85/144

31st December 1985

Before: Sir Frank Ereaut, Bailiff

Between

C. Le Masurier Limited — Plaintiff

and

The Island Development Committee — Defendant

Advocate F.C. Hamon for the Plaintiff

H.M. Solicitor General for the Defendant

This is an action by way of Order of Justice in which the plaintiff seeks a declaration that it is possessed of a valid consent to build four dwellings on Field 203 (hereinafter called "the Field"), Route Orange, St. Brelade. The consent relied upon is alleged to have been given to the plaintiff in a letter, dated 14th August, 1961, written on behalf of the Natural Beauties Committee. The Island Development Committee contests the action.

As I have indicated, the history of this case begins in 1961. The Law which then regulated the development of land was the Preservation of Amenities (Jersey) Law, 1952 (to which I will refer as "the 1952 Law"). It was administered by the Natural Beauties Committee, whose name was changed to the Island Development Committee by Act of the States of 17th October, 1961. The 1952 Law was superceded by the Island Planning (Jersey) Law 1964 (to which I will refer as "the 1964 Law"). The 1964 Law is also administered by the Island Development Committee, and as the name of the Committee has no significance in this action, I will refer to it simply as "the Committee".

The provisions of the 1952 Law relevant to this case were as follows -

"Article 5

(1) It shall not be lawful, without the consent of the Committee, to erect, make, extend or externally alter any building upon any land in the Island.

.....

(4) / ...

(4) Any consent given under this Article may be given subject to such conditions as the Committee may think fit to impose."

The Schedule to the 1964 Law provides that any consent to build given under the 1952 Law should have effect as if given under the corresponding provision of the 1964 Law. Although the 1952 Law uses the word "consent" and the corresponding provision of the 1964 Law uses the word "permission", I treat those two words as synonymous.

The history of this case is as follows.

In 1961 the plaintiff, being then the owner of the Field, applied to the Committee for consent to develop it for building purposes.

On the 14th August, 1961, the Deputy Greffier of the States wrote to the plaintiff as follows:-

"I have been asked by the Natural Beauties Committee to refer to your application for consent to develop land opposite La Moye Hotel, St. Brelade, for building purposes, and to say that the Committee is prepared to agree, in principle, to the development of four sites only on the land.

The Committee also wishes me to say that the type of building to be erected on the sites should be of a very high standard from an architectural point of view and only dwellings of high quality will be approved.

The application has now been referred to the Public Health Committee, and a further communication will be sent to you in due course."

The plaintiff's architect, Mr. S.H. Longson, subsequently had site discussions with a representative of the Public Health Department, and on the 20th January, 1962, the Chief Sanitary Inspector wrote to Mr. Longson as follows:-

"Further / ...

"Further to your site discussion on the 19th instant with Mr. Skinner of this Department, I wish to confirm the following points which arise in respect of the above application:-

(a) Approval of this site will depend upon the prior removal of the drainage of La Moye Hotel to the public sewer, which sewer will soon be available for use.

(b) The water table on this site, in winter time especially, is very high. It would be desirable that any domestic development should approximate to the existing road level, but in any case any dwelling and the access thereto should at least be elevated some 3 ft. above the existing ground level.

(c) The Sewerage Board indicate that drainage from this site can be received on the west side of the ejector station at an invert level of 207 ft. a.o.d. In many respects this invert level will require any buildings to be elevated at least as far as required in paragraph (b) above.

This site has been approved by the Island Development Committee for four dwellings, but I would prefer to indicate that approval for public health purposes can be given when you have had time to consider the implications of the foregoing for the site as a whole. Your plans will be retained in this office meanwhile and I shall be pleased to hear from you in due course."

The plaintiff took no steps to develop the Field, but early in 1962 it applied for consent, in principle, to erect a Supermarket on the said Field. The Greffier of the States replied to Mr. Longson on the 14th May, 1962, as follows:-

I have / ...

"I have to inform you that, whilst the Committee maintains its approval in principle for the erection of four good quality dwellings, it is not prepared to extend its approval for the construction of residential property to the erection of a Supermarket."

On the 6th March, 1963, Mr. Longson wrote to the States' Planning Office to request that a further extension of time be given to "the approval in principle given by your Committee to the erection of four good quality dwellings." There is no record as to whether any reply was received.

On the 13th April, 1965, Mr. Longson, on behalf of the plaintiff, submitted an "Application for Planning Permission" under the 1964 Law to erect on the Field "eight flats or maisonettes with market shopping area and ground floor parking facilities." On the 10th July, 1965, the Island Development Committee refused permission for that development.

