IN THE ROYAL COURT OF JERSEY (INFERIOR NUMBER)

BEFORE Mr. P.R. Le Cras Commissioner
Jurat Mrs. B. Myles
Jurat Mrs. M.J. Le Ruez

CHARLES WILLIAM BINET

-v-

THE STATES OF JERSEY
ISLAND DEVELOPMENT COMMITTEE

For the Appellant - Advocate B.I. Le Marquand
For the Committee - Advocate S.C. Nicolle

This is an appeal brought by Mr. Binet, the Appellant, against the decision of the Island Development Committee refusing him permission for the construction of an agricultural shed and dwelling house at Field 951, La Rue des Fosses a Mortier, St. Brelade, on the grounds that the decision was unreasonable having regard to all the circumstances of the case.

A further ground, that the decision was inconsistent with a valid conditional consent issued by the Committee, was withdrawn during the hearing and we are not therefore required to deal with it.

Article 6 (2) of the Island Planning (Jersey) Law 1964 states:-

> "Subject to the provisions of this Article, where application is made to the Committee for permission to develop land, the Committee may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission."

In passing, we may say at this stage that, in consequence of the refusal to grant development permission, there has been, of necessity, no revocation or modification of that decision as contemplated by Article 7 (1).

In consequence of the refusal under Article 6 (2) the Appellant has sought to appeal under the terms of Article 21 (1) of the Island Planning (Jersey) Law 1964, the relevant part of which reads as follows:-

> "Any person aggrieved by the refusal of the Committee to grant permission under Article 6 of this Law, ---- may appeal --- to the Royal Court --- on the ground that the decision of the Committee--- was unreasonable having regard to all the circumstances of the case."

The facts surrounding this appeal are virtually not in dispute.

The Appellant gave evidence, which was not challenged, to the effect that having been a grower in another part of the Island until 1982, he had then sold up and gone to Australia. Having found no suitable opportunity there, he had returned to the Island. In or about the early part of 1985 he had purchased some forty-nine Vergees of land in St. Brelade. Some eighteen Vergees were near Le Bocage, and the remaining thirty-one Vergees were near Dereen. It is with the application to build on this latter parcel that we are concerned.

He stated that he knew that a previous tenant of this land near Dereen, who had lived in the bungalow behind that house, had been granted permission to build in the field in which he (the Appellant) wished to build. This was confirmed by Mr. R.P.M. Paton, the Chief Officer of the Defendant Committee, who confirmed that planning permission had indeed been granted on the 13th July 1978 for, we understood, some form of agricultural shed. The Appellant went on to state that he also knew, before he purchased, that another applicant

had been refused more recently. This, too, was confirmed by Mr. Paton, who informed us that this application had been put in and rejected on the 15th April 1985 with virtually the same wording as was used to reject the application of the Appellant. The Appellant further agreed that he had not discussed the building of a new unit with the Committee of Agriculture before he purchased the land.

However, in July 1985, soon after he bought the land, he approached an Architect, Mr. D.J. Phillips in order to put in a planning application for a house and a farm shed. Mr. Phillips had also been involved with the first application to the Island Development Committee, when the then tenant was considering the purchase of the outbuildings and land at Dereen with the object of developing the outbuildings for private accommodation and building a new farm house and shed for himself in the field where the Appellant wished to build.

Before dealing in detail with the course of the application, we should say that in his evidence Mr. Paton made it clear that, in the interest of the public at large, the procedure followed by the Committee in receiving applications was not that envisaged under the terms of the planning law.

The planning law envisaged only one stage, that is, an application to develop land, as set out in Article 6 of the Law. In practice however, and, we may say, very sensibly, a preceding stage has been added . . . This stage is a planning application which, if granted, does not permit actual work to be carried out. Whether granted or not, it is subject to further discussions. The second stage, which is that envisaged under the law as being the only stage, that is, for development permission, may of course be the subject of an application whether or not planning permission has been granted. He went on to say that because planning consent has been issued, the Committee do not feel bound to issue a development consent. As

he put it, there were cases where the Committee, with the information it has from the planning application, feels happy to grant outline permission, but because the development application contains a lot of additional information the Committee, weighing up that information, will refuse the development application.

He also added that, in the first place, the Planning application goes to the Officer who looks after that part of the Island in which the development is to be sited. This Officer makes a recommendation to the Committee who then make a decision. The development application in turn also goes to the Planning Officer, who checks that it is the same scheme that the Committee had previously approved. The major work at this stage is done by the Building Inspector, who checks that the work is subject to the Bye Laws and so forth, following which the Planning Officer makes a recommendation to the Committee who decide. Mr. Paton agreed in cross examination that if planning consent were granted, development consent was usually granted, as the planning consent establishes that it is, in principle, acceptable for the land to be used for a certain purpose; and that if development consent is not granted it is normally on account of some practical reason. He added that it was usual to issue a planning permit by stamping a set of drawings which would be returned to the Applicant, so that when a development application was made the drawing would shew what the Committee had approved.

