

for many years gradually acquiring the house worth £100,000, now first time buyers would have to save the same length of time to save for a £100,000 deposit on a mortgage, which they would then have to pay off for the rest of their lives. And they would not be able to get the plot on the cheap, and save up brick by brick and gradually build the house - they would have to save up the £100,000 outright first.

So there is no panacea. Legislative fiat cannot offer comfort from the realities of life. No doubt the gripes of those people who have gripes about the current system differ between different individuals. If the debate continues and a reform is passed, it is bound to be a compromise - likely to be agreed amid heated debate, trying to bring a bitter process to an end - which will please some to some extent but will not fully please anybody - and which is at least as likely to please you personally as not to. Is this the great improvement for which it is worth risking bitterly dividing the Island over? There is a moral dimension as well. A number of speakers at the meeting expressed the feeling that land reform was theft and was being pursued by people with a vested interest of making a quick buck. While I believe there are people on the Island who want land reform for less cynical reasons, I also believe there is a considerable element of truth in these concerns.

Richard Axton wrote...

I think it is a pity that Tuesday (12th October 2010) evening's meeting focused so much on lease enfranchisement (an English notion) to the neglect of the more fundamental matter of land division (a peculiarity of Sark's law). Removal of King James's prohibition against dividing lands would at once create much of the freedom that people seem to want - and without any compulsion.

Any change in land law would clearly have to be accompanied by a plan to protect the fields for agriculture and grazing as well as the coast, woodland

and natural landscape of Sark. Some tenants might want to sell parts (including existing leasehold plots) as freeholds. Others might prefer to keep their 'original' lands intact. There would be merits and financial prudence in both courses, depending on family circumstances and prospects.

Land owners would continue to create leases as they chose. Freedom to sell fields (as well as house plots, where appropriate) might help to rationalise the landholdings that are farmed and ensure their long-term stability.

I'm aware that as recently as 1999 Sark's Inheritance Law retained the prohibition against division. I think this was a mistake and that the abolition of male primogeniture should have taken the prohibition with it. The order in council of 1611 has not prevented development, it has merely skewed the way development happens. Land ownership and land use are completely different matters. If we want to protect Sark's historic and natural heritage we need to improve development control. It is futile to pretend that a law made explicitly for the benefit of 'Sark's third seigneur by a despotic king will somehow 'protect Sark'.

I have no personal interest in this issue. My proposal will not go far enough to satisfy those who live in fear of their landlords, but it would be a start: it is a simple Sark remedy for a four-century Sark anomaly. And it compels no-one. What better time than the four hundredth anniversary of 1611?

I have brought these three opinions together in the hope of providing balanced views of this important subject. Readers letters are always welcomed - but should be short, concise and relevant to Sark.

Bob Parsons (Editor)

The Sark Scribe

The Independent Monthly Journal for Sark

Extra

The contents of this Extra edition are a reproduced from articles published in the November 2010 edition of Sark Scribe and are made available to encourage thought and discussion during the current period of consultation on Land Reform.

Land Reform

The subject of Land Reform has been around Sark for a long time, probably as long as that of reforming how Sark is governed. GP & A called a public meeting on 12th October 2010, chaired very fairly by Adrian Guille with HM Comptroller, Richard McMahon, QC. and Laura De Lisle as speakers.



Almost a quarter of the electorate attended to hear HM Comptroller outline the various aspects of land reform and explain that there was no legal requirement or external pressure to change our system.

There were many points raised in the well attended meeting. Phyllis Rang said her land is her pension and asked "Who's land will they be carving up? Mine!". She spoke of her experience of Werner's family being dispossessed of their land by the Russian Communists at the end of the war. As Mrs Rang sat down she received a round of applause.

Robert Taylour started to explain how land reform has worked elsewhere but the meeting was specifically an opportunity for questions. We invited Robert to make his points in the Sark Scribe - see following page.

Simon Couldridge spoke of property price inflation, Christopher Rang described lease enfranchisement as 'legalised theft' and Philip Perree voiced fears that dividing properties could lead to the type of ribbon development that is prolific in Guernsey.

Kevin Adams raised questions about mortgages and what happens if the mortgagor falls behind with payments, suggesting a possible domino effect with bank foreclosures and more work for the Prevot.

Peter Stisted asked if the island could stay as it is with land reform?

The speakers had prepared a two page information sheet in which they stress that Full consultation (their emphasis) with Sark residents and other interested parties will be essential.

Sally Hutchins suggested the fairest way would be to hold a referendum - a point with which HM Comptroller seemed to strongly agree.

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Robert Tylour wrote...

After the meeting on land reform arranged by Chief Pleas, I was invited by the editor of the Sark Scribe to set down some thoughts on the subject.

The subject is technical, not much is commonly known about it and it's a change in society; all of these can result in fear of the unknown. Hence, I have deliberately expressed my thoughts in everyday language preferring to avoid legal jargon and reference to any relevant law.

It has to be expected that change will flow from a democratically elected Chief Pleas as our, Europe's newest democracy evolves.

Land reform could well be one of those changes, following the principle of one man one vote, the universal franchise we now enjoy on Sark.

In Sark, land reform could mean the subdivision of tenement and existing freehold lands, coupled with leasehold enfranchisement, being freely allowed.

If so, all land would become real freeholds and could be subdivided; free to trade on the open market and long leaseholders would have the right to buy from tenement, the freehold of their own home.

In the UK, the land reform referred to above democratised what had been effectively a 1000 year feudal system.

In the case of Guernsey, this change of law is not needed because there's no history of widely held long leaseholds; property is freehold and has largely been simply bought or rented.