On the 6th August, 1966, the Committee gave further consideration to the above application. The Committee's Minute reads in part -

"The Committee was informed that a previous Committee had approved the said Field for residential development and in 1961 a planning permit was issued for the development of four good-quality houses, but that no development of this kind had taken place and instead the proposed development of a Supermarket had replaced it and this had subsequently been rejected.

Having discussed the matter, the Committee decided formally to revoke the permit and directed the Chief Executive Officer to act accordingly."

If that was intended to be a revocation of the planning permit issued in 1961, there is no record that notice of this revocation was ever sent to Mr. Longson or to the plaintiff.

Nothing / ...

Nothing further appears to have happened in this matter until the 9th October, 1974, when Mr. Longson, on behalf of the plaintiff, submitted an "Application for Development Permission - Minor Works" to construct on the Field a temporary car park. In an accompanying letter to the Committee of the same date, Mr. Longson wrote -

> "It will be recalled that approval was granted in August, 1961 for the development of the above area for four dwellings of high quality, but that a subsequent application for the establishment of a Supermarket was rejected in July 1965.
>
> The site was depressed below the road level to the extent of some 8 ft. and our client has been engaged in filling the site with a view to its consolidation over a period for its original approved purpose. It will be recalled that the Public Health requested that the development should approximate to the existing road level (20th Jan 62).
>
> Our client also owns the La Moye Hotel, and it has become increasingly difficult to accommodate the various patrons transport, this is particularly so this year, with the replacement of coaches (due to higher charges), by many more hire cars and especially mainland cars consequent on the introduction of the roll-on, roll-off service.
>
> The field in question is waste land awaiting filling and consolidation, and the need for additional car parking is quite evident, and therefore in our clients view, it is logical to submit an application for the proposed use of at least part of the area as a temporary car park, and we trust the Committee will agree with this view."

On the 23rd December, 1974, the Committee refused permission.

No steps having been taken to develop the Field, on 29th October, 1979, Mr. Longson wrote to the Committee as follows:-

"Our clients / ...

"Our clients made an in principle application in 1961 to develop land opposite La Moye Hotel, and the Committee of the day agreed by letter dated 14th August, 1961, that four good quality dwellings could be built, subject to consideration being given by the Public Health Department, as the land was low lying and there was a problem of making a connection to the sewer.

Since that time, the land had been retained by our clients without development, and apart from an application for car parking facilities, for the hotel, which was rejected, no action has been taken by our client company.

Our clients are now asking - would the Committee of today give encouragement to the development of this land, and if so, for how many units of accommodation?".

The Act of the Committee dated the 7th November, 1979, states -

"The Committee decided to advise C. Le Masurier Limited, in response to a request for guidance, that it would not favour any residential development as described on Field 203, Route Orange, St. Brelade."

On the 9th November, 1979, Mr. J. Beaty, of the Planning Office, wrote to Mr. Longson as follows -

"Thank you for your letter dated 29th October.

Having recalled the general disposition of the land in question, the Island Development Committee has now determined that without prejudice to its final decision on any application which may be submitted, the Committee would not favour the construction of dwellings upon this land.

Generally the Committee's policies are aimed at avoiding the further extension of suburban development on the fringes of the built-up areas, and in the opinion of the Committee, the circumstances have so changed since the original decision of 1961 that that decision can no longer be honoured."

Mr. Longson replied, on the 14th November, as follows -

"We have advised our client company of the content of your letter dated 9th November, and they have considered the matter, and have requested that we should approach the Committee again.

Our clients have an immediate problem relating to the provision of a new dwelling for the housing of an essentially employed member of staff, which the Housing Committee have intimated should be developed by the company on property already owned by them.

Would the Committee feel able to look favourably at the provision of such a dwelling on part only of this particular piece of land."

By Act, dated the 28th November, 1979, the Committee maintained its refusal and on the 29th November, Mr. Beaty wrote -

"The President and Members of the Island Development Committee have asked me to respond to your letter dated 14th November, and to say that the Committee believes that it has already clearly indicated its view in regard to the prospect of any development upon the land which you have identified.

In the opinion of the Committee, any development upon the land forming part of Field 203, La Moye would involve an extension of suburbia which the Committee would be unable to sanction."