The instant application proceeded in the normal way. An application was sent in to the Committee in August 1985. Following this, the Appellant met Officers of the Committee on site, as a result of which Mr. Phillips wrote to the Committee on the 21st November 1985:-

"The Island Development Committee,
South Hill,
ST. HELIER.

For the attention of Mr. Bernard Morris.

Dear Mr. Morris,

Re: Field 951, Le Coin, St. Brelade.
I.D.C. Ref. 4/12/5389B.

I have been asked by Mr. C.W. Binet to refer to a meeting which he had with you recently, in respect of his application to construct an agricultural building and dwelling on the above site. I wish also to refer to our subsequent discussion on the telephone when you confirmed that the application was still under consideration by your Committee and that alternative layouts had been discussed. On this basis, I advised my client that a more precise site plan should be prepared and that his requirements with regard to the farm outbuildings should be looked at in greater detail.

The attached sketch No. 1392/1 indicates the result of more precise site measurements and shows recent boundary stones with restrictions in the form of an existing soakaway ad legal covenants preventing construction on land situated to the South-West of the field.

The drawing also shows a slightly improved situation with regard to the siting of the building, in that it is "grouped" nearer to existing buildings. This is motly brought about by the discovery of an accidental error in the scaling of the previous plan.

My client's precise requirements with regard to the size and positioning of the building have been exhaustively researched and we are now both convinced that any further variation in the soze or positioning of the building would prejudice the intended layout, resulting in an inefficient processing of produce and much higher running costs. The building shape required is therefore an expression of my client's working requirements and takes into account the most economic shape in terms of building and operating costs.

I am therefore to ask your Committee to consider that any other shape or layout will seriously hamper and affect my client's operational system in terms of agricultural competiteness. I trust that your Committee will accept that the layout now presented is the best than can be arranged in terms of efficiency and planning.

Yours sincerely,

D.I. PHILLIPS.
Encs. "

As a result of the discussion described in this letter, Mr. Phillips felt that the time was ripe to put in a more precise drawing and this he did.

In reply, the Committee wrote to Mr. Phillips on the 13th December 1985 as follows:-

"Field 951, La Rue des Fosses a Mortier, St. Brelade

The Island Development Committee has considered your proposal to construct a new dwelling and agricultural outbuilding at the above site.

The Committee has noted the points made in your letter of 21 November 1985 and seen the revised plan.

In principle the Committee considers that the formation of an agricultural unit in the west end of Field 951 is acceptable, but is still concerned at the extent of development to the east and possible prejudice to adjacent properties to the north.

I have discussed the difficulties of forming a more compact grouping with Mr Binet, particularly as turning space for lorries and vehicular access to fields behind is required.

However, the Committee would wish for further consideration to be given to achieving a more compact grouping of buildings, and I think the best course of action is for me to discuss the matter further with yourself at the site.

Could you please telephone my secretary to make an appointment for a meeting on site.

Yours faithfully,
B.A. Morris

Assistant Development Officer (Planning)

"

On the 19th December 1985 there followed a meeting between the Appellant, his Architect, Mr. Phillips and the responsible Officer of the Committee, during which, according to Mr. Phillips the discussion seemed to circle around the actual siting of the shed, including its size, shape and general positioning.

Following that meeting, the Committee wrote again to Mr. Phillips on the 31st January 1986 in the following terms:-

"Field 951, La Rue des Fosses a Mortier, St. Brelade

I refer to your application to construct a farm shed with workers accommodation and a farm house on the above field.

The Island Development Committee has given consideration to your revised plan showing a more compact form of development, and has decided to approve that proposal, as shown on your drawing number 1392.

However, no planning permit can be issued until drainage details are shown on a drawing.

Any revised plan should also indicate what the areas around the buildings are to be utilized for, - i.e.

yard areas, - and the area to the east of the sheds should be excluded from the site, so as to remain part of the field. Those drawings should also include planting and screening of the site which will be necessary to minimize the impact of the buildings.

You may wish to submit a revised site plan together with sketch elevations of the proposed buildings, or separately, so that a planning permit can be issued on the basis of the site plan.

Yours sincerely

B.A. Morris
Assistant Development Officer (Planning) "

As a result of this letter, Mr. Phillips advised the Appellant that it would be necessary to obtain details of the shed in order to prepare elevations for the plans. This proved a matter of surprising difficulty but finally the chosen contractor supplied one towards the end of May 1986.

