

COURT OF APPEAL.

12.

17th January, 1996n

Before: Sir Godfray Le Quesne, Q.C., (President),  
Sir Louis Blom-Cooper, Q.C., and  
Lord Carlisle, Q.C.

Between:	Basil Fraser Burt and Helen Isobel Burt	Appellants
<hr/>		
And:	The States of Jersey	Respondent

Appeal against Judgment of the Royal Court (Samedi Division) of 14th December, 1994, upholding the lawfulness of the Respondent's decision of 20th August, 1991, to purchase the Appellant's property by compulsory purchase.

Advocate G. R. Boxall for Appellants.  
The Solicitor General for the Respondent.

JUDGMENT.

5 THE PRESIDENT: This appeal concerns a house known as "Kent Lodge", 21 Clarendon Road. It belonged for some years to a Mr. Roy Filleul Burt. He had to move into a nursing home in 1974, by which time he had already allowed the house to run into very poor condition. When he died in 1981 the house had stood empty since 1974 and naturally its condition had become considerably worse.

10 Under his will the property passed to a nephew and niece in the United States, who are the appellants now before us. Having inherited the property, they did nothing with it and allowed the process of deterioration to go on. The consequence was that the house became seriously dilapidated, the garden a wilderness, and there was much adverse comment from the public and complaints from neighbours.

It appears that the appellants obtained plans from an architect for development of the property in 1985, but nothing was done because they had no money with which to proceed. They then formed another plan involving another property which they had inherited from their uncle, Mr. Burt. This was No. 26 New Street. The new plan was for the construction of new commercial premises with some flats on the New Street site, to be carried out jointly by the appellants and the developer. The appellants intended, with the funds which they derived from this, to develop Clarendon Road. This plan had to be abandoned because the States imposed a moratorium on the development of commercial premises in St. Helier, and therefore made impossible the plans which had been formed for 26 New Street.

When this application was turned down, the appellants applied for permission to demolish "Kent Lodge" and use the site as a car park. This application was refused by the Island Development Committee because they were not prepared to give permission for demolition unless there was in existence an approved scheme for a new building.

The Housing Committee had been interested in "Kent Lodge" while these events were taking place and had been in correspondence with Messrs. Bailhache and Bailhache, the lawyers acting for the appellants. As no definite scheme for redevelopment resulted from this correspondence, the Housing Committee resolved, on 16th February, 1990, to ask the States for authority to acquire "Kent Lodge" by compulsory purchase.

Messrs. Bailhache and Bailhache, when informed of this, protested and said that their clients were actively considering development of the site and had indeed obtained plans for that purpose. On hearing this the Housing Committee relented. They said they would not for the present put their proposition for compulsory purchase before the States, but they reserved their right, if after six months there was little evidence of development, to put the matter before the States then. This they conveyed to Messrs. Bailhache and Bailhache by a letter of 24th April, 1990.

Matters seemed to have remained in this state for some months until, on 22nd January, 1991, the Housing Committee wrote to the appellants' lawyers again to ask what the appellants were doing. The answer, sent on 25th January, 1991, was that they had instructed architects to prepare an application for the demolition of the house with a view to its future development. On 5th February, the Housing Committee asked whether the appellants envisaged any time scale for this development, and the answer which they were given was in these terms:

*"There is no time scale presently envisaged. The viability of the development depends to a very great*

extent on the outcome of present negotiations with the Housing Committee and the Finance and Economics Committee relating to 26 New Street, a property also owned by my clients".

5

By 12th April, 1991, the proposition adopted by the Housing Committee in the previous year for compulsory purchase which had been lodged au Greffe, had expired automatically because of the passage of twelve months after its lodging. On this date, therefore, 12th April, 1991, the Housing Committee resolved that a new report and proposition for compulsory purchase should be prepared. The new report and proposition were approved by the Committee on 26th April and they ordered that the new proposition should be lodged.

15

After this further discussion continued with the representatives of the appellants and on 15th August, when the debate upon the Housing Committee's proposition was approaching, an officer of the Committee spoke to the appellants' architects and asked them what was the likely date for the carrying out of development by the appellants. The answer which he was given was that no date could be given for the commencement of any scheme because of the state of the housing market and the price of borrowing.

25

On 20th August, 1991, the Committee's proposition came before the States and, as we shall see in a moment, was approved.

The law under which the Committee was seeking the authority for compulsory purchase was the Housing (Jersey) Law, 1949. I read Articles 3 and 4 of the Law:

30

"Article 3.

