

ROYAL COURT
(Samedi Division)

5th June, 1997

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Before: The Judicial Greffier

In the Matter of the Representation of Idocare Properties Limited

Between Idocare Properties Limited Representor
And The Planning and Environment Committee Respondent
of the States of Jersey

Application by the Representor for further and better particulars to be provided of the Respondent's amended Answer.

Advocate M.M.G. Voisin for the Representor.
Advocate S.C.K. Pallot for the Respondent.

JUDGMENT

THE JUDICIAL GREFFIER: This Representation is an application for judicial review of the decision of the Respondent to refuse to grant planning permission to the Representor in relation to a development of offices and six flats on a site in Green Street.

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The Representation was commenced in May, 1996, and amended in November, 1996. In the amended Representation, the Representor pleaded that the Respondent had given its consent for the construction of office developments on numerous sites within St. Helier and elsewhere which are outside the "defined office area" and thirty-six alleged such sites were mentioned. One of the grounds for the refusal of planning permission was that the relevant site in Green Street was outside the "defined office area".

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In its amended Answer, the Respondent answered this allegation by providing an explanation in relation to these various sites. In that explanation the Respondent pleaded that in relation to applications where planning permission was granted prior to November 1987, when the new Island Plan was approved, and in relation to applications which were made prior to the Island Plan being approved, that the Respondent had applied the criteria under the old Island Plan.

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The Representor, by its Summons dated 28th April, 1997, has applied for further and better particulars of various paragraphs of the amended Answer. The first twenty-three of the twenty-seven requests contained therein relate to acquiring additional

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information in relation to various sites. Where the relevant planning permission was given with the criteria set out in the new Island Plan being applied, the Respondent has consented to the giving of that information. However, where the Respondent
5 says that the relevant planning permission was granted applying the criteria under the old Island Plan, the Respondent has refused to provide the particulars requested.

Advocate Voisin, on behalf of the Representor, brought to my
10 attention section 18/12/1 on page 308 of the 1997 White Book which relates to the function of particulars and asked me to apply to this application the normal criteria which would be applied to an application for further and better particulars in an action.

15 The relevant section from the White Book reads as follows:-

"The function of particulars is accordingly:

20 (1) *to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved.*

25 (2) *to prevent the other side from being taken by surprise at the trial.*

(3) *to enable the other side to know with what evidence they ought to be prepared and to prepare for trial.*

30 (4) *to limit the generality of the pleadings.*

(5) *to limit and define the issues to be tried, and as to which discovery is required.*

35 (6) *to tie the hands of the party so that he cannot without leave go into any matters not included.*

40 *But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings".*

Neither party quoted to me any authorities upon the point as to what test should be applied in such a case as this. However,
45 I have referred to the Judgment of the learned Deputy Bailiff in Daisy Hill Real Estates Limited v. Rent Control Tribunal, (1995) JLR 176 which was also in relation to an application for further and better particulars in a case in which judicial review of a decision of an administrative body was being sought. In that
50 case, after setting out the six functions of particulars as set out above, the Court continued as follows from line 26 on page 180 of the Judgment:-

5 "We must recall that an application for particulars is a method of attacking pleadings that have been filed and "the object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense and avoid allowing parties to be taken by surprise". (Spedding v. Fitzpatrick (1888) (38 Ch.D.410 at p.413, per Cotton, L.J.))

10 Particulars will normally narrow the issues between the parties and limit the parties to matters which are fairly contained within them. There is, in our view, a distinction to be drawn at this stage. A party is entitled to know the outline of his opponent's case; and
15 the Greffier will always order a party to give particulars if he is satisfied that if he does not the applicant will be uncertain of what is going to be proved against him at trial. What the Greffier will not do is to order
20 particulars of how the other party will prove his case. That, to us, is a matter of evidence and if the only purpose of particulars is to obtain details of such evidence, that would properly be regarded as an improper application.

25 But in a case where the only object is to obtain particulars, if the information asked for is necessary, we would say clearly necessary, then the application is a proper one and must be given even though it will disclose
30 some evidence upon which the other party will rely at trial (see Marriott v. Chamberlain (1886) 17 QBD 154 at p.161). This would apply, in our view, even in cases where the party from whom particulars is sought was privileged from producing documents which would disclose
35 the evidence. (Millbank v. Millbank ([1900] 1 Ch.376 at p.383)."

40 In this case, I propose to apply the principles set out in the six functions of particulars, the general principle that the particulars requested must relate to a matter in issue in the proceedings and the principle that where the answer to the
45 particulars would include evidence the particulars requested must be clearly necessary. However, I do so with some trepidation because since the writing of the learned Deputy Bailiff's Judgment in Daisy Hill Real Estates Limited v. Rent Control Tribunal and since the writing of various other Judgments on
50 interlocutory matters in relation to applications for judicial review, including the learned Deputy Bailiff's Judgment in Mayo Associates S.A. and others v. The Finance & Economics Committee (6th March, 1997) Jersey Unreported, and my Judgments of 23rd August, 1996, and 7th October, 1996, in relation to the same case, the Royal Court has been actively working upon a new set of rules in relation to proceedings brought seeking judicial review and has, in relation thereto, had the benefit of advice from an English expert thereon. During the course of the giving of that

advice, it has become apparent that, although there is provision in Order 53, Rule 8 of the Rules of the Supreme Court for applications for discovery, interrogatories, cross-examination etc., there is no provision therein for an application for particulars and the applications for discovery, interrogatories, cross-examination etc., are only granted in exceptional cases. By reason of this knowledge and advice, I strongly suspect that I ought to be finding that I should only grant an application for particulars in relation to proceedings seeking judicial review in exceptional cases. However, the normal rules of precedent require that I must hold myself to be bound by the Judgments of a senior Court and, in this case, I am therefore bound by the Judgment of 8th June, 1995, in Daisy Hill Real Estates Limited v. Rent Control Tribunal and must apply the principles set out therein.