Time was now pressing on the Appellant, for, if he did not soon have his shed erected, he would not have it available in time for the ensuing season. As a result, Mr. Phillips advised him that he should proceed with a full development application, particularly in view of the amount of information for which the Committee had asked. On 1st July 1986 he therefore put in a development application for the shed, accompanied by drawing 1392/2, leaving over the application for the dwelling house. Mr. Phillips was of the opinion that the plan complied with the request of the Committee for information.

Mr. Phillips told us that he had taken the letter of the 31st January 1986 as a typical "green light" letter from the Committee and, following a meeting with the Building Inspector, with whom he discussed certain fairly minor matters on 21st August 1986, assumed that it was just a matter of a week before he got the building permit. In fairness to the Building Inspector we should say at once that it was accepted that the Building Inspector had not made any promise or given any undertaking to that effect, his behaviour being wholly proper.

However, instead of the anticipated development permission

permission the next communication was a letter of the 10th September 1986 from the Committee enquiring why the application for the dwelling house had not been submitted at the same time. This was answered by Mr. Phillips on the 15th September 1986, and no point appears to us to arise on these two letters.

On the 6th October 1986 the Committee wrote a letter which surprised Mr. Phillips, stating:-

"Dear Mr Phillips

Field 951, St Brelade

Thank you for your letter dated 15 September 1986 with regard to your application for an agricultural shed for Mr C.W. Binet at the above location.

Once the IDC has given further consideration to this matter, a further communication will be sent to you advising you of the Committee's decision in this matter.

Yours sincerely

M.J. Lightfoot
Development Officer

Mr. Phillips told us that he was surprised by this, because he thought it was odd to receive a letter saying that the Committee would give further consideration to an application which he felt was virtually approved.

The next communication was a long letter dated 3rd December 1986 which read as follows:-

" Mr. D.T. Phillips,
Rock Ferry,
Westmount,
St. Helier,
Jersey, C.I.

Dear Sir,

Field 951, St. Brelade

The Island Development Committee has considered your application to construct an agricultural shed and the dwelling house you also proposed.

The Committee has considered the previous history of this site, and has noted that a previous applicant was rejected on the grounds of the proposal involving an extension of development in the countryside.

Having visited the site on several occasions, the Committee has expressed considerable concern at the loss of a very fine field, and the environmental impact that the proposed building would have on part of the countryside which has remained intact.

Although the Island Development Committee did indicate earlier this year that it would be prepared to give favourable consideration to the proposal subject to the submission of further details, it has decided to reject the application for the reason given on the enclosed notice.

Although your client owns a certain amount of land in the area which was originally attached to "Dereen", it considers that the planning factors outweigh those of agriculture, as it would not wish to see this spoilt by the intrusion of further buildings.

The Committee is, however, prepared to pay for the cost of drawings undertaken by yourself on behalf of Mr. Binet because of its earlier favourable indication that approval would be forthcoming.

Yours faithfully,

B. Morris
Assistant Development Officer (Planning) "

This letter was accompanied by the formal refusal dated 5th December 1986 which simply read:-

"

Registration No.4/12/5389-C

To Mr. C.W. Binet,
Wattle Grove,
Route de Genets,
St. Brelade,
Jersey, C.I.

The Island Development Committee, having considered your (agent's) application in respect of the following development:-

Agricultural shed and dwelling house.

at Field 951, La Rue des Fosses a Mortier, St. Brelade.

hereby gives notice of its decision to REFUSE PERMISSION for the following reasons:-

The proposal would constitute development in the countryside, detrimental to the amenities of the locality and contrary to the provisions of the Development Plan.

Date: 5th December, 1986 Signed: B.A. Morris for
Chief Officer. "

This then was the position as seen by the Appellant.

Mr. Binet was of course given no indication other than that which we have set out above as to the reasons for which

the Committee changed its mind between the letter of the 31st January 1986 and the refusals in December.

There is one further factor which we ought perhaps to mention at this stage, which is that a development permission had been granted on the 4th November 1985 for the erection of a substantial outbuilding on Field 946, which is not far away, lying as it does near the property "Vermont".

It is now necessary to examine the factors which led to the Committee to refuse to grant development permission following its initial favourable reaction.

The circumstances in which the Committee changed its mind were helpfully and clearly set out by Mr. Paton in his evidence.

He put it in this way in his evidence in chief, that in December 1985 and January 1986 the application had reached a stage where the Committee felt perfectly happy about the use of the land, but did not have enough information to issue a planning (not a development) permit in this instance because the appearance of the building in the countryside was crucial to the decision; and the drawings which had accompanied the planning application did not include a picture of the buildings to shew for example, how high they would be. The Committee, he said, could not visualise the effect. He conceded however in cross examination, as we think he was bound to do, that the members of the Committee would know what an agricultural shed would look like and that there were enough buildings of this type to carry a picture in one's head.

