

JERSEY / JUDGMENT

Craven v Environment and Public Services [2004] JRC 061 (02 April 2004)

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judgment

the deputy bailiff: 1. This case concerns two appeals by neighbouring property owners against the refusal of the Environment and Public Services Committee ("the Committee") to allow them to carry out work which would enable them to gain vehicular access to their respective properties. The appeals were heard together. The background 2. Mr and Mrs Elliott are the owners of Tregoney, 2 Green Road, St Clement. The property forms part of a terrace of eight two-storey dwellings situated on the northern side of the western end of Green Road. The property adjoins No.3 Green Road which is owned by the other appellants Mr and Mrs Craven. 3. The houses are all set back approximately 3.2 metres from the highway. Each of the properties has a small front garden with a low fairly uniform roadside wall to the front. Only one of the properties in the terrace, namely the property at the eastern end, has an authorised front vehicular access, which provides access to an integral garage to the side of the property. 4. Mr and Mrs Elliott applied in 1999 for permission to demolish the front garden wall in order to create a parking space for one car. Following consultation with the Public Services Department as the highway authority, the application was refused in November 1999 on the grounds that the proposal would result in the loss of a roadside wall which would be detrimental to the visual amenity of the area and the proposal was likely to result in the creation of a traffic hazard caused by vehicles manoeuvring into and away from the proposed parking area. 5. Mr and Mrs Craven are the owners of Rayeil, 3 Green Road which immediately adjoins No.2. In November 1997 they applied for permission to demolish the front garden wall so as to create a parking space. Following consultation with the Public Services Department, the application was refused on 14 th January 1998 on the grounds that the proposal did not include adequate car parking provision complying with the standards adopted by the Committee and was likely to result in the creation of a traffic hazard caused by vehicles manoeuvring onto and away from the proposed parking area. 6. On 11 th July 2000 the appellants submitted a joint application in respect of both properties to provide joint vehicular access at the front of their two properties so as to enable the provision of one parking space in front of each house. The Constable of St Clement had no objection to the proposal. The Public Services Department, as the highway authority, was again consulted and recommended rejection. Permission was refused on the grounds that:- (i) the proposal did not include adequate facilities to enable a vehicle to turn on the site and enter the highway in a

forward direction, considered essential in the interests of road safety; (ii) the proposal was likely to result in the creation of a traffic hazard caused by vehicles manoeuvring on to and away from the proposed parking area; (iii) the proposal would result in the loss of a roadside wall, the impact of which would be detrimental to the visual amenity of the area. 7. In November 2002 it was brought to the attention of officers of the Committee that part of the wall and a gate post in respect of each property had been removed in order to provide vehicular access/parking in front of both properties. The owners were warned as to possible prosecution and they both made retrospective applications for approval. The application of Mr and Mrs Elliott in respect of No.2 was submitted on 5 th February 2003 and that of Mr and Mrs Craven in respect of No.3 was submitted on 14 th December 2002. Although worded very slightly differently, the effect was identical and retrospective consent was sought for the work which had been undertaken, namely the removal of a gatepost and part of the front wall in order to create a parking space. In each case, any parking would be in a direction parallel with Green Road. The area in front of each house is not deep enough to allow parking at right angles to the road. 8. The applications were advertised but no representations were received. Consultation with the Public Services Department (now under the auspices of the Committee) was undertaken in pursuance of the duty to consult with the highway authority. In response the following comment was made by the Assistant Records Manager of the Public Services Department in respect of each application:- "No drawing received to indicate visibility splays. There is no room for a vehicle to turn on site and to be able to enter and exit in a forward gear at right angles to the main road. We recommend that the application be rejected." 9. The Assistant Planner, Mr Farman prepared reports dated 7 th March for the Planning Sub-Committee in respect of the two applications. The reports referred to Planning Policies G2(vii) and (viii) and BE13; to the fact that the Public Services Department had recommended refusal; and to the provisions of Article 6(6) of the 1964 Law in the context of the road safety factors and various other matters. The reports recommended that the applications should be refused on the basis that approval would result in a potential hazard to highway safety and the degradation of the character and appearance of the streetscape. 10. On 24 th March 2003 the Planning Sub-Committee considered the applications and rejected them. The Notice of Refusal dated 27 th March gave the reasons for refusal as follows:- "1. The proposed development does not provide adequate visibility splays and would therefore result in prejudice to highway safety. 2. the proposed development does not provide enough space to enable a vehicle to turn on the site and the highway in a forward direction and would therefore be prejudicial to highway safety. 3. the proposal would result in the permanent loss of a roadside wall and which would be detrimental to the character and appearance of the street scene contrary to Policy BE13 of the Jersey Island Plan 2002." 11. Subsequently, by identical letters dated 23 rd April 2003 from Messrs Michael Voisin & Co, the appellants requested re-consideration of the applications. The letters emphasised the terms of the proviso to Article 6(6) and referred to the fact that the visibility splays for the two properties were at least as good as most other accesses in Green Road, very few of which had enough space for vehicles to turn round. This went before the Committee on 17 th July accompanied by a further report from a planning officer. The Committee resolved to uphold its decision and accordingly the appellants have now both launched appeals to this Court. 12. It was agreed that there is no vehicular access to the rear of any of the properties in the terrace and

