER RELEVANT. THE NEED TO MAINTAIN THE AGRICULTURAL VIABILITY FOR DEFENCE REASONS HAS LONG PASSED. MY OWN BELIEF IS THAT PEOPLE OUGHT TO HAVE AN INDEFINITE INTEREST IN THEIR HOME. VARIOUS SEIGNEURS HAVE DIVIDED IN THE PAST AND THAT HAS DONE NO HARM. BUT WHATEVER HAPPENS HAS TO BE VOLUNTARY.

INDIVISIBILITY RESTRICTS THE ABILITY TO WILL A TENEMENT OR FREEHOLD TO MORE THAN ONE BENEFICIARY, OTHER THAN ON TRUST FOR SALE. IN THIS DAY AND AGE IS THAT FAIR?

WE SHALL HAVE TO DEAL WITH THE SPECTRE OF ENFRANCHISEMENT. IT HAS BEEN MENTIONED IN RECENT TIMES AND THE POSSIBILITY IS PERHAPS HAVING AN EFFECT ON THE GRANT OF NEW LEASES. IF DIVISIBILITY STAYS THEN ENFRANCHISEMENT IS NOT POSSIBLE AS THE PROPERTY CANNOT BE DIVIDED

IF WE ARE TO FREE UP THE MARKET AND ENCOURAGE LANDLORDS TO GRANT LONG LEASES, THEN THERE WILL HAVE TO BE A MECHANISM TO FUTURE PROOF THOSE LEASES AGAINST ANY ENFRANCHISEMENT LEGISLATION. I AM TOLD THAT THIS CAN BE DONE. THE LEASE SHOULD BE ONE THAT GIVES THE LESSEE RIGHTS WHICH ARE BROADLY SIMILAR TO THOSE OF A FREEHOLDER, BUT LIMITED ONLY BY THE LENGTH OF THE LEASE.

FINALLY I DO NOT THINK THAT WE SHOULD BE LEGISLATING NOW AGAINST CLAUSES IN EXISTING LEASES. I THINK THAT A DEAL IS A DEAL, AND THE INITIAL CONSIDERATION WILL PROBABLY HAVE REFLECTED ANY RESTRICTIVE CLAUSES IN THE LEASE. WHILST WE CAN LEGISLATE GOING FORWARD FOR THE EXCLUSION OF CERTAIN TERMS, WE SHOULD NOT INTERFERE WITH EXISTING CONTRACTS.

AT SOME POINT IT WILL BE NECESSARY TO LOOK AT HOW THE 'LOCAL MARKET' WORKS IN PRACTICE. IT SEEMS THAT THERE IS A CONSIDERABLE DIFFERENCE BETWEEN THE VALUES IN THE TWO MARKET PLACES, WHICH MAKES IT ALMOST IMPOSSIBLE TO CHANGE FROM LOCAL TO OPEN.

WHEN YOU CONSIDER THE MATTER OF LAND REFORM YOU NEED TO CONSIDER WHAT YOU THINK THE AIM SHOULD BE. SHOULD THE TEAM BE LOOKING TO BROADEN OUT THE 'FREEHOLD' TYPE OWNERSHIP MAKING IT AVAILABLE TO MORE RESIDENTS, OR SHOULD IT CONTAIN THE WORK TO ALTERING THE BASES GOVERNING LEASES, AND THUS MAINTAIN THE EXISTING TENEMENT SYSTEM.

Charles

I first wanted to thank all those who put pen to paper and sent us their views which reflected the wide range of opinions encompassing both Landowners and Leaseholders.

As Zoe has said, this very much a work in progress and an exercise that will have to involve as wide a cross section of the community as possible.

We are very mindful of the fact that the Tenants have a special interest in all this and will want more feedback from as many as possible. We cannot emphasize the point enough – we are NOT looking at the compulsory enfranchisement of leases here. It is not even on the radar. If we can get the reforms right at this point, and there is a fair balance between the interests of both parties, Tenants and Leaseholders, I cannot see that there will be any pressure for enfranchisement in the near future. It will be up to all of us to be part of the consultation process and to make the resulting reforms work.

The Sark Leasehold Law will give statutory rights to Leaseholders – the most important of which will be the right to renew.