The development plan at the time the application was received was the 1963 plan; the land was in the white zone; and the Committee always looked sympathetically on applications for agricultural buildings. The new Island Plan was published in July 1986 as a consultative document and amended for the States, and, under it, this land was to form part of the Agricultural Priority Zone being in the subdivision named

named the Sensitive Landscape Area. The plan was approved by the States on the 22nd September 1987 and the map on the 3rd November 1987. This subdivided area of sensitive landscape is now subject to Policies CO 7 and CO 8

"POLICY CO 7

Permission for essential agricultural development within the "Sensitive Landscape Area" of the "Agricultural Priority Zone" will only be given if:

(a) The applicant has no suitable alternative site outside the "Sensitive Landscape Area" which can be used to accommodate necessary buildings;

(b) There are no existing buildings which can be satisfactorily modified or converted to meet the requirement;

(c) There is a convincing demonstration, supported by the Committee of Agriculture and Fisheries, that the proposed development is essential for the economic running of the farm holding.

POLICY CO 8

Every application for agricultural development in the "Sensitive Landscape Area" of the "Agricultural Priority Zone" will be very carefully considered in relation to its effects on the landscape, with particular consideration being given to siting and design. Wherever possible new buildings should be sited near to existing ones or within an existing group of buildings.

"

In this instance the Agricultural Committee had supported the view that the holding was viable and that there was a requirement for an agricultural shed.

He went on to say that while the Committee was considering the planning application they were still thinking in terms of the white (as opposed to the green) zone, but that when they came to consider the development application they had been looking at the countryside in a different way and had begun to appreciate what buildings in the countryside looked like and the effect they had on the landscape.

In cross examination Mr. Paton conceded that the change of mind on the part of the Committee was unusual in that there was no practical problem, this being the normal reason why

development permission was not granted once a planning permit had been issued. He confirmed that the Island Development Committee had not applied the policy set out in CO 7 (supra) as, at the time of the refusal, it had not received the approval of the States; but that they were nonetheless thinking in the way set out in CO 7. The instant application, however, was in fact rejected under the 1963 plan. It was put to him that the Committee were not really looking at a new plan, but at the 1963 plan with a slight mental change by the Committee as to how they should apply it. To this Mr.Paton agreed, adding that the Committee were looking at it in a way which had been influenced by all their thinking on the Island Plan; and with a growing appreciation of buildings in the countryside. He agreed that there was neither a minute nor a formal statement between January and December 1986 giving notice of this change. There was no change in the surrounding circumstances, nor in environmental factors: the change was the change in attitude in the mind of the Committee. Put another way, between January and December 1986, the Committee went round the countryside, saw what they had done and said we must allow no more, but had kept this change of mind in their heart and had not advised the Appellant.

We are not here concerned with the merits of the decision communicated by the Committee on the 31st January 1986. It was clearly one which was reasonable within the parameters of the planning law and one to which the Committee was entitled to come.

The question which we have to face here is whether, having once made this decision, it was reasonable, having regard to all the circumstances of the case, for the Committee to refuse to grant a permit to develop the land. There is a further point raised by Counsel for the Committee which was to the effect that, in any event, and whether the sub-

sequent refusal by the Committee was reasonable or not, all the Appellant was entitled to were damages as assessed under Article 7 (4) of the Law. As this second point, if the Committee is correct, would, in the present appeal, be decisive, we propose to deal with it first.

As we have said above, the Island Planning (Jersey) Law 1964 envisages only one stage in applying for a permit to develop. This is the application for such a permit which is envisaged in Article 6 (2) (v. supra). There is no provision for any form of consent in principle but just the one application for development, accompanied clearly by all the necessary plans and information.

Article 7 (1) of the Law then provides:-

> "Subject to the provisions of this Article, if it appears to the Committee that it is expedient that any permission to develop land granted on an application made in that behalf under this Law should be revoked or modified, it may revoke or modify the permission to such extent as appears to it to be so expedient."

In case of such revocation Article 7 (4) provides:-

> "Where permission to develop land is revoked or modified under this Article, then if, on a claim made to the Committee, within one month from the date of the notification of the decision of the Committee, it is shown that any person interested in the land has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, the Committee shall pay to that person such compensation in respect of that expenditure, loss or damage, as may, in default of agreement, be determined by arbitration. "

It is quite clear from this that any work done prior to the permit to develop is at the risk of the person submitting the plans and it is only for loss directly attributable to the revocation which entitled the Appellant to compensation.

As no development permit was ever granted, Article 7 (4) is not directly in point in the present appeal, and we mention it at this stage because Counsel for the Committee submitted that the procedure which should have been followed by the

Committee was not to refuse a development permit, thus leading to the present proceedings but to grant one and then at once revoke it, on the ground of expediency under Article 7 (1) which would render the Committee liable only to pay the damages assessed under Article 7 (4); and that the Committee in fact by its offer made in the letter of the 3rd December 1986 had very properly offered to meet these.

