

JERSEY / JUDGMENT

Le Maistre v P and E [2001]

JRC 158 (25 July 2001)

[2001] JRC 158

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judgment

The Bailiff: 1. This is an appeal pursuant to Article 21 of the Island Planning (Jersey) Law 1964 ("the Law") by Richard David Le Maistre ("the appellant") against a decision of the Planning and Environment Committee ("the Committee") refusing to grant development permission for the construction of a 3 bedroomed bungalow at Field 921, La Rue des Bœufs in the parish of St. Mary.

2. We interpose to state that the notice of appeal refers to a refusal to grant "planning permission". In evidence, Mr. Peter Le Gresley, a principal planner employed by the Committee, described the application as being one for "detailed planning permission". Neither of these terms is known to the Law. Article 5 refers to the obligation to obtain "permission for development". "Development permission" is the phrase which we shall employ in this judgment. We observe in passing that it is not conducive to good administration for confusing extra-statutory terminology to be used.

3. The facts may be summarized as follows. Field 921 is a small field which has been in the ownership of the appellant's family for some 50 years. The appellant acquired it from his mother about 17 years ago. He has tried without success to let it for agricultural purposes. It was last let by his mother to a Mr. Le Cornu, a local grower but it appears now to have no market for letting. The appellant has used it for growing vegetables for himself and his family. For many years the appellant and his family have sought to obtain development permission to build on the land. All these applications have been refused. On 26th July 1999 the Committee received an application submitted by the appellant's agent together with the usual drawings and plans. Permission was sought to develop a 3 bedroomed bungalow with integral garage.

4. In accordance with its usual practice the Committee advertised the application and consulted with the relevant statutory authorities. No objections were received from any neighbour or other party, except that one neighbour expressed concern about access if access were not to be directly on to the road from the site. In the event that contingency does not arise. The Department of Agricultural and Fisheries responded: "... I can advise you that the Agricultural Land Sub-Committee recently visited the field and agreed that whilst the field is only 30 perch in size, has limited access and is not part of a holding, it is however capable of sustaining a wide range of crops. Therefore in the circumstances they would not wish to comment on the planning issues appertaining to this application". Mr. Le Gresley sought clarification of this advice and on 28th October 1999 the Department replied:- "The results of the Sub-Committee's discussions are, that

it agrees that the field consists of good agricultural land, but because of its size, is only likely to be used as a market garden, rather than become part of a large agricultural enterprise. Its loss could not therefore be described as a major loss to agriculture." 5. The Public Services Department advised by memorandum:- ""There is no foul sewer available within La Longue Rue. The nearest foul sewer is located at Les Six Rues junction. Details of the route of the proposed pumping main are required to be submitted prior to any approvals being given". In evidence it emerged however that the appellant had obtained the consent of his neighbour to connect to a sewer on adjoining land. It was conceded by the Committee that there were no insuperable difficulties relating to foul sewage or surface water that prevented development from taking place. Field 921 also has access to a borehole for the supply of water. 6. On 12 th January 2000, the Connétable of St. Mary wrote to the Planning Department stating:- "I have no objections to the plans for the construction of a three bedroomed bungalow with integral garage on Field 921, La Rue es Boeufs St. Mary. I and my Comité des Chemins recently visited the aforementioned site, and also have no objections to the formation of a new entrance being formed in the Rue es Boeufs to service this proposed bungalow". 7. On 19 th January 2000, Mr. Le Gresley prepared an application report including a site description, site planning history, details of the results of the consultation process and planning considerations. This report appeared to the Court to be a model of its kind and no issue was taken by counsel for the appellant as to the proceedings of the Committee. In the event, Mr. Le Gresley recommended that the application be refused and on 3 rd February 2000, the Committee accepted that recommendation and refused the application. 8. The grounds of refusal contained in the formal notice were that "the proposed development would be contrary to the approved Island Planning Policy for the Agricultural Priority Zone, in which there is a general presumption against any new non-agricultural development". 9. It is clear from the minutes of the Committee's meeting and from correspondence which issued subsequently from the President of the Committee and Mr. Le Gresley that the factors which dominated discussion were these. On the one hand the Committee had been told that Mrs. Le Maistre, the wife of the appellant, suffered from a progressively debilitating disease which would require her to live in a bungalow. The Committee was also aware that the States had supported a private member's proposition brought by Senator Leonard Norman inviting the Committee to grant development permission. On the other hand the Committee had regard to the presumption against non-agricultural development contained in Policy CO6 which had itself been approved by the States. 10. Both counsel were in agreement that the test to be applied by the Court was that laid down by the Court of Appeal in *Island Development Committee v. Fairview Farm Ltd* .

(1996) JLR 306 CofA. In earlier cases this Court had held that it had no power to substitute its own view for that of the Committee. It had been held that its functions were limited to considering (1) whether the proceedings of the Committee were sufficient and satisfactory, (2) whether the decision was one which the law empowered the Committee to make and (3) whether the Committee's decision was one to which it could reasonably have come. In *Fairview Farm* the Court of Appeal held that that approach was wrong. Given that the Royal Court was a court of appeal under Article 21 of the Law, it was not restricted to considering whether the Committee had reached its decision in a lawful manner. Le

