

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

Inspectors Question

*The applicants' case is based in part on comparisons of the impacts resulting from the development with that which could result from its reopening as tourist accommodation. There is an underlying assumption that the use (in planning terms) although inactive remains extant. As you will know the issue of abandonment is one that has featured in many planning disputes and is the subject of case law. I would like you to present evidence, preferably by reference to relevant case law, as to why you consider that **the use** in this case as tourist accommodation should not be treated as having been abandoned and a clear statement of what uses you consider the existing site could be put, and why, without the need for a planning application. I note the Planning Department's Statement of Case at paragraph 6.6: "The Department does not, necessarily, consider the Plémont Holiday Village site to be 'abandoned' in planning terms. The lengthy history of planning applications gives an indication that the applicant company has not relinquished its interest in the site nor its future."*

Applicants Answer

Jersey Law

1. At present, the general principle of "abandonment" is not part of Jersey law. The Planning and Building (Jersey) Law 2002, its associated orders and the Island Plan 2012 provide a comprehensive regime of planning control and this does not contain the concept of abandonment. Furthermore, there is no general rule of "abandonment" to be found in Jersey case law. (This is also one of the central findings by Lord Scarman in his judgment in the **Pioneer Aggregates** case (referred to further below) in respect of English Law).

2. The only Jersey case that makes reference to "abandonment" is the **Maletroit** case (enclosed in Appendix 1) from February 2012. In that case the Appellant argued that the proposed new building was in replacement of an existing building and an existing use. On the facts, the Court found that there was no existing building and no established use. The previous building had been demolished long before the Applicant had acquired the property.

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

3. The Royal Court went on to refer to a passage in the judgment of Kennedy LJ in **Hughes** (see *Appendix 4*), describing it as "useful guidance on abandonment". The test was the view to be taken by a reasonable man with knowledge of all the relevant circumstances.
4. Furthermore, in **Maletroit** the proposed new dwelling was 80 metres from the previous one and well outside the domestic curtilage of what had been there many years ago. The appeal was dismissed.
5. As the judgment states, the passage from the **Hughes** case was just "useful guidance" and the court had already decided the case on the facts that there was no existing building and no established use. It emphasised that the court must look at these matters objectively.
6. In our opinion the **Maletroit** case of itself does not import UK case law on "abandonment" into Jersey Law. However, as you probably know, where there is an absence of Jersey case law on a point then UK case law may be persuasive.
7. It is also important to note that the UK planning regime is not exactly the same as Jersey's planning regime and therefore comparisons in case law must be made with considerable caution.

UK Case Law

8. The **Pioneer Aggregates** case (enclosed in *Appendix 2*) established that the principle of abandonment was not of general application and that it does not apply to rights granted by planning permission. As can be seen in the that case, Lord Scarman emphasised that planning control was a creature of statute and based his decision on the then in-force UK statutory planning regime.

"Without general prejudice to the provisions of this Part of the Act (ie. Section 33(1) of the Town and Country Planning Act 1971) as to the

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector’s Question on ‘Abandonment’ dated 13 September 2012**

duration, revocation, or modification of planning permission, any grant of planning permission to develop land shall (except insofar as the permission otherwise provides) enure for the benefit of the land and all persons for the time being interested therein.”

“The clear implication is that only the statute or the terms of the planning permission itself can stop the permission enuring for the benefit of the land and of all persons for the time being interested therein.”

9. The reconstruction of the Plémont Bay Holiday Village in the 1960s was approved by two separate planning permissions granted in November 1967 and January 1968, enclosed in Appendix 3. Neither of the permissions carried conditions limiting validity to a particular owner, nor were they limited by any time condition on the future of the use. A separate condition required the permitted works to be completed within a specified timescale, which they were, with the agreement of the officers of the (then) Island Development Committee as recorded by the “Work Completed” file note enclosed in Appendix 3. Those permissions remain valid under the transitional provisions from the 1964 Law to the 2002 Law.
10. Article 24(1) of the Planning and Building (Jersey) Law 2002 replicates the wording of Section 33(1) of the Town and Country Planning Act 1971, that:-

“the grant of planning permission enures (except insofar as the permission otherwise provides) for the benefit of the land to which it relates and for the benefit of each person for the time being having an estate or interest in the land.”

11. It is therefore our submission that the permitted and legal use of this site for tourism accommodation continues to be attached to the land and therefore, based on Lord Scarman’s ruling in the **Pioneer Aggregates** case, this statutory use cannot be abandoned by any owners’ actions or intentions.

