

ROYAL COURT
(Samedi Division)

193.

14th October, 1997

Before: Advocate B. I. Le Marquand, Greffier Substitute

Between:	John Arthur Burnett Bower	Appellant
And:	The Planning & Environment Committee of the States of Jersey	Respondent

Application by the Respondent for an Order for discovery relating to various issues in the appeal. Application by the Appellant for an Order for mutual general discovery relating to any matter in question in the Appeal or alternatively for discovery relating to additional issues in the appeal.

The Appellant in person.
Advocate N.M. Santos-Costa for the Respondent.

JUDGMENT

GREFFIER SUBSTITUTE: This administrative appeal relates to an enforcement notice which was served on the Appellant by the Respondent relating to the Appellant's property known as Les Buttes, St. Mary.

5 On 6th June, 1997, on the application of the Respondent, I set the appeal down for hearing. Prior to 1997, it had been my practice when setting down an administrative appeal to make an Order that the parties do, within twenty-eight days from the date of the Order, furnish each other with a list, verified by affidavit, of the documents which are or have been in their possession, custody or power relating to any matter in question in the appeal. However, towards the end of 1996 I realised that it was not the practice in England to make such a general Order for discovery in relation to an administrative appeal or an application for judicial review. Accordingly, on 10th June, 1997, I wrote to Advocate Santos-Costa indicating that I had not made a general Order in relation to discovery of documents as I was of the opinion that, at most, a limited discovery Order ought to be made in relation to such proceedings. I invited him to seek to agree with Mr. Bower the ambit of discovery by reference to specific issues in the proceedings and indicated that if he were unable so to do then he would need to issue an interlocutory Summons before me seeking an Order of discovery limited to defined issues.

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Following a letter from Advocate Santos-Costa dated 20th June, 1997, in which he indicated that he was puzzled as to why a general Order for discovery should not be made in these particular proceedings, I wrote again to Advocate Santos-Costa on 26th June, 1997.

The third paragraph of that letter read as follows:-

"However, a combination of the decision of the Deputy Bailiff in the Mayo v. F&E Committee case, which was an example of judicial review, and discussions with an English expert on judicial review and on appeals against decisions of public bodies, has brought me to the conclusion that it is not appropriate in the case of an administrative appeal to simply make an Order for mutual general discovery. Such an Order would never be made in England in relation to a similar matter. The problem with administrative appeals is that, unlike normal actions, there are not always clearly defined issues between the parties."

On 24th July, 1997, a date was fixed for 29th August, 1997, for the hearing of an application by the Respondent for an Order under Rule 6/16 of the Royal Court Rules, 1992, as amended, ordering by consent the disclosure of documents verified by Affidavit for inspection to follow within seven days thereof; such Order to be limited to the issues as set out in the Schedule attached to the Summons.

At the hearing on 29th August, 1997, I granted the application made by the Respondent in full. However, the Appellant requested that I make an Order for general mutual discovery or alternatively, that I add additional categories to the Schedule mentioned in the Summons. I widened slightly the ambit of the Schedule attached to the Summons in relation to items 2, 3 and 5 and added an additional item 6 on the Schedule attached to the Order dated 29th August, 1997. However, on 26th September, 1997 this Department received a letter from Mr. Bower dated 22nd September, 1997, to which was attached a Notice of Appeal dated 19th September, 1997. That Notice of Appeal includes at paragraphs 3, 4 and 5 applications to the Royal Court for additional Orders which were not requested at the hearing before me on 29th August, 1997. However, the first paragraph of the Summons seeks to set aside the decision made by me on 29th August, 1997, and the second paragraph seeks an Order for full disclosure of all the Respondent Committee's and Department's records on the property Les Buttes, St. Mary, and personal files and data.