If this submission is correct, it seems to us that it must follow that any appeal to the Court in circumstances such as the present must be rendered nugatory, as the effect of Article 7 (4) would be to override such an appeal on paying damages as assessed under that Article.

The right of Appeal is given by Article 21 (1)

> " (1) Any person aggrieved by the refusal of the Committee to grant permission under Article 6 of this Law, or by any condition attached to the grant of any such permission or by any notice served under paragraph (2) of Article 7, or paragraph (1) of Article 8, or paragraph (3) or paragraph (5) of Article 9, or paragraph (1) of Article 12, or Article 13, of this Law, may appeal, either in term or in vacation, to the Royal Court, in the case of a refusal to grant permission or the attaching of any condition within two months of the date of the notification of the decision of the Committee in the matter, and in the case of of the service of a notice within the period specified in the notice as the period within which the requirements of the notice are to be complied with, on the ground that the decision of the Committee or the service of the notice, as the case may be, was unreasonable having regard to all the circumstances of the case. "

It covers, first, an appeal to the Royal Court against the refusal of the Committee to grant permission under Article 6 or any condition attached to the grant of such permission. It next permits an appeal to the Royal Court by any person aggrieved by any notice served either under Article 7 (2), that is, notice of revocation of a permission to develop land; or under Article 8 (1), that is, notice to restore land which has been developed without permission or to ensure compliance with a condition imposed when such permission was granted; or under

Article 9 (3) or 9 (5), that is, notice of a listed building or restoration thereof if it is demolished or its character altered; or Article 12 (1) that is, notice of requirement to demolish a building and to remove the rubbish resulting thereon; or Article 13, that is, notice to abate injury to amenities on account of the condition of the land. In each case the ground of the appeal is that the decision of the Committee or the service of the notice as the case may be was unreasonable having regard to all the circumstances of the case.

Two of the grounds thus relate to the refusal or revocation of permission to develop, that is, those under Articles 6 & 7 (2): whilst the remainder are clearly to ensure that the Committee should not be entitled to act unreasonably in the exercise of its executive powers in respect of matters which we have briefly mentioned above which have nothing to do with development applications.

So far as development applications are concerned therefore, there are two Articles which envisage an appeal. The first, as we have seen, is that exercisable under Article 6. This is clearly intended to permit an applicant to appeal in a case such as the present one where the Committee has refused to grant a permit to develop.

The suggestion put on behalf of the Committee is that if the Court finds that the Committee had behaved in an unreasonable manner in so refusing consent, it could extricate itself simply by granting a consent and then revoking it, rendering itself liable only to pay those damages provided by Article 7 (4) viz, expenditure which has been incurred in carrying out work which is rendered abortive by the revocation or for loss or damage otherwise sustained which is directly attributable to the revocation. In a case such as this, where the applicant has not committed himself to a purchase of land in reliance on the good faith of the Committee, it seems to us that the only

loss which he could claim, under the law, were the consent to be immediately followed by the revocation, as would seem to be the course proposed, would effectively be that for which the Committee now proposes to pay.

If this argument were correct, this would have the effect that the Committee could behave unreasonably if it so wished in refusing applications as it could entirely escape the control of the Court, notwithstanding that a right of appeal was provided, by paying damages limited to those under Article 7 (4). Put another way, there would be no point in providing for a right of appeal against a refusal under Article 6, for the Appellant would gain nothing, but merely be reimbursed for the expenses he had incurred.

Further, if the Committee's contention is correct, we would expect there to be no appeal against revocation: for there would be no need to have one as all contingencies would be suitably catered for under Article 7 (4). There is however, in this Article a right of appeal given against a notice issued under Article 7 (2) which reads:-

> "Where permission to develop land is revoked or modified under this Article, the Committee shall serve notice on the owner and on the occupier of the land affected, and on any other person who in its opinion will be affected by its decision. "

Although, curiously enough, there is no appeal against a revocation in the same way as there is against a refusal of consent under Article 6, nonetheless it is clear that an appeal is envisaged. It seems to us that there is, in the circumstances surrounding a revocation no clear distinction between an appeal against the revocation on the grounds of its being unreasonable and an appeal against the notice conveying the decision of the revocation. It is, to use the well known phrase, a distinction without a difference.

We may add, further, that to render the appeal, which is clearly envisaged against the refusal of the Committees decision

nugatory, notwithstanding its provision in the law, would require the clearest wording of the statute; and as we say our view is that, far from the statute containing such wording, it is to be construed in the way we conceive so that the order of the Court is to be effective and is not to be negated at the will of the Committee.

In refusal and revocation of permissions to develop, we find that the Committee is subject to the control of the Royal Court in the manner set out in the law as we have thus construed it, subject, of course, to the well established jurisprudence of the Island.

