



Chartered Architects, Planning and Design Consultants

Our Ref: PWH/1871

7th February 2012

Deputy Rob Duhamel
Minister for the Environment
Planning Department
South Hill
St Helier
JE2 4US

Dear Deputy Rob Duhamel,

**Plémont Bay Holiday Village – P/2011/1673 –
2/3rds Land returned to Publicly Accessible Natural Landscape with 28 Houses
Response to the Council for Protection of Jersey's Heritage Letter dated 30th January 2012**

I refer to the letter from the Council for Protection of Jersey's Heritage (CPJH) dated 30th January 2012 to you regarding the above application. I respond to their representation and comments /opinions as follows:-

Generally

It is well known that CPJH have been campaigning (alongside the National Trust for Jersey) for all development to be removed from my Client's property and the whole of their land to be returned to nature. In this context CPJH have overtly confessed their avowed Preference for Another Use for my Client's property, instead of considering the material Planning considerations relevant to this application.

This application proposes replacing the existing substantial development on my Client's property by returning 2/3rds of their site to Publicly Accessible Natural Landscape, replacing two existing houses on the site (Manager's bungalow plus Staff Cottage) and replacing less than half of the substantial existing development with 26 Houses. The CPHJ representation fails to consider the relevant material planning considerations applicable to this application, indeed their representation fails to advance any material Planning Reasons why this application should not be approved.

The concluding penultimate sentence of the CPHJ letter encapsulates the main reason for their representation:-

"The Council supports most strongly the recent proposal by the National Trust of Jersey that the Plémont Holiday Village site should be purchased and returned to nature as a commemoration of the Queen's Diamond Jubilee."

Their overtly stated preference for another use is an invalid consideration in determining this Planning application because it does not address what this application proposes against material Planning considerations. We therefore request that, having considered the contents of their representation, please can you reject the arguments they advance for reasons we set out herein.

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Public Inquiry Requirements not satisfied

The CPJH letter misquotes Article 12 of the Planning and Building (Jersey) Law 2002. Article 12 of this Law stipulates two alternative requirements that must be satisfied for enabling a Public Inquiry to be called:

- "a) *the development would be likely to have a significant effect on the interests of the whole or a substantial part of the population of Jersey; or*
- b) *the development would be a departure (other than an insubstantial one) from the Island Plan."*

Firstly this application will not have a significant effect on the interests of the whole or a substantial part of the Island's population because, inter alia:- a) The proposals involve halving the amount of development on site, that will be replaced by traditionally designed houses in three clusters reflecting hamlets found elsewhere in the St Ouen's countryside, and at same time reverting 2/3rds of this private land to publicly owned natural landscape; and moreover b) The substantial part Jersey's population do not live anywhere near the Plémont Bay Holiday Village.

In this connection it should be noted the renewed campaign by the National Trust for Jersey over Christmas week 2011 has not produced a significant number of public representations over and above those generated by NTJ Officials and supporters. The relatively low number of public representations demonstrates the overwhelming majority of Jersey's population are satisfied with the proposals in this application. There is no evidence of any concern by a substantial part of the population about this application having any effect, significant or otherwise, on themselves.

Secondly your Department has previously acknowledged in writing this application complies with all relevant 2002 Jersey Island Plan Policies¹ and your Planning Case Officer has confirmed to me the applicable planning policies have not changed in the 2011 Jersey Island Plan.

On any view, even if there were a departure from the Island Plan, it would clearly be insubstantial. The beneficial effects that would be realised by the application being approved are far, far more substantial.

Beneficial effects on Interests of Jersey's Population

It is absolutely undisputable that creating a new publicly owned, publicly accessible, natural landscape amounting to 14.87 vergées (similar in size to Howard Davis Park overall extent) with majority of this new natural landscape on northern part of site where existing buildings stand will comprise a substantial new public asset. This will amount to the largest major environmental improvement and substantial character enhancement of any Island location within the last 60 years.

The submitted Environmental Impact Statement (EIS) with supporting Landscape and Visual Assessment (as amended) concluded there will be:-

- A) Major to moderate positive Economic and Social impact;
- B) Major positive Environmental impact; and
- C) Major positive Landscape and Visual impact.