35

*Responsible Committee.*

*The Committee (that is the Housing Committee) shall be charged with the administration of this part of this law.*

40

Article 4.

*Power to acquire land by compulsory purchase.*

45

*1) Where it appears to the States that any land should be acquired to provide for the housing of the inhabitants of the Island it shall be lawful for the States to acquire such land by compulsory purchase on behalf of the public in accordance with the provisions of the Compulsory Purchase of Land Procedure (Jersey) Law, 1948. (The reference to that Law has subsequently been replaced by a reference to a compulsory purchase law of 1961.)*

50

2) *In the exercise of their powers under this Article the States shall have regard to the suitability of the land for agricultural purposes".*

5 It will be seen that Article 4 creates an executive  
discretion and provides that it is to be exercisable only in  
circumstances defined by the opening words of Article 4: "*Where it*  
10 *appears to the States that any land should be acquired to provide*  
*for the housing of the inhabitants of the Island"*. When that  
condition is fulfilled the discretion is exercisable. The  
discretion is conferred, not as would be more usual on a  
Committee, but on the States itself. It follows that when  
15 considering whether to exercise that discretion the States are  
acting in an administrative capacity and not in a legislative  
capacity.

When the question arises as to the extent to which such a  
decision of the States is reviewable by the Court it is important  
20 that that question be answered with full recognition that this is  
the position, that is to say, that the decision was reached by the  
States acting in an administrative capacity and not in a  
legislative capacity.

25 The proposition which was put before the States was in the  
following terms so far as necessary for present purposes:

*"The States are asked to decide whether they are of the  
opinion -*

30 *a) to agree to purchase on behalf of the public from Mr.  
Basil Fraser Burt and Miss Helen Isobel Burt jointly the  
property known as "Kent Lodge", 21 Clarendon Road, St.  
Helier, at a fair and proper price to be agreed by the  
Finance and Economics Committee;*

35 *b) to agree that in the event of it not being possible to  
reach agreement on a fair and proper purchase price, the  
Housing Committee be empowered to acquire the land by  
40 compulsory purchase on behalf of the public of the Island  
in accordance with the provisions of the Compulsory  
Purchase of Land Procedure (Jersey) Law, 1961"*.

45 This proposition, as I have said, was put before the States,  
together with a report from the Housing Committee. That report  
read as follows:

50 *"The property, "Kent Lodge", 21 Clarendon Road, has lain  
derelict for many years and as a result has attracted  
considerable public attention. The owners live abroad and  
have made little effort to carry out any maintenance to  
the property, nor to pursue expressed intentions to  
redevelop the site. The site measures about .192 of an*

acre and a feasibility study has indicated that redevelopment could yield up to six two-bedroomed flats.

5 In view of the grave shortage of suitable sites for housing development it is clearly unacceptable to continue to allow this site to remain derelict.

10 The Housing Department has written many letters to Messrs. Bailhache and Bailhache who act for the owners, Mr. B. Burt and Miss H. Burt and although in recent replies an intention to develop the site has been expressed, no firm timetable has been given. The owners through their lawyers have stated they do not wish to sell.

15 An independent assessor valued the site in November, 1989, at £135,000, but as the owners have shown no wish to negotiate, the Housing Committee seeks the approval of the States to acquire the property by compulsion if necessary".

20 At the end of the debate of 20th November, 1991, the proposition was carried by a large majority.

25 Further discussion followed with the appellants and yet further opportunity was given to them to show plans for an immediate redevelopment of the site, but this led to nothing.

30 On 21st August, 1992, the appellants issued an Order of Justice against the States, seeking to restrain them from acting in pursuance of the decision to acquire the property compulsorily. I refer to two paragraphs of the Order of Justice in order to show the ground upon which the case was put:

35 "Paragraph 12

The powers conferred by Article 4 of the Housing (Jersey) Law, 1949, may only be exercised for the purpose of providing for the housing of the inhabitants of the Island and the exercise of the powers for any other purpose, reason or motive, based upon any other consideration, is ultra vires the defendant and unlawful and such exercise may be subject to judicial review by the Royal Court of the Island of Jersey.