We have no hesitation in ruling against the Committee's submission on this point.

This brings us back to the first point which is whether, once having given a decision in principle, it was unreasonable having regard to all the circumstances of the case for the Committee to refuse to grant a permit to develop the land.

A considerable part of the address by Counsel for the Appellant was taken up by a close examination of the letter of the 3rd December 1986 which purports to set out the Committee's reasons. We do not think we need to deal with this in detail in this particular case. Mr. Paton's evidence explains it and makes it perfectly clear what had happened. Having granted the Appellant consent in principle there were no changes in policy, the Island Plan or any environmental factors, nor were there any practical problems which preceded the refusal the reason for which was that the Committee had had a change of heart, which it kept to itself, regarding the appearance of agricultural buildings of this nature, brought on at least partly by the necessary preparations for the presentation of the Island Plan.

On these facts, the Appellant's case rested on two major propositions. The first was that the Committee was inconsistent

and that it was unreasonable for the Committee to change its mind when there was no change of circumstances, and that the Committee was not entitled to change its mind in the kind of way it did. The second was the effect of the reliance placed by the Appellant on the Committee's early indication of consent and that this was sufficient of itself to require the Court to hold that the decision of the Committee was unreasonable in the circumstances.

This second submission, will if it is successful, ensure success for the Appellant. We will therefore take it first. It relied on the principle established the line of cases beginning with Scott v. I.D.C. (1966) JJ 631 @ 634 where the Appellant had committed himself to expenditure on the faith of intimations given to him by the Committee which the Court found (@ 641) that they must assume that he would not have incurred had he known that he would not be allowed to develop business premises. Such incurring of expenditure played a part at least in the finding of the Court in Le Maistre v. I.D.C. (1980) JJ 1 (v. @ p.12) and would seem also to have played a part in the decision in C. Le Masurier Ltd. v. I.D.C. (31st December 1985 unreported) (v. @ p. 14).

Counsel invited us to extend this principle to cases in which people acted as, he claimed, had the Appellant on the positive indications of the Committee in that he did not seek to change his accommodation during 1986 nor did he sell his land during that year.

In the circumstances of the present case we are quite unable to do so. We do not find the present case on all fours with the precedents cited above. In our view, both Mr. Scott and Mr. Le Maistre were given clear assurances by the Committee that if they did certain things and committed themselves to expenditure - on the one case the purchase of a bungalow and in the other the purchase of a site and the

obtention of an agricultural loan - then the Committee would grant a consent. As it was put in Le Maistre @ 12

> "The Committee is precluded from denying its assurances ....."

In Scott @ 641

> "the intimation was such as to entitle the Plaintiff to believe that once he had bought the bungalow, his application could go forward."

In the present case no such intimation was given to Mr. Binet before he purchased the land. He bought bare land and, as it were, took a chance. He was certainly not invited to effect the purchase by the Committee nor given any assurance when he did buy it. The case is then put, that the encouragement given by the Committee's earlier consent in principle, and his continuance in farming in reliance on that, is sufficient loss to require the Court to say that ipso facto he is entitled to receive his development consent.

In our view this cannot be correct.

Of itself, the reliance by Mr. Binet on the favourable indication of the Committee is not and cannot be decisive in the circumstances of the present case.

That is not to say that it does not have any weight in deciding whether the decision of the Committee was or was not unreasonable, as clearly it is one of the factors to be taken into account, but that in the present circumstances it is not decisive.

We turn now to the main thrust of the Appellants' case.

It is, of course, clear beyond a peradventure that the Committee is entitled to change its mind. The law is drawn with that eventuality in mind, and the Courts have on a number of occasions confirmed this view. The question before us however is not whether the Committee was entitled to change its mind but whether in the circumstances it was unreasonable to do so in the manner in which it did.

A series of cases were cited to us, and as Counsel remarked,

it is not particularly easy to draw a clear line of authority through them. However there are helpful passages in several of the cases cited to us.

The first was that of Blackall & Danby v. I.D.C. (1963) JJ 273 @ 280:-

> "Where consent to the erection of a building is granted, the possibility that some matters may be overlooked is to be envisaged or matters may subsequently arise which would lead to the refusal of consent if they were taken into account or had arisen when the application was considered and thus, on a reconsideration of the application, it might be entirely reasonable to refuse an application which had originally been approved.
>
> In this case, however, no material change of circumstances appears to have arisen nor does it appear that any matter of substance was taken into account in 1962 which was overlooked in 1960. The Court must rely on the reasons for the refusal stated in the Committee's Act recording its decision and the Court can find nothing in that Act to justify a reversal of the original decision.
>
> In view of all the matters to which reference has been made the Court is not able to give an unqualified answer in the affirmative to the first two questions and is also of the opinion that the decision of the Committee was unreasonable having regard to all the circumstances of the case. The appeal is therefore allowed. "

It was put very strongly by Counsel for the Appellant that there had indeed been no change in material circumstances which would make it reasonable for the Committee to refuse an application which had originally been approved albeit in principle only. The Island Plan was the same when the application was refused as it had been when the consent was originally given, no real time had elapsed and no matter of substance had been overlocked. The change was in the heart of the Committee and on an objective test, nothing had changed. Put another way the change was that the Committee saw with new eyes what an agricultural shed would look like.