Despite the objective conclusions of these independent reports it is therefore very peculiar that CPJH suggest there will be "*destruction and loss of the Island's cultural heritage*", unless they are referring to the existing Holiday Village buildings themselves as the Heritage being lost. The CPJH go onto misrepresent "*The Line in the Sand*" demonstration, which was not about any proposals for Plémont, but against inappropriate development on the Coastline. Your Department's Report published on 24th September 2010 conversely concluded the proposals for 30 houses (since reduced to 28 houses) comprised "*an appropriate response to the sensitivities of the location.*"

¹ Confirmed in Department Report published 24th September 2010 for Planning Panel meeting on 7th October 2010

Compliance with the 2011 Jersey Island Plan.

The principal Planning Policy relating to this application is the Green Zone Policy, within which the whole application area (with exception of natural landscape to west of La Route de Petit Plemont remaining unaltered in these proposals) is located. The Green Zone policy is referenced as Policy NE7 in the 2011 Jersey Island Plan, exactly replicating Green Zone Policy C5 in the 2002 Jersey Island Plan.

Your Department's Report published on 24th September 2010 concluded these proposals complied with Green Zone Policy, confirming that:-

"In this instance, it is considered that the proposal to re-develop would involve a significant environmental and visual improvement compared to the existing situation and, as such, would be in accordance with the requirements referred to under Policy C5 to justify an exception to the general presumption against new development within the Green Zone.

CPHJ again misrepresent the proposals in the application as being a "modern housing estate", which totally pervert the truth. Your Department's Report published on 24th September 2010 advised the scheme possessed a "vernacular approach to the design of the new dwellings", since when the detail design has been subjected to the most intense scrutiny by Departmental Officers including former Architect Adviser to the Minister (David Cox) and exhaustive refinement. In September 2010 your Officers², by arranging for the application to be decided at the Panel meeting on 7th October 2010, were satisfied the scheme represented an exemplar of vernacular architecture and they were 100% satisfied with every last detail.

Rebuttal of CPHJ claimed "Reasons for Objection"

1a) CPHJ state:- "Council letters objecting to Applications P/2009/0709 and P/2011/0144 dated 27th April 2009 and 24th February 2011 respectively refer. Reasons for objecting to large-scale developments given in those letter still remain valid and are again drawn to your attention".

1b) Response:- Application P/2009/0709 was an application for constructing 49 no. two bedroom and 27 no. three bedroom self catering units with associated facilities on the same footprint of the existing buildings - without creating any publicly accessible natural landscape, nor any substantive reduction in mass or floorspace. Clearly there is no relationship or comparison between this former application and the current application, which are materially different.

My Client did not request nor apply for Application P/2011/0144 (no application form was submitted to your Department) and this remains a "phantom" application introduced by your Department, subsequently withdrawn by your Department. We have not received or seen copy of CPHJ letter dated 24th February 2011 and are therefore unable to comment on its contents. However as Application P/2011/0144 has no status under Article 9 of the Planning and Building (Jersey) Law 2002 (Article 9(2) requires your Department receives an application form with the particulars you require to determine the application) then any representations received equally have no status and cannot be considered in relation to this application.

2a) CPHJ aver:- "The Council firmly believes it would be an environmental catastrophe to permit 28 modern houses with new access roads, unnatural landscaping, tree-planting and manicured gardens which would destroy for ever, what is possibly the most important part of our remaining coastal landscape which is an irreplaceable and essential part of our cultural heritage".

2b) Response:- The CPHJ Council clearly have no cognisance nor understanding of the proposals in this application. It seems they have not even looked at the submitted proposals. We are surprised CPHJ consider that "tree-planting" is environmentally inappropriate. The proposed landscaping proposed by the application consists of local species indigenous to the surrounding area as explained in the Landscaping report.

² Reference e-mail from Alistair Coates, Senior Planner, to Paul Harding on 5th August 2010.

They clearly overlooks and totally mistakes the fact that existing landscape within Plémont Bay Holiday Village does not form part of the "coastal landscape" having been developed for over 60 years. The proposals in this application clearly seek to reinstate the "coastal landscape" as much as realistically possible, in the circumstance where the States of Jersey have decided not to acquire the whole of my Client's property.