that there is no on-street parking allowed in Green Road. The evidence from the appellants, which was not challenged by the Committee, suggested that, as compared with when they first moved in, there had been a substantial reduction in on-street parking, particularly in the nearby coast road. There was now very little on-street parking in the immediate neighbourhood and that was confirmed by our site visit. In the absence of parking on their properties, the appellants would normally have to park a considerable distance away even if carrying groceries etc. The appellants' submissions 13. The case for the appellants is to be found in the affidavits filed on their behalf, their written skeletons and the oral

submissions.

We have carefully considered all the points made but propose to give only a brief outline of some of the arguments. 14. Mr Hoy referred to the relevant provisions of the Island Planning (Jersey) Law, 1964. Article 5(2) defines 'development' (for which permission is required) as including:- "(a)..... (b) the creation of a new means of access to land from a road and the enlargement of any existing means of access to land from a road, to a width exceeding three feet;" 15. Article 6(6) provides as follows:- "Where application is made to do any such work as is referred to in subparagraph (b) of paragraph (2) of Article 5 of this Law, or where in respect of any application for permission to develop land it appears to the Committee that the work, or any part thereof, would be a source of danger to persons using any road bordering the land or would involve an increase in public expenditure in the event of the improvement of any such road at any future time, or would hinder any proposals for the improvement of any such road previously notified to the Committee by the highway authority, then in the consideration of such application, the Committee shall consult with the highway authority and take into account any representations made by the highway authority in the matter: Provided that the Committee shall not exercise its powers under this Article in such a manner as to deny reasonable access to land either to persons or to vehicles." The 'powers under this Article' referred to are of course the powers to grant development permission conditionally or unconditionally or refuse permission. 16. The appellants' written submissions contended that the proviso to Article 6(6) was mandatory in its terms. Any property owner was entitled to reasonable access, vehicular and pedestrian to his home. The only duty imposed by the main part of Article 6(6) was to consult with the highway authority. The Committee was not bound to agree with any views which the highway authority might express. It was entirely reasonable for a party whose property had no other means of vehicular access and who also had no reasonable access to on-street parking, to wish to use available space in front of his house for the purpose of vehicular access. By definition such access would be reasonable because it could be done and there was no other means of access. Alternatively, they submitted that the proviso created a strong presumption in favour of granting vehicular access to a property owner where there was no other means of such access and there was a heavy onus on the Committee to rebut that presumption. 17. The Committee had considered Policy G2(vii) and (viii) of the Island Plan 2002 which stated:- "Applicants need to demonstrate that the proposed development (vii) provides a satisfactory means of access, manoeuvring space within the site and adequate space for parking; (viii) will not lead to

unacceptable problems of traffic generation, safety or parking." However, submitted Mr Hoy, these could not override the express terms of the proviso to Article 6(6). 18. During his oral submissions Mr Hoy did not press his first interpretation of the proviso and was inclined to accept that his alternative formulation was correct i.e. there was a presumption in favour of a sole means of vehicular access. The matter ultimately turned, he said, on the degree of danger which would be caused to the public if vehicular access in this case were to be allowed. The Committee had not rebutted the presumption in this case. It had failed to consider the specific circumstances of the case. It had not visited the site nor had it received any evidence concerning the level of traffic on the road, the number and nature of other exits of a similar nature in the vicinity and whether there had been a record of accidents in that particular road. Indeed there was no evidence before the Committee to justify the first reason which it gave in its Notice of Refusal, namely that the visibility splays were not adequate. On the contrary, the comment from the highway authority had said simply that no drawings had been received to indicate the visibility splays. In this connection, he submitted that it had been unreasonable for the Public Services Department to criticise the appellants for failing to produce any such drawings without their being alerted to the need to produce drawings. These were applicants in person. There was no published document indicating that such drawings were necessary and no one had seen fit to communicate the concern of the Public Services Department to the appellants. We would add that, in our judgment, Mr Hoy's criticisms in this respect were fully justified. 19. The appellants submitted that the danger which would be caused by allowing the access to be created would be minimal. There were many existing vehicular exits from a number of properties in the neighbourhood and, in many of them, the visibility was rather worse than it would be in the two properties in question; yet there was no evidence of accidents having been caused as a result. Whilst the road was reasonably busy, it was certainly not one of the busiest roads in the island. There was a 30 m.p.h. limit. The appellants had not experienced any difficulty in exiting safely from their properties during the time they had been parking on them since the spring/summer of 2002 when they had undertaken the unauthorised works. 20. The second reason given by the Committee in its Notice of Refusal was that there was not enough space for vehicles to turn round and exit in a forward direction. It was clear from the comments of the highway authority that it wished access to be gained at a right angle to the road. The appellants submitted that there were hundreds, if not thousands, of similar access points throughout the island where there was insufficient space to turn round with the result that a car had either to stop and reverse off the road (the preferred method) or reverse on to the road from the property. Furthermore the preference for perpendicular parking as opposed to parallel parking was not justified. All on-street parking was parallel to the direction of traffic and there was no real difficulty in drivers exiting in such circumstances. It made no difference that the parallel parking in this case would be just off the road rather than on the road. Furthermore the Committee had never published any guidance to make clear that this was its policy. 21. In short the Committee had failed to give sufficient weight to the proviso to Article 6(6). It had simply adopted the advice of the highway authority without further thought and without giving consideration to the specific facts of this case, in particular the level of danger which would be caused by allowing the creation of this particular access. 22. Additionally the appellants submitted that the Committee had been