On the 5th December, Advocate F.C. Hamon, acting for the plaintiff, wrote to Mr. Beaty. He expressed surprise at the use of the phrase "the decision can no longer be honoured" and referred to the case of Craven -v- Island Development Committee (1970) 258 Ex. 119, J.J. 1425. He asked that the matter be reconsidered.

By Act dated the 12th December, 1979, the Committee -

"agreed / ...

"agreed that the Committee's planning policies had changed since the original permit had been issued on the 4th August, 1961, and accordingly decided formally to revoke the said permit subject to the prior advice of the Law Officers of the Crown having been obtained."

and on the 14th December, the Chief Executive Officer wrote to say that the Committee -

"had decided to maintain its position of indicating that it would be unlikely to favour any formal application for development of this land under present-day planning criteria."

On the 14th February, 1980, the Chief Executive Officer wrote to inform the plaintiff that the Committee had been advised that the case referred to (Craven -v- Island Development Committee) was not comparable and that the Committee had therefore -

"decided to maintain its position of indicating that it would be unlikely to favour any formal application for development of this land under present-day planning criteria."

The first question which I have to decide is whether the letter of 14th August, 1961, was a conditional consent, or a consent in principle, because if it was the former then the plaintiff is possessed of a valid conditional consent to the building of four houses on the site subject only to the implementation of the conditions attached to the consent. If it was the latter then the Plaintiff is not possessed of a valid conditional consent unless the subsequent decision of the Committee not to permit such development was unreasonable having regard to all the circumstances of the case.

Counsel for the Plaintiff submitted that the letter in question amounted to a conditional consent to the building of four houses on the site, the conditions being, firstly, that the houses should be of a high standard and quality, and secondly, that the requirements of the Public Health Department should be met. Counsel relied in particular on the case of Craven -v- The Island Development Committee (1970) J.J.1425.

Counsel for/ ...

Counsel for the Committee argued, however, that the letter was no more than a consent in principle and was not, therefore, a binding consent under either the 1952 Law or the 1964 Law. He relied on the case of Scott -v- The Island Development Committee (1966) J.J. 631.

It is not in dispute in this case that a "consent (or permission) in principle" does not constitute a binding consent, but it is nevertheless helpful to consider the Scott case briefly. In 1960 Mr. Scott applied for consent under the 1952 Law to "erect a new show-room and car valet service" on the site of numbers 2 and 3 Millbrook Cottages, Rue de Galet, St. Lawrence. He owned a property at the junction of Rue de Galet with Victoria Avenue. Between that site and the site of the Millbrook Cottages was a bungalow and Mr. Scott wished to purchase the bungalow so that there could be an overall development of his property.

Having been informed of his intentions, on 30th June, 1960, the Committee decided "to approve the project in principle, and subject to Mr. Scott purchasing the intervening cottage which it considered necessary to the projected overall development." Mr. Scott was informed of this decision and in 1963 he purchased the bungalow. Subsequently, in 1965, the Committee decided that it would only give permission for a residential building on the site.

It was argued on behalf of Mr. Scott that the decision of the Committee to approve the project in principle amounted to an irrevocable grant of permission in principle to the erection of a motor showroom and car valet service station at numbers 2 and 3 Millbrook Cottages, Rue de Galet, St. Lawrence, once the condition concerning the purchase of the intervening cottage had been fulfilled. The Court ruled against that submission as follows (at page 633) -

> ".... 'permission in principle' is not a 'permission' in the true sense of the word. To grant permission is to allow someone to do something which he would otherwise be forbidden to do, and for the permission to be a true permission that which is permitted to be done must be fully established.
>
> It might, however, be possible to find that a 'permission in principle' had a particular meaning if such a meaning were assigned to it by the Law of 1952 or the Law of 1964, but neither of those Laws do so; they envisage nothing but the grant of permission in the true sense of the word, though permission may be granted subject to conditions; there is nothing to indicate that the word

'consent' / ...

'consent' in the Law of 1952 and the word 'permission' in the Law of 1964 are intended to have anything but their normal meaning.

The Committee's decision of 30th June, 1960, neither grants, nor purports to grant, authority to the Plaintiff to do anything. What it does is to approve the principle of the Plaintiff's project and this is something entirely different."

In the Craven case Mr. Craven learned in 1947 that there was land for sale at Mont-a-la-Brune, St. Brelade, and thinking that he could turn it to account for building, he negotiated for its purchase. Before completing, however, the Plaintiff, in compliance with the Regulations then in force, wrote to the Committee charged with the execution of the Regulations asking for permission to build twenty-five houses on the land. The Committee acknowledged receipt of his letter and stated -

"that theCommittee has granted your permission to use the site for building, but to ask you to submit detailed plans of the proposed houses for the Committee's consideration."

