

**Judgment 23/2006 Collas and Collas v Minister of the Environment
Department – Royal Court (Civil Action File 963) – 3rd
May, 2006**

Island Development (Guernsey) Law, 1966 – preliminary points of law – whether the Department is precluded from granting the permission sought by Policies EMP6 and EMP7 of the Urban Area Plan – EMP6 held not to be applicable – relevance of the size of the site under EMP7 – size of the relevant site to be determined by the Jurats

IN THE ROYAL COURT OF GUERNSEY

The 3rd day of May, 2006 before John Russell Finch, Esquire, Lieutenant Bailiff; sitting alone.

In the action of PETER DAVID COLLAS and ROSE MARY ANN COLLAS (“the Appellants”) against the MINISTER OF THE ENVIRONMENT DEPARTMENT (“the Respondent”);

WHEREAS on the 24th day of March, 2006 the Court heard Advocate P. Richardson for the Appellants and Crown Advocate R.J. McMahon for the Respondent on a point of law, and RESERVED JUDGMENT;

THE COURT this day handed down Judgment in the terms attached hereto and FOUND in favour of the Respondent, DIRECTED that should the matter arise for determination by the Jurats, draft submissions be lodged within 21 days of this day, and RESERVED the matter of costs.

M. A. TOSTEVIN
Her Majesty’s Deputy Greffier.

**IN THE ROYAL COURT OF
GUERNSEY**

**APPEAL UNDER SECTION 26 OF THE
ISLAND DEVELOPMENT (GUERNSEY)
LAW, 1966**

Between

Peter David COLLAS

Appellants

and

Rose Mary Ann COLLAS

and

**THE MINISTER OF THE
ENVIRONMENT DEPARTMENT**

Respondent

**Date of hearing: 24th March 2006
Judgment handed down on 3rd May 2006**

Before: John Russell Finch Esq., Lieutenant-Bailiff

**Advocate for the Appellants: P. Richardson
Advocate for the Respondent: R. J. McMahon**

Cases, Text and statute referred to:

1. Le Noury v Island Development Committee (1986) 3 GLJ 44
2. Blue Diamond v Island Development Committee (1995) 20 GLJ 41
3. Island Development Committee v Portholme Properties Limited (2002)
Civil Appeal No. 320
4. Grangehurst Limited v Island Development Committee (2002) Royal
Court 31st December 2002
5. Hamon and Hamon v Minister of the Environment (2005) Royal Court 17th
October 2005
6. Urban Area Plan, Review No. 1
7. Island Development (Guernsey) Law, 1966
8. Phipson on Evidence, Paras 1 – 35 to 1 – 43

JUDGMENT

Background

1. The Appellants (“Mr and Mrs Collas”) seek to set aside or vary a decision of the Respondent (“The Department”) refusing to grant them permission to develop a site at Epinelle Road, St Sampsons, to create open yards and workshops for the storage of light tools, redevelop the horticultural holding and carry out landscaping (see page 1 of the agreed bundle to which further page references will refer). The letter of refusal is dated 22nd September 2004 and is to be found at pages 116 – 118.
2. The appeal raises an issue for my sole determination, namely whether the Department was correct in concluding that Policies EMP6 and EMP7 of the Urban Area Plan precluded it from granting the permission sought to Mr and Mrs Collas. The relevant part of the Department’s decision is the last paragraph on page 117:

“The site is situated outside the Settlement Area as defined within the Urban Area Plan. Whilst policy EMP6 makes allowances for certain forms of development, such development is limited to previously developed land and such land does not include land used for agricultural/horticultural purposes. Policy EMP7 allows for the development of small workshops and yards, but only where the proposals are consistent with other policies and in very limited and exceptional circumstances on redundant horticultural sites/holdings of less than 0.5 ha. The site is 0.72 ha and as such the proposal would not comply with the requirements of Policies EMP6 and EMP7”.

3. The argument advanced on behalf of the Department is found at Paras 1 – 4 of Crown Advocate McMahon’s “Skeleton Argument”.

The Law

4. The application made by Mr and Mrs Collas constitutes “Development” within the meaning of section 40 of the Island Development (Guernsey) Law, 1966. The permission of the Department is therefore required. The Department is required to take into account the factors set out in Section

17 of the Law of 1966, including, by virtue of Section 17 (a), the relevant Detailed Development Plan, which in this case is the Urban Area Plan (“The Plan”).