Your Head of Countryside Management, John Pinel, has confirmed³ that creating nearly 10 vergées of natural landscape across the northern and western part of the site, totalling 42% of total site area, will provide habitat of value to indigenous species and comprises a "substantial beneficial environmental improvement".

3a) CPHJ suggest:- "This headland is an integral part of an area particularly noted for its largely unspoilt scenic beauty with sheer rugged cliffs, long sea views and, apart from the unsightly derelict holiday camp, a total absence of large scale development. This outstanding combination makes this part of the north coast countryside most prized for its wilderness and remoteness."

3b) Response:- CPHJ acknowledge the existing Plémont Bay Holiday Village buildings are an unsightly large scale development. They fail to comprehend this application is the only means (without cost to the Jersey taxpayer which the States of Jersey have decided against incurring) by which the existing buildings can be removed and the landscape reinstated across 2/3rds of the overall site area. The Countryside Character Appraisal did not classify Plémont Bay Holiday Village within the "Headland" landscape area as CPHJ erroneously suggest (then contradict themselves on next page), my Clients property was classified within Character Type E: Interior Agricultural Land, E1 – North-West Headland (St Ouen).

4a) CPHJ aver:- "Claims made in the application that permission for the development should be granted on the grounds that it would produce a 'planning gain' and 'an improvement in the natural environment' are incredible..."

4b) Response:- CPHJ overlook the conclusion made by your Head of Countryside Management (your own adviser on these matters) the proposals will result in a "substantial beneficial environmental improvement". Further, your Department's Report published on 24th September 2010 confirmed that:-

"In this instance, it is considered that the proposal to re-develop would involve a significant environmental and visual improvement compared to the existing situation.."

5a) CPHJ claim that:- "An independent Environmental Impact Assessment would have taken full note of the recommendations of the Countryside Appraisal Report completed in 1999 and which was regarded as a key document in the production of Jersey Island Plan 2011"

4b) Response:- The submitted independent EIS did consider and address relevant recommendations in the Countryside Character Appraisal (CCA) dated December 1999. See pages (iv) (of the Non-Technical Summary), 4, 12, 18, 21 & 66. The supporting Landscape and Visual Assessment also referenced CCA, drawing heavily on the Appraisal's recommendations to arrive at the conclusion "Overall the redevelopment is considered to have substantial positive impact on the existing physical landscape setting."

Basis of the Application – Response to CPJH's comments

a) CPHJ misquote & misconstrue UK PPG3, which in any event is superseded UK Planning Policy because this was withdrawn in 2006 and replaced with PPS3 by the UK Government. The definition of "Brownfield Land" given in PPS3⁴ (see enclosed copy) comprises:-

³ Minutes of meeting with John Pinel & Glyn Young on 8th November 2009 contained in e-mail from Paul Harding to John Pinel on 9th November 2009. Minutes agreed by John Pinel in his e-mail of 30th November 2009 to Paul Harding

⁴ Planning Policy Statement 3 (PPS3): Housing, 4th Edition June 2011, Annex B page 27

"Previously-developed land (often referred to as brownfield land)

' Previously-developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure'

Therefore according to the UK definition of "Brownfield Land" the whole of Plémont Bay Holiday Village site comprises previously developed land, including areas within the curtilage where buildings are not standing such as former Fields 44 and 47. The misleading claims made by CPHJ about this do not stand objective scrutiny

Further your Department considers it is preferable (indeed since 2005 has previously advised and guided us) to locate the replacement development in three small clusters moved as furthest away as practically feasible from the northern part of my Clients property where the existing building stands, in order to maximise the new open natural landscape closest to the coastal headland and cliffs / North Coast Footpath.

CPHJ selectively misquote Policy Green Zone NE7 referring only to the part relating to "new" development where none exists at present, which is not the case with this property. They fail to recognise this Policy goes onto recognise *"within this zone there are many buildings and established uses and that to preclude all forms of development would be unreasonable"* and in this case where existing commercial buildings will be replaced with half the amount of development and even less spread of development the Policy allows for *"their demolition and replacement with a new building(s) for another use"* when that *"would give rise to demonstrable environmental gains and make a positive contribution to the repair and restoration of the landscape character of the area through a reduction in their visual impact and an improvement in the design of the buildings that is more sensitive to the character of the area and local relevance."*