For Sark, it is logical that we could use existing English law as an example of best practice with "tweaks" to reflect the circumstances here. Certainly this would be the most cost effective, which is in the best interest of taxpayers.

The open and local market property criteria currently on Sark need not be disturbed.

Let's be clear there will be no stealing of property from anyone and no one should be forced to sell land and no one should be forced to buy their long leasehold.

In the English model the leaseholder in exercising their right of enfranchisement would have to satisfy strict criteria:

- The property must be their home
- They must have a long lease, more than 21 years in the UK

- They must have owned their home for at least 2 years

and has to pay to the tenement owner:

- The marriage value of bringing the long lease and freehold together, if there is less than 80 years remaining on the lease

If there is more than 80 years remaining on the lease then the marriage value is considered to be nil and the leaseholder has to pay to the tenement owner the following:

- The reversion value, that is the interest a person has in property upon the termination of the preceding estate, and
- A capitalisation of ground rent over the remaining years of the lease, and
- A value for the removal of previous restrictions on the lease, if any, and
- Loss of any potential redevelopment, and
- All the tenement reasonable fees in completing the transaction

The formulae for calculating these all exist in English law.

For example let us say, here on Sark there is a tenement owner who is asset rich and cash poor and there are houses on the tenement that are let on long leaseholds.

With no land reform

The tenement owner has very little income for years from a considerable asset. The leaseholder has a wasting asset in that it devalues every year.

The leaseholder has to ask the tenement owner when the lease has only a few years left and is virtually worthless, if he/she will extend the lease. If the tenement owner refuses the leaseholder will lose his/her home.

The capital of both the tenement owner and the long leaseholder is locked in bricks & mortar and not actively working for either.

The result is two parties commercially inactive and Sark's economy stagnates at worst or remains fragile as it is today, with only a few prospering!

With land reform:

The tenement owner has a valuable asset that can be traded.

The leaseholder may decide to exercise the right to buy and having met strict criteria pays full market value of the freehold to the tenement owner.

The tenement owner would now have cash to invest in another property on Sark which could now be freely traded, or elsewhere off island, or in a business

venture, or buy other assets, or put in the bank and receive interest or spend it. In addition the tenement owner could now sell any part of land at the market value.

The leaseholder now becomes a new freeholder and has an asset that can be mortgaged, whilst living in it, against another property, or investment or in a business venture.

The result is there are two parties commercially active and Sark's economy grows.

In time, a property market would develop with homes and land being bought and sold freely. With funders providing loans and mortgages with enhanced confidence as there is freehold security, resulting in Sark having an economy which is stronger, more vibrant and full of vitality.

The DCC will continue to be in control of planning and of what is built; land reform such as this need not disturb existing planning law.

This is a win-win situation for Sark, it is change but democracy is strengthened and nobody loses commercially.

Prices of property will probably rise as will the price of labour and bread. Crucially though, there will be an opportunity for first time buyers to get on the housing ladder, knowing they own their own home!

It is up to the people to decide, but I believe it is right for Chief Pleas to bring the matter to the people as it strives to achieve the noble objective of establishing a legislative environment, under which we can all thrive.

Thank you for the opportunity,

Tomaž Slivnik wrote...

The mood at the meeting on October 12th seemed pretty unequivocal. Many people spoke, and I believe it is fair to say that the response was almost unanimously hostile. At times, the atmosphere was tense and briefly, between two speakers, reached a point which one might fairly describe as combative. We were told that this was "only the first" meeting at which we merely scratched the surface of the subject matter. But am I the only one who got the message that this was a subject matter that was unwelcome for debate by a large proportion of the public, including the vast majority of those - a significant sample - who spoke at the meeting?

Since we were also clearly told that there was no requirement - on human rights grounds, for example -

to have land reform, one has to question, given the subject's reception, the wisdom of carrying on with what is likely to be a hugely divisive subject.

The constitutional reform process started with - what I can only presume to have been, as it was before my time - the first friendly meeting. Seven years later, it led to a hugely divided island and people not speaking to each other. Land reform is likely to be an even more contentious matter. If this was the first friendly meeting, when we have not yet had the chance to be frustrated and get on each others' nerves for 7 years, what will future meetings be like?

Even at this first meeting the tension was obvious. What will it get like if the debate continues? A few years ago, a Tenant who has since died, reputedly said he would shoot anyone who tried to take his land. Can anyone blame him? Do we really want to open this can of worms?

Merely continuing the discussion of land reform will lead to bad blood, division and hostilities on the Island - probably worse even than in the case of the constitutional reform. I believe this much most of us can agree on. It is only worth going through with this if there is such a great benefit at the end that it justifies the suffering. And is there?

Every system of land tenure has its problems. I certainly understand the difficulty of those who live in short leases and in rented premises - I am one of them. My occupation of my previous property ended at about half an hour's notice, and my current landlord is unwell. But any legal system has its problems and any reform has unintended consequences - in most cases, problems much worse than we face at present.

For example, while today youngsters may find it hard to buy a house - purportedly because they cannot get a mortgage - consider this: say it costs £100,000 to have a house built today on a small plot. Youngsters can often get a plot on the cheap from a relative, then scrimp and save for years, gradually building a house, perhaps with their own hands, and with the help of family and friends. It is no doubt difficult, but it is possible - people have managed, with difficulty, for generations. It is a fact of life that prices of first time buyer properties always adjust to the level which first time buyers can just about afford. If mortgages were to be introduced, house prices would go up to the point at which first time buyers were still only just able to afford them - only instead of just about being able to build the house and able to live in it free of debt - they will then be able to just about save up for a deposit. The equivalent of a local market house costing £100,000 on Sark may well cost £1 million in an expensive area where mortgages are available. A 10% deposit on that is £100,000. Instead of working