

A Note On Local Market Letting



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In February 2003 the then Advisory & Finance Committee and Housing Authority presented a joint policy letter to the States of Guernsey which began the fleshing out process of what the States call a corporate housing programme, which had originally been born in July 2002 at the States Policy Planning Debate. The joint report stated that the shortfall in the provision of sufficient decent and affordable housing to meet demand was the single-most controversial issue on the political agenda for many years, indeed for decades.

As a result, there are more action plans relating to housing strategy than you can shake a stick at, some of the most important of which are the commitment of the States to partial ownership schemes (operated by housing associations) and the development of assisted purchase and self-build schemes.

It is quite clear that the Housing Department is under the tutelage, in the person of David Jones, of a Minister who is determined and will brook no argument. As a can-do sort of politico (extraordinarily rare in this Island) there is little doubt that he will ensure (if he is around long enough) that the Department will fulfil its mandate in respect of the provision of housing. Actually, it is probably unfair to focus solely on the Housing Department: the States as a body are committed to what has been agreed throughout a number of debates during 2003 and 2004, but doubtless it will be left to the Department, quite rightly, to carry the baton.

If the States are successful, and they deserve to be, the consequence will be the provision of affordable housing. That means, of course, that the lower-income sector in the housing market will be affected as to price: after all, that is the specific aim of that part of the corporate housing policy. There will be many units on the market, both in the form of houses and flats, and it would be a very sunny optimist who thought he was going to make a career in owning buy-to-let accommodation in that sector.

The buy-to-let for the middle income range and above might still be attractive. Even in times of flattening house prices, some properties will be inherently right for profitable letting. From the landlord's point of view the essential trick – as always – is to ensure that the location is right, other things (such as the house being well-built) being equal.

There are downsides, of course, and the biggest problem of all is getting the right tenant. It is a fundamental rule of the universe that tenants are never going to be as careful with their accommodation as the owners of that accommodation, but that has to be factored into the rent to be charged. The real problems come from the maverick tenant, who is in constant breach of the lease. There are tenants who turn the property into a slum or are constantly late with the payment of rent. Ultimately, if you can't make the tenant see sense, you have to bring eviction proceedings against him and this is where the real problem might arise. Eviction proceedings fall within the jurisdiction of the Royal Court of Guernsey. If it can be shown that a tenant is in breach of the terms of his lease, and appropriate provision for eviction in such circumstances is contained within the lease, the Royal Court will have no alternative but to grant an order for eviction. It may, however, grant a stay of eviction, and this is where the problem can become serious. Historically, the Royal Court has had a consistently liberal approach in favour of tenants and against landlords. Its power of granting a stay of eviction is unlimited, and it certainly isn't unheard of for the court to grant a stay of eviction of a year, or even several years. The length of stay would obviously depend upon many factors, such as (for example) the duration of the lease thus far, the gravity of the tenant's breach of his lease, the availability of other accommodation, the tenant's domestic circumstances and the conduct of the landlord. All in all, however, the landlord wishing to eject a recalcitrant tenant is in for an anxious time in any Royal Court eviction proceedings – in respect of which he will not recover his legal costs. For that reason, he needs to ensure that he, or his agent, takes every possible step to ensure that the chances are that the tenant is going to be a good one.

It isn't good enough to take up references. There must be a proper, probing, interview.

Another elephant trap (fortunately, meant to be on its way out, if the States stick to their guns) is the old rent control law of 1976, as amended in 1993. It applies to dwelling houses occupied by not more than one household where the rateable value does not exceed £50 or a house in multiple occupation or a tenement house. On an application by the landlord or the tenant, a "Rent Officer" is able to assess the basic rent, and the maximum rent then chargeable by the landlord is the sum total of the basic rent and certain things such as Occupier's Rate, as set out in section 2 of the law. I have bitter experience of this law. A client of mine put a lot of time, effort and money into the creation of a block of flats from a converted local market house. A tenant, who had agreed the rent at the outset, mischievously applied for an assessment of rent as soon as he moved into the property and the consequence was that the rent officer imposed a rent which bore not the slightest commercial resemblance to a proper rent reflecting the cost of conversion of the property. The provisions of the law which prevented the landlord evicting a tenant who behaves in this appalling way means that the landlord is stuck with a low rent for at least 12 months from the date of assessment. Although I would not expect the Housing Department to deal with the rent control in the same bone-headed way as the old Cadastre Committee, I will be delighted when the Island is shot of this law.

Tenants are fine, until they are not. When they are not, they can make considerable demands upon the time of a property owner. Considerable thought needs to be given as to whether the owner is prepared to deal himself with his tenant, or whether he does it through an agent. An agent will charge (typically – but it could well be higher) 7½% of the annual rent to manage the property. The cost of finding a tenant in the first place could well be of the order of 7½% of the first year's rent. The owner might consider that money to be very well spent. One of the useful consequences of using an agent is that he will have his ear very finely attuned to the market. He will know what is an appropriate rent for the property concerned, and what liabilities, if any, should remain the responsibility of the landlord (such as exterior decoration and structural upkeep).

Local market letting should be regarded as a long-term investment, so that you can obtain the benefit of an appreciation in property prices. If you want a short term investment – don't bother with local lettings.

Are there any other problems? Well, there is at least one major one looming, and that is the economic black hole which is the potential consequence of the States of Guernsey going to a changed tax regime in 2008 (under which non-finance companies will pay zero tax). One of the targets is bound to be the property market, and we can expect to see Tax on Rateable Value go up by a considerable amount, thereby squeezing the profit of the buy-to-let investor. Beware also of the off-the-peg leases which are sometime put up for signature by estate agents. Sometimes, these are all right, but quite often they are plain wrong, and introduce elements of legal gibberish. Even if you don't want to go to the expense of consulting a lawyer for every lease, at least have a specimen type of lease drawn up for that particular type of property. In fact, most banks which lend on buyer-to-lets will not just accept the lease prepared by the landlord and will require it to be vetted by the bank's lawyer.

The prospective house purchaser with a month or so to spare (and an appetite for acronyms and other IIMANAs (intensely irritating and mind-numbing abbreviations)) might like to read the report by Michael Parr to the States of Guernsey dated 24th March 2004, which resulted in 29 recommendations being made to the States in respect of the rental sector.

If you are patient and persistent and begin to understand the report, you'll see that there are a number of very sensible recommendations in it – particularly the recommendation that rent control be abolished and that there be new tax exemptions and allowances. It is too soon to say yet whether the dead hand of States' interference will outweigh these proposals so far as house owners are concerned.

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