5. Crown Advocate McMahon submits that when considering an application for development the Department must first of all look for a policy “gateway”. If there is none, because a proposed development is either expressly or impliedly prohibited by the Plan, then permission has to be refused. In support of this proposition reference was made to the leading Court of Appeal case of *ISLAND DEVELOPMENT COMMITTEE v PORTHOLME PROPERTIES LIMITED* (2002), and the Royal Court decisions in *GRANGEHURST LIMITED v ISLAND DEVELOPMENT COMMITTEE* (2002) and *HAMON v THE MINISTER OF THE ENVIRONMENT* (2005). These represent, it was suggested, a clear and established line of authorities, which I should follow. It is worth noting the words of Beloff JA in the *PORTHOLME* case (at page 15 of the transcript):

“Furthermore when a policy in a Detailed Development Plan expressly precludes the Committee from granting the permission sought, the terms of the Plan bind the Committee (LE NOURY v IDC (1986) 3 GLJ 44 and BLUE DIAMOND v IDC (1995) 20 GLJ 41).”

The Policies

6. Policy EMP6 (page 18) is as follows:

The expansion or consolidation of existing sites and the development of new premises for industrial and storage and distribution purposes, within the Settlement Areas and on previously developed land, will only be permitted where:-

- a. *the proposal would have minimal impact on the amenities of any adjoining uses;*

*b. access, parking and servicing arrangements would be satisfactory;
and*

*c. the proposal is compatible with Policy EMP10 and other policies
of the Plan.*

7. Policy EMP7 (page 19) is as follows:

*The development of small workshops and yards will only be permitted
where the proposals are consistent with Policy EMP5 and Policy EMP6
and, in very limited and exceptional circumstances, on redundant
horticultural sites of less than 0.5 hectare (3 vergees), which meet all of
the following criteria:-*

*a. The Committee is satisfied that there is no real prospect of the
continuation or reinstatement of horticultural activity on the site;*

*b. there is no realistic prospect of the site being restored to
agriculture or other open land use;*

c. the site has adequate vehicular access; and

*d. the development would not adversely affect an Area of Landscape
Value or detract from the character and amenity of the
surrounding area.*

*Applications for such development would be required to demonstrate
that:-*

*a) the site will be properly laid out with buildings, parking, access and
open storage areas designed to be in sympathy with the landscape
character of the area;*

*b) the site will be sufficiently screened to minimise any adverse effect on
the character of the area and the proposal is accompanied by full
landscape and planting plans: and*

c) the proposals will meet the land and accommodation requirements for small workshops and yards.

8. In relation to EMP6 the Policy can only be engaged “within the Settlement Areas and on previously developed land”. There seems to be no dispute in the present case that “previously developed land” (sometimes referred to as Brownfield Land) comprises land which is or was occupied by a permanent building or structure and associated infrastructure such as roads. It does not include land used for agricultural/horticultural purposes, such as a glasshouse or former glasshouse sites (see the Department’s letter and decision on 2nd December 2003 at page 70). The definition is provided at page 156 of the Urban Area Plan Written Statement. The site we are concerned with consists of a derelict vinery and is covered with glasshouses. Hence it is apparent that Policy EMP6 cannot be engaged.
9. The principal area of dispute was Policy EMP7 (small workshops and yards). It will be recalled that this refers to development “on redundant horticultural sites of less than 0.5 hectares (3 vergees).” The site is shown bordered in red on page 119 from the Guernsey Digimap.

Submissions

10. Crown Advocate McMahon submitted that as the site comprises 0.72 hectares it falls outside the ambit of EMP7. He referred to the explanation of this Policy at paragraph 6.2.2.3, which he considered supported the Department’s interpretation “rather than the more strained interpretation advanced by the Appellants.” :

6.2.2.3 Small workshops and yards

The maintenance of a viable industrial sector in Guernsey depends on there being sufficient accommodation for starter business and service trades. The latter are especially important because they provide essential services and utilise diverse skills. These firms generally require small, inexpensive workshops and yards, on accessible sites, perhaps with some shared support services.