Counsel for the Appellant went on to make the point that the decision must be viewed in relation to the conditions prevailing at the time of the consideration of the case and that these had not changed since the consent in principle had

been granted. In support he cited a passage from Arbaugh v. I.D.C. (1963) JJ 593 @ 595

> "It is also well to clarify this point because, following a principle enunciated in Blackall and Danby Ltd. v. Island Development Committee (1963) 254 Ex.284, a decision of the Committee on an application must be viewed in relation to the conditions prevailing at the time of the consideration of the application, though actually in this case, the question is of no importance since, so far as the reason for the decision is concerned, the conditions prevailing on 2nd April and 13th August, 1965, were the same. "

He further submitted that the Committee was not entitled to add to the reasons given in the formal rejection of the 5th December 1986 and the Committee's letter of the 3rd December 1986. In support of this contention he cited the passage in Arbaugh supra @ pp 599 - 600:

> "There is a further variation between the two Laws. Article 6 (10) of the Law of 1964 provides that where the Committee refuses permission to develop land, it shall furnish to the applicant a statement in writing of its reasons for the decision, whereas Article 5 (7) of the Law of 1952 provides that this statement need only be furnished on the requirement of the applicant. It is the practice in this Court for an appeal against a Committee's decision (in exercise of a right of appeal) to be instituted by simple action. Until the coming into force of the Royal Court (Procedure and Pleadings) (Jersey) Rules, 1965, the Court, when the action was first called, requested the Committee "de mettre a la disposition de la Cour un releve des raisons qui avaient motive leur decision" and since the coming into force of those rules the action has been transferred to the pending list. Thus in this appeal the Committee has entered what has come to be known as a "Statement of Reasons" and this has led to a submission by the appellant that the Committee is not entitled to introduce reasons which are additional to those stated in the notification of the refusal.
>
> In principle, we agree with this submission; the Law requires the Committee, when refusing permission, to state its reasons; it is on that statement that an applicant decides what action to take; and it is in relation to those reasons that the test of reasonableness must be applied. We envisage, however, that it was never the intention of the legislature that the reasons should be given in full detail and we therefore consider that it is open to the Committee to explain and justify them and to give details in support of them. "

Two further cases were cited to us which were in our view of assistance to us on this submission.

The first was Scott (Supra) in the passage @ 641:

> "Although the plaintiff did not buy Mr. Le Gros's bungalow until May, 1963, the reason for the delay has been satisfactorily explained. If the Committee had wished, an indication could have been given as to the time by which the bungalow was to be bought, but no such indication was given; the intimation was such as to entitle the plaintiff to believe that, once he had bought the bungalow, his application could go forward. This reduces the time lapse to one of twenty-three months. The plaintiff has not sought to excuse the delay; it is a long one; in fact, it is of a length that might, in some circumstances, entitle the Committee to review an earlier decision. "

The points here which Counsel sought to make were these: by Miss Nicolle (for the Committee) that it shews that the Committee may alter their decision in certain circumstances and by Mr. Le Marquand (for the Appellant) that the delay here was not of the order of twenty-three months: and that the delay in proceedings was adequately explained. We should say at once that we accept these submissions and find in particular that delay by the Appellant was not a factor in the present case. Apart from this, we do not find this case of great assistance, turning as it does, in our view on intimations given to the Appellant which went far beyond those given in the present case.

The last case which we found to be of relevance was Le Maistre (supra). This case turned very largely on encouragement given to the Appellant to commit himself and to that extent is not on all fours with the present appeal. However we found the passage, dealing with the question of the reasonableness of the decision of the Committee having regard to all the circumstances of the case (" the third head") at pp. 11 & 12 to be of very considerable assistance:-

> "This leaves the third head. There is a tendency, as we understand some of the English judgements, to equate the way in which a Court should exercise its powers of appeal with that where it is acting as a reviewing body over a decision from an authority where no appeal is provided for in the relevant legislation. But to do this in the light of the wording of the appropriate Article in our Law, would, we think, be to ignore these very words. Moreover, since the decision of the Superior Number in Le Masurier v. The Natural Beauties Committee in 1958 (13 C.R. 139) and the other decisions of the Inferior Number of this Court which followed it, there have been a number of decisions which indicate

that the English Courts may be taking a slightly less stringent view of the word "reasonable" where an appeal is provided for in the legislation itself. As Professor de Smith puts it in the third edition of his work, "The Judicial Review of Administrative Action" at page 305,

> "The scope of review will naturally tend to be wider where an appeal or right of objection against the reasonableness of an administrative act, decision or proposal has been conferred by statute."