45 Paragraph 13.

50 The plaintiffs aver that the primary motive of the Housing Committee in lodging the proposition aforesaid was the avoidance of embarrassment to the said Committee due to the condition of the property and that this consideration, together with other irrelevant considerations influenced the defendant in the taking of the said decision. The

5        *plaintiffs further aver that notwithstanding the terms of the proposition put to the defendant by the Housing Committee, the substance of the debate of the defendant on 20th August, 1991, indicates that its decision was taken by reason of the dilapidated condition of the property and the failure of the plaintiffs to abate the same and not by reason of any need to provide housing for the inhabitants of the Island".*

10        The injunction which was imposed by the signing of the Order of Justice restrained the States from implementing the decision on compulsory purchase and has remained in force ever since.

15        The action came before the Royal Court in November, 1993. On that occasion a question arose whether evidence of what was said at the debate in the States was admissible and the Royal Court adjourned the trial in order to allow an appeal on this point to be brought to this Court. This Court decided that such evidence was admissible and returned the case to the Royal Court for  
20        continuation of the trial. It was continued in October and November, 1994, and judgment was given on 14th December, 1994.

25        The Royal Court decided in that judgment, to put matters shortly, that the States was not sitting as a legislative body when it made the challenged decision, but as an executive or administrative body exercising statutory powers. Secondly, the Court could interfere if the States had misconstrued the statutory powers, or used them for purposes outside their proper ambit; but, thirdly, no such ground for interference had been shown and  
30        consequently the action should be dismissed.

35        Before coming to the grounds which were urged upon us by Mr. Boxall on behalf of the appellants I refer to the arguments which were put by the Solicitor General. She conceded that an administrative decision of the States is reviewable by the Court if bad on its face, but not otherwise. She also contended that the Royal Court had been wrong to equate the States for these purposes with an administrative body and wrong also to enter upon an inquiry into the motivation of the States. I shall return  
40        later in this judgment to these arguments.

45        In order to see whether the States acted within the Law, the first inquiry must be: what exactly was it that the States did? The answer to this is clear. They adopted the proposition before them. They agreed, that is to say, that in the event of it not being possible to reach agreement on a fair and proper purchase price, the Housing Committee be empowered to acquire the land by compulsory purchase on behalf of the public of the Island in accordance with the provisions of the Compulsory Purchase of Land  
50        Procedure (Jersey) Law, 1961.

This was not merely an agreement that the property should be compulsorily purchased. It was an agreement that it should be compulsorily purchased by the Housing Committee on behalf of the public. The only purpose for which the Housing Committee could acquire land was for the provision of housing for the public. It was not suggested to us that compulsory acquisition by the Housing Committee could have been for any other purpose.

The decision of the States that the house should be compulsorily purchased by the Housing Committee was, therefore, a decision that it should be compulsorily purchased for the provision of housing for the public. In other words, the States must have been of the opinion that the acquisition of the house for the provision of housing was something which should be done. If this is right it is clear that the condition in Article 4 was satisfied, the States acted within the Law and what they did was *intra vires*.

Mr. Boxall, however, submitted that the transcript of the debate showed that the States were motivated not so much by any desire to acquire the house for housing purposes but by a desire to acquire a derelict property in a residential district because it was an eyesore and was becoming a nuisance.

This submission clearly provides wide scope for argument, first upon the question whether motivation and purpose are the same thing, and, secondly, on the question whether if the States said by a vote that it appeared to them that land should be acquired for a particular purpose it was open to the Court to investigate the motive which led them to do so.

I do not consider it is necessary to consider these questions because it is, in my judgment, perfectly clear that the ground upon which Mr. Boxall bases his argument is untenable. He submitted that the mind of the States could be discerned from the speeches of the six or seven members who spoke in the debate and emphasised their concern about the nuisance and annoyance which the house was constituting. What is in question here is: what was the collective mind of the States upon the proposition put before them? The collective mind of the States can be shown in one way only: that is, by a vote. It was so shown on 20th August, 1991. When an assembly of about 50 members has shown what is its collective mind by a vote, that cannot be contradicted by reference to the views of six or seven individual members who spoke in the debate.

This view is supported by authority. I refer to the case of R. -v- London County Council ex parte London & Provincial Electric Theatres Ltd (1915) 2 K.B. 466. That was a case in which a decision of the LCC was being impugned, and the attack was based partly on things which had been said by members of the Council in the course of the debate which led to the decision.