inconsistent in its decisions. There were innumerable examples of properties having access on to main roads where there was no room to turn on the property (so that reversing on to or off the property was required). There were also many cases of parallel parking having been permitted. Some of these decisions were comparatively recent. A number of examples were given in evidence. Mr Hoy submitted that it was unreasonable therefore to refuse these particular applications for parallel parking when others, which would have caused no less and possibly greater danger to road safety, had been allowed through. 23. In its third reason the Committee had relied upon Policy BE13 of the Island Plan which provides:- "There will be a presumption against the loss of front gardens and their boundary features to provide for frontage parking with direct access off the highway where this would have a detrimental impact on the character and appearance of the street scene or highway safety." Mr Hoy repeated his argument that any such policy could not override the express terms of the proviso to Article 6(6). 24. Finally, in his written submissions, Mr Hoy took a technical point in connection with the expression of the views of the highway authority. In the case of a main road such as Green Road, the highway authority has until recently been the Public Services Committee. At the end of 2002 the Public Services Committee was merged with the Environment and Planning Committee to make the Environment and Public Services Committee. The Committee itself is therefore the highway authority in respect of a main road such as Green Road. However it fulfils that function through officers in the Public Services Department. Initially, in his written submissions, Mr Hoy took a technical point concerning whether the Committee had properly delegated its functions as a highway authority to these officers but, following production of an Act of delegation by the Committee (which showed a due delegation albeit misdescribing the title of the Assistant Records Manager), he has not pressed that point and he was clearly right not to do so. We will not consider it further. The Committee's submissions 25. The Committee's position was set out in the 'statement and material facts of the Committee's decision' ("the Committee statement") as supplemented by affidavits from Mr Webster, Principal Planner and Mr St George, Senior Traffic Engineer of the Public Services Department and the skeleton arguments submitted by Mr Hawgood. We have carefully considered all the matters set out in those various papers but propose to summarise only certain points in this judgment. 26. Essentially the Committee stood by its decision for the reasons given at the time. First, because of concerns about road safety, it did not consider that the proposed access amounted to 'reasonable access' to the properties as envisaged in the proviso to Article 6(6). Secondly, it considered that the removal of part of the wall at each property would be detrimental to the character of the street scene and contrary to Policy BE13 of the Island Plan. 27. We refer only briefly to the second reason. The Committee's position is that, if there were no reasonable grounds for refusing permission on highway safety grounds, then, having regard to the issue of reasonable access referred to in the proviso to Article 6(6), it would not have refused permission solely on visual amenity grounds notwithstanding its concern about the adverse visual impact of the proposal. However, given its decision on the road safety issue, the visual amenity ground was also taken into account and relied upon by the Committee. In the light of this assertion it seems sensible to concentrate on the road safety issue. 28. As to this, the reasons given by the Committee were essentially two-fold. First the proposed development did not provide adequate visibility splays and would therefore

