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ROYAL COURT

11th July, 1990 100.

Before: The Bailiff, and
Jurats Le Boutillier and Herbert

Between:	**Dowell Limited**	Appellant
And:	**The Island Development Committee of the States of Jersey**	Respondent

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Two appeals (brought in accordance with the provisions of Article 21 of the Island Planning (Jersey) Law, 1964) against decisions of the Respondent Committee made in November, 1987, and June, 1988, respectively, whereby the appellant company was refused permission to develop two parcels of land in the Parish of Grouville.

Advocate S. Slater for the appellant,
Advocate C.E. Whelan for the respondent.

JUDGMENT

THE BAILIFF: The appellant company is the owner of two fields bordering the Rue des Côtils, Grouville. It bought the fields some time in 1963. The first is field 408 to the North of what was formerly the Woodlands Hotel and is now a large block of flats. The second, field 427 lies to

the South of those flats. Neither field is connected to the main drains, or to a surface water drain, although there is a foul sewer adjacent to field 427. Both fields are now in the green zone for planning purposes, under the Island Planning (Jersey) law, 1964, although they were formerly in the white zone at the time of the 1987 applications by the appellant company.

The appellant company did not enquire of the Island Development Committee before it bought the fields whether planning permission on the fields would be likely to be granted. Mr. W.R. Seddon, the beneficial owner of the appellant company, told us that he thought that because there had been a number of consents issued for building in the area at the time his company acquired the fields, it would obtain consent. He was mistaken because although between 1963 and 1987 a number of applications to build on the fields and two for access to field 427 were submitted to the Island Development Committee, all were refused.

The present appeal involves two sets of applications to develop both fields. The first set was submitted on the 26th August, 1987, for five houses on field 427 and three houses on field 408. The site plans which accompanied the applications were misleading. That for field 408 showed a foul sewer and a surface water sewer in the Rue des Côtils alongside the field. In fact there was no surface water sewer at all in the road and the foul sewer finished some 200 ft. to the North of field 408. That for field 427 showed a fresh water sewer which likewise was not there. Field 427 could have been connected to the foul sewer which was adjacent to it but stopped at or near the Woodlands flats. The same wrong information is to be found in the application forms themselves.

The applications were refused. The grounds for refusal dated the 10th November, 1987, were as follows. So far as field 408 is concerned: "1) The proposal would constitute development in the countryside detrimental to the amenities of the locality and contrary to the provisions of the development plan. 2) Inadequate provisions for drainage".

Insofar as concerns field 427 the refusal is as follows: "The proposal would involve an extension of development in a prominent location in the countryside detrimental to the amenities of the locality and contrary to the provisions of the development plan".

There is a slight variation between the two refusals, one because there is an additional refusal in respect of the drainage covering field 408 and secondly the word "prominent" occurs in the refusal in respect of field 427. But the main reasons in respect of the refusal for each field concerns development in the countryside contrary to the provisions of the development plan about which I shall have more to say in a moment.

The appellant company, having received those refusals later submitted two further sets of applications in June, 1988. This time the applications were for one house on each field. The same mistakes on the plans and the application forms were repeated and, as I have already said, at that time the fields were in the green zone for planning purposes.

Again the applications were refused. The grounds of those refusals are as follows. In respect of field 427: "The proposal is contrary to the approved Island Plan policy for the green zone in which zone there is a presumption against all forms of development for whatever purpose".

In respect of field 408 the first reason was in identical terms and the second reason was as follows: "2) The Resources Recovery Board have informed the Island Development Committee that there is no foul sewer in this part of Rue des Côtils. Unless the sewer is extended then the development would need to be served by septic tank and soakaway or similar installation which would be contrary to policy SE4 of the approved Island plan". This document states that there is a presumption against any new development which relies (it says here "lies" but it must be "relies") on private drainage facilities.

