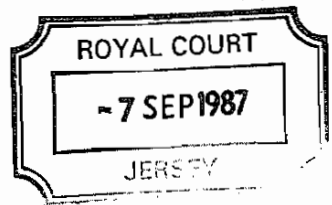


146.  
87/49.



ROYAL COURT (INFERIOR NUMBER)

Before Mr. P.R. Le Cras, Commissioner  
Jurat P.G. Blampied  
Jurat J.J. Orchard

TROJAN BUILDERS LIMITED

v.

THE STATES OF JERSEY HOUSING COMMITTEE

Advocate B.E. Troy for the Appellant  
Advocate S.C. Nicolle for the Respondent

Trojan Builders Limited ("the Appellant") is a well known local building Company. By an application, which was undated but accompanied a letter to the Respondent Committee of the 25th June 1985, the Appellant made an application for consent to purchase fields No. 591, 592 and 593 at St. Ouen measuring approximately Vergees 5.20 perch in total. As to the purpose for which it was intended to be used, the form stated that it was for "Basic States Loan development". This however was expanded and explained by the letter of the 25th June 1985 addressed to the Housing Office, which reads as follows and was signed by the Managing Director of the Appellants:-

"I enclose an Application for consent for my Company to purchase Fields 591, 592 and 593, St. Ouen, from Mr. S.J. Meral for the sum of £140,000.

You will be aware that this land has been zoned for residential development and I believe there has been some thought given to the possible purchase of the land by the States.

It is the intention of my Company to construct Basic loan houses on the land for occupation by first time buyers which it is hoped will satisfy the ambitions of your Committee for this land. However, if the Committee has other types of dwellings in mind, it would be willing to work in with your ideas. Additionally, full consultation will take place with the I.D.C. as to the best way of developing Fields 591 and 592 in relation to the old persons units to be constructed by the Parish on Field 593.

I hope that consent will issue shortly."

In reply, the Housing Committee, acting in pursuance of Part III of the Housing Jersey Law 1949, as amended, refused consent on the grounds "that, in the opinion of the Committee, the land should be acquired on behalf of the public to provide for the housing of the inhabitants of the Island." There then followed a long exchange of correspondence between the Appellant and, in particular, the Respondent the purpose of which was, not unnaturally, to urge in various terms that the refusal described above should be withdrawn and a consent issued. This exchange culminated, or rather terminated, with a letter from the Housing Department dated the 17th June 1986 wherein the President of the Housing Committee refused to attend a meeting with the respondent, stating inter alia:-

- "(i) It is a fact that the States has declared its clear wish that the Island Development Committee should acquire this land and transfer it to the Housing Committee for basic loan development. I would not wish to attend a meeting such as the one you propose whilst this decision of the States still stands.
- (ii) Not only has my Committee already refused an application from Trojan Builders Limited to buy this land (in view of the States decision), we have also refused applications from no fewer than three other builders. I consider that it would not be ethical for me to be 'negotiating' with any one Company against a backcloth of having rejected others."

The Appellant during this correspondence appealed from the decision of the Respondent in August 1985 and it is this Appeal which comes before us.

The history of the case with which we are concerned begins, for the purposes of the present Appeal, with the proposition lodged au Greffe on the 1st May 1984 by the Island Development Committee when the States were asked to consider the rezoning of land for St. Ouen's Village. We do not need to refer to all the propositions, but note that, in particular, the following propositions were put forward:-

- "(c) to rezone Fields Nos. 591, 592 and 593 (about 6 vergées) at La Rue de la Fosse au Bois, St. Ouen from White Land to use for housing purposes - specifically for the construction of States (basic) Loan and/or States Rental housing units;

