

(2) the proposed development would not have adequate car parking provision to meet the standards of the respondent".

5 The notice issued by the Respondent to the Appellant is dated 13th October, 1995.

10 On 15th November, 1995, a document addressed to the Respondent was served by the Viscount on the Greffier of the States. In that document the Appellant claims to exercise a "right of appeal conferred by Article 21 (i) of the Island Planning (Jersey) Law, 1964 (as amended) against the refusal of the Respondent to grant planning permission for the aforementioned development.

15 On 17th January, 1996, the Judicial Greffier set the matter down for hearing.

20 On 19th January, 1996, the Respondent filed a Statement of its case. The Statement was filed without prejudice to the Respondent's right to argue in the course of its submissions:-

25 (a) that the decision of the Respondent of which the Appellant complains is a refusal to grant outline or planning permission and is not a refusal to grant permission pursuant to Article 6 of the Island Planning (Jersey) Law (hereinafter called "the Law"). Article 21(1) of the said Law does not confer a right of appeal against a refusal of outline or planning permission and the appeal, which purports to be brought under the said Article 21(1), is therefore
30 misconceived and invalid.

35 As a result a summons was issued on 12th February, 1996, requesting the Court, inter alia, to rule upon the following question of Law:-

"whether Article 21(1) of the Law confers on an applicant for planning permission a right of appeal against the refusal of the Respondent to grant such permission."

40 The relevant Articles of the Island Planning (Jersey) Law, 1964 are:

45 "

Article 5.

(1) Subject to the provisions of this Law, the permission of the Committee shall be required in respect of the
50 development of any land.

Article 6.

5 (1) An application for permission to develop land under this Law shall be in the form required by the Committee and shall contain or be accompanied by such particulars as the Committee may require.

10 (2) 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."

15 In passing this refers to the permission sought by what one may call the "blue form".

" Article 21.

20 (1) 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."

25 Mr. Matthews for the Committee takes the point that the law confers a right of appeal only against, in this case, a refusal of development permission. The law provided for no appeal against refusal of planning or outline permission which was all that had been refused here.

30 In his submission the proper route here for the Applicant to follow was, assuming for this purpose that there were sufficient grounds, by way of judicial review.

35 It was, he conceded, clear that a practice had grown up which was not envisaged in the law. He cited Binet -v- I.D.C. (1987-88) JLR 514 at p. 518, 11.20-34:

40 "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.

45 The planning law envisaged only one stage, that is, an application to develop land, as set out in art. 6. In practice, however - and, we may say, very sensibly - a preceding stage has been added, namely that of a planning

5 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, envisaged by the Island Planning (Jersey) Law, 1964, as being the only stage, involves obtaining development permission which may of course be the subject of an application whether or not planning permission has been granted."

10 The mere fact that a practice had grown up of inviting what is in effect a preliminary application did not, he submitted, *ipso facto*, extend the right of appeal to such an application.

15 Mr. Le Sueur put the applicant's case in this way. The preliminary question assumes that outline planning permission is something distinct and separate from development permission. In the various cases put before the Court a permission had been granted and then withdrawn and thus they were not on all fours with the present case, where it had simply been refused.

20 Outline and development permission should be looked at as a whole, and, particularly in a case such as this, refusal of planning permission is effectively to be equated with a refusal of development permission; as he put it, if one is refused the other is certain to follow.

25 The Committee exercises the same discretion in both cases and the only discretion the Committee can properly exercise is that conferred by the law. Indeed, in terms, it is that law under which the Committee purports to found its refusal.

30 Thus an appeal should be possible at any stage, the intention of the law being clear. That the Committee - for reasons of public convenience - has altered the method of applications for permission should not therefore relieve the Committee of their obligation to be subject to an appeal.

35 Given the parameters, if the Committee is right, the only way to mount an appeal is by incurring totally unnecessary expense in order to be refused again and on the same grounds as a preliminary to an appeal.

40 He put it in this way: that the Committee will have exercised the same discretion in arriving at the same decision: an unnecessary and really improper - insofar as it causes totally useless expenditure - exercise of their duties under the law.

45 As a second and subsidiary point he referred to the blue form which appears to require the preliminary use of the green form, reading as it does: "this form is to be used for the purpose of obtaining development permission to carry out building works where outline planning approval has already been given..." The latter

form, that is the green form, fails to given any indication that an appeal will not lie thereunder.

5 Notwithstanding the cogency of this submission, the Court is unable to accept it.

10 The appeal is, in the view of the Court, applicable (in this instance), under the terms of the law to a development application and it is not for the Court to extend the ambit of the law beyond the parameters decided by the legislature. The mere fact that the Committee has, for public convenience, adopted a preliminary (though not essential) stage cannot in the view of the court thereby extend the right of appeal to that preliminary stage.

15 The application of the Committee is thereby granted and the Court orders:-

1. that the proposed notice of appeal be struck out; and
- 20 2. rescinds the order of the Judicial Greffier setting the appeal down for hearing.

25 The Court would however as a rider wish to remark that in Binet -v- Island Development Committee at 537 the Court stated:-

30 *"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."*

35 Despite that, nothing has yet appeared on the statute book, and the Court would urge the Committee to review the position which has remained, it appears, constant during the nearly eight years which have elapsed since that case was decided.

Authorities

Reynolds -v- Housing Committee (30th October, 1995) Jersey
Unreported.

Binet -v- I.D.C. (1987-88)JLR 514.

Barker -v- Ann Street Brewery & Ors. (4th October, 1993) Jersey
Unreported.

The Island Planning (Jersey) Law, 1964: Articles 5,6,21.