Judgment 22/2007 **Wilson and Wilson (Applicants) v**
(i) Minister of the Environment Department (Respondent)
(ii) Doumejour Property Company Limited (Intervenor)
Royal Court (Civil Action File 1072) – 26th July 2007

Royal Court Civil Rules, 1989 (Rule 48) – judicial review of grant of planning permission – application withdrawn – respondent and the intervenor sought costs against the applicants – costs always in the discretion of the Court – procedural requirements as respects judicial review in England and Guernsey contrasted - principles governing costs in judicial review must take account of the procedure parties must follow – principles laid down by the English Court of Appeal not applicable – applicants ordered to pay the recoverable costs of the respondent and the intervenor

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1072

The 26th day of July 2007 before Richard John Collas, Esquire, Deputy Bailiff

Between MR & MRS P K WILSON

Applicants

-v-

THE MINISTER OF THE ENVIRONMENT DEPARTMENT

Respondent

- and -

DOUMEJOUR PROPERTY COMPANY LIMITED

Intervenor

The Applicants having applied to withdraw an application for Judicial Review and the other parties consenting to the said withdrawal and all the parties failing to agree the costs thereof and the Deputy Bailiff having considered the submissions of counsel thereon the Deputy Bailiff this day gave judgment in the terms attached hereto and directed that the said costs shall follow the event and that the reasonable costs of the Respondent and the Intervenor be paid by the Applicants on the recoverable basis. If the said costs cannot be agreed they are to be taxed under the normal procedures.

S M D ROSS
Her Majesty's Deputy Greffier

Approved Text
26 July 2007

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between	**MR & MRS P K WILSON**	**Applicants**
	-v-	
	THE MINISTER OF THE ENVIRONMENT DEPARTMENT	**Respondent**
	- and -	
	DOUMEJOUR PROPERTY COMPANY LIMITED	**Intervenor**

JUDGMENT RE COSTS

Judgment handed down on: 26 July 2007

Before: Richard John COLLAS Esq., Deputy-Bailiff

Advocate for the Applicants: **J T Le Tissier**
Advocate for the Respondent: **R J McMahon**
Advocate for the Intervenor: **C J Hay**

Cases, texts & statutes referred to:

1. Rule 48 of the Royal Court Civil Rules 1989.
2. Scherer v Counting Instruments [1986] 1 WLR 615**.**
3. Bolton MDC v Secretary of State for the Environment [1995] 1 WLR 1176.
4. Practice Direction 3 of 2004.
5. R (Mount Cook) v Westminster City Council [2003] EWCA Civ 1346.
6. Administrative Decisions (Review) (Guernsey) Law 1986.
7. Rules of the Supreme Court 1999, paragraph 53/14/88.
8. R v Industrial Disputes Tribunal ex parte American Express Co Inc [Practice Note] [1954] 1 WLR 111.
9. R v Registrar of Companies ex parte Central Bank of India [1986] QB1114.
10. Bolton MDC v Sec of State for the Environment [Practice Note] [1995] 1WLR 1176.

Background

1. On 5 January 2007, the Applicant tabled an application in the Royal Court for Judicial Review of a decision by the Respondent to grant planning permission to the Intervenor. The application was adjourned to the Interlocutory Court on

12 January 2007 when leave was granted to the Intervenor to intervene. All three parties were represented on that day.

2. In accordance with Practice Direction 3 of 2004, the Applicant required leave to proceed with the claim for judicial review. It was agreed that there be a hearing of the application for leave and a timetable was set for the exchange of affidavits and Skeleton Arguments prior to a hearing of the application on 5 February.

3. On 2 February 2007, the Applicants applied to withdraw the application for leave. The other parties consented, subject to agreeing the position on costs.

4. The parties have been unable to agree costs. Both the Respondent and the Intervenor seek an Order for costs. All parties have filed Skeleton Arguments which I have considered without requiring an oral hearing.

5. I am very grateful to Counsel for their detailed and helpful written submissions.

General Principles

6. Rule 48 of the Royal Court Civil Rules 1989 empowers the Court to make such an Order as to costs as it considers just.