- (d) to authorise the Island Development Committee to negotiate with the owner for the purchase of Fields Nos. 591, 592 and 593 at a fair and proper price to be agreed with the Finance and Economics Committee;
- (e) to agree that in the event of it not being possible to reach agreement on a fair and proper purchase price for the land described in paragraph (d) above, the Island Development Committee be empowered, in exercise of the powers conferred by Article 4 of the Island Planning (Jersey) Law, 1964 to acquire the land by compulsory purchase on behalf of the Public in accordance with the provisions of the Compulsory Purchase of Land (Procedure)(Jersey) Law, 1961, as amended;
- (g) to authorise the Island Development Committee to transfer the land described in paragraph (d) when acquired, to the administration of the Housing Committee;"

The Report which was attached thereto contained, inter alia, the following paragraphs:-

- "1. This Report recommends the approval of a long-term development plan for St. Ouen's Village, and the rezoning of a total of 8½ vergées of White Land for housing use, the development of which will be undertaken by the Parish of St. Ouen and the Housing Committee.
- 5. The Committee also considers that Fields 591, 592 and 593 should be incorporated in a comprehensive scheme, designed to provide much needed homes. The Housing Committee has indicated its support for the proposals and preparedness to construct a mixture of States Loan and rental homes.
- 8. The Island Development Committee and Housing Committee consider that the development of these fields will make a significant and much needed contribution to the housing stock in this part of the Island."

The States minutes for the 6th November 1984 shew that no less than 43 members of the States voted in favour of the proposition.

We have also had produced to us the minute of the meeting of the Housing Committee of the 12th July 1985, which merely reads:-

- "(83587) - the sale in perpetuity of Fields 591, 592 and 593 St. Ouen by Mr. Stanley John Morel to Trojan Builders Limited for consideration of £140,000.  
that in the opinion of the Committee, the land should be acquired on behalf of the public for the housing of the inhabitants of the Island."

The Appellant contended that notwithstanding that agreement had been reached with the owner of the land for the sale to the Appellant at £140,000 and that various other factors which it claimed to be relevant had been set out, nonetheless, at its meeting of the 12th July 1985 the Respondent received the Appellant's application but issued

a rejection without proper justification and without making any enquiries concerning the offer of the Appellant to produce basic States loan houses or to co-operate with such other proposals as the Respondent might have for the land or for neighbouring land.

On behalf of the Appellant, Counsel submitted that the questions to be decided were:-

1. did the Respondent Committee conduct itself properly in dealing with the application?

2. did it deal with the application reasonably and in a way that can be related to its terms of reference; and as a subsidiary question,

3. to what extent is the Committee bound by or entitled to have regard to either general policy enunciated by itself or some other Committee or a proposition adopted by the States?

He went on to claim that the application received the most casual perusal and was dismissed out of hand because of a general policy framed by this and other Committees regardless of the circumstances, this policy being for the States to buy all land zoned for the construction of basic loan houses.

He then set out the general law which he urged was applicable, and referred to the following enactments:- first, the preamble of the Housing (Jersey) Law 1949 which reads as follows:-

"A LAW to provide for the constitution of a Committee of the States to administer matters relating to the housing of the population, to empower the States to acquire land by compulsory purchase for the purposes of housing, and to control sales and leases of land in order to prevent further aggravation of the housing shortage, sanctioned by Order of His Majesty in Council of the 4th day of March 1949."

Second, the Housing (Extension of Powers) (Jersey) Law 1969 in which the preamble states that it was "A law to extend the powers of the Housing Committee to control sales and leases of land sanctioned by order of Her Majesty in Council; and in which Article I makes it plain that the powers of the Respondent Committee to "control sales

and leases of land in order to prevent further aggravation of the Housing shortage are hereby extended to include a power to control such sales and leases in order to ensure that sufficient land is available for the inhabitants of the Island .....

Third, Articles 3 & 4 of the 1970 Regulations (R & O 5444)

Article 3 of these Regulations provides that the Respondent Committee "Shall not be required to grant consent to the sale ..... of land ..... where, in the opinion of the Committee, the land ..... should be acquired on behalf of the Public to provide for the housing of the inhabitants of the Island."