result in prejudice to highway safety. Secondly the proposal did not provide enough space to enable a vehicle to turn on the site and emerge on to the highway in a forward direction at right angles to the main road. Mr Hawgood conceded that there was in fact no evidence before the Committee that the visibility splays were inadequate because there was no evidence as to what they were. This reason was therefore erroneous. However, he submitted, the Committee was still entitled to take account of the concerns of the highway authority and apply the policy that access should not be allowed unless it could be achieved in a forward direction (by provision of turning room on site) and at right angles to the road. Furthermore, although there may have been no figures before the Committee, it was obvious that the visibility splays were inadequate because of the existence of a hedge on the property lying to the west of No.2 Green Road. 29. In response to the issue of whether the policy of the highway authority of requiring turning space and being against parallel parking, as acceded to by the Committee, was a published policy, the Committee could only point to a document entitled 'Technical Guide No.1, Roads Serving Small Housing Developments' ("Technical Guide No.1") which had been publicly available for many years. Mr Hawgood agreed that most of that document was not relevant to an application such as this, which related to the creation of a means of access to an existing individual property, but he referred the Court to the plan at the top right hand corner of the second page (which shows a car in a junction where the minor road approaches the main road at right angles) and suggested that this made it clear that vehicles must emerge from parking places on private property at right angles to the road. There is however no reference in the text to an appropriate angle of approach to the main road and we are quite unable to draw, simply from the existence of the sketch plan, a published policy that means of vehicular access from private property must be at right angles to the road. We have not therefore been referred to any published policy whereby applicants such as these appellants might have been expected to have been aware that access must be by a vehicle travelling forward at right angles to the road. 30. Mr Hawgood also referred us to a document entitled 'Public Services Department. Technical Guide: Roads Serving Small Housing Developments' ("the New Guide"). This was apparently published on 16 th July 2003, coincidentally, one day before reconsideration by the Committee of the applications in this case. It replaces Technical Guide No.1. There is however no suggestion that this document was referred to or relied upon either by the planning officer when preparing his report for the reconsideration hearing or by the Committee when reconsidering the matter. Nevertheless the Committee argues that the New Guide merely reflects previous practice. Again the document is mainly concerned with small housing developments and the standard for roads in those developments. However the introductory sentence to the New Guide says:- "This guide superceeds (sic) 'Technical Guide' [and] is only applicable to the access arrangements for residential developments of up to 25 dwellings and for new or altered private dwelling accesses onto public main roads." The only passage in the New Guide which is relevant to these applications is the following at page 5:- "Developments shall have sufficient turning area on site to allow vehicles to enter and exit the site in forward gear and perpendicular to the highway. Single dwelling developments without adequate turning area on site will only be permitted subject to all the following criteria: · there is sufficient visibility to traffic on the main road and · the 85 th percentile speed on the main road is less than 35 m.p.h. and · the two-way

traffic flow on the main road is less than 400 vehicles in the busiest hour in a 24-hour period · the proposed vehicular access is at right angles to the public highway." 31. In preparation for this appeal, Mr St George of the Public Services Department arranged for a traffic survey in Green Road to be undertaken. The Court has been shown an affidavit exhibiting the results. These show that the maximum average two-way traffic flow in Green Road during the busiest hour (8-9 a.m.) was 539. It therefore exceeded the figure of 400 given in the New Guide. Although such a figure was apparently well below the level to be found in the busiest roads in the island, both parties accepted that Green Road could properly be described as a reasonably busy road. Mr Hawgood therefore argued that, although these particular matters had not been before or considered by the Committee, nevertheless, of the four criteria for making an exception to the rule that access would be refused where there is no turning room on site, only one was met in this case, namely that there is a 30 m.p.h. speed limit in Green Road. This therefore confirmed, he said, that the Committee had acted reasonably in accepting the advice of the highway authority in this case and adhering to the general policy requiring turning space on site and a right angled approach to the road. 32. As to the effect of Article 6(6), the Committee, both in its Committee statement and in its skeleton argument, argued that, for the purposes of the proviso, access was unreasonable (and therefore not reasonable) if it presented any of the problems expressly listed in the body of Article 6(6). Thus, if it appeared to the Committee that the proposed works would be a source of danger to persons using the bordering road, the proposed access would not be reasonable and should therefore be refused. The Committee had consulted the highway authority as required by Article 6(6) and had accepted its advice that there would be a source of danger to persons using the bordering road. 33. The Committee accepted that there were innumerable examples of parking spaces throughout the island which did not comply with the guidelines which were being insisted upon in the present case. However it denied any allegation of inconsistency. The vast majority of such spaces fell into one of three categories:- (i) They were created before the 1964 Law came into force. (ii) They were created after 1964 but many, many years ago when traffic conditions were much lighter and the predecessors of the Committee adopted very different standards towards road safety. (iii) The Committee had granted consents more recently which did not comply with the turning on site/right angled approach guideline but these were in cases where there had been a pre-existing access and the proposal put to the Committee was an improvement on the existing situation. Thus the effect of refusing an application in those circumstances would be to leave the existing situation in place. The Committee regarded it as preferable to allow an improvement in the safety of a particular access even if it did not comply fully with present day standards. Mr Hawgood submitted that most of the examples given by the appellants in evidence fell within one of these categories. Alternatively the circumstances were very different. So, for example, Pomona Road, one of the streets referred to by the appellants, was a relatively quiet back road and another, Langley Avenue had a 20 m.p.h. speed limit so that traffic was travelling much more slowly than in Green Road. 34. Mr Hawgood appeared to accept that there were three instances where the Committee (through its predecessor) had granted permission for parallel parking in circumstances which were not dissimilar to the present applications. The first related to 28 Green Road where such a permission had been granted in 1991. However, the report of the planning officer prepared for the reconsideration by the