In his judgment in the Court of Appeal, Pickford, L.J. (as he then was, later Lord Sterndale, M.R.) said this (I quote from the bottom of p.490):

5  
10  
15  
*"I see no evidence that the Council acted upon any but a perfectly proper ground. With regard to the speeches of the members which have been referred to, I should imagine that probably hardly any decision of a body like the London County Council dealing with these matters could stand if every statement which a member made in debate were to be taken as a ground of the decision. I should think that there are probably few debates in which some one does not suggest as a ground for decision something which is not a proper ground; and to say that, because somebody in debate has put forward an improper ground, the decision ought to be set aside as being founded on that particular ground is wrong".*

20  
25  
I pass to another submission made by Mr. Boxall. At the outset of his argument he disclaimed any intention to rely upon what are now generally known as "Wednesbury Principles". By the time he had completed his argument, however, it was clear that he was arguing both that there was no material before the States upon which the States could reasonably have reached the decision they did and also that there was relevant material which ought to have been put before them but was not.

30  
35  
40  
As regards the first point that there was no material before the States upon which they could reasonably have reached the decision they did, it is sufficient to look at the report of the Housing Committee on which the States acted. I have already quoted it in full. In that report the Committee said, first, that this house had long been derelict; secondly, that there was a grave shortage of sites suitable for housing development; and, thirdly, that the owners had not carried out expressed intentions to develop the site and were still offering no firm timetable for doing so. In my judgment the States was perfectly justified in accepting this report, and in accepting it as material which led to the conclusion that the property ought to be acquired for the provision of housing.

45  
It is noteworthy indeed that every speaker who took part in the debate accepted that the property must be used for housing. The only question which divided them was whether the proposition should be accepted at once or whether, before resort was taken to compulsory purchase, the owners should be given yet another opportunity to carry out development themselves.

50  
Mr. Boxall's submission that relevant material was not put before the States was based on evidence, which was indeed given at the trial, that the Committee had before them, in the summer of



1991, predictions that the housing position would be much improved by the year 1995. Knowledge of these predictions, Mr. Boxall says, might well have affected the minds of members of the States in voting upon the proposition. It does not appear to me that a prediction of improvement by 1995 could reasonably form any ground for not taking action to meet the need existing in 1991. Furthermore, it is impossible to judge the significance of the predictions without knowing the assumptions on which they were based. These assumptions may very possibly have included the maintenance by the Housing Committee meanwhile of its existing policy and practice.

Mr. Boxall also submitted that concern about what I have called the nuisance and annoyance constituted by the property was not a consideration relevant to the question which the States had to decide. This view, in my judgment, is wrong. When there is a question whether a house should be acquired for housing purposes its condition, in my judgment, is clearly a relevant consideration. When the house is derelict and constituting a nuisance, it is further, in my judgment, a relevant consideration that restoring the property to its proper use as housing will put an end to the nuisance arising from its neglect.

For these reasons, in my judgment, the appeal must be dismissed. Before concluding, however, I add some more general observations upon the handling of disputes of this kind.

The Order of Justice challenging the States' decision of 20th August, 1991, was issued on 21st August, 1992. On 12th February, 1993, following the filing of pleadings, the action was set down for hearing. The action was heard by Mr. Commissioner Hamon, as he then was, and the Jurats on 22nd, 23rd and 30th November, 1993, when it was adjourned for the purpose which I mentioned earlier of settling whether evidence of what was said in the States was admissible. On 14th July, 1994, this Court decided that question, held that the evidence was admissible and remitted the case to the Royal Court for further hearing.

On 17th and 18th October and 7th and 8th November, 1994, the case came before the Royal Court again. The Court heard, among other evidence, that of Mr. Michael John Pinel, the Chief Executive Officer of the Housing Committee, dealing with the events of the late 1980's which led to the report of the Housing Committee being placed before the States for the debate of 20th August, 1991. The judgment of the Royal Court dismissing the action was given on 14th December, 1994. On 31st March, 1995, Sir Peter Crill, acting as a Single Judge of this Court, granted the appellants' application for an order restraining the respondents from implementing the decision of 20th August, 1991, pending appeal.

Thus, for 4½ years, while the States' decision has been the subject of litigation, the compulsory purchase of "Kent Lodge" has remained unfulfilled.

5

10 The Solicitor General accepted that in Jersey an unstructured body of public law has emerged in the last few years through cases following the procedure of private law litigation, of which this is the latest example. She had submitted, in her written submission, that (and I quote): "In holding in the instant case that it could review decisions of the States, acting in an executive and not in a legislative capacity, the Royal Court has thus created an entirely new power which should be exercised with circumspection and kept within strict bounds". She submitted 15 during the hearing that the Court can review an administrative decision if, first, the decision is taken in performance of a power conferred by an empowering enactment so that the extent of the vires is ascertainable, and, secondly, if the decision is bad on the face of it. The Court, she submitted, cannot go behind the 20 decision and inquire into the motivation of the States.