Quesne J. A. stated, at p 317 - "The Royal Court, as an appellate body, must consider not merely whether the inferior body has followed the correct procedure, but also whether its own view is that the decision was unreasonable. It may allow whatever weight it thinks proper to the experience and knowledge of the inferior body, but it cannot escape the responsibility of forming its own view.... ... The duty of the court on an appeal under art. 21 is not merely to consider whether any reasonable body could have reached the decision which the Committee did reach, but to decide whether the court considers that that decision was, in its view, unreasonable." 11. The Island Plan was approved by the States on 3rd November 1987. The Island was divided into a number of zones including the Green Zone, the Agricultural Priority Zone and the Sensitive Landscape Area of the Agricultural Priority Zone. Field 921 is to be found in the Agricultural Priority Zone. We were told that the Agricultural Priority Zone and the Sensitive Landscape Areas of the Agricultural Priority Zone make up some 50% of the Island's surface area. Chapter 2 of the draft Island Plan which was presented to the States in 1986 described the philosophy behind the Agricultural Priority Zone in the following terms:- " 2.15 The principle of protecting agricultural land is to be maintained. However, changes from the current 'White Land' policies are proposed, based on the following considerations: (1) Agriculture makes such an important contribution to maintaining the character of the countryside and rural communities that it deserves [more] positive support and encouragement, than the neutral view indicated by use of the phrase 'White Land'

- a term which suggests land left over after everything else has been accommodated: (2) The current policy of permitting the 'infilling' of sites between existing building and the completion of 'groups' of existing buildings throughout the area of 'White Land' has led to a loss of agricultural land and a gradual encroachment into the countryside. In addition, it is more and more difficult to ensure that this form of scattered development is provided with essential services. 2.16 There is a need to give positive support to the industry in the agricultural areas of the Island and to limit the spread of new development in the open countryside by restricting it to existing defined settlements where there are adequate services." 12. That led to Policy CO6 which was adopted by the States in the following terms:- The 'Agricultural Priority Zone' Agricultural land and all other land outside the Green Zone, the defined built-up area, the Green Backdrop Zone and the 'Villages', is designated as an Agricultural Priority Zone where: a) There will be a presumption against any new non-agricultural development; b) Applications for new agricultural buildings and other forms of development for which the Committee accepts a need will generally be approved to considerations of siting and design; c) Applications for new dwellings which arise from agricultural need will be considered sympathetically. The Committee will wish to be convinced of the need and will consult the Committee of Agriculture and Fisheries. Special conditions or agreements will be used to ensure that such dwellings are occupied by bona fide members of the agricultural community and remain within the corpus fundi of the farm holding". 13. Mr. Benest for the appellant argued that the Committee had placed undue emphasis on the argument that the medical condition of the appellant's wife was a special

factor justifying a rebuttal of the presumption against non-agricultural development. This had caused the Committee to ignore more material considerations which were the attitude of the Agriculture and Fisheries Committee and the impact (or lack of impact) upon the environment. We think that there is some force in this argument. So far as the medical condition of the appellant's wife is concerned, Mr. Benest frankly conceded that this was not a compelling factor. We agree. Human beings are mortal and personal circumstances may and frequently do change. Yet land, once developed, will for practical purposes never be returned to its natural state. The personal circumstances of an applicant for development permission should not be ignored but they should rarely carry much weight and never be determinative of an application. In our judgment the Committee was right not to grant permission on that ground. But what of the other factors? 14. A presumption is not a straight-jacket. A presumption carries the connotation that, in the absence of more compelling considerations, a decision will go a particular way. But if there are other compelling considerations, a presumption may be overridden. The principles presented to the States prior to the adoption of Policy CO6 make it clear that the presumption against non-agricultural development in the Agricultural Priority Zone is underpinned by two factors. First, it is designed to promote positive support of and encouragement for the agricultural industry. Thus agricultural buildings may be permitted in areas where any other form of development would be entirely inappropriate. Secondly, it is designed to prevent the loss of agricultural land and the gradual encroachment of development into the countryside which was the result of the former policy of "in-filling". 15. How do those considerations relate to the application which was before the Committee? It is not in issue that the loss of Field 921 would have no impact at all upon the agricultural industry. It is too small and is of no interest to local farmers or growers. It has not been possible to find a tenant for many years. It seems difficult to conceive of any way in which the land could be used to promote positive support of and encouragement for the agricultural industry. Indeed, the Agriculture and Fisheries Committee seems, unusually, to have lent tacit support to the application submitted by the appellant. A memorandum of 13th November 1997 from an official of the Department to the then President of the Agriculture and Fisheries Committee stated that "if a formal application were made to construct a house on the site, I would have no objection to the application ...". A copy of this memorandum was forwarded to Senator Norman at the direction of the President, thereby implicitly supporting the application. The development of Field 921 would, of course, involve a loss of agricultural land but would not cause any detriment to the agricultural industry. 16. Would it then adversely affect the character of the countryside in the immediate vicinity? The Court visited the site and examined it carefully. Field 921 borders the public road to the north and is bounded to the west by a relatively substantial guest-house and adjacent owner's accommodation, annexe and to the east by a conglomeration of buildings used by a stonemason. To the south is open agricultural land although that is screened by a row of mature trees. Mr. Belhomme, for the Committee, argued that there was a margin of appreciation and that we should not allow the appeal simply because we might have reached a different decision. We agree that there is a margin of appreciation but at the same time we cannot escape the responsibility of forming our own

view. 17. In our judgment the presumption against non-agricultural development is rebutted by the other considerations which are relevant in this case, viz the small size of the field and its non-marketability for agricultural purposes together with the tacit support of the Agriculture and Fisheries Committee, and the minimal adverse impact upon the character of the countryside in this vicinity. Field 921 is not in the sensitive landscape area of the Agricultural Priority Zone. 18. We accordingly find that the decision of the Committee to refuse development permission was unreasonable. We allow the appeal and direct the Committee to grant development permission for a bungalow or some other appropriate domestic building on the land. The acceptability of the design, density, siting and other matters of detail are of course for the Committee to determine in the usual way. Authorities *Le Maistre-v-IDC* (1980) JJ 1. *IDC-v-Fairview Farm Ltd*.

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Prepared on 27 October 2026 · Esheria