It will also deal with over restrictive clauses in existing leases. A clause which states that the Lessee will not be allowed to sublet is not OK. But if that clause is amended to say: the lessee will not be allowed to sublet “without the consent of the Landlord, such consent not to be unreasonably withheld” – that clause would pass the fairness test. The same would apply in the case of a prohibition against business use. The landlord could refuse to give permission if the leased land was to be used for pig farming and the resulting smell might disturb the landowner’s enjoyment of his own property but not if the house was used for an on line business or a B&B. It would be useful if Lessees could let us have examples of existing unfair clauses.

So what would the proposed Sark Lease look like?

It would be as simple as possible:

1. Parties
2. Consideration – the money paid.
3. Ground rent if payable – perhaps a peppercorn if no rent.
4. Term – long enough to be mortgageable. 100 years plus right to renew/right for the landowner to buy back if property is sold by the Lessee.
5. The property leased
6. Any repair obligations
7. Rights of way etc and contributions to shared services
8. Jurisdiction and proposals for settlement of disputes

On this latter clause, it is proposed that we have a Sark Land Tribunal, chaired by an experienced Arbitrator with knowledge of land and property law, to help work out settlements where the parties to a lease are in dispute. We want to avoid the use of the Courts with their expensive legal costs.

I agree with Zoe that if the Lessee is given a right to renew the lease, whether a statutory right or otherwise, there should also be a corresponding right for the landowner to buy back the lease at the market price when the property is offered for sale by the Lessee. These pre-emption clauses are already standard in most existing Sark Leases.

We have to remember our aims in this process:

1. That any proposed changes are fair and reasonable – with a balance restored between the rights of landowner and leaseholder

2. The proposals have to have a positive effect on the economy and future prosperity of the Island
3. And the objective would be to enable banks and lending institutions to have adequate security for loans and confidence in the market in Sark. The lease will have to be long enough, we have to make Sark property an attractive proposition, and – Antony will again deal with this – we have to have a land and charges registry in place.

So what next?

We shall need an in depth consultation with all residents.

When the Securing Sark's Future Survey was undertaken by Colin Kniveton we had a great deal of help from Catherine Hannah at the MOJ and the Office of National Statistics who helped process and collate the questionnaire. We shall need this sort of help in order to find out what you, the Sark Public, wants.

As the completed Law will have to pass through the MOJ on its way to the Privy Council – it will be of vital importance that there is evidence of a properly conducted and widely supported consultation.

Chris

Everybody who I have spoken to seems to agree that farm business tenancies of 5 or 10 years are a very good idea.

The Policy Development Team think that when the land use plan is made available land owners will know which fields will only be allowed to be used for agriculture. They will then be willing to look at 5 or 10 year tenancy. We do not see why the Landowner and prospective tenant cannot agree at the onset any restrictions the Landlord requires as long as it is in writing at the onset.

For instance, if the owner wants a field or fields to be left unimproved and left as meadow land with grazing and or cutting dates etc that would be fine as long as both parties agree. This means the owner will still have basic control of their land and of course they are guaranteed possession at the end of the 5 or 10 year term.

Any improvements carried out by the Tenant should be agreed in writing but obviously, as the fields can only be used for agriculture, any improvements are likely to be reseeded. The Tenant should then have had a return on his investment within the time span of the Tenancy. But if for any reason his Tenancy had to be cut short then we think compensation should be awarded.

Zoe

Sark Leases/ Existing vs New.

Of course, this is all very much a work in progress. This Policy Development Team's job is not to make the decisions for the Island, just to do the investigative homework so that Chief Pleas can make the legislation. It is down to the people of Sark to tell us how to progress and we must then check that what is wanted is within the scope of the Law.

With a proper Leasehold Law, we would hope to achieve the best outcome for the majority of people, giving Leaseholders a stability and security which can be somewhat lacking currently. This

would also be beneficial to Landowners as they can maintain an element of control over their property and have an income from long leases. This would be the Sark Leasehold Law.

There is currently no legislation concerning leasing and leaseholds and this must be remedied. All Lessors and Lessees have the protection afforded by their leases being legally recognised in a Court but this goes no further. There are a great number of variations between leases around the Island. Some are very brief, barely covering anything and some are real missals, bordering on telephone directory size! A standardised lease would be easier for both parties, Lessor and Lessee, covering all pertinent points necessary and without any unreasonable clauses.