As earlier noted Policy NE7 replicated the same stipulations in 2002 Jersey Island Plan Policy C5 with which your Department have confirmed these proposals are in full compliance.

b) It is factually correct that 67% of the site area will be made available as publicly accessible natural landscape, refer to submitted Schedule of Existing and Proposed Land Areas dated 12th December 2011, revision 3.

i) The boundaries of the publicly accessible natural land are shown on the submitted drawings.

ii) It is expected (as outlined in your Departments report dated 24th September 2010) a Planning Condition will be recommended by your Department requiring the ceding of the 'publicly accessible natural land' to a body that will manage and maintain public access. My Client has already offered to cede this land to the Publique of the Island in perpetuity.

iii) The area will be made into natural landscape through the process detailed in the submitted reports. Clearly it is your Environment Department who will decide what constitutes 'natural landscape' on this site – which is not classified⁵ as being part of the Plémont headland.

iv) There are no 'new' access roads situated within the 'publicly accessible natural land', this road exists and will be extended to serve the South-West cluster. The footpaths within the 'publicly accessible natural land' will be transferred as part of (ii) above.

c) Here CPHJ proceed to totally contradict themselves, having earlier claimed the EIA ignored the Countryside [Character] Appraisal report. As earlier demonstrated the submitted reports did take account of CCA conclusions and recommendations.

It is irrational and confuses the issue for CPHJ to claim the "Plémont headland" is excluded from the Coastal National Park (this headland is actually within the Coastal National Park) because:-

- i) CCA distinguishes between the "Plémont headland" which the CCA classified as Character Type A: Coastal Cliffs & Headlands, and Plémont Bay Holiday Village itself which the CCA classified as lying outside the "Plémont headland", but

⁵ Refer to Countryside Character Appraisal dated December 1999, pages 159 to 164, for correct classification of Plémont Bay Holiday Village

forming part of Character Type E: Interior Agricultural Land, E1 – North-West Headland (St Ouen). This is borne out by its historic use as agricultural fields over 60 years ago.

- ii) Your Planning Inspectors during the Public Inquiry into the draft 2011 Jersey Island Plan considered submissions arguing that the Costal National Park should be expanded to whether Plémont Bay Holiday Village, but concluded⁶ there was no case supporting an expansion of the Costal National Park to include my Client's property.

d) The CCA level of protection recommended for Character Type E: Interior Agricultural Land, E1 – North-West Headland (St Ouen) concluded that:- "Jersey's interior agricultural land has some capacity to accept change". CPJH misrepresent the CCA recommendation because they only quote selectively and omit to mention the CCA's criteria (where relevant to this property) that should be applied:-

"• Any such developments must be of a style and design that is in keeping with the character [of the] area" - your Departments report of 24th September 2010 confirmed these proposals are in keeping with character of the area.

"• Careful consideration must be given to conditions regarding screening of developments. Large masses of trees and dense coniferous shelterbelts can be very intrusive within this bleak, open landscape" – your Departments report of 24th September 2010 confirmed that "with the implementation of the mitigation measures (including sensitive planting and habitat creation) outlined in the EIA, the proposed redevelopment would result in an enhancement of the countryside character."

"• Developments should not impinge on the sensitive heathland edge. Where developments are permitted, opportunities should be taken to achieve the environmental enhancements and management measures outlined above." – these proposals remove existing development from the heathland edge and the reduced replacement houses are drawn significantly away from the heathland edge. Your Departments report of 24th September 2010 concluded there would be a "significant environmental and visual improvement".

The parts of CCA Character Type Area A1 that CPJH quote relate to the existing buildings at Plémont Bay Holiday Village. For the sound and justifiable Policy reasons already explained none of your own expert independent advisers (including CCA writers Land Use Consultants, your own Planning Policy Officers and Chris Shepley / Alan Langton acting as your Island Plan Inspectors) have recommended this property is capable of being included within Area A1. Therefore recommendations for this area (which is mostly undeveloped, unlike this property) are incapable of being applied to this application as CPHJ attempt to conflate. The CPJH quotes and comments in bottom half of their page 3 can therefore be totally discounted as inapplicable to this application, except to point out the fields at Les Landes they mention are over ½ mile (or over 1 Kilometre) to west of Plémont Bay Holiday Village. The boundaries between Fields 44 & 47 have been lost and do not represent those found at Les Landes.