The appellant company appeals against all four refusals on the grounds that the decision of the Committee in both cases was

unreasonable having regard to all the circumstances of the case and the level of development that was permitted by the Committee on other sites in the vicinity. Those were the same grounds of appeal in respect of both sets of applications.

It will be noted that the secondary reason which I have already mentioned in respect of field 408 refers to drainage and it only relates to that field. We do not think it necessary to go into the matter of drainage because if we allow the appeal under the first head against the non-drainage reasons the appeal against the drainage reasons falls away. If on the other hand we refuse the appeal on the first head as regards field 408 then even if the decision on drainage grounds was thought to be unreasonable then that in itself would not justify our allowing this appeal on those grounds alone. See Guillard -v- The Island Development Committee (1967-69) JJ 1225.

Moreover Mr. Smith the assistant director of the Island Development Committee said that the applications for field 408 would not have been approved even if the appellant company had submitted satisfactory drainage proposals. We therefore confine ourselves to the first head of the appeal against the main grounds for refusing the applications.

In 1987 at the time of the first application under appeal, the guidelines for white land had been set out in a number of papers laid before the States and had been in force since at least 1974. They were repeated in a policy document of the Committee of the 29th September, 1981. I cite from the relevant passages as regards the white zone policies. Firstly on page 20 of the annex attached to the paper laid before the States on that day (29th September, 1981) under Annex B(b): "The most frequent form of application on white land is for a building or buildings which although adjacent to existing individual dwellings or groups nevertheless in the Committee's view primarily involves the extension of building into the countryside. The Committee's policy is that approval should be given only where a building conforms in character with and can be regarded as forming part of an existing group of buildings when viewed from any angle. However, even in those cases account must be taken of whether it is desirable that the existing

group be added to in regard to public health, amenities, density and appearance".

On page 21 we find the following: "Existing small groups of buildings within white land areas: Proposals which constitute ribbon development or an extension of building development into the countryside will not be permitted. Proposals which constitute infilling or the completion of a group will be considered on their merits and will usually be permitted where other planning and public health factors are also favourable". Further on there is mention of farm buildings to which I shall return in a moment.

On the 3rd November, 1987, the States approved an Island map which showed the two fields as we have already said to be situate in the green zone. There was an considerable extension of the green zone at that time and a change of policy as regards building in the green zone inasmuch as the restrictions on building in the green zone were considerably tightened and in the policy document which accompanied the map and which is accepted by the States at the time the new Island plan was adopted we find the following sentence: "In the green zone there will be a presumption against all forms of new development for whatever purpose". It is clear therefore that so far as the appeal in respect of the 1988 refusals is concerned that there is an absolute bar to building according to the green zone requirements.

Mr. Slater for the appellant company said that if it succeeded on the appeals against the 1987 refusals or decisions, it would not proceed with the remaining two appeals in respect of the 1988 refusals.

Before turning to Mr. Slater's submissions we think it necessary to set out the dates of development permissions which were granted for a number of properties within or near the area of La Rue des Côtils and in particular of course fields 408 and 427. The first one was "La Cachette" which is a prominent white building to the North of field 408 some two or three houses away and it must be said it is extremely prominent and according to Mr. Smith it was one of the applications that should not have been granted. Nevertheless it is not for us to speculate whether an application should or should not have been granted

by a Committee, one must take the view in this Court that all applications are properly received unless they are under appeal of course and that decisions made by the Committee are made properly and in accordance with the requirements of the law.

Nevertheless, as I have said, we have looked at that property and it may be said that it is very prominent, but it is some way away from field 408. Development permission for that building was given on the 23rd February, 1981.

The second property is that of the Woodlands flats themselves and final permission for the erection of those flats was given on the 19th May, 1987. It was of course an application originally to replace a hotel which had been burned down, therefore being a replacement it was the normal policy so we were told by Mr. Smith that the Committee would permit replacement of buildings. Whether there is a larger amount that has now been permitted there than what was there previously is a matter for some speculation and is not something with which we need concern ourselves. As I say that consent for the erection of those flats was given in May, 1987.