Committee in this case had made it clear that that decision had been recognised as not in the best interests of highway safety and it should not be repeated elsewhere. The second instance related to certain properties in Bel Royal Terrace, La Route de St Aubin. It was accepted that that was a far busier road than Green Road but the Committee of the day had been persuaded in 1998, after an initial refusal, to allow parallel parking in respect of 6 Bel Royal Terrace following representations by the Connétable of St Lawrence, consideration of the fact that the parking space was large and therefore allowed more reasonable visibility and the fact that, at the time, vehicles were parking on the road immediately outside the property but that this was about to be terminated by the introduction of yellow lines. Having granted permission for No.6, the Committee later found itself unable to refuse similar applications in respect of 4 and 5 Bel Royal Terrace. It had come to regret its initial decision. The third instance related to a property in Green Street, St Helier known as Yacht Villa, where permission for a parallel parking space in front of the house had been granted in 1993. However, that was the only property in Green Street where such consent had been granted since 1980. In the 23 years since then the Committee had refused applications (often repeated) in respect of five other properties in that street. 35. In relation to these decisions, the Committee relied upon the dicta of the Royal Court in *Caesar Investments Limited -v- Planning and Environment Committee* (2003)JRC180 at para 74 :- "As to the argument on inconsistency, we agree that consistency is an important factor as described by Lord Widgery in *Collas Radio and Rokison JA in Le Maistre* . But the need for consistency cannot elevate an earlier decision into a binding precedent as Mr Voisin seemed to consider. If, for example, the Committee were to conclude that it had made an error in relaxing the standards to the extent which it had at the [nearby] development, we think that it would be open to the Committee, in the case of an identical site, to admit its error and decide not to relax the standards to such an extent in future. No doubt such a decision could be said to be inconsistent with the first decision but, assuming the Committee could satisfy the Court that it was acting reasonably in revising its reviews, we think that any such decision would survive an appeal." The Committee submitted that this was the situation here. It had concluded that its predecessors had erred in granting the permissions at 28 Green Road, Bel Royal Terrace and Green Street and it did not wish to perpetuate those errors. 36. Finally the Committee emphasised its concern that, if the present applications were to be successful, it would make it much more difficult for the Committee to resist other similar proposals in the vicinity or elsewhere. This would in turn further exacerbate the potential for highway safety problems and would serve to detract further from the visual amenities of the area. Test on appeal 37. We remind ourselves of the test to be applied by this Court on an appeal as authoritatively stated in *Token Limited-v-Planning and Environment Committee*

(2001) JLR 698 at 703 per Bailhache, Bailiff :- "The Solicitor General submitted that the decision in *Fairview Farm* did not entitle the court to find that the Committee's decision was reasonable but quash it because the court had reached an equally reasonable but different decision. We agree. The court might think that a committee's decision is mistaken, but that does not of itself entitle the court to substitute its own decision. The court must form its own view of the merits, but it must reach the conclusion that the Committee's decision

