

9th December, 1988.

236.

IN THE ROYAL COURT OF JERSEY

Before: Mr V A Tomes, Deputy Bailiff
(Sitting alone by virtue of provisions of Rule 3/6 of the Royal Court Rules, 1982, as amended.).

Emile Francis le Vannais

-v-

The Island Development Committee

Advocate B E Troy for the Plaintiff

Advocate S C Nicolle for the Defendant

The plaintiff is the owner of a certain piece of land known as "Le Côté du Mont Vautier", situate in the Parish of St Ouen (the land).

In 1947 there were in force triennial Regulations entitled the Preservation of Amenities (Jersey) Regulations, 1947 (the 1947 Regulations). The relevant part of paragraph (1) of Regulation 2 read:

(1) It shall not be lawful, without the consent of the Committee, to erect any building upon any land in the Island".

On the 31 January, 1949, the Committee charged with the execution of the Regulations granted an unconditional consent to a Mr G A Farley, predecessor, or nominee of the predecessor, in title of the plaintiff, for the erection of a bungalow and outbuilding on the land.

Regulation 5 of the 1947 Regulations was amended in 1948 and all the Regulations were re-enacted in 1950 (the 1950 Regulations) with the provision that, inter alia, any consent given under the 1947 Regulations should continue to have effect as if it had been given under the 1950 Regulations.

In 1952 the 1950 Regulations were replaced by a Law, the Preservation of Amenities (Jersey) Law, 1952, (the 1952 Law) which introduced no change relevant to this case and contained the same saving provision.

The 1952 law remained in force until the enactment of the Island Planning (Jersey) Law, 1964, (the 1964 Law) which is still in force.

The transitional provisions of the 1964 Law are set out in the Schedule to that Law (Article 25 (2)). They are:-

"2 - (1) Insofar as any application, determination, decision or appeal made, consent given, licence or permission granted, compensation paid or recovered, notice served, condition imposed, requirement made or other thing done, under the 1952 Law could have been made, given, granted, paid, recovered, served, imposed or done under a corresponding provision of this Law, it shall not be invalidated by the repeal of the 1952 Law but shall have effect as if made, given, granted, paid, recovered, served, imposed or done under that corresponding provision.

(2) For the purposes of this paragraph, consent to make, extend or externally alter a building under the 1952 Law, and the giving of such consent, shall be treated as the equivalent of permission to develop land under this Law, and the granting of such permission.

(3) Any proceedings in respect of any of the matters referred to in paragraph 2 of this Schedule which could have been taken under any provision of the 1952 Law, if that Law had not been repealed by this Law, may be taken under the corresponding provision of this Law, and any proceedings pending at the commencement of this Law under the 1952 Law may be continued under the corresponding provision of this Law".

Accordingly, as at the date of the coming into force of the 1964 Law under paragraph (2) of the Schedule to that Law the plaintiff had a consent which was the equivalent of permission to develop land under that Law (and see *Craven-v-The Island Development Committee* (1970) Jersey Judgments Vol I, Part III, 1425).

Applications to develop land under the 1964 Law are dealt with under Article 6 of that Law. Paragraphs (1) and (2) of Article 6 are in the following terms:-

"(1) An application for permission to develop land under this Law shall be in the form required by the Committee and shall contain or be accompanied by such particulars as the Committee may require.

(2) Subject to the provisions of this Article, where application is made to the Committee for permission to develop land, the Committee may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission".

The corresponding provisions of the 1952 Law were to be found in paragraphs (3) and (4) of Article 5 of that Law.

The 1964 Law introduced a power for the defendant to revoke or modify permission to develop land previously granted. The relevant Article is Article 7, the relevant parts of which read:

"(1) Subject to the provisions of this Article, if it appears to the Committee that it is expedient that any permission to develop land granted on an application made in that behalf under this Law should be revoked or modified, it may revoke or modify the permission to such extent as appears to it to be expedient.

(2) Where permission to develop land is revoked or modified under this Article, the Committee shall serve notice on the owner and on the occupier of the land affected, and on any other person who in its opinion will be affected by its decision.

(3) The power conferred by this Article to revoke or modify permission to develop land may be exercised -

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed".

In the present case the development of the land has not been commenced.

By a notice in writing dated 15 September 1986, issued under Article 7 (2) of the 1964 Law the defendant revoked the consent of the 31 January, 1949, for the erection of a bungalow and outbuilding on the land.

The plaintiff contends that neither the provisions of Article 7 (1), the transitional provisions, nor any other provision, of the 1964 Law empower the defendant to revoke a consent validly issued under the 1947 Regulations.

On the other hand, the defendant contends that by virtue of the provisions of paragraph 2 (1) of the Schedule to the 1964 Law the consent to develop the land has effect as if granted under Article 6 of the 1964 Law; that by virtue of the provisions of Article 7 of the 1964 Law, the defendant is empowered to revoke any permit granted under Article 6; and that the defendant is therefore empowered by Article 7 to revoke the consent to develop the land, it having effect as if it were granted under Article 6.