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

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12. In the *Pioneer Aggregates* case Lord Scarman went on to explore and distinguish three classes of case that might give rise to a loss of planning rights which do not appear in the statutory planning regime:

- Loss of existing use rights through abandonment;
- Incompatible with the claimed use right, i.e. inconsistent planning permissions;
- Loss of use rights resulting from the creation of a "new planning unit" or the "opening of a new chapter" in the planning history of the site.

13. Whilst we do not agree that any of these three classes of case apply to the Plémont Bay Holiday Village site for all the reasons we have stated above, for completeness, we have addressed in the following paragraphs the first of those classes – loss of existing use rights.

14. One of the leading cases on loss of existing use rights is the *Hughes* case (enclosed in Appendix 4). This case provides a four factor test for assessing abandonment:

1. The physical condition of the building;
2. The length of time for which the building had not been used for its purposes;
3. Whether it had been used for any other purposes; and
4. The owner's intentions.

Abandonment is decided as an objective question of fact. That is, the test must be the view to be taken by the reasonable man with knowledge of all the relevant circumstances.

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

The Plémont Holiday Village Site

15. In terms of the Plémont site, addressing each of those four factors described above in the *Hughes* case:

- a) The Planning Department has stated that the buildings at Plémont could be repaired and refurbished, and brought back into use at any time without the need for planning permission. In the Hughes case the local authority viewed the building "*beyond repair*" nine years before the case was heard, by which time the Planning Inspector had described it as "*now in a ruinous state with its roof and part of its walls missing*". None of these are the case at Plémont Bay Holiday Village;
- b) The buildings have not been used as tourism accommodation since 2001 principally because the Applicant and previous owner have experienced lengthy delays since then waiting for planning approval of proposed development. The Applicant has been undertaking daily security checks, monthly building checks plus periodic vandalism clean-up works;
- c) Other uses have been made of the buildings at Plémont, at least in part, until December 2009, including occupation of the two dwellings and use by the States of Jersey Police for training purposes; and
- d) The intention of the owner has always been to revert to a tourism use if the planning applications for housing were not successful. Indeed an outline planning application for self-catering apartments was made, at the suggestion of the (then) Planning Minister in November 2009.

16. Other relevant factors to take into account are:

- The Planning Department does not claim that the site has been abandoned for tourism/commercial use. Indeed the Department's reports of 2009 and

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

2010 have confirmed the existing permitted use as “commercial tourism accommodation”; and

- Any "abandonment" case would no doubt have to take into account the fact that the long delay in the use of the site for anything at all is primarily attributable to inordinate delays in the Planning process.

17. The Applicant has demonstrated, and the Planning Department agrees, that the existing approved use is for “commercial tourist accommodation”, for which purpose it remains valid and capable of being continued.

18. Article 3(1) of the Planning and Building (General Development) (Jersey) Order 2011 describes “Use Classes” and prescribes, without obtaining planning permission for a change of use, that:- *“Planning permission is hereby granted by the Minister where a building or other land is used for a purpose specified in a use Class set out in Schedule 2 to use the building or land for another purpose specified in that use Class.”* The existing use falls within Class F of the Use Classes:-

*“Class F – Accommodation” lists use as either (a) a guest house; or
as a (b) hotel.”*

19. Subject to registration under the Tourism (Jersey) Law 1948, the existing site could continue to be used for tourism accommodation purposes without a planning application.

Authors:

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21 September 2012

Appendices

1. Maletroit v Minister for Planning and Environment (February 2012)

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

2. Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] 1 A.C. 132, HL
3. Extracts from Planning Departments file with Planning Permissions issued for Plémont Bay Holiday Village in November 1967 and January 1968
4. Hughes-v-Secretary of State for the Environment, Transport and the Regions and South Holland District Council [2000] 80 P & CR 397.

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

Appendix 1

Maletroit v Minister for Planning and Environment (February 2012)

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

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Inspector's Question on 'Abandonment' dated 13 September 2012**

Appendix 2

**Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment
[1985] 1 A.C. 132, HL**

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

Appendix 3

**Extracts from Planning Departments file with Planning Permissions
issued for Plémont Bay Holiday Village in November 1967 and January
1968**

**Plémont Bay Holiday Village – P/2011/1673
Public Inquiry**

**Answer from Plémont Estates Ltd. to
Inspector's Question on 'Abandonment' dated 13 September 2012**

Appendix 4

**Hughes-v-Secretary of State for the Environment, Transport and the
Regions and South Holland District Council [2000] 80 P & CR 397**