We propose to take the wider approach to the meaning of "reasonable". A Committee in exercising its discretion and arriving at a decision on an application before it, must be consistent, but we do not need to interpret the meaning of that woolly phrase in the letters of the 16th April, 1971, and the 10th January, 1972, or elsewhere, because the Committee was entitled, by 1977, to find that conditions had changed as regards building in the Les Mielles area from what they were in 1971. However, we are abundantly satisfied that the Committee had agreed in principle to the erection of an agricultural shed on the site and had told Senator Le Marquand so at its meeting in December 1977. The Planning Officer told us that in 1971 the appellant would have been given permission to erect the building but that is not a relevant matter in the light of our finding that the Committee was entitled to consider circumstances as they were in 1977. It was perhaps, unwise of the appellant to rely on the letters of the 16th April, 1971, and the 10th January, 1972, (and the verbal assurances of the then President) some five to six years later, but the fact remains that even if we exclude what the position was in 1971, we are left with the meeting in December 1977. In its letter of the 13th December, 1977, it appears to us that the Committee confirmed its undertakings to Senator Le Marquand, who, for this purpose, was the agent of the appellant. On this point we are entitled to take the uncontested evidence of the Senator into account as to what took place at that meeting and as to what those undertakings were. Like the appellant in Scott v. Island Development Committee, JJ 631, the appellant here, was, by the conduct of the Committee at the December 1977, meeting, encouraged to commit himself, albeit not quite so directly as Mr. Scott was. This he did when he bought the site from his father and obtained the loan from the Agricultural and Fisheries Committee on the 10th January, 1978. The Committee is precluded from denying its assurances to the appellant through Senator John Le Marquand (see Halsbury, 4th Edition, Volume 1, paragraph 24). Moreover there were no material changes in circumstances between October 1977, and August 1978.

Accordingly we find that when the Committee refused consent on the 3rd August, 1978, it was being neither consistent nor reasonable. "

It is clear from this, that the Committee must behave in a consistent manner and that the consistency of the Committee is

a factor which is highly material as regards the reasonableness of the conduct of the Committee, especially where, as here, there is no change in material circumstances.

In the present appeal, there is no question but that the consent in principle, conveyed by the Committee was one to which it was entitled to come. The words of the Committee, even though they may not be binding and may be subject to revocation must be given due weight, and, once they are pronounced, an Applicant must be entitled to rely on them.

In our view we cannot read the letters of 13th December 1985 and 31st January 1986 in any other way than as being the very clearest indication, subject to various details, of the Committee's intention to permit the Appellant to proceed. It is little wonder that Mr. Phillips felt that the application was virtually approved. Following this indication we find that there was no undue delay; nor any material change in circumstances nor any question of any practical problem in the building but that the Committee, having agreed in principle, shortly thereafter found itself opposed to the whole principle of a house and shed on the site although every point made in the letter of rejection had been known to the Committee when the original consent was granted.

We accept that there are circumstances in which it is reasonable for the Committee to alter its decision. This is clearly the case. However, in altering its decisions, the Committee must act reasonably; and this phrase comprises acting with consistency. The public is entitled to rely on the Committee thus acting, and, in our view, for the Committee to change its mind as it did in the present case is, in all the circumstances, unreasonable. We therefore order the Committee to withdraw its refusal as contained in the notice of the 5th December 1986 and to deal with the development application in a manner which is consistent with the decision conveyed by its

letter of the 31st January 1986.

As a rider, we should perhaps add that we were told that consideration was being given to amending the law in order to bring it into line with the practice of the Committee in dealing with planning applications. We should say that we were pleased to hear this as it must be in the general interest that this should be done.

I. R. L. C.

31 May 1988.

BETWEEN	Charles William Binet, Junior	APPELLANT
AND	The Island Development Committee	RESPONDENT

AUTHORITIES CITED

1. Craven v. Island Development Committee 1970 JJ 1425
2. Scott v. Island Development Committee 1966 JJ 631
3. Le Maistre v. Island Development Committee 1980 JJ 1
4. Arbaugh v. Island Development Committee 1966 JJ 593
5. C. Le Masurier Ltd. v. Island Development Committee (Unreported, 31st December, 1985, 1985/101)
6. Royal London Mutual Society Ltd. v. Finance and Economics Committee 1982 JJ 37
7. Felkin v. Housing Committee (Unreported, 16th December, 1986)
8. The Judicial Review of Administrative Action, Third Edition, de Smith
9. Wade, Administrative Law, 5th ed., pp. 362 to 372 inclusive.