

# STATES OF JERSEY



## **REG'S SKIPS LIMITED – PLANNING APPLICATIONS (R.118/2010): COMPENSATION AND FURTHER ACTION (P.130/2010) – COMMENTS**

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**Presented to the States on 22nd October 2010  
by the Committee of Inquiry: Reg's Skips Limited – Planning Applications**

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**STATES GREFFE**

## COMMENTS

Given that the States is seemingly faced with a variety of proposals regarding the recompense that it should make to Reg's Skips Ltd. (RSL) the Committee of Inquiry felt that it might be helpful if, for the avoidance of any doubt and to aid good debate, it set out its recommendation on this and the rationale for it.

We concluded after very careful analysis that the costs incurred by RSL were some £249,000. This is, we believe, not now in dispute although this sum excludes any putative interest costs that may have been incurred by the company; we assiduously sought information about these but none was forthcoming. We came to the view that of this sum, £157,000, rounded down, could properly be judged to be directly attributable, per our terms of reference, to the failings of the Planning Department. The reasons for this are spelt out in section 17 of our report.

The £157,000 comprises –

|   |                            |
|---|----------------------------|
| Messrs. Le Gallais and Luce: legal services provided)   | £40,873                    |
| Southdowns Consultants: noise consultancy etc   | £16,668                    |
| Messrs. Sinels: legal services provided pursuant to RSL's seeking a second opinion about appealing the Royal Court's <i>voisinage</i> judgment, up to the point where RSL agreed with Sinels' recommendation to change the grounds of appeal (20/02/08) | £11,000<br>(best estimate) |
| Mr. and Mrs. Yates: agreed liability for costs  | £80,000                    |
| B. Le Neveu: provision of manual labour during 2006 following the Planning Department's 'instruction' to RSL to cease use of its mechanical digger  | £9,132                     |
| <b>TOTAL</b>  | <b>£157,673</b>            |

We excluded the following costs –

|  |                |
|--|----------------|
| Messrs. Sinels: legal services provided after the decision to change the grounds of appeal | £76,500        |
| J. Diamond Associates: fees for negotiation with Messrs. Sinels regarding legal costs      | £14,825        |
| <b>TOTAL</b>   | <b>£91,325</b> |

We excluded the £91,000 from our recommendation because we judged that this element of the total was not 'directly attributable' to the failings of the Planning Department.

Up to 20th February 2008 RSL had been pursuing an appeal based on the premise that Mr. C. Taylor's application to roof over the skip sorting yard at Heatherbrae Farm

would be approved. This was intrinsically consequent upon the processes and actions of the Minister and the Planning Department because –

- (a) the ‘roofing-over’ application had arisen because of the Minister’s overt support for the idea during his site visit to Heatherbrae Farm in September 2006;
- (b) RSL had been advised by Senator Shenton, following a telephone conversation he had had with the Minister (a recorded transcript of which is printed in our first report) of the Minister’s assurance that the ‘roofing-over’ application would be approved; and
- (c) because, and only because, of the Minister’s assurance, an appeal against the *voisinage* judgment against RSL was forthwith lodged with the Court of Appeal on grounds of material change of circumstances: roofing over of the skip sorting yard would have allowed RSL to assert to the Court that the injunction against the company awarded by the Royal Court requiring it to vacate Heatherbrae Farm was now not necessary in order for the noise nuisance to be abated.

RSL had been advised by Messrs. Le Gallais and Luce that the scope for an appeal was not wide. But the ‘change of circumstances’ argument was a runner provided the Minister’s assurance could be had promptly in writing. As is normal in such circumstances RSL were not discouraged from seeking a second opinion if it were unsure as to whether it was adopting the best course of action. In the circumstances this was not an imprudent course for any company to take. Messrs. Sinels were approached for that second opinion. As noted above we estimated that Sinels’ costs attributable to this process were some £11,000.

Sinels identified possible different grounds for appeal from the single ground cautiously identified by Le Gallais and Luce. Essentially these concerned the lawfulness of the Royal Court’s application of the rules of *voisinage*. On 20th February 2008 or thereabouts, RSL, having considered the new arguments, elected to instruct Messrs. Sinels and the grounds of the company’s appeal were accordingly changed.

This was a calculated risk taken by RSL and was not a decision influenced directly by the actions of the Planning Department. As things turned out the revised grounds of appeal were resoundingly rejected by the Court of Appeal, which was also critical of Sinels (but not RSL) for making changes at a late hour. Admittedly with the benefit of hindsight, it was clear to the Committee that the stance taken by Messrs. Le Gallais and Luce had been appropriate in the circumstances. And once it would have become clear that written confirmation of the Minister’s assurance to his fellow Senator was not to be forthcoming, and indeed once the Assistant Minister (not knowing of her Minister’s assurance) had turned down the ‘roofing-over’ application, the only advice to RSL would have been to withdraw the appeal. Substantial costs would have been averted as a result, as indicated in the table above.

The considerable risks surrounding the appeal as pursued by Messrs. Sinels could not, we decided, be attributed to any failings by the Department and so we excluded them from our recommendation accordingly.

It was not part of the remit given to us by the States to consider the case for compensation to Mr. and Mrs. Pinel to reflect the losses and difficulties they experienced throughout this long and difficult saga because of the actions of the Planning Department. We shall let our report speak for itself on this, trusting that States members will wish to take its findings as a whole into careful account as they decide how best to seek to remedy the wrong that the Committee concluded was indeed suffered by RSL, by Mr. and Mrs. Pinel and by Mr. Taylor.

John Mills CBE  
Edward Trevor MBE FRICS  
Richard Huson Esq

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### **Committee of Inquiry – Reg’s Skips**

#### **Terms of Reference**

To investigate all planning matters relating to the various relevant planning applications made by, or on behalf of, Reg’s Skips Ltd. in connection with the activities of the company as skip operators –

- (i) to establish whether the various planning applications were determined appropriately and to a standard expected of the Planning and Environment Department;
- (ii) to establish whether the legal fees accrued by Reg’s Skips Ltd. totalling nearly £300,000 were as a result of any failings in the processes or actions of the Planning and Environment Department; and
- (iii) to make recommendations for changes and improvements to the planning process to ensure that any failings identified in relation to these applications are not repeated in the future.