Upon receipt of that letter the Plaintiff concluded the purchase of the land. Shortly after he acquired further land and applied to build eighty houses. The Committee replied saying that the number of houses was limited to twenty-five and requesting the submission of plans before permission could be given. Subsequently Mr. Craven built thirteen houses on the original land, and, later in 1967 applied to build a total of forty houses. The Committee refused, but suggested that he submit a further application to build twelve houses. He did so, and the Committee refused on planning grounds. The Plaintiff therefore sought a declaration of the Court that he was possessed of a valid permission to build twenty-five houses on the original site.

The Committee submitted that the permission given was only a permission in principle and that the Court had ruled in the Scott case that a permission in principle was no permission at all because such a permission was unknown to the Law.

The Court declared that it could find no fault with that ruling, but concluded that it had no bearing on the Craven case. It construed the first letter of the Committee as a conditional consent to the building by the Plaintiff of twenty-five houses on the original land, subject to the condition that he submit detailed plans before building them. Mr. Craven was therefore possessed of a valid conditional consent and for

so long / ...

so long as that consent remained valid the Committee was bound to entertain plans for the remaining twelve houses and could refuse their consent for the building of those houses only for lawful reasons which related to the houses themselves.

I find it difficult to reconcile the decisions in the Scott and Craven cases on the issues of conditional consent and consent in principle. Of course all cases depend on their particular facts, but I find myself more sympathetic to the approach taken in the former case than in the latter case.

In the instant case, I have no hesitation in concluding that the consent given in the letter dated 14th August, 1961, was, as the letter itself states, a consent in principle and not a conditional consent. Counsel for the Plaintiff pointed to the fact that the Committee had twice, in August, 1966, and again in December, 1979, purported to revoke "the permit", which indicated that the Committee thought that it had issued a valid permit. It is clear that on each occasion the Committee was fully aware that what it had granted in 1961 was a permission in principle or a planning permit (which is the same thing) and I therefore find no particular significance in the use of the word "revoke". I also have to say that I can find no particular significance in the use of the phrase in 1979 "that that decision can no longer be honoured."

Having concluded that the consent given in the letter dated 14th August, 1961, was a consent inprinciple, I now turn to the second question which I have to decide, namely, whether the later communications from the Committee to the Plaintiff's representatives, terminating with the letter of 14th February, 1980, to the effect that development of the site would not be permitted, were unreasonable having regard to all the circumstances of the case. For this purpose the approval of the principle of the Plaintiff's project is relevant.

In the Scott case, the Court found that the subsequent decision of the Committee to give permission only for a residential building on the site was unreasonable. It is clear from the judgment (at page 641) that a substantial cause of that finding was the view of the Court that Mr. Scott was entitled to believe that, once he had bought the bungalow, his application for commercial development could go forward and that in that belief he had incurred expenditure which he would not otherwise have incurred.

The Court / ...

The Court further found that when it changed its mind the Committee was either unaware, or gave little weight to, the reason why Mr. Scott bought the bungalow.

In the Craven case, had the Court there found that the consent was a consent in principle and not a conditional consent, it might very well have gone on to find that the subsequent decision of the Committee to limit Mr. Craven to thirteen houses was unreasonable, since he had bought the original site after obtaining approval (in principle) for twenty-five houses.

Another relevant case is Wightman - v - The Island Development Committee (1963) 257 Ex. 449 where in relation to an intimation to an applicant for permission to build which requested the submission of detailed drawings but contained nothing in the nature of an expression of approval in principle or of a willingness to give favourable consideration to the application, the Court said -

> "... to invite members of the public to incur the expense of having complete drawings prepared, in triplicate, and two copies of the specification drawn, against the possibility that no building will be allowed at all, does not conform to our idea of rational and fair administration ...."

The Court was not then called upon to express an opinion on the legal effect of the intimation, nor, except in the Scott case, has it apparently been necessary to determine the point in any other case of a like nature, as all such intimations which have been put forward by appellants in support of their appeals, have contained a clear reservation that their effectiveness, whatever that might be, would cease after a stated period, and in all those cases, the appellants have allowed that period to expire.