The third development to which Mr. Slater has drawn our attention of some relevance is that of field 485. This is or was an open field in the sense that it had no building on it near the Fauvic crossroads some two or three hundred yards to the South of field 427 and surrounded at least on two sides by existing buildings. Permission to develop that field was given on the 22nd July, 1986. Lastly, another property for which permission had been given, not development permission but at least planning permission before the 1987 applications were submitted by the appellant company was the property, Woodlands Farm on the other side, that is to say the East side of the Rue des Côtils opposite Woodlands flats themselves. That property was granted planning permission on the 21st July, 1987, and development permission on the 20th June, 1988. It is therefore fair to say that all these four properties had been considered with the applications in respect of what was going to be put on them before the Island Development Committee applied its mind to the 1987 applications by the appellant company and rejected them in November of that year.

There was a further development which was said to be relevant and that was of "Les Fonds" which was pointed out to us on the site and which consisted of a replacement or refurbishment of existing or dilapidated farm buildings to the North East of the fields adjacent to Woodlands Farm in a North Easterly direction but something like half a mile away. We think this site to be too far away to have much significance. And so far as the development on field 485 is concerned, we think the same considerations of distance applies and in any case as I have said this development could be said to be consistent with the white land policy, although it is fair to say as Mr. Slater pointed out and Mr. Smith seemed to confirm the Committee seemed to have adopted a very flexible interpretation of its guidelines for this site. Nevertheless it is part and can be said to be part of an existing group of buildings forming a unit and close to developed properties adjacent to Fauvic crossroads.

Mr. Slater had no quarrel with the white land guidelines, but he submitted that those guidelines had to be interpreted in accordance with the law. We have looked very carefully at the law and have come to the conclusion that those guidelines are not in any way inconsistent with the requirements of the law.

Mr. Slater also submitted that because between 1981 and 1987 a number of developments, some of which we have listed had been permitted and notably those of the Woodlands flats and "La Cachette", that meant therefore that the area had been transformed from being one consisting of mainly countryside into at least a semi-urban one.

Having visited the site it is clear to us that that is not entirely so. And even if we include the escarpment to the West of the Rue des Côtils in isolation which we think would be inconsistent if we are to look at all the developments mentioned by Mr. Slater, of which only three, "La Cachette", Woodlands Farm, and Woodlands itself are in the immediate vicinity, we do not think that - even adding those in and taking into account the two or three other houses to the North of field 408 between it and "La Cachette" and of course some buildings further along La Rue des Côtils to the East - it can be said at this stage at

any rate that it would be fair to describe it as a built-up area. Whether it may be approaching it at a later time is not for us to say.

That being so, is there substance in Mr. Slater's submission that because the Island Development Committee has allowed the development of Woodlands, "La Cachette" and Woodlands Farm before the 1987 applications of the appellant company its refusal to allow five houses on field 427 and three houses on field 408, was unreasonable?

Unfortunately for Mr. Slater the Guillard case does not support that submission. Woodlands as I have said was a replacement, although as I also said it appears to have been replaced on a somewhat larger scale. It may well have spoilt the Grouville Bay area by the impact it makes overall, but to compound that error, if it was an error, and it is not for us to express any view on this point, would in our view be absurd. And the same may be said to a minor extent of "La Cachette". Woodlands Farm of course is in a category of its own having been built on agricultural land and as I said there is a special section in the policy document of 1974 put before the States again in 1981 referring to farm buildings on white land. And the two relevant passages are these:

"Essential new farm buildings.

Because of the size of the buildings and the desire of the farmer or grower to build as economically as possible this type of development has had a particularly great effect on the countryside. Siting is of paramount importance in these cases and the Committee will take care to see that the buildings are well designed and finished however inexpensive they are to construct. The use of planting to reduce the apparent bulk of buildings, break outlines and to screen will be required in appropriate circumstances". That really covers the farm building arrangements.