The only question which I have to decide, therefore, is a narrow one of Statute interpretation. Mr Troy argues that the plaintiff has an irrevocable consent to build a bungalow and outbuilding on the land; that because there was no power under the 1947 Regulations or under the 1950 Regulations or under the 1952 Law to revoke a consent granted under those Regulations or that Law

respectively, the transitional provisions in the 1964 Law cannot affect the irrevocable nature of the consent to develop the land granted on the 31 January, 1949. Miss Nicolle, on the other hand, argues that the effect of the transitional provisions is that the consent has effect, in every respect, as if it were a consent issued under Article 6 of the 1964 Law and is thus subject to revocation under Article 7 of that Law.

The language of the Law here in question itself must now be considered to see what bearing it has upon the question whether the plaintiff holds an irrevocable consent. It is my duty to seek the intention of the legislature primarily by examining the Law itself and to have regard also to the nature of the problem which the Law was designed to mitigate or to solve (*v. Macready v Amy* (1950) JJ11).

In my judgment, the effect of the saving provisions in the 1950 Regulations and the 1952 Law is that the consent issued on the 31 January, 1949, under the 1947 Regulations, became a consent given, in effect, firstly under the 1950 Regulations, and secondly under the 1952 Law. So that, at the date of the coming into force of the 1964 Law the plaintiff held a valid consent given, in effect, under the 1952 Law.

Under paragraph 2 (1) of the Schedule to the 1964 Law the consent given under the 1952 Law has effect as if given under Article 6 of the 1964 Law. Moreover, under paragraph 2 (2) of the Schedule to the 1964 Law, consent to make a building under the 1952 Law shall be treated as the equivalent of permission to develop land under the 1964 Law. (Emphasis added).

In my judgment paragraph 2 (1) is sufficient of itself to save the consent given to the plaintiff. But paragraph 2 (2) is also to be taken into account.

"The whole, or any part, of the Act may be referred to and relied on" (per Lord Somervell of Harrow in *A.G. v Prince Ernest Augustus of Hanover* (1957) 1 All E R 49 H.L. at page 61)

If the consent given to the plaintiff is to be treated as the equivalent of permission to develop land under the 1964 Law, then it must be treated as revocable under Article 7 of that Law.

To find otherwise would be to find that the legislature in 1964 intended that there should be two kinds of consent - the one granted before the coming into force of the 1964 Law which would be irrevocable and the other granted after the coming into force of the 1964 Law which would be revocable. That is not, in my judgment the intention of the legislature to be drawn from the wording of the Law itself; nor would there be any logic or common sense in it. I reject that alternative.

I am satisfied that my decision does not offend against Article 19 (2) (c) of the Interpretation (Jersey) Law, 1954, since the repeal of the 1952 Law did not affect the consent which, indeed, was expressly saved. Nor does it offend against Regulation 2 (6) of the 1947 Regulations which provided that the decision of the Committee upon any application for consent under the Regulation should be final; that meant only that there was no right of appeal; it could not tie the hands of the legislature for ever.

Mr Troy argued that to hold that the 1964 Law applies to earlier consents would be to give it retrospective effect. He cited *Denney v Hodge and anr.* (1973) J.J.2429 at page 2433:-

"The principle behind the first and second alternatives is that expressed in the maxim 'A new law ought to be prospective, not retrospective, in its operation'.

Accordingly, it has been said that every Law which takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past must be deemed retrospective in its operation and opposed to sound principles of legislation".

Counsel also cited *Evans v Committee of Agriculture and Fisheries* (1983) J.J.89 at p.100.

".....the Law (Agricultural Land (Control of Sales and Leases) (Jersey) Law, 1974) limits the rights of people to deal with land as they think best and the taking away of those rights can only be done by a law which is completely unequivocal".

and the two English cases there cited, together with passages from *Bennion on Statutory Interpretation*.

In my judgment, the 1964 Law does not offend against the principle that law should not operate retrospectively; it does not take away or impair a vested right i.e. the consent under the 1952 Law, which is saved by the transitional provisions. What it does is to make all consents prospectively revocable subject to the payment of compensation for, inter alia, loss or damage which is directly attributable to the revocation.

If I am wrong and the 1964 Law does contain some retrospective operation, then "the rule against the retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing" (*Carson v Carson* (1964) 1 W.L.R. 511 per Scarman J at p.517.) And I remain satisfied that the intention of the legislature drawn from the wording of the Law itself and taking its provisions as a whole, is that there should be only one kind of consent and that all consents should be revocable.

For the reasons I have given, I discharge the defendant from the action.

Because the matter in question had not been decided previously and I can well understand that the plaintiff felt bound to refer it for judicial decision, there will be no order for costs.

Authorities referred to in the judgment

- Craven -v- The Island Development Committee (1970) JJ Vol 1,
Part 3, 1425
- Macready -v- Amy (1950) JJ 11
- A.G. -v- Prince Ernest Augustus of Hanover (1957) 1 AER 49 HL,
at p.61
- Denney -v- Hodge et al (1973) JJ 2429, at p.2433
- Evans -v- Committee of Agriculture and Fisheries (1983)
JJ 89, at p.100
- Bennion's Statutory Interpretation
- Maxwell (12th edition) - Chapter 2 - General Principles of
Interpretation - 1. The Primary Rule: Literal
Construction.
and at p. 225