

ROYAL COURT
(Samedi Division) 197.

22nd October, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Myles and de Veulle.

The Attorney General

- v -

Brian Francis de Gruchy

1 count of contravening Article 8(1) of the Island Planning (Jersey) Law, 1964 by causing or permitting land to be developed without the permission of the Planning and Environment Committee, as required by the said Law.

Plea: Infraction admitted.

Age: 59.

Details of Offence:

The defendant caused or permitted unauthorised development to take place on Field 52, Plémont, St. Ouen, a field he owned jointly with his wife.

The unauthorised development took place between May and October, 1996, when a considerable quantity of soil and materials was tipped on Field 52. A substantial proportion of the material tipped came from surplus excavated material from the laying of main drains in St. Ouen. This material was tipped by the contractor who had obtained Mr. de Gruchy's consent in late April, 1996. An insignificant quantity of surplus excavated material (18.75 cubic metres) was dumped on the Field by another contractor from work on a project to connect Pontin's Holiday Village to the mains drain and which had Field 52 designated as the official tipping site for that work. The source or sources of the remainder of the material that was tipped on the Field was a matter of conjecture.

The prosecution case was that Mr. de Gruchy had "caused" the material from the St. Ouen contract to be tipped by reason of the express permission he gave to the contractor in April, 1996, and that Mr. de Gruchy had "permitted" the tipping from the other source(s) by turning a blind eye (i.e. had constructive knowledge). The prosecution stated that the small scale tipping from the Pontin's contract was not in issue.

Details of Mitigation:

No previous convictions. Positive good character (respected farmer, landowner and member of Road Committee of St. Ouen). Not a deliberate breach of the Planning Law. Was approached by employee of contractor and gave permission because he did not realise that the tipping site identified for the Pontin's contract was limited to that contract and he wished to assist the contractor. Busy farmer who was taken advantage of by contractor. No financial benefit to defendant. Faces potential costs of £30,000 for removing embankment if Committee decides to require removal of the bank. Was unaware that tipping from the other sources was taking place and also did not realise scale of tipping from the St. Ouen's contract until late September, 1996. He was horrified at what he saw. Offence was referred to as "absolute" by defence counsel. Plea of guilty (albeit approximately one week prior to trial).

Previous Convictions: None.

Conclusions: Fine of £2,500 or 6 months' imprisonment in default of payment. £500 costs.

Sentence and Observations of the Court:

Fine of £1,000 or 1 month's imprisonment in default of payment. £500 costs.

Fine sought in the particular circumstances of this case too high. Not a deliberate flouting of the Planning Law and Court took into consideration the potential costs to the defendant in removing/modifying embankment.

P. Matthews, Esq., Crown Advocate.
Advocate R.J. Michel for the Defendant.

JUDGMENT

5 THE DEPUTY BAILIFF: Mr. Brian Francis de Gruchy owns fields 52 and 53 at Plémont, St. Ouen. Field 52 has not been used to grow crops. Field 53 is arable. There has been substantial dumping of soil and materials on field 52. The dumping is substantial enough to warrant the terms "development" within the meaning of the Planning Law.

10 In the latter part of 1995 a foul sewer was being developed by the Public Works Committee and some three to four lorry loads of waste material was agreed to be dumped on field 52. The Senior Planning Officer gave permission. He felt the matter was *de minimus*. This field is referred to in a letter to Mr. de Gruchy from the Public Services principal engineer as his "tipping site". That dumping does not apparently affect the present prosecution.
15 The contract number was contract 633 to Pontin's Holiday Camp. A much bigger contract was contract number 631 affecting St. George's Estate and the La Saline areas. This was a very substantial contract and under the contract all surplus excavated material had to be disposed of to a suitable tip.
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25 The site engineer did not apparently know that Mr. de Gruchy had made an arrangement with Mr. Tom Callaghan of P. Tranter Limited who held the contract. The company was actually dumping material at the time in St. Helier or at the Five Mile Road tip. As we say, the engineer was never consulted. Mr. de Gruchy apparently assumed that the Pontins' letter allowed tipping. It was a letter after all from the senior planning officer. Consequently it was much easier for Tranter to use this tip mainly at weekends and they dumped their tarmac type one stone and very
30 soft granite stone between May and October of 1996, the period of the charge.

There is apparently additional material but its source is not known. We have no doubt it came from opportunists.

5 We have seen photographs and the tipping, as we have said already, is by any standards, substantial. Mr. de Gruchy brings to the Court his good character. Although the fine under the Law is unlimited, the maximum of £5,000 was only increased in 1997 by amendment No. 6 to the Planning Law.

10 There was no financial inducement for this dumping. Mr. de Gruchy may have the benefit of a windbreak now that the land has been flattened a little depending on what action the Committee takes when it sits to consider the matter in November. Alternatively, he may find himself faced with a very substantial
15 removal bill.

Advocate Michel says that after Mr. de Gruchy finished his digging in June, he did not return to the site. He was appalled when he saw the end result. He sought no advice, however, before
20 giving his consent to the dumping. Rather naively, perhaps, he trusted his erstwhile neighbours. He lives at L'Etacq and apparently does not return to the wilds of Plémont until the potato season comes round again.

25 A fine is inevitable. The conclusions, in our view, are too high in the circumstances of this particular case. This was not a deliberate attempt to circumvent the law and we reiterate there was no financial benefit. In the circumstances we are going to impose a fine of £1,000 together with £500 costs.

Authorities

AG -v- Brown (13th May, 1985) Jersey Unreported.

AG -v- Channel Island Carriage Company Ltd (31st January, 1997)
Jersey Unreported.

AG -v- Barette (14th December, 1990) Jersey Unreported.