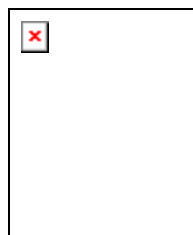


STATES OF JERSEY



***EX GRATIA* COMPENSATION PAYMENT: MR. AND MRS. R. PINEL (P.29/2009) – COMMENTS**

**Presented to the States on 30th March 2009
by the Minister for Planning and Environment**

STATES GREFFE

COMMENTS

Background

1. Reg's Skips is a skip-emptying and sorting business operated by Reg and Rita Pinel. It was started in September 2000.
2. From 2000 to 2004 the company operated from Home Farm and La Prairie, St. Peter. Planning permission was not in place to operate from those properties and the company was under investigation by the Planning and Building Services Enforcement Team.
3. In May 2004, the company applied to use a storage shed at The Homestead, St. John but this was refused on the grounds that the use would be a bad neighbour in close proximity to residential property.
4. Following discussions with the Planning service, and the former Planning and Environment Committee, the company applied to move to a vacant shed and disused silage clamp at Heatherbrae Farm, St. John (owned by Mr. C. Taylor). Permission was duly granted in May 2005, subject to several conditions, one of which stated "*The use of this site shall operate in the same way as the current site [La Prairie] as a skip sorting yard only and for no other purpose.*" The purpose of this condition was to limit the extent of operations, bearing in mind the potential for nuisance.

First complaints

5. After the company had been in operation for several months at Heatherbrae, the Planning service started to receive complaints from a near neighbour. The service investigated throughout 2006 and tried to persuade the Pinels to moderate its operations, but to no avail. It was clear that the company had expanded both in size and in its intensity of operations. Mechanical sorting (the lifting of material with a mechanical arm from one skip and dropping it into another) and vehicular movements were the main concerns.
6. In 2006, the Company were also advised by the Environment Division that an application for a waste management licence under the Waste Management Law was also required. Whilst the company was keen to comply with this requirement, until the legal situation was resolved the waste licence was not pursued. This was a sensible course of action, as a waste licence is only required if the company was going to remain at the site and operate. Clearly, this was in doubt due to the legal action.
7. Having made little progress on the planning issues, the Minister decided to serve an enforcement notice on 10th January 2007, citing the planning condition quoted above. The notice was appealed by the company in February 2007 and, on legal advice, the Minister withdrew (it was felt that the condition was not sufficiently precise to be enforced in Court).
8. Also in January 2007, the company applied to roof over the former silage clamp at Heatherbrae, in an effort to minimise disturbance. Advice to the applicant was that this proposal should be acoustically modelled to the satisfaction of Health Protection, before they proceeded with an application. Both Heatherbrae and the objector provided conflicting expert opinion on the noise levels likely to be emitted from a covered structure. Health Protection concluded 'Even with the noise reductions calculated, impact noises would be likely to cause a nuisance to the occupiers of residential premises in the area. The proposed works will reduce noise levels but not enough to abate the nuisance caused by the skip business.' The Planning Department report concluded that 'it was not considered by this Department that it was proven that the roofing over the yard would eliminate the noise to the extent that a noise nuisance would no longer exist'. The (Assistant) Minister refused this application. The complaints continued.

Legal Action

9. Matters continued to deteriorate and, at this point, the closest neighbours decided to take matters into their own hands. They issued an ultimatum to the Pinels to reduce the nuisance. When this was ignored, the

neighbours took their own legal action. This culminated in an action of '*voisinage*' which the plaintiffs finally won in the Royal Court in December 2007. The result of the decision was that Reg's Skips were ordered to vacate the site.

10. A subsequent appeal against the vacation order failed, although the company was granted additional time by the Court in which to comply.

Costs

11. The costs of these proceedings were heard under a separate hearing. Following submissions, the Bailiff ruled that Reg's Skips should pay the costs of the action, but the company should be entitled to recover 25% of those costs from the Minister for Planning and Environment.
12. The Minister appealed this decision and the Court of Appeal upheld the Minister's position in November 2008. The Appeal Court held that –
 - the former Planning and Environment Committee had not 'encouraged' Reg's Skips to occupy the site;
 - the Minister had not been a party to the *voisinage* action and so should not have been ordered to pay any of its costs; and
 - there is no 'duty of care' on the Minister to ensure that successful applicants for planning permission do not breach any obligation de *voisinage* towards neighbouring properties.

All of the costs therefore fell to be paid by Reg's Skips Limited.

Claims made in P.29/2009

13. There are a number of errors within the proposition which are in need of correction.
 - The proposition states that Reg's Skips were operating lawfully from the St. Peter site. This is not correct. Empty skips could be stored on that site (and had been for several decades), but there was no consent to sort material from those skips on that site. The very reason that Reg's Skips was seeking another site from which to operate was due to that fact that they were not authorised at La Prairie.
 - Mr. Taylor (owner of Heatherbrae) was not instructed by the Planning service to omit the name 'Reg's Skips' from the application. Indeed, the service included the company name in the advert which it published in the JEP on 22nd March 2005. Planning and Building Services would not try to disguise such an application as it has a duty to consult and make it clear to the public the details of planning applications received.
 - The proposition states that the Planning Department is obliged to seek the consent of the Environmental Health Department (Health Protection) prior to granting consent for a change of use to 'commercial'. This is not correct. There is no such requirement. The Planning service does, of course, *consult* with Health Protection on such applications which it did do in this case. There was no attempt to 'to bypass Environmental Health'. The service's record clearly shows that the Health Protection was consulted (by letter with a copy of the plans) on 14th March 2005. Their letter of response was received on 7th April 2005.

Opinion

14. There will undoubtedly be some sympathy that a small local company has been forced to move from a site for which it had previously obtained planning permission. However, it would be wrong to paint the company as an innocent bystander in this matter.
15. The company expanded considerably at Heatherbrae Farm and the operations were clearly causing harm to the neighbour. There was any number of points at which the company, when asked to, could have

adjusted its operations to moderate this impact on the neighbours. This might have avoided the need for the neighbour to resort to legal action.

Update

16. The Minister has now found that Reg's Skips, in complying with the Court Order to vacate Heatherbrae Farm, is now occupying McQuaig's Quarry in St. John. There is no planning permission for the sorting of skips on this site and several complaints have been received. The Planning Service's Enforcement Team are once again involved and in order to avoid further formal action, are trying to obtain from Reg's Skips a retrospective planning application. If approved, the company will also require a waste management licence. The requests to date, have not resulted in a planning application being submitted and further action will therefore need to be taken.

Re-issue Note

This item is re-issued because the Minister has revised the text of his comments.