

ROYAL COURT
(Samedi Division) 184.

Before: The Deputy Bailiff, sitting alone

11th October, 1996

Between	Stephen Hotton Limited	Appellant
And	Island Development Committee	Respondent

Advocate R.G.S. Fielding for the Appellant
Advocate P. Matthews for the Respondent

JUDGMENT

THE DEPUTY BAILIFF: On 2nd February, 1993, the Island Development Committee served two notices on a company called Stephen Hotton Limited. Each notice was served under Article 13 of the Island Planning (Jersey) Law 1964. The first gave notice to the company to "cease the use of" certain land shown on a plan attached to the notice "for the purpose of parking and/or storing vehicles, vehicle parts, machinery equipment, rubble and associated debris." The land in question is situate alongside La Rue de La Ville Emphrie, St. Lawrence and has been used by this long established company since 1963 as a general haulage yard and used generally by the company since 1948. The second notice, again served under Article 13, gave notice to the company to "remove" from the land "all vehicles, vehicle parts, machinery, equipment, rubble and associated debris". Each notice warned the company that failure to comply before 7th March, 1993, would render the company liable to pay the penalty or penalties prescribed by Article 14 of the Law.

Article 13 of the Law reads as follows:-

"If it appears to the Committee that the amenities of any part of the Island are seriously injured by the condition of any land, the Committee may serve on the owner and occupier of the land a notice requiring such steps for abating the injury as may be specified in the notice to be taken within such period as may be so specified."

Article 14 lays down that if a person upon whom notice has been served under Article 13 fails to comply within the time specified he shall be guilty of an offence and if his failure to comply with the requirements continues after conviction he shall be guilty of a further offence and liable to a fine not exceeding one hundred pounds *per diem* thereafter. The initial fine (amended in 1983) is five hundred pounds. Article 14 also says that whether proceedings are taken or not the Committee "may execute the work required to be done in such manner as it thinks fit."

There are three assumptions agreed by Counsel, without prejudice to any subsequent hearing because this is but a preliminary issue of law where I am asked to decide whether the Committee is empowered under Article 13 to issue the two notices.

The assumptions are these:

1. That the use of the land is *prima facie* a lawful use.
2. That the use of the land seriously injures the amenities of the immediate vicinity; and
3. That the use of the land does not adversely affect the physical condition of the land.

Interestingly, the 1964 Law was preceded by the Preservation of Amenities (Jersey) Law, 1952, which has no equivalent to Article 13. There is a provision in Article 5 of the 1952 Law which refers to any building injuriously affecting the amenities of the neighbourhood but no more. Article 6 and Article 8 of the 1964 Law deal with use of land. By Article 6, an application must be made for permission to develop land and the Committee may attach to the grant of permission a condition relating *inter alia* to the "use of any buildings or other land". Article 8 deals with the enforcement of planning control and, under that Article, the use of land can be required to be discontinued. Article 13 is, in my view, a provision of the law dealing with the way that land may be misused. We only have to look to the preamble of the Law to see the matters that the Law intended to address:

"A LAW to provide for planning the development and use of land, for the grant of permission to develop land and for powers of control over the use of land, to confer powers in respect of the acquisition and development of land, to provide for the protection and enhancement of the natural beauties of the Island and the preservation and improvement of its general amenities, and to make other provision in similar respects."

In that regard, Mr. Fielding submits that it is difficult to see how a notice under Article 13 could be directed to land use

because, as he puts it, the condition of land (defined in the law as "any corporeal hereditament, including a building, and land covered with water...") is not necessarily synonymous with its use and, furthermore, it is the condition of the land, not the things situate upon it, which must injure the amenity.

I find that argument difficult to follow. It is agreed between the parties for the purpose of this hearing that the use of the land seriously injures the amenities of the immediate vicinity. Why should the condition of the land merely mean the state of the land irrespective of how that state was brought about? It seems to me that whether the condition is caused by inactivity or by some activity (as here) is of no consequence. In Guillard v. IDC (1969) JJ 1225 the Court looked for a wide definition of the word "amenity" and was able to regard the wide definition favourably because the Law makes provision for the control of the use of the land. That supposition goes beyond a mere visual approach and extends to the definition in the Shorter Oxford English Dictionary of "amenity" as "the quality of being pleasant or agreeable" and "pleasant" as "agreeable to the mind, feelings or senses" (see page 1233 of the judgment).

We have spent some time examining in detail the judgment of the English Court of Appeal in Britt v. Buckinghamshire County Council (1964) 1 QBD 77, (1963) 2 All ER 175 but in my view that case is essentially authority for the proposition that an English Statute may be construed in the light of delegated legislation made under it. The case has been helpful but I have tried to avoid having to consider planning laws and controls in another jurisdiction which are infinitely more sophisticated than they are here.

One matter is very important. Article 13 is a penal provision and its effect could be used to deprive a subject of proprietary rights. It should be strictly construed, and if there is ambiguity it must be construed in a manner most benevolent to the appellant and so as to protect his proprietary rights.

But what is ambiguous in the Article? In my view nothing. The "condition" of the land means the state of the land and if the land is an eyesore and detrimental to the amenities of the locality, why should action not be taken to remedy it? That seems to me to be within the very spirit of the purpose for which the law was passed. It is not for me to decide today whether the action of the Committee was reasonable, but only whether it was lawful. This is not a Le Masurier v. Natural Beauties Committee (1958) 13 C.R. 138 hearing. The Committee has said that the land in question is an eyesore. The parties accept that it is an eyesore. The Committee has taken steps under Article 13 to abate it. In my view there is no merit in the argument that the Committee has not the power to rid itself on behalf of the public

of a continued usage that seriously injures the amenities of the immediate vicinity. I uphold the notices as valid notices.

Authorities

- Preservation of Amenities (Jersey) Regulations 1950.
- Preservation of Amenities (Jersey) Law 1952.
- Preservation of Amenities (Amendment) (Jersey) Law 1954.
- Preservation of Amenities (Amendment No. 2) (Jersey) Law 1960.
- Island Planning (Jersey) Law 1964.
- Town and Country Planning Act 1947: ss.23-33 & 113.
- Town and Country Planning Act 1971: ss/65, 88-105.
- Purdue, Young & Rowan-Robinson: "Planning Law and Procedure" (1989):
Ch. 15.
- Maxwell on the Interpretation of Statutes (12th Edn, 1976) pp. 1-2,
28-47, 238-246, 251-262.
- Stephens -v- Cuckfield Rural District Council (1959) 1 All ER 635.
- Stephens -v- Cuckfield Rural District Council (1960) 2 All ER 716.
- Britt -v- Buckinghamshire Count Council (1963) 2 All ER 175.
- Holm -v- Royal Borough of Kensington and Chelsea & Others (1968) 1 QB
646.
- Guillard -v- IDC (1969) JJ 1225.
- Burt -v- States of Jersey (4th July, 1994) Jersey Unreported CofA.
- Buckingham -v- Constable of St. Helier (1966) JJ 679.