I do not think, as I have already explained, that these questions have to be decided in order to dispose of this case and this is not, therefore, an appropriate occasion for going further 25 into the state of public law in Jersey. I prefer to say nothing about the Solicitor General's submissions except that they remain open for decision in a future case which may raise them.

30 What I do wish to say, however, is that the question of the appropriate procedure for judicial review of administrative action, which has been burgeoning in England over the last 20 years, is in dire need of review here if only to cope with the necessity for expedition in determination by the Court of the validity of Governmental decisions which are under challenge.

35

In the common law jurisdictions which have faced these developments of public law, there has been uniform acceptance of the need for speedy resolution of such forensic disputes. In England, section 31 of the Supreme Court Act, 1981, and O.53 of the R.S.C. prescribe a limitation period of three months for application for leave to apply for judicial review. In its most recent report, that is to say, the report entitled "Administrative Law: Judicial Review and Statutory Appeals (1994) Law Commission Report No. 226, the Law Commission said this:

45

50 "5.24 After reviewing the approach adopted in European Community Law and a number of other systems containing time limits for challenging administrative acts or rules, our consultation paper invited views as to whether the present three month time limit was too short. We suggested that the correct balance lay somewhere between three and six months. The majority of consultees,

5           *however, did not favour lengthening the time limit  
although there was support for abandoning the promptness  
requirement. We believe that the principle of certainty  
is particularly important in administrative law decisions  
and that a short time limit for initiating the application  
should continue to be included in the rules.*

10           *5.25. The public policy considerations set out in part II  
all tend to justify the provision of special time limits  
for initiating legal challenges to administrative acts.  
Different circumstances and the different remedies that  
are sought do, however, mean that it is important that the  
Court should continue to have discretion at the  
15           preliminary consideration stage and be able to exercise  
its jurisdiction flexibly. We consider that time limits  
should be dealt with in the Rules of Court rather than in  
primary legislation and that section 31 sub-section 6 of  
the Supreme Court Act, 1981, should accordingly be  
20           replaced by a provision empowering time limits to be  
specified by rule".*

25           I have referred to this passage in the hope that it may be  
helpful in consideration of the procedure to be followed for the  
handling of disputes of this sort in Jersey. What in my judgment  
is perfectly clear is that the law should not be allowed to  
develop any longer without specific consideration of what rules  
should be made to govern its administration.

5 BLOM-COOPER, J.A.: I agree that this appeal should be dismissed  
for the reasons given by the President in the judgment which he  
has just delivered. I would like to add only my own thoughts on  
the concluding remarks made by the President. I would echo very  
10 much the view that the procedures of the Royal Court in dealing  
with challenges to administrative actions should be dealt with in  
a way which is expeditious and I would strongly invite those who  
are responsible for the administration of justice in Jersey that  
the report of the Law Commission to which the President referred  
15 should be looked at from the point of view of pointing the way  
forward for dealing with the developing public law in Jersey. I  
would dismiss this appeal.

15 CARLISLE, J.A.: I also agree that, for the reasons given by the  
learned President, this appeal should be dismissed and I have  
nothing further to add.

## Authorities

- Housing (Jersey) Law, 1949: Article 4.
- Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961, as amended: Article 3.
- Representations of McMahon & Probets (7th April, 1993) Jersey Unreported.
- Supperstone & Goudie: "Judicial Review" (1992): pp.110-118, 127-128, 138-143, 270-272.
- R. -v- Tower Hamlets LBC *ex parte* Chetnik Developments (1988) A.C. 858.
- Administrative Law: Judicial Review and Statutory Appeals (1994) Law Commission Report No. 226.
- Associated Provincial Picture House Ltd -v- Wednesbury Corporation (1948) 1 KB 223.
- R. -v- London County Council *ex parte* London & Provincial Electric Theatres Ltd (1915) 2KB 466.
- Pyx Granite Co Ltd -v- Ministry of Housing and Local Government [1958] 1 QB 554.
- R. -v- Broadcasting Complaints Commission, *ex parte* Owen (1985) QB 1153.
- Pepper -v- Hart (1993) A.C. 593.
- Auckland City Council -v- Minister of Transport (1990) 1 NZLR 264.
- Supreme Court Act 1981: s.31
- R.S.C. (1995 Ed'n): O.53.