In so far as this this may be an appeal against my refusal to make a general Order for mutual discovery, my reasons for that decision were as follows:-

(1) this is an administrative appeal and, in my view, it is not in general appropriate that such an Order be made in relation to such an appeal. The main reason for this is that the documents filed on behalf of both parties are not pleadings in the normal sense of the word. The first document which is filed is a Notice of Appeal. This is followed by the Committee's Statement in which they set out the nature of the decision which was made and the reasons for the making of that decision. There then follows the Appellant's Case which, in accordance with Rule 12/3(3), consists of the contentions to be urged by the Appellant in support of his appeal. The final document filed is the Committee's Case, which in accordance with Rule 12/3(5), consists of the contentions to be urged by the Committee at the hearing of the appeal. Accordingly, most of the documents which are filed consist of contentions rather than statements of fact. Indeed, in an administrative appeal there may not be any dispute as to fact at all. In principle, an Order for discovery ought to be confined to a situation where such an Order is necessary for disposing of the appeal fairly. Although the quotation to which I will now refer was not before me at the hearing I am including it both by way of assistance to the Court and because it explains the reasons for the English practice. In the case of the Representation of Idocare Properties Limited (26th September, 1997) Jersey Unreported, I included a quotation from page 255 of Lewis: "Judicial Remedies in Public Law" which reads as follows:-

30 *"Test for ordering discovery*

The governing principle in ordinary writ actions is that the court should not make an order for discovery "... unless the Court is of the opinion that the order is necessary for disposing fairly of the cause or matter or for saving costs." The same test applies, in principle, in judicial review proceedings, so that discovery should be ordered whenever and to the extent that it is necessary in order to dispose fairly of a particular case or for saving costs. The courts have, however, pointed out that, as the nature of judicial review proceedings is different from ordinary litigation, discovery in practice is likely to be ordered in far fewer cases and will be more circumscribed in its extent than would be the case in ordinary private litigation. The court in judicial review proceedings is not usually concerned with making findings of fact. The court is largely performing a supervisory role. Facts will often be agreed or appear in documentary form and it will be the legal consequences attaching to those facts that is in issue. There are occasions when questions of jurisdictional fact arise and these are matters which the courts must determine. There

are also occasions when further information about a decision-making process is required and this may necessitate discovery. It may, for example, be necessary to know what considerations a decision-maker took into account or what procedure he actually followed in reaching a decision."

Although that quotation applies to judicial review, it seems to me that precisely the same principles apply in relation to an administrative appeal. Accordingly, an Order for general mutual discovery cannot ever be appropriate in relation to such an appeal.

- (2) In this particular case, the Appellant's case runs to more than five pages and contains many and varied allegations. The Committee's case in response, runs to more than twenty-two pages. In my view, even if there are cases in which an Order for general mutual discovery would be appropriate, and I have already taken the opposite view, it would not be appropriate in this case.

The second paragraph of the appeal notice dated 19th September, 1997, seeks an Order for full disclosure of all the Respondent Committee's and Department's records on the property Les Buttes, St. Mary and personal files and data. In the Schedule to the Order dated 29th August, 1997, I have set out all the categories of document in relation to which I considered that it was appropriate to make an Order for discovery. Upon reading my notes of the hearing on 29th August, 1997, it appears to me that the only category of documents which was requested by Mr. Bower which I refused, was a category which I have described in my notes as "documents between lawyers of Mr. Bower's father, and the I.D.C. in relation to the property known as Les Buttes and adjacent land from 1974 onwards." Mr. Bower indicated that his late father had been threatened with compulsory purchase and that there had also been disagreements with the I.D.C. in relation to the closing down of a piggery. He indicated that there were also matters relating to the remise des biens of his late father. In his view, the predecessor of the Respondent had consistently showed a bias against the Bower family. In my view, these matters are not matters in issue between the parties in relation to this appeal because they are not pleaded and even if pleaded would be of doubtful relevance and an Order for discovery in relation to these matters is not necessary for disposing fairly of the appeal or for saving costs and, accordingly, I refused this application. The Order set out in paragraph 2 of the Summons dated 19th September, 1997, was never presented to me in that form and the only justification for additional documents which was presented to me was that which I have set out above.

Authorities

Royal Court Rules (1992) as amended Rule 6/16.

Representation of Idocare Properties Limited (26th September,
1997) Jersey Unreported.