He then went on to note the proviso which reads as follows:-

"Provided that the Provisions of this regulation shall not apply in any case where the Committee, having refused to grant consent for the reasons aforesaid, has not ..... purchased the land, nor served a preliminary notice in respect of the land in accordance with Article 4 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 as amended and a subsequent application for consent as aforesaid is received by the Committee at a date at least six months later than the date of the original refusal."

Article 4 of course deals with the assessment of price by the Housing Committee.

His first point was that if the Committee have refused once and have not proceeded as required within 6 months they cannot refuse again.

His next point was that it was the Housing Committee which must do these things, and that in applying Article 3 aforesaid, the Committee is not free from the obligation properly to conduct its proceedings and to relate its decision to its terms of reference. He submitted that the test, and the obligation of the Court was that set out in *Associated Builders and Contractors Ltd v. the Housing Committee* (1965) 111 479 at p.p. 482 and 483. Although this has been cited many times before, and was endorsed by Miss Nicolle for the Committee, nonetheless in view of its importance, we think it helpful if we cite it in full here. The passage reads:-

"The interpretation which the Court has, on more than one occasion, placed upon that Article is that it does not

have for effect to substitute the Court for the Committee and, in our opinion, that interpretation is correct. The opinion of the Court on any particular application can be no more valid than that of the Committee; indeed, it is likely to be less so because, unlike the Committee, the Court is without the information necessary to the foundation of an opinion.

That which the Article empowers the Court to do is to examine the way in which the Committee deals with applications and the reasons which have motivated its decisions and to determine whether the Committee has acted regularly and reached a decision for reasons which are tenable.

We conceive it to be the duty of the Committee -

- (a) to receive all applications made to it;
- (b) to obtain such information about the application as is relevant to the decision it must make;
- (c) to relate the application to the Committee's terms of reference set out in the Law; and
- (d) to reach a reasoned and consistent decision which must be either to refuse the application or to allow it, conditionally or unconditionally."

He went on to submit, after referring to the cases of Bundy v. Housing Committee (1979) JJ 99 @ 106 and B.E.C. v. Housing Committee (1984) JJ unreported at page 8, ~~which we will mention below~~, that this was an application which did not receive proper consideration, that the Committee has a duty to exercise its discretion even if it means disregarding and overriding the proposition of the States and, furthermore, that it has a duty to conduct itself under the Law, that is, to relate its decisions to its terms of reference under the Law and not merely to follow a general policy whether supported by a proposition of the States or not. In this case, he submitted, the Court must distinguish between the two Committees, that is between the Island Development Committee and the Housing Committee. Their spheres of operations were separate and the Housing Committee had not followed the guide lines. It was for the Applicant to decide whether he might have been prepared to take the risk that the Island Development Committee might have expropriated him. The Housing Committee, he said, had a duty to decide on the application as a matter of law and here the Committee had misdirected itself as to the effect of the States proposition as it had taken the proposition as an overriding decision, depriving it of its power and duty to act in accordance with the Law. In support of this

proposition he cited *Le Gros v. Housing Committee* (1974) JJ77 @ 87:

"That Law reserves to the States no power whatsoever to give to the Island Development Committee directions or instructions and confers on the Committee alone the power to determine the questions which come within its terms of reference. The only powers possessed by the States in this context are the power to change the Law, provided such change is approved by Her Majesty in Council, and the power to dismiss the Committee.

Furthermore, that Law gives to the Committee no power to decide by whom land will be developed; its power is restricted to determining whether and in what manner land may be developed,

and @ 88: It is here convenient to interpose an observation which, whilst not relevant to our decision, is one which should be made. The Board said -

"Until the 30th January, 1973, the land was zoned for agricultural purposes and as such could have had only a very limited value. Any increase in value as a result of the rezoning of the land for development could only come about as a result of a decision of the States Assembly".