Some of these activities have established themselves illegally on disused vinery sites. Land covered by glasshouses is classed as agricultural and the normal expectation is for it to be cleared and restored as open landscape. However, it is recognised that in recent decades horticultural development has become increasingly industrialised and it may not always be realistic and practical to expect a site to be restored as open fields given the investment in and the irreversible impact of buildings and infrastructure. Therefore, in very limited and specific circumstances, the use of redundant horticultural sites to provide small-scale accommodation for service trades may be acceptable.

11. It was the current existing holding that must be regarded as the redundant horticultural site. The phrase “on a redundant horticultural sites of less than 0.5 hectares” when construed supports the Department’s assessment of the matter. It is therefore the size of the site rather than the size of the proposed development or the area on which any previous horticultural activity took place, which is important. Hence if the Appellants’ counter-argument is correct then it could be applied to other larger sites to enable industrial development.

12. Advocate Richardson took me through the history of the application in detail. His clients feel aggrieved that the size of the site did not become an issue until quite a way into the procedure; the first reference is in one of the letters of objection at page 65. No one thought this was germane until it appears at page 70. Advocate Richardson stated that if the site did not reach the 0.5 hectare requirement why not tell his clients earlier on so they could avoid the time and expense of obtaining submissions and documentations. Reference was made to the Cadastre (Rating) classification of the land, which treats less than 3 verges as for horticultural purposes. There is an inconsistency between these arms of the Government. It was further submitted that the underlying purpose of Policy EMP7 is to be found in the letter from the Department of Commerce and Employment dated 3rd September 2004 (pages 107 – 108).

The reality of the situation is that the site being developed is less than 0.5 hectares.

13. In response Crown Advocate McMahon suggested that the purpose of the Cadastre sub-division was to show different rating classifications. The totality of the site is the aggregate of the three separate amounts payable there. Furthermore, from the beginning it is relevant to note that the Committee for Horticulture were looking at the site as a whole (letter of 16th October 2003 at pages 37 – 38). There is no policy gateway and upon considering Section 17 (a) of the Law of 1966 the Committee is precluded from considering the application.

Decision

14. It is clear that “Policy Gateways” apply in these cases. EMP6 is not applicable. In relation to EMP7 I have regard to what I consider is the ordinary and natural meaning of the words used in their overall context. I repeat the relevant phrase:

“..... on redundant horticultural sites of less than 0.5 hectares (3 verges)...”

15. This phrase refers to the site and I consider Crown Advocate McMahon’s submissions here are correct. To hold otherwise would not only, in my judgment, do violence to the plain meaning of the words, but lean to a strained and artificial construction. If the alternative suggested by the Appellants were to be preferred the Policy would have spelt it out clearly. A further consideration is that to hold to the Appellants’ interpretation would lead to the possible sub-division and development of larger sites. I consider the Cadastre classification is a rating matter and does not in any way damage the position of the Department.
16. The grievances referred to by Advocate Richardson are reflected in the curious references to damages at Para 25 of the Cause. It is now accepted that any issues of this nature should be on the basis of separate

proceedings. It is not for this tribunal to pronounce upon them, especially as disputed recollections of the facts may be involved.

Fact or Law

17. Crown Advocate McMahon submitted, without demur from Advocate Richardson, that there would still be a role for the Jurats should I rule in favour of the Department. It is a question of the assessment of what is the size of the horticultural site – is it larger than 0.5 of a hectare? There is a factual difference between the parties here, not just an issue on policy. The question therefore will be along the lines of “what is the extent of the redundant horticultural site in respect of which the development is sought?”

18. Initially I had some difficulty with leaving this to the Jurats. I turned to assistance from the current edition of Phipson on Evidence, Paras 1 – 35 to 1 – 43. The conclusion of the learned editors was that:

“The authorities discussed in this section appear not all to be readily reconcilable with each other. It is thought the reason is that the questions which arise are not capable of solution by reference to a single formula. No doubt “pure” questions of law and fact are allocated to the judge and jury respectively. But every fact the finding of which has direct legal consequences is in some sense a question of mixed law and fact.”

19. Accordingly I would, on balance, leave the question to the Jurats - should it now arise for determination. It would be appreciated if Counsel would agree the form of question and produce draft submissions on this point within 21 days from the date of this judgment.

Costs

20. In all the circumstances these are reserved.