The Sark Leasehold Law would only apply to Long Leases - those of over 20 years, and not to short leases, those below 20 years or short term rentals.

Within this would be two types of lease - a) existing leases and b) new leases following the guidelines of a standardised lease. Both types of lease would have legal safeguards, protecting both Lessor and Lessee.

Existing Leases

Leaseholder rights - right to renewal, possibly up to 100 years, allowing for mortgages
Unenforceability of clauses against the public interest, i.e. Subletting/running a business from your house.

Lessor rights - landowner must have first refusal when selling lease - compensation for renewing leases

The automatic right to renewal of leases would give people security in their own homes so they would have no fear of being evicted as their leases come to an end. There would, of course, be compensation to be paid to the landowner for this lease extension and this would vary depending upon whether the house is local/open market and if you have built on a bare plot or bought an existing house. We would envisage this compensation being on a formula relating to length of lease remaining, extension required and what ground rent is currently paid. This compensation formula will obviously need work.

The proposed legislation would also seek to help those leaseholders with prohibitive clauses or clauses against the public interest. An independent arbitrator could oversee matters as leaseholders asked to have clauses removed or amended.

- Do these proposals go some way towards creating the protection which Islanders are asking for?
- What unreasonable clauses are in some leases at the moment?

Antony

The feedback following the presentation on the 24th November last year brought up one main point in relation to the matters I had been tasked with.

There was a perception that Land Reform could lead to a development free-for-all.

Suggested solutions to this appeared to focus on the need for a 'stronger' Development Control Law.

I am unsure what is meant by a 'stronger' Development Control Law, at least when it comes to new dwellings, however that task is being carried by another Policy Development Team.

Rest assured that it is aware of the concerns that had been raised.

This team believes that the perception of any potential development free-for-all should be allayed with the production of a Land Use Map.

Each one of you should have a handout sheet, on one side is a map of the northeast of Sark, on the other a list of 'Matters to be taken into account'.

I will mention the list of matters shortly, but for now I would draw your attention to the map.

This map is taken from the 'field boundary layer' of the Sark DigiMap, it shows roads, field boundaries as well as buildings and other structures.

I am sure that you will all have worked out that the Colinette is just below the middle of the page and that the road running west is the avenue with the road running north from it is Rue Lucas.

(The Mermaid can be found marked as 701301)

You will notice that one field, numbered 710750 is marked with an 'X', this not a treasure map just a means to draw your attention to one field in particular.

I ask you to consider what would happen should an application for a dwelling be made upon this plot of land.

In considering the application the **Development Control (Sark) Ordinance, 1992**, as amended, gives the Development Control Committee ten matters it should take into consideration before deciding whether or not to approve an application.

On the reverse of the map is an extract from the 1992 Ordinance showing the ten matters that should be taken into consideration.

The Development Control Committee has to weigh the effect of the proposed development against each of the ten matters, or at least those that are appropriate to the application.

Having considered these ten matters the Development Control Committee then decides if it will approve the application or not.

As it happens a number of years ago an application had been considered for 701750 and the decision was to decline.

That decision means that 701750 could be coloured in RED, to show that development was not possible on that field.

Should the Development Control Committee undertake to go through the same process for each adjoining parcel of land.

Imagining that an application had been made and what its decision would likely to be, before doing the same for those plots ever further afield.

A map would gradually appear showing upon which plots development could take place and those upon which it could not.

This would be the Land Use Map.

A land owner could look at this Land Use Map and know whether any application upon their land is likely to be acceptable or not.

Any RED area, showing that a field was not available for development could be considered for leasing to a farmer, in line with the proposals Christopher has spoken about.

Those that foresee a development free-for-all would hopefully realise that, even with the current Development Control Law, room for potential green-field development is not going to be as great as they fear.

I should stress that just because a parcel of land is coloured GREEN to show that development would be considered does not mean that any application will automatically be approved.

The process of an application to the Development Control Committee would still need to be followed, each application would still have to be considered on its individual merits.

END

Reader Notes – Land Reform Public Meeting - Island Hall, February 2nd 2016