is not only mistaken but also unreasonable before it can intervene. There is an element of semantics here but there is, nonetheless, a qualitative difference between finding that a decision is unreasonable, rather than simply mistaken. To put it another way, there is a margin of appreciation before a decision which the court thinks to be mistaken becomes so wrong that it is, in the view of the court, unreasonable." Decision 38. We must first consider the correct interpretation of the proviso to Article 6(6). We are quite satisfied that Mr Hoy's primary submission (as summarised in the first part of para 16) is incorrect. It would make it impossible for a new means of access to be refused if it was the sole means of access to the property, no matter how dangerous. However, neither do we think that the Committee has correctly interpreted the proviso. The main part of Article 6(6) provides only that, on the occurrence of any one of the four situations there described, the Committee is under a duty to consult with the highway authority and take account of any representations from the highway authority. That is all; the Committee is clearly not bound by any such representations. The four situations, any one of which leads to the duty to consult, are:- (i) an application to do work referred to in Article 5(2)(b) i.e. to create a new means of access to land from a road; (ii) where in respect of any application for permission to develop land, it appears to the Committee that the work would be a source of danger to persons using any adjoining road; (iii) where it appears to the Committee that the work would involve an increase in public expenditure in the event of the improvement of any adjoining road at any future time; (iv) where it appears to the Committee that such work would hinder any proposals for the improvement of any such road previously notified to the Committee by the highway authority. 39. The Committee said in its written reasons and submissions that access becomes unreasonable for the purposes of the proviso if it presents any of the problems expressly listed in the body of Article 6(6). That clearly cannot apply to the first of the four situations which we have listed above as that would mean that every new means of access would be unreasonable. The Committee is therefore arguing that for some reason the three following situations must be treated differently. Can that be so? Let us take (iii) above, namely where the work of development (let us assume that it is a creation of a new means of access) would involve an increase in public expenditure in the event of the improvement of the adjoining road at any future time. This does not require there to be a particular road improvement in mind either immediately or in the future. On the Committee's argument, if the new access would involve an increase in public expenditure if there were ever to be a road improvement in the future, that alone makes the proposed access unreasonable. That cannot possibly be right. It would be thoroughly unreasonable to refuse a person permission to create the sole means of vehicular access to his property simply because, one day, there might just conceivably be a road improvement scheme which would cost more as a result of the creation of the access. We are quite satisfied that it cannot be the case, as argued by the Committee, that access becomes unreasonable for the purposes of the proviso if it presents any of the problems listed in the body of Article 6(6). We acknowledge that in paragraph 38 of the Committee statement, the Committee states that the issue has to be one of degree and proportionality relative to the public interest; but in our judgment this

cannot undo the effect of the misinterpretation of the statute articulated earlier in paragraph 38 and repeated in the skeleton argument on behalf of the Committee. 40. One of the four situations referred to in the main body of Article 6(6) is where there appears to be a source of danger to persons using the adjoining road. The Committee argues, therefore, that if it concludes that there is such a danger, any access resulting from the work would not be reasonable access. In our judgment that does not follow. If the Committee is entitled to refuse access simply because such access would be a source of danger, there would be no need for the proviso. It would have been very simple to so provide. But that is not what the statute says. It merely states that, if the Committee thinks there is such a danger, it should consult. In our judgment the proviso makes it clear that, even where one of the four circumstances is present (so that the duty to consult arises) the Committee must still not refuse permission if the effect would be to deny reasonable vehicular access to the land. We note in passing that Mr Hawgood sought at one stage in his oral submissions to suggest that the proviso was satisfied if there was either reasonable pedestrian access or reasonable vehicular access. In other words the proviso would only apply to ensure that no property was ever 'enclavé' in the sense that it could not be accessed reasonably either by vehicles or by pedestrians. In our judgment the proviso is clearly not so limited. If that was its meaning there would have been no need to mention vehicular access at all. In our judgment the proviso is clearly stating that, *prima facie* a property is entitled to reasonable access for persons and vehicles. 41. The proviso in our judgment makes it clear that, no matter what the circumstances, the Committee must not refuse permission so as to refuse reasonable access to vehicles. It is unambiguous and mandatory in its terms. However the key question is what is meant by 'reasonable'. Here the level of danger to the public is relevant. To take an extreme example, if the only vehicular access would be on to a completely blind corner on an extremely busy road with a 40 m.p.h. speed limit, the scale and level of the danger would clearly suggest that any such access would not be reasonable. However, as with all cases of reasonableness, the Committee must decide whether, having regard to all the particular circumstances of the case, a refusal of permission would have the effect of denying reasonable access. That involves consideration of all the relevant factors of the particular case including the nature of the request for access and the level of danger to road users which would thereby be caused. It is not consistent with the proviso for the Committee rigidly to apply a general policy on exits on to roads. It is of course perfectly proper for the Committee to have a general policy as to the standards which it would like to apply. But it has to consider that policy against the particular facts of each case in order to decide whether, in the particular case, the effect of applying the policy would be to deny reasonable access to the land; because it is prohibited by statute from refusing permission if that were to be the effect. The terms of the statute are mandatory and the existence of a general policy cannot override the clear words of the statute. Thus Policies G2(vii) and (viii) and BE13, together with the general policy on parking spaces as advised by the Public Services Department are subject to the express terms of the proviso. 42. We hold therefore that the Committee misapplied the proviso to Article 6(6) by taking the view that, if any of the problems listed

