

Judgment 46/2003

**Leymar Ltd. v Island
Development Committee
Royal Court
(Civil Action File 755)
15th August, 2003**

Island Development (Guernsey) Law, 1966 – application to change from tourist accommodation to permanent residential accommodation – appeal to the Royal Court – relevance of Strategic and Corporate Plan and Rural Area Plan Phase 2 – apparent self misdirection of the Committee – lack of evidence before the Committee and delay – appeal allowed and matter remitted to the Committee for a fresh application to be made.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 15th day of August, 2003 before Sir de Vic Carey, Bailiff; present:- David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Keith Bichard, OBE, Michael John Wilson, Michael Henry De La Mare and Michael John Tanguy, Esquires, Jurats.

LEYMAR LIMITED

Appellant Company

V

THE PRESIDENT OF THE ISLAND DEVELOPMENT COMMITTEE

Respondent Committee

In the matter of the Appeal in the terms attached hereto from the decision of the Respondent Committee communicated by letter dated 15th December, 2000;

WHEREAS, on 14th August, 2003, THE COURT, having heard Advocate R. J. Collas for the Appellant Company and Her Majesty's Comptroller for the Respondent Committee thereon, and having held a Vue de Justice, ALLOWED the appeal and ORDERED that the Appellant Company submit a further application to the Committee within 28 days of the expiry of the appeal period or of confirmation that they did not wish to appeal this decision;

AND WHEREAS, on the said 14th August, 2003, THE BAILIFF ORDERED that the Respondent Committee shall pay one-half of the recoverable costs of the Appellant Company;

THE BAILIFF this day ISSUED JUDGMENT in the terms attached hereto, remitting the matter to the Respondent Committee.

K. H. TOUGH
Her Majesty's Greffier

THE ROYAL COURT OF THE ISLAND OF GUERNSEY
SITTING AS A FULL COURT

Between

LEYMAR LIMITED

Appellant

and

**THE PRESIDENT OF THE
ISLAND DEVELOPMENT COMMITTEE**

Respondent

Judgment of the Bailiff allowing the appeal and remitting the application to the Respondent Committee.

Counsel for the Appellant: Advocate R. J. Collas

Counsel for the Respondent: H.M. Comptroller

Date of hearing: 14th August, 2003
Date judgment delivered: 15th August, 2003

1. Introduction

I sat with jurats yesterday to consider this appeal. During the course of the hearing issues arose as to whether the decision of the Committee was flawed in the "Wednesbury" sense and I asked the jurats to withdraw whilst I considered the issues. As a result of further submissions I decided that this matter should go back to the Committee for reconsideration rather than the jurats try to reach their own conclusion as to the reasonableness of what the Committee had done particularly because there had been a substantial delay in this case as will be seen from what I now relate.

2. Background

The Appellant owns Le Douit Farm which is situate in a rural part of St. Pierre du Bois. It comprises a farmhouse and various additional buildings in the curtilage which form ten units of accommodation. Originally there were eight units of which six were self-catering units and two local market flats. In 1995 approval was given to the construction of two further self-catering units, one of which appears to have been permanently let to a licence holder from the outset. The present beneficial owners of the company acquired it in 1991 and operated it as a self-catering complex (subject to the continued occupation by local persons of two of the units) until 1997. They complain that business was poor.

There were further problems because Mrs. Woolston became ill and as a result boarding permits were not sought for the year 1998 or any subsequent years. People in the neighbourhood became aggrieved because they felt that it was not appropriate for these units situate as they were in a very attractive valley in St. Pierre du Bois to be occupied by local persons who were allegedly at the bottom of the housing ladder. The Tourist Board also complained at the loss of this accommodation to the tourist sector. The Respondent became seised of the matter in 1999 and sought an explanation from the Appellants. The Respondent was not highly energetic in pursuing the matter and neither was the Appellant very responsive. In the end in October 2000 a letter was sent in by a Mr. Torode, an architect, on behalf of the Appellant explaining the difficulties over letting the units as tourist accommodation and seeking permission for change of use. The Committee refused that. An appeal was lodged in April 2001 and no pressure seems to have been brought to get the matter to Court until the file arrived with H.M. Greffier in July. As the Court is facing a heavy criminal load in the autumn and the file revealed that this was a retrospective application which was some five years old I brought on the appeal somewhat quickly and I am grateful for Mr. Collas and H.M. Comptroller for accommodating the Court by accepting an early date.