There is an additional part under "Essential new dwellings". This was dealing with new farm buildings. Under "new dwellings" the paper has this to say: "In white land areas the applicant must satisfy the

Committee that any new dwelling which cannot fulfil the requirements of infilling or completion of a group" (and clearly Woodlands Farm cannot do that) "is essential to the economic running of a farm holding. Wherever the opportunities exist for extending an existing building rather than creating a new one they will be thoroughly explored. In all cases aspects of siting and design will be given careful consideration".

It is fair to add that after carefully studying the plans drawn by the appellant company's architect for the use of the Court, when we visited the site we noted that an extension was being undertaken to a building not far from field 427 on the other side of the road, but that was not passed as far as we can tell - and no evidence has been given to us to suggest to the contrary - before the applications were refused but we have no evidence as I say on that point. Mr. Smith did tell us that there was an application and it was for the raising of a roof in that building and we observed that.

Mr. Slater also criticised the Committee which he is entitled to do for not visiting the site, but again the Committee is not required to do so. Once more our authority for saying that is the Guillard case. We are satisfied that the Committee had before it all the relevant information which it needed to consider the 1987 application.

Looking at the plans submitted to the Committee and having been invited by the parties to look at the site from the East down one of the side roads and from the coast road itself, it is clear to us that the Committee would have been entitled, as eventually it did to take the view that the addition of five houses on what is clearly a prominent site, field 427, and three houses on a not so prominent site, but nevertheless a wooded site which would inevitably (in spite of the protestations to the contrary by the appellant company) have meant the removal of a number of trees, would have a detrimental effect on the amenities of the locality. It would increase the amount of building in that area and would indeed, if the five buildings had been allowed on field 427, have become as Mr. Smith pointed out a form of ribbon development which is not encouraged in the new plans.

Therefore we have come to the conclusion so far as the applications of 1987 are concerned that the Committee was justified in its refusals and therefore the appeals are dismissed in respect of the applications of 1987.

Turning to the 1988 application, we think that the burden is on the appellants to show that they had grounds in 1988 which the Island Development Committee could support in asking the States to rezone the fields for building. We can take judicial knowledge of the fact that the practice has been as required by the States that when the Committee is minded to rezone green zone land for building it takes that application to the States. A recent example is that of some land at Mont au Prêtre which received a good deal of publicity. In our opinion there has not been sufficient evidence adduced to us to satisfy us that that burden has been discharged by the appellants and to replace the presumption which I have referred to that there would be no new buildings in the green zone at all. Therefore in our opinion again we must dismiss the appeal in respect of the 1988 applications.

Your client company as I have said did not enquire from the Committee before it bought the land whether it would be likely to get consent; it speculated. Secondly it was never encouraged during the whole of the time it owned the land, although Mr. Seddon suggested that he had had one or two conversations, but it was never pursued. Certainly it was not to the knowledge of Mr. Smith that your client company had been encouraged to believe that it would get consent. I think under the circumstances, following our ruling, I can see no reason to disturb the usual rule that costs follow the event and the Committee will have its taxed costs.

Authorities referred to:

Le Masurier -v- Natural Beauties Committee (1957) 251 Ex. 43.

Wightman -v- Island Development Committee (1963) 254 Ex. 449.

Rabet -v- Island Development Committee (1966) JJ 697.

Taylor -v- Island Development Committee (1969) JJ 1267.

Breen -v- Amalgamated Engineering Union (1970) 2 All ER 179.

Secretary of State for Education and Science -v- Metropolitan Borough of Tameside (1976) 3 All ER 665.

Le Maistre -v- Island Development Committee (1980) JJ 1.

Phantesie Investments Limited -v- Housing Committee (30th May, 1984) Jersey Unreported.

Blackall and Danby Ltd -v- Island Development Committee (1967-69) JJ 273.

Guillard -v- The Island Development Committee (1967-69) JJ 1225.