in the main part of Article 6(6) were present, that of itself meant that any access would be unreasonable and therefore would not fall within the proviso. The duty of the Committee was to have regard to the nature and level of the danger in the particular case and balance this against the other relevant factors in order to decide whether the effect of refusing to allow the creation of the access in question would be to deny reasonable vehicular access to the land. The Committee failed to do this. It appears not to have considered whether the facts of this particular case required a departure from the preferred general policy in order to comply with the proviso. 43. This misunderstanding alone, coupled with the fact that the first ground referred to in the Notice of Refusal was clearly wrong in that the Committee had no evidence before it that the proposal did not provide adequate visibility splays because, as the note from the highway authority had stated, no visibility splays were shown in the papers before the Committee (and the Committee had not compensated for this by attending on site in order to form its own opinion of the degree of visibility), means that the decision of the Committee must be quashed. The question then arises as to whether we should remit the matter to the Committee for it to reconsider. This would seem inherently undesirable. It would create added expense to the parties and, furthermore, we have concluded that, applying what we have held to be the correct interpretation of Article 6(6), on the specific facts of this case, a decision to refuse consent was and would be unreasonable. We understand fully the Committee's concerns that, to allow these applications might set some form of precedent which would make it difficult to resist other applications in the vicinity or, indeed, elsewhere. However, in our judgment the combination of factors which leads us to conclude that it would be unreasonable to refuse consent in these cases is fairly exceptional and should not be capable of use as a precedent in different circumstances. 44. The factors which have led us to conclude that a refusal of consent was unreasonable are as follows:- (i) There is no prospect of any other means of vehicular access to these properties. (ii) The actions of government have made the appellants' position worse because on-street parking in the vicinity has been reduced. The problems of parking have therefore become worse. (iii) The problems of parking near the properties are particularly bad. Not only is there is no on-street parking in the whole of Green Road but there is no on-street parking in most of the roads nearby. There is very limited on-street parking in the near-by coast road but this is usually full. The consequence therefore of not having vehicular access to the properties is that the appellants' cars have to be parked a very considerable distance away even if they are carrying substantial items. It is not a case where there is parking further up the road or in an adjacent street. We doubt that there will be many cases where the consequences of refusing a parking space would be so severe in this respect. (iv) At the time of the application, the Committee had no published policy to the effect that parking must be perpendicular to the road so as to allow exit at a right angle. As we have said previously, Technical Guide No.1 did not articulate such a policy. Since then the New Guide has been published and, subject to what we say below, the Committee may of course consider future applications against the policy set out in that guide. Although we note the assertion that it merely reflected pre-existing practice, the fact remains that it had not previously

been published and was not in force at the time of the application. (v) This is in effect a joint application. It was made clear to the Court during the course of the hearing that the intention was to knock down the remaining gate pillar and wall which divides the properties. There will therefore be a moderately large area and the cars of each appellant will be able to pass over the property of the other for the purposes of access to and egress from their respective parking spaces. As was said by the Committee's predecessor in relation to the decision at 6 Bel Royal Terrace, this assists road safety. It does so in two respects. First it assists in achieving better visibility because the driver has more room for manoeuvre in a large parking space in order to put himself into the best position for visibility when emerging from the space. Secondly, if the parking space is less restricted, the driver does not have to concentrate so hard on avoiding contact with any of the immediate surroundings of the parking space thereby enabling him to concentrate on checking for on-coming traffic. Emerging from a very constricted site means that the driver's concentration is split between checking for on-coming traffic and ensuring that he does not come into contact with any part of the site as he emerges from it. The appellants both made it clear that they were willing to agree conditions to ensure maximum road safety. We think it would be perfectly reasonable to insert a condition on any permission that the parties should amend the title to their respective properties by creating reciprocal rights to pass over their respective parking spaces (subject of course to the right of a car to park in that space) for the purpose of access to and egress from the site. This would ensure that the position would not change should the properties change hands in future and the new neighbours not get on so well. (vi) We accept that Green Road is a road in which the maximum two-way traffic exceeds the figure of 400 which is set out in the New Guide. However this only applies for some three hours a day. At all remaining times the volume of traffic is below this level. It is a reasonably busy road but it is not nearly as busy as many other roads in the island where there is existing parallel parking of the nature sought in this case. (vii) There are a large number of existing parking spaces in Green Road where the means of access do not comply with the conditions which the Committee seeks to impose in this case. We appreciate that, save for No.28 they are historical or were granted because they were an improvement on the previous position and that distinguishes them from the present case. But the fact remains that they exist apparently without causing any particular difficulty or danger. The Court has not been informed of any record of accidents or concern on the part of the authorities that Green Road is at particular risk of accidents because of all these exits. It is noteworthy that the Connétable of the parish did not object to the application. We would have expected him to have done so if his honorary police were of the opinion that there was a difficulty. Indeed, as the Court saw during its site visit, just to the west of the properties in question, there are accesses where cars have to reverse on to the road at a location which is closer to the junction with the coast road and where cars therefore come round a bend into Green Road. In addition the evidence from the appellants is that they have not experienced any difficulty in emerging safely from their parking spaces during the 18 months or so that they have been doing so following the unauthorised works. Having visited the site the