Non Planning Matters

States of Jersey Debates on Propositions

It has been very recently established in a judgement of the Royal Court of Jersey [2012] JRC008 that you cannot take into account "Non-Planning Matters" alongside relevant material Planning considerations when deciding an application. This judgement makes it clear that political representations of themselves cannot be material considerations. By extension political decisions made by the States Members as a body cannot comprise a material Planning consideration.

⁶ Refer to The (Draft) Jersey Island Plan Inspectors' Report Volume 1 dated 19th November 2010 Pages 28 & 29 Paras 4.27 to 4.32 inclusive and Volume 2 Page 26.

Notwithstanding this position CPHJ misrepresent the States decision on P/144/2009 that the States Assembly debated on 19th January 2010. This proposition titled "Plémont Holiday Village: acquisition by the Public" was in three parts:-

The States are asked to decide whether they are of opinion –

- (a) to approve, subject to the availability of the necessary funds voted by the Assembly, the acquisition by the public of the site known as the Plémont Holiday Village site as identified on drawing number 1505/06/101 (as attached at the Appendix);
- (b) to agree that the Minister for Planning and Environment should be empowered, in exercise of the powers conferred by Article 119 of the Planning and Building (Jersey) Law 2002, to acquire the land and any interest therein by compulsory purchase on behalf of the Public in accordance with the provisions of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961;
- (c) to authorise the Attorney General and the Greffier of the States on behalf of the Public to pass any contracts which might be found necessary to pass in connection with the acquisition.

In fact the States Assembly voted on the proposition in three parts, firstly part (a) to approve acquisition by the public of my Client's property. The States Assembly rejected part (a) thereby deciding not to pursue acquiring Plémont Bay Holiday Village by the public. The States Assembly never voted on parts (b) and (c) which fell away because the States had decided not to take any further action by rejecting part (a) of the proposition. This decision overrides previous States decisions including P.122/2006 and put the prospect of the States acquiring the site out of any further consideration.


Proposal by the National Trust of Jersey

In light of the States Assembly deciding not to pursue acquisition by the public of Plémont Bay Holiday Village it is clear the National Trust of Jersey campaign relies on their own fund raising abilities. The National Trust for Jersey have now had well over 6 years available to them for raising public donations and there is no prospect of them being able to raise anything nearing an amount that would recompense my Client. CPHJ themselves acknowledge their proposal is a "Non Planning matter" and clearly cannot be considered by you as they express preference for another use for the site to that applied for in this Planning application.

Rather I ask you to take into account all the material Planning considerations I have referred to in this response and affirm your Department advice in their report published on 24th September 2010 that concluded:-

"In principle and in detail, the proposed site layout and vernacular approach to the design of the new dwellings is considered to be an appropriate response to the sensitivities of the location. The Department is keen to support this approach, and recommends that permission be granted, subject to the safeguard of the conditions suggested"

Yours Sincerely,
For and on Behalf of
BDK Architects


Paul W. Harding BA (Hons) DipArch RIBA MIOd
Director

cc. Mr Alistair Coates – Senior Planning Officer
Mr Mike Grindrod – Northern Trust Group Ltd.

There is further guidance on Affordable Rent in the Homes and Communities Agency Affordable Homes Rent Framework document.

The terms 'affordability' and 'affordable housing' have different meanings. 'Affordability' is a measure of whether housing may be afforded by certain groups of households.

'Affordable housing' refers to particular products outside the main housing market.

Previously-developed land (often referred to as brownfield land)

* ['Previously-developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure.'

The definition includes defence buildings, but excludes:

- Land that is or has been occupied by agricultural or forestry buildings. *N/A*
- Land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures. *N/A*
- Land in built-up areas such as private residential gardens, parks, recreation grounds and allotments, which, although it may feature paths, pavilions and other buildings, has not been previously developed. *N/A*
- Land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings). *N/A*

There is no presumption that land that is previously-developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed.

Market housing

Private housing for rent or for sale, where the price is set in the open market.

Net dwelling density

Net dwelling density is calculated by including only those site areas which will be developed for housing and directly associated uses, including access roads within the site, private garden space, car parking areas, incidental open space and landscaping and children's play areas, where these are provided.