If I had felt free to apply the exceptional circumstances test to this application then, not only would I have refused all the applications before me but also I would not have granted those to which the Respondent has consented.

In applying the tests of the six functions of particulars and of relevance to matters in issue with regard to the cases of those developments in relation to which the Respondent says that planning permission was granted under the old Island Plan, I have come to the conclusion that it is not appropriate for me to order that the information requested be given. The bulk of the information sought in these cases relates to the size and other characteristics of the proposed developments for which planning permission was given. In circumstances in which the Respondent alleges that the decision was made under the terms of the old Island Plan this information clearly does not form part of the Respondent's case. It is also one further and substantial step away from the category of applications to which the Respondent has consented. The effect of this decision is that most of Requests 4(b), 6, 11 and 18 are refused. However, Request 11(vi) relates to an allegation that the Respondent was advised to treat applications which were in the pipeline when the new Island Plan was approved under the old Island Plan. The Representor seeks particulars as to who gave that advice and I have refused this Request as the matter of advice is not in issue. If anything is in issue here it is whether the Committee dealt with such cases under the old Island Plan and what is being sought here is really evidence that that is so.

I am now going to deal with each of the other Requests individually. Request 10 relates to Lucas House, David Place. Here, it is alleged that although planning permission was granted on 9th October, 1986, that is to say under the old Island Plan, that the planning permission then granted related to a mixed development including shops, offices and dwelling accommodation and that there was a subsequent planning permission granted under the new Island Plan for offices alone. The fact that offices were included in the original planning permission introduces an

5 additional factor and I have come to the conclusion that this matter is of only slight relevance to the application for judicial review and that this Request should be refused. As Advocate Pallot had had to step into the hearing at the last moment, he was unable to confirm or deny whether there had been this change and I indicated that I would need to be addressed at a later date on this point but that will not now be necessary.

10 Request 17 related to St. Paul's Gate and the adjacent site of 22 to 24 New Street and here the planning permission was granted under the new Island Plan. The Respondent is alleging that there are special factors in this case relating to the provision of community facilities in conjunction with the office development and the Representor is seeking particulars in
15 relation to the development and particulars relating to whether any evidence was submitted to the Respondent in relation to the costs of developing this site and providing the community facilities and if so, what evidence. Again here there is an
20 additional factor, namely the desirability of the community facilities and it seems to me that this matter is of only slight relevance to the application for judicial review and that this Request should also be refused.

25 Request 19 relates to the Jersey Farmers Union premises. Here the Respondent says that there were initially office premises and that these were expanded. The Representor submitted that the expansion had been of such an extent as to be relevant to the proceedings. The fact that there were originally offices on this site is an additional factor and, again, it seems to me
30 that matters relating to this property are only of slight relevance to the application for judicial review and that this Request should also be refused.

35 Request 24 relates to an averment of the Respondent that the relevant site is suitable for residential development. The Representor is requesting particulars of all matters relied upon in support of that contention. The Respondent submitted that the Representor well knows that the Respondent had previously granted permission for twenty-two flats on the relevant site and that the
40 current application to which these proceedings relate included six flats. The reasons given by the Respondent for the refusal of the relevant planning permission were, firstly, that the proposed use of the building for office purposes was contrary to the approved Island Plan policy as the site is located outside
45 the "defined office area" and, secondly, that the proposed development would not have adequate car parking provision to meet the standards of the Planning & Environment Committee. However, notwithstanding this it seems to me from the pleadings and the relevant documents that the Respondent may well be of the opinion
50 that a development of flats is the most appropriate development for this site. This Request is an attempt to obtain particulars as to why the Respondent is of that opinion and, in the context of these proceedings, that is an important matter, particulars of which ought to be given.

Request 25 relates to the fact that the Respondent has permitted the relevant site to be used on a temporary basis for a period of five years as a car park. The request is for the Respondent to state all matters taken into consideration or relied upon by the Respondent in granting this permission. Although this Request relates to the relevant site there is clearly a great deal of difference between an application for temporary permission where a site would otherwise be unused, and an application for permanent permission, where the long term use of the site is decided. It seems to me that this issue is of only slight relevance to the application for judicial review and that these particulars should, therefore, be refused.

I shall need to be addressed both upon the matter of the costs of and incidental to the Representor's Summons, dated 28th April, 1997, and in relation to the time period during which the Respondent should furnish those further and better particulars to which it has consented or which I have ordered.

Authorities

R.S.C. (1997 Ed'n): O.18/12/1.

Daisy Hill Real Estates, Ltd. -v- Rent Control Tribunal (1995) JLR
176.

Mayo Associates & Ors. -v- Finance Economics Committee (6th March,
1996) Jersey Unreported.

Mayo Associates & Ors. -v- Finance & Economics Committee (23rd August,
1996) Jersey Unreported.

Mayo Associates & Ors. -v- Finance & Economics Committee (7th October,
1996) Jersey Unreported.

Mayo Associates -v- Cantrade Private Bank (12th September, 1995)
Jersey Unreported.

Nawar -v- Secretary of State for the Environment & Anor. (1994) EGCS
132.

Arbaugh -v- Island Development Committee (1966) JJ 593.

Binet -v- Island Development Committee (1987-88) JLR 514.