7. I agree with Advocate Le Tissier's submission that although costs normally follow the event, there is no inflexible rule to that effect and that costs orders are always in the discretion of the Court. As Buckley L J said in *Scherer v Counting Instruments* [1986] 1 WLR 615 at 621D-E said:-

> *"A successful party has a reasonable expectation of obtaining an Order for his costs to be paid by the opposing party, but has no right to such an Order, for it depends upon the exercise of the Court's discretion".*

8. As Lord Lloyd of Berwick expressed in *Bolton MDC v Secretary of State for the Environment* [1995] 1 WLR 1176 at 1178F:

> *"As in all questions to do with costs, the fundamental rule is that there are no rules. Costs are always in the discretion of the court, and a practice, however widespread and longstanding, must never be allowed to harden into a rule."*

Judicial Review

9. The procedure for Judicial Review in Guernsey is set out in Practice Direction 3 of 2004. The Royal Court Civil Rules 1989 contain no provision for Judicial Review proceedings different from those procedures that apply in normal civil cases. Practice Direction 3 of 2004 does not mention how costs are to be dealt with at the conclusion of proceedings.

10. Advocate Le Tissier argues that the principles governing the issue of costs at the permission stage of Judicial Review proceedings are, or should be, different from the costs principles in usual contentious proceedings. He argues that the decision of the English Court of Appeal in *R (Mount Cook) v Westminster City Council* [2003] EWCA Civ 1346 should be viewed as

persuasive. In that case, the Court of Appeal set out to give guidance on the issue (see the judgment of Auld L J at para 47).

11. However, it is clear from Auld L J's judgment that the procedure followed by the English Courts in Judicial Review matters is different to that followed in Guernsey. Paragraphs 8.5 and 8.6 of The Judicial Review Practice Direction state that neither the Defendant nor any interested party need attend a hearing on the question of permission unless directed otherwise by the Court and where they do attend, the Court will not generally make an Order against the claimant (para 52 of Auld L J's judgment). Consequently, Auld L J advises at para 37 that:-

> *"Judges before whom contested permission applications are listed, and in their conduct of them, should discourage long hearings and/or the filing by both parties of voluminous documentary evidence for consideration at them. In short, they should not allow the Court to be sucked into lengthy and fully argued oral hearings that transform the process from an enquiry into arguability, into that of a rehearsal for, or effectively, an expedited and full hearing of the substantive claim."*

12. By contrast, Practice Direction 3 of 2004 requires Judicial Review to be instituted by tabling the Cause at a Friday Ordinary Court having previously issued a Summons on the Defendant and other parties in accordance with the normal rules of service. In the present case, the Respondent and the Intervenor appeared in the Ordinary Court and, the following week in the Interlocutory Court. The directions of the Court required them to file affidavits and Skeleton Arguments which is clearly contrary to what Auld L J advises should be the normal practice in the English Courts. Those directions were made in the Interlocutory court without objection from Advocate Le Tissier.

13. Advocate Le Tissier submits that the underlying principle governing the English procedure and costs principles are that those seeking Judicial Review should not be discouraged by fear of a cost penalty if they do not get beyond the permission stage (Auld L J at para 71) and should not be denied access to justice (para 47).

14. That principle is clearly reflected in the procedure followed in the English courts.

15. Our Practice Direction shows a different approach in Guernsey.

16. I am not aware of any concern that aggrieved persons are denied justice in Guernsey by reason of our procedure. It is perhaps worth noting that in many instances, although not in relation to planning matters, an alternative procedure exists under the Administrative Decisions Law which does not involve the Courts. Notwithstanding the existence of that procedure, few applications have been made in recent years.

17. After my judgment was circulated to Counsel in draft form, Advocate Le Tissier observed that I have not expressly addressed one of his submissions. He argued that in England the Courts will not, save in exceptional circumstances, award costs to more than one party. By way of authority he cited the Rules of the Supreme Court 1999, paragraph 53/14/88; *R v Industrial Disputes Tribunal ex parte American Express Co Inc [Practice Note] [1954] 1 WLR 1118; R v Registrar of Companies ex parte Central Bank*

of India [1986] QB1114; and *Bolton MDC v Sec of State for the Environment [Practice Note] [1995] 1WLR 1176.* Whilst I accept that the position under English law is as described by Advocate Le Tissier, I do not accept that the same approach should be followed in Guernsey where, as I have said, Practice Direction 3 of 2004 envisages a different procedure.

18. In my view, the principles that govern costs in Judicial Review matters should take account of the procedure that the parties are required to follow. I am therefore not minded to apply the English principles laid down by the Court of Appeal.

Conclusion

19. Accordingly, I direct that costs shall follow the event and that the reasonable costs of the Respondent and the Intervenor be paid by the Applicants on the recoverable basis. If those costs can not be agreed they are to be taxed under the normal procedures.