3. A political problem

For many years the tourist industry in Guernsey like tourist industries in many parts of the world has had problems of falling visitor numbers, which has made it less attractive to operators to provide accommodation for tourists in all sectors. At the same time demand for local residential accommodation has been very strong. The consequence has been that many property owners have sought to change the use of hotels and other accommodation reserved for tourists into permanent residential accommodation for local people. In the early 90s the Tourist Board was promoting the idea that the bed stock be increased, but that policy was abandoned in 1995 and the more recent policies have acknowledged that there will be a loss of bed numbers. The thinking of the day has been set out in the Strategic and Corporate Plan and unusually the Rural Area Plan makes reference to the provisions of the Strategic and Corporate Plan when discussing the issue of containing the contraction in the tourist industry. Policy T5 of the current Rural Area Plan Phase 2 applies.

"Proposals to change the use of existing tourist accommodation will be dealt with as follows:

- (i) change to permanent residential accommodation will be treated on its merits. Change to other uses will not normally be permitted. For the removal of doubt, the criteria referred to in the definition of the phase 'will be treated on their merits' contained in paragraph 1.10 of the Written Statement mean, for the purposes of this Policy, the criteria relating to Visitor Accommodation which have been approved by the States from time to time and incorporated in the Strategic and Corporate Plan;
- (ii)
- (iii)"

4. The difficulty in the approach of the Committee in this application

The Island Development Committee with the encouragement of the Tourist Board and quite a lot of local residents rejected the application submitted by Mr. Torode and recorded its decision in a letter signed by a Mr. Rowles dated the 15th December, 2000. That decision carefully recorded the Committee's views. However, when one looks at the second page of the letter (page 51 of the bundle) one sees that after reference to Policy T5 there are five paragraphs which are almost direct uplifts from the Strategic and Corporate Plan of 1999. The relevant paragraphs which have been uplifted are paragraphs 4-3-8, 4-3-9 and 4-3-13.

The difficulty over this is that in October 2000 a new Strategic and Corporate Plan was approved which made no such references. That Plan did not repeat the guidance contained in the section entitled "4.3 Visitor Accommodation" in the 1999 Plan, but merely contained a short statement in 6.2.11 of the 2000 Plan recording that the Tourist Board was actively preparing a strategy for the development of the tourism sector and directing a Strategic Policy 17 that "Provision may be made for tourist related developments, taking into account the objectives for tourism set out in a strategy for tourism in Guernsey and approved by the States." I accept that the offending references to the 1999 Strategic and Corporate Plan which, as I have explained, was superseded in 2000 prior to the consideration of this application were not mentioned in the very full Planning Report that was submitted to the Committee. However, I cannot be satisfied that those members of the Committee who sat to consider this application were not misdirecting themselves on the directions that the Committee had been given by the States, both in the wording of the Strategic and Corporate Plan and T5 of the Rural Area Plan, to the extent that that makes specific reference to the Strategic and Corporate Plan in force from time to time.

I accept that it could be argued that the apparent self misdirection of the Committee as to the basis on which it was to make its decision could be overlooked and it then left to the jurats to use their good sense to decide whether or not the decision of the Committee was reasonable on general principles, but I regret that I do not think it is appropriate to ask the jurats to approach this issue on that basis.