As a statement of the legal position it is incorrect. Article 3 of the Island Planning (Jersey) Law, 1964, certainly permits the Island Development Committee to prepare development plans for the approval of the States but does not require it to do so, and although disregard of the wishes of the States might ultimately lead to the Committee's political downfall, the Committee as a matter of law can disregard the wishes of the States. Furthermore it is possible to envisage circumstances in which the Committee, in order properly to exercise its functions, might have to disregard the wishes of the States."

He went on to urge that because two propositions stand on the same order paper they do not thereby become conditional one upon another. The Housing Committee, he argued, should either have granted consent to the first Applicant or to all the Applicants, leaving them to take their chance as to whether the Island Development Committee would expropriate them. The policy by itself was not unlawful but what the Respondent Committee must not do is to deprive itself of discretion, that is, to decide the application regardless of the circumstances. The Committee was therefore at fault in adopting a blanket policy and depriving itself of discretion and should not have taken the proposition as being the final word. He conceded that the zoning proposition was binding but not the purchase proposals.

Counsel for the Housing Committee put the Committee's case in simple terms as falling within one of the following categories. The first was that the proposition approved by the States had a binding force and the

Respondents were under a duty to have regard for it whilst the second was, that, even if that were incorrect, the proposition was born out of the Committee's policy in any case and that the Committee's own policy which it is certainly entitled to consider was identical in effect with the proposition.

As to the rezoning, Miss Nicolle claimed that the passage cited in *Le Gros v. Housing Committee* @ p. 88 was obiter and in any case conflicts with the passage @ p. 82 which gives the better view:-

"Until the 30th of January, 1973, the land was zoned for agricultural purposes and as such could have had only a very limited value. Any increase in value as a result of the rezoning of the land for development could only come about as a result of a decision of the States Assembly. On the 31st of July, 1972, the Housing Committee signified its refusal to grant the owner consent to sell the land to M.H.P. Holdings Limited for 25,500 on the grounds "that, in the opinion of the Committee, the land should be acquired on behalf of the public to provide for the housing of the inhabitants of the Island". On the 30th of January, 1973, the States simultaneously approved two propositions, one being a proposition of the Housing Committee that it should be authorised to acquire the land for the public to provide for the housing of the inhabitants of the Island and the second being a proposition of the Island Development Committee that the Assembly should rezone the land (together with field 617 which at that time was reserved for educational purposes) for residential purposes. This second proposition, however, was made conditional upon the Assembly's simultaneously approving the Housing Committee's proposition."

Her first point was that the Legislature empowers the Committee to make and submit a development plan and that if the States approve the rezoning, this approval does bind the Committee as it relates to the development plan, has its roots in the law, and that any contrary interpretation of Article 3 of the regulation, cited above, would make provision for something meaningless.

Her second point was that the form of the proposition was a reflection of the Respondent's own policy which was shared by the Island Development Committee. This policy was based on some years of experience of developments - not, she added, connected with the Appellants - whereby the Committee had come to the conclusion that the way to control quality and uniformity in quality was for the Committee to develop, so that if the Court were to find that the rezoning by the



States were not binding on the Committee to the extent that the Committee was deprived of all exercise of discretion, it would matter little. Furthermore the Committee, as we have seen, has power to refuse consent where it thinks land should be acquired on behalf of the public. The proposition and the Committee's policy, she urged, were streams running in the same channel.

Miss Nicolle further made the point that the criticism of procedures contained in *Blackall & Danby vs. the I.D.C.* (1963) 1JJ 273 @ 280 was as to the unreasonableness of the decision itself rather than to the unreasonableness of the surrounding circumstances so that the Court should not order a consent unless it thought the decision were unreasonable.

Counsel for the Respondent further made the point that the enforcement of undertakings, as was quite clear from the correspondence which was before us, has been a problem confronting the Committee. It was claimed that smaller matters were difficult to police or enforce other than by the Committee developing the land itself. It was neither desirable nor in the public interest that Purchasers on different Estates should be at the mercy of substantially varying standards of overall quality.