In the instant case the intimation to the Plaintiff contained no such reservation (despite Mr. Longson's erroneous belief that it did) and thus its effect is a relevant matter. I agree with the view expressed in the Scott case (at page 635) that where an applicant is given an intimation of this nature, he is entitled to assume that if he does that which the intimation asks him to do, he will be allowed to do so much as he has indicated that he wishes to do, subject, of course, to any reservations contained in the intimation. The Committee, on its side, is entitled to rely on the fact that the applicant is sincere in his expressed intention not only to carry out that for which

permission is sought, but also to carry it out with due expedition. The extent to which the applicant and the Committee respectively are entitled to rely on these factors will depend very largely on the circumstances of each case, but in all cases is of significance in determining whether or not a decision of the Committee is reasonable.

I apply those principles to the present case.

Unlike the applicants in the Scott and Craven cases, the Plaintiff did not, on the strength of the consent in principle, buy the field, for it was already the owner of it. The Plaintiff argues, however, that it has incurred expenditure in reliance upon the consent. The Chief Sanitary Inspector's letter of 20th January, 1962, recommends that any domestic development should approximate to the existing road level. On 9th October, 1974, as I have already noted, Mr. Longson submitted an "Application for Development Permission - Minor Works" to construct on the field a temporary car park, and in the second paragraph of his letter states that "our client has been engaged in filling the site with a view to its consolidation over a period for its original approved purpose", and in the last paragraph of his letter he states that the field in question "is waste land awaiting filling and consolidation."

No evidence was adduced before me on the facts stated in this letter and the facts stated were not disputed. I therefore feel bound to conclude that the Plaintiff had for some considerable time been incurring expenditure on filling the site with a view to its use for the purpose for which permission in principle was given in 1961, and in the belief that that permission had not been withdrawn.

As already noted, on 6th August, 1966, the Committee's Minute revoked "the permit" and directed the Chief Executive Officer to act accordingly. There is no record that notice of this revocation was ever sent to Mr. Longson or to the Plaintiff, and I must assume that it was not, and that he was not aware of the revocation. That failure to communicate the revocation to Mr. Longson explains why in 1974 the Plaintiff was continuing to fill the site "with a view to its consolidation over a period for its original approved purpose."

That failure/ ...

That failure was unfortunate, but it was compounded by the failure of the Committee to appreciate the significance of the facts mentioned in Mr. Longson's letter of 9th October, 1974. The response of the Committee was limited to a refusal of permission on an official form. The letter from Mr. Longson went into considerable detail and should have alerted the Planning Office to the fact that an applicant to whom planning permission had been granted thirteen years before was continuing to do work, and presumably to incur expenditure, in reliance upon that permission and in the expectation that he would receive development permission. Had the Planning Office been so alerted and had it communicated at once with the Plaintiff then the circumstances on which I have to base my decision might have been very different. As it is, although thirteen years is a very long period and hardly bears the description "expeditious", no time limit was set in the first place within which the level of the field was to be raised, and bothiin 1966 and 1974 there was a failure by the Committee to communicate with the Plaintiff.

I do not know whether the filling in of the field continued, and therein lies a difficulty because another five years were to elapse before the original permission in principle of 1961 was raised again, on this occasion by the Planning Office in a letter to Mr. Longson dated 9th November, 1979. In the meantime, and indeed until Advocate Hamon was consulted, it seems that the Plaintiff, through its agent Mr. Longson, had either forgotten or lacked confidence in the validity of the 1961 decision. I have considered whether that further delay of five years has the effect that the Plaintiff should no longer merit sympathy.

Although I consider that I lack certain information, I have come to the conclusion that the final outcome of this matter should be governed by the failure of the Committee to recognise the significance of the letter from Mr. Longson of 9th October, 1974, and to respond to it. I recognise the difficulty in keeping track of many applications and no doubt it is easy to be wise with hindsight, but in my view, that failure outweighs any failure by the Plaintiff to proceed expeditiously with the work of filling and consolidation and any failure to raise the 1961 decision with the Committee during that five year period.

In the / ...

In the light of all these somewhat unusual circumstances, I have come to the conclusion that the decision of the Committee notified to the Plaintiff by letter, dated 14th February, 1980, and previous communications to the same effect were unreasonable having regard to all the circumstances of the case.

I therefore find that the Plaintiff is possessed of a valid conditional consent to the building of four houses on Field 203, but that it is conditional upon the Plaintiff complying with the conditions specified in the letter of 14th August, 1961, and with the requirements of the Public Health Department as specified in the letter of 20th January, 1962, or with such other requirements as may have superceded these with the passage of time.