23rd September, 1982

HERRICK v. I.D.C.

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DEPUTY BAILIFF: There is a small old bunker type building at the bottom of Mont Pinel, St. Ouen. It was, so we were told, an old powder magazine where explosives were kept for use in a nearby quarry. It is used now by the appellant Miss Murial Herrick as her summer home. She calls it Le Vieux Mont Chalet. It has a small garden, some steps leading up from the garden to the building, water and electricity, sanitation, cooking, washing and sleeping facilities. It has no windows but some ventilation and is furnished and carpeted. She acquired it along with an adjacent property called Hillside in 1959. In 1972 she sold Hillside but retained the bunker. Up to the 1st April, 1965, which was the date on which the Island Planning (Jersey) Law, 1964, came into force, the bunker was used by Miss Herrick occasionally for sleeping by herself or allowing some overflow guests from Hillside to use it; and once two young workers did so. Some blankets and beds were stored there. She also used the grounds for picnicing and sun-bathing. It is fair to say therefore that before the coming into force of the Island Planning (Jersey) Law, 1964, on the date we have mentioned the 1st April, 1965, she had acquired an irregular and occasional use for the purposes we have described at and in the bunker. Since then the bunker has been decorated, plastered, proper sanitation installed and water and electricity laid on as we have already mentioned. It is now a small compact home. The Island Development Committe says that what Miss Herrick did after 1965 amounted to a material change of use and on the 23rd March, 1979, it served a notice on her ordering her to cease using the bunker for habitable use. Miss Herrick has appealed from that decision.

The issue first of all is this - has there been a material change of use. Since the legislation in Jersey is based to a large extent on similar legislation in the United Kingdom, it has been proper for this Court on previous appeals from decisions of the Island Development Committee to refer to English case law. Those cases show that where appeals of this nature are heard, in the English courts at least, the question of whether there has been a material change of use is a matter of fact and degree. Now just as in appeals properly so called from decisions of the Island Development Committee the test which the Royal Court applies is that of reasonableness and the Royal Court does not interfere with decisions of the Committee, subject of course to the proper procedure having been followed, unless the Committee made a

decision to which in all reasonableness it could not have come, so here, before the Court can interfere in the Committee's decision to serve a notice, it would have to be satisfied that the Committee's decision was one to which it could not reasonably have come. Mr. Falle says that the issue is one of the validity of the notice, but of course that validity in turn depends on whether the Committee properly considered that there had or had not been a material change of use. Looking at the correspondence which passed between Miss Herrick's then legal advisers and the Committee, we are satisfied that most of the facts canvassed by Mr. Falle on behalf of the appellant during this hearing were in fact before the Committee. It is clear from the correspondence also that the Committee visited the site and were of the opinion that, on the facts before it, the premises had not been used for habitation before the coming into force of the law. The Committee has a duty under the law to protect the green zone in particular from development. The bunker is in the green zone in that area. The Committee's decision to serve the notice was founded on a finding of fact. Before this Court can interfere with such a finding it must be satisfied that the Committee either took account of matters which it ought not to have taken account or omitted to take account of matters which it ought to have taken account. We find that the Committee did neither of these two things and, accordingly as its proceedings were in order it was entitled to serve the notice it did which was valid. That said, we have already found, as was indeed admitted by Mr. Whelan for the respondent Committee, that Miss Herrick, with whom we have I am bound to say some sympathy, had acquired before the coming into force of the Law a limited occasional use of the bunker for the purposes we have described, but it is impossible for us to define with precision what that occasional use was for it to have any precise meaning and be enforceable. We think, because of that difficulty, it would be proper to refer that particular aspect of this appeal back to the parties to see whether some arrangement cannot be arrived at, perhaps along the lines of the correspondence, when at one stage it appeared some compromise was possible. Because the Committee has succeeded in the main in this case, but the appellant has succeeded to a lesser extent in establishing a limited use, we think it right that the appellant should pay three-quarters of the Island Development Committee's costs.