In our view the correct starting point for the determination of this appeal is to consider the facts in relation to the four duties of the Committee set out in the *Associated Builders and Contractors* case, cited above. These are:-

"a. To receive all applications to it."

This indeed the Committee has clearly done, and no point arises here.

"b. To obtain such information about the application as is relevant to the decision it must make."

It is quite clear, in our view, that the Committee has been exercised for some time about the density and quality of building for first time occupiers. It has of necessity had a long experience with dealing with various Builders in the Island and as a result it was in a position to assess whether it wished to have the Estate developed privately.

Prior to the application by the Appellant it had already decided, in view of these considerations, not to grant applications by private Developers but to have the land developed by the Public and had so advised the States who had approved that view by a large majority.

In our view and not least taking into account the terms of Article 3 of the Housing (General Provisions)(Jersey) Regulations 1970 which states that the Committee shall not be required to grant consent to the sale or transfer of land "where in the opinion of the Committee ..... the land concerned ..... should be acquired on behalf of the public to provide for the housing of the inhabitants of the Island", we have no hesitation in finding that the Committee was entirely within its rights to take that decision. It was a decision of policy which the Respondent Committee had submitted to the States who had approved thereof. Whatever the effect on the rezoning, it seems to us immaterial to decide whether it i.e. the passing of the proposition in the States, was binding on the Committee, and we expressly make no finding on that point. What does seem to us to be material is that the whole hearted approval of the Assembly to a proposition and towards a policy endorsed by the Respondent Committee is a factor which the Committee is entitled to and indeed ought to take into account in deciding whether to continue with that policy.

We believe that in these circumstances the Committee had sufficiently fulfilled its duties under this heading.

However, even if we are wrong in this view, it is quite clear to us that during the lengthy correspondence which ensued, the Appellants were able to put every fact which they thought might be relevant or helpful to their case to the Committee, and this alone would in our view be sufficient in the circumstances and on the facts before us.

"c. to relate the application to the Committee's terms of reference as set out in the law"

We believe that we have largely covered this ground already. It seems to us quite clear that the Committee had the power to refuse consent where it considers that land is required by the Public, and

it is clearly entirely entitled to do so. No point appears to arise under the proviso to Article 3 of the Regulations cited above.

"d. To reach a reasoned and consistent decision which must be either to refuse the application or to allow it conditionally or unconditionally."

We find no evidence that the decision here was anything other than reasoned or consistent and made in accordance with the proper policy of the Committee.

We should add that even had we found that there was some defect in the procedure, we should have found the decision to be reasonable in the particular circumstances and as falling entirely within the guidelines found in the passage cited to us in *Blackall & Danby Ltd. v. I.D.C.* (1963) JJ 273 @ 280.

"In arriving at a decision, the Court considers it necessary to take into account the fact that, if an appeal of this nature is allowed, the carrying-out of building works of a specific nature will be authorised and the Court would not consider it right to allow an appeal merely because of some defect in the proceedings leading to the Committee's decision if, notwithstanding that defect, the decision was reasonable, that is to say, the Court must be concerned with the unreasonableness of the decision itself rather than with the unreasonableness of surrounding circumstances."

In the circumstances we see no merit in referring the application to the Committee for reconsideration, and have no hesitation in dismissing the Appeal.

Authorities referred to in the judgment:

Associated Builders and Contractors Limited -v- The Housing Committee (1965) JJ 479 at p. 482 and 3

Burdy -v- The Housing Committee (1979) JJ 99 at p. 106

B.B.C. -v- The Housing Committee (1984) JJ - as yet unreported - at p. 8

Le Gros -v- The Housing Committee (1974) JJ 77 at p. 82, p. 87 and p. 88

Blackall and Darby -v- The I. D. C. (1963) JJ 273 at p. 280

Other authorities referred to:

Turbridge -v- Greffier of the States - The Housing Committee cited  
JJ Vol 1 at p. 35 et seq.

Le Maistre -v- The I. D. C. (1980) JJ p. 1