Court is of the opinion that the visibility, even if it does not comply to the letter with the current required standards, is reasonable and certainly no worse - and in many cases rather better

- than the other exits on to Green Road. (viii) For all these reasons we conclude that the additional risk to road safety on Green Road would be minimal. Taking account of all the various factors which we have described, a decision to refuse permission in this case had for its effect to deny reasonable vehicular access to the appellants' properties and was therefore contrary to the proviso. We have reminded ourselves, per Token, that we must not allow an appeal simply because, if we had been the Committee, we might have reached a different decision. However we are satisfied, for the reasons for which we have given, that a decision to refuse access in this case on the grounds that to do so would not amount to the denial of reasonable access as required by the proviso, was itself an unreasonable decision. 45. We have reached our conclusion for the reasons set out above but there is an additional matter which has caused us some concern. We have some difficulty in accepting the validity of the objection of the Committee, on the advice of the Public Services Department, to parallel parking in all circumstances. We make no concluded finding because we did not hear oral evidence from the Public Service Department officials but Mr Hawgood was unable to answer our queries to our satisfaction. The policy is stated in the New Guide. It states that even where there is no room to turn, the Committee will still require perpendicular parking rather than parallel parking so that the exit is at right angles to the road. We have some difficulty with this view for two reasons. First, human nature being what it is, any car with a perpendicular parking space will often drive forward off the road into the parking space rather than stop on the road and reverse into the parking space so that it may emerge in a forward direction. Indeed, in the course of our site visit, it was clear that this had occurred in a number of cases in Green Road itself and in similar parking spaces off, for example, Route du Fort. It seems to us that, in most cases, reversing back on to the road at right angles is a much more hazardous operation than emerging from parallel parking. The driver is likely to be further off the road and will have more limited visibility than if he were parked parallel to and next to the road. Furthermore he has to look over his shoulder in both directions in order to look along the road whereas, in the case of parallel parking, he is looking forward in one direction albeit over his shoulder in the other direction. Secondly, it seems to us that, although parallel parking off-road is not exactly the same as on-street parallel parking, there is considerable similarity. Almost all on-street parking is parallel parking and this involves the driver looking forward in one direction and over his shoulder in the other direction when seeking to leave the parking space. We accept that the best way of emerging from any parking space is in a forward direction at right angles. However the policy in the New Guide is to deal with situations where there is no room to turn. For the reasons which we have given we remain very uncertain that it is right to insist, in circumstances where there is no turning room, on the parking being perpendicular (so that the approach is at right angles) rather than parallel because it seems to us that it is more dangerous to reverse on to a road in such a situation than to emerge from a parallel parking

position. We invite the Committee to revisit this whole subject and consider whether the fourth bullet point on page 5 of the New Guide (which requires perpendicular parking so as to allow access at right angles) is indeed the best course from a road safety point of view where there is no room to turn. 46. Finally we would wish to say something about visual amenity. In this case the Committee accepted that the level of visual amenity meant that, if the road safety reason were not upheld, there were no grounds for refusing access on the grounds of visual amenity and that to do so would be a breach of the proviso. However we would not wish to be taken as accepting that this would be the case no matter what the level of visual amenity. The proviso simply refers to reasonable access. In our judgment, if one had a street scene of a particularly high quality which contributed very greatly to the visual amenity of the street, it might well be the case that to allow the demolition of part of the scene to allow a car to be parked would be so detrimental to the high quality of the street scene that such access should be refused on the grounds that it would not be reasonable access. In other words we do not think that the Committee should shy away from such a finding in the right case. However we emphasise that it would require a high level of visual amenity and certainly the visual amenity on Green Road does not reach the necessary level. 47. It follows that we have concluded that the decision of the Committee to refuse these applications was unreasonable. We therefore allow the appeals, quash the refusals and direct that consent to the applications should be granted subject to such conditions as the Committee may think fit in order to maximise road safety and minimise any adverse effect on the visual amenity of the area. Thus, as we have indicated, the Committee may well seek to impose conditions in order to ensure that the maximum amount of space is available to both properties in order to gain access to and egress from the site with the minimum distraction. Further we see no reason why the Committee should not impose conditions in relation to the surface of the parking space or other aspects in order to make the resulting work as attractive as possible. Authorities. Island Planning (Jersey) Law, 1964. Public Services Department Technical Guide: Roads serving small housing developments (16 th July, 2003). Caesar Investments Limited -v- Planning and Environment Committee (2003)JRC180. Token Limited-v-Planning and Environment Committee

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