5. Further complications

I am fortified that this view is the right one when I take into account two further matters that trouble me in this case:-

- (a) Lack of evidence before the Committee. In one way this Appellant has only itself to blame for having its application turned down because it furnished very little information to the Committee in support of its contention that its self-catering operation was not viable. It may be a fact that the amount one can receive for these units to be let on a permanent basis for 52 weeks a year is more than can be earned by letting them during the holiday months on what inevitably may be an intermittent basis to tourists at a higher rent and then letting them to local people during the winter months at a lower rent, particularly when account is taken of the extra labour required to service short term lets. However that is not the issue. By introducing the controls that it has the legislature has clearly decreed that property owners have to accept some control over the use they make of designated tourist accommodation. The requirement of the legislature that self catering units and permanent units of accommodation, albeit that their physical characteristics are the same, must now be regarded as separate use classes for the purposes of the Island Development Law is inevitably an interference with the right of the individual to enjoy his possessions as he wishes but that is always the case in planning matters. However if the State is to refuse the wish of the proprietors of such premises to change from one use class to another, for the greater good of protecting the Guernsey tourist industry, cogent and substantiated evidence must be available to justify refusal. I regard the response of the Tourist Board to the request of the Respondent for comment as wholly inadequate.
- (b) Committee's failure to allow Appellant to comment on Tourist Board response

One of Mr. Collas' complaints was that the Respondent should have given the Appellant the opportunity of commenting on the Tourist Board's response. I do not wish to suggest in this case that the Respondent had any obligation to formally put the Tourist Board's case to the Appellant; if it was surprised by matters such as opposition from neighbours and opposition of other States Committees it was free to make further representations, as most people seem to in these cases, and ask the Respondent to reconsider its decision. Toing and froing of the kind that Mr. Collas suggests would merely prolong unnecessarily the planning process. I do however feel that where the Island Development Committee asks another Committee for views on an application, that if those views are hostile to the interests of the individual seeking permission a full explanation of the views of the opposing Committee should be communicated to the Island Development Committee.

(c) Delay

This case has been subject to less than efficient handling by the Respondent and its advisers, the result of which is that we are now five years down the road from the unauthorised change of use being effected.

The original appeal summons was lodged in 2001 and Mr. Collas has not got on with bringing the appeal. The unfortunate result of this is that if this appeal were to be considered now the jurats will have to be looking back at the reasonableness of a decision of the Respondent made nearly three years ago. Life moves on. Jurats naturally have perceptions of the world as it is today and it is not easy for them to cast their minds back and consider whether or not a Committee was acting reasonably some three years ago. The position of the jurats as judges of reasonableness is wholly different from that of a judge of law who is unlikely to find difficulty in deciding what the law was on an issue three or even more years ago.

6. Conclusion

With reluctance, therefore, I am allowing this appeal and directing that the matter should revert to the Committee. The Appellant Company and the Respondent Committee must get on with this matter with

diligence because it is clearly unsatisfactory that an unauthorised change of use is allowed to continue unabated for such a long time. Therefore the Appellant Company must submit a further application within 28 days of the expiry of the appeal period or of Mr. Collas being notified by H.M. Comptroller that the Committee does not wish to appeal against this decision. I direct that the Respondent pay one-half of the recoverable costs of the Appellant.

7. Postscript

This case has revealed a disturbing state of affairs. Whilst issues of delay may be relevant to any future enforcement decisions I do not wish to express any view one way or the other as to the appropriate decision that should be made on the proposed new application. Indeed I have not researched what the present guidance given to the Committee by the States comprises. However, from the Court's point of view it is clearly undesirable if not impossible to do justice when there have been delays like this. The Court can only take charge of the situation when an appeal is filed and I think it is now appropriate to give a direction to the Law Officers that within 35 days of the receipt of a summons instituting any administrative appeal before the Full Court, the matter is listed for directions before the new Friday afternoon directions hearings in respect of Full Court matters which start with the criminal plea and directions hearings and then move on to general directions on all matters.