Judgment 53/2003

Island Development Committee v Lainé and Lainé
Court of Appeal
(Civil Appeal 332)
18th December, 2003

Island Development (Guernsey) Laws, 1966 to 1990 – Rural Area Plan (Phase 1) – appeal by IDC from decision of the Royal Court – relevant test of unreasonableness to be applied by the Royal Court – margin of appreciation to be allowed to IDC – jurisdiction of the Court of Appeal – adequacy of directions given to Jurats – unlawful extension of the garden did not extend the curtilage of the dwelling for the purpose of applying the policies of the Plan – Jurats should indicate the basis on which they found a decision of the IDC to be reasonable or unreasonable.

IN THE COURT OF APPEAL OF GUERNSEY

The 18th day of December, 2003 before Richard Charles Southwell, Esq., QC Presiding, Peter David Smith Esq., QC and Patrick Stewart Hodge Esq., QC

THE ISLAND DEVELOPMENT COMMITTEE

The Appellant Committee

v

STEPHEN LAINE

and

LOUISE LAINE

The Respondents

In the appeal of the Appellant Committee from the decision of the Royal Court dated 20th May, 2003;

THE COURT, having heard Advocates R. J. McMahon and R. A. Perrot for the Appellant Committee and the Respondents respectively, thereon, GAVE JUDGMENT in the attached terms, ALLOWED the appeal, SET ASIDE the decision of the Royal Court and ORDERED that the parties shall each bear their own costs both in this Court and in the Royal Court.

K. H. TOUGH
Registrar of the Court of Appeal

IN THE COURT OF APPEAL OF GUERNSEY

THE ISLAND DEVELOPMENT COMMITTEE

V

STEPHEN LAINE

And

LOUISE LAINE

Hodge: JA

1. This is an appeal from the judgment of the Royal Court sitting as a Full Court on 20 May 2003 in which the Royal Court held that the decision of the Island Development Committee ("IDC") contained in a letter dated 28 August 2002 to reject the planning application by Stephen Lainé and Louise Lainé ("the Respondents") was an unreasonable exercise of the powers of the IDC.

Background

2. The Respondents' application was for planning permission to erect a building comprising a double garage with a utility area and a cloakroom together with a studio on the upper floor on their property at Medina, Rue des Landes, Vale. This application was one of three applications for the erection of such a building, each application being for the location of the building on a different site within the property but in close proximity to each other. In an accompanying letter dated 17 June 2002 Messrs Ozannes, advocates for the Respondents, explained that they were seeking permission for only one of the three schemes which they described as "alternative schemes".

3. The Respondents made the application after the IDC had on 24 January 2002 refused their earlier application to build a garage with a utility room and shower room to the rear together with a studio on an upper floor of the garage building. The IDC refused that application under section 17 of the Island Development (Guernsey) Laws 1966-1990 ("the 1966 Law") having regard to the Rural Area Plan (Phase 1) and in particular policies CE 6, H 2, AG 1 and AG 2.

4. The IDC in their letter of 28 August 2002 rejected the proposal for the development of each of the three schemes, again referring to the Rural Area Plan (Phase 1) and drawing particular attention to policies CE 6, CE 10, HT 10 and AG 2.

The history of the property

5. The Respondents' property at Medina, Rue des Landes, was once, like many properties in the area, a horticultural unit, comprising glass houses and a dwelling house. The house was built in the early 1980s after the IDC in October 1981 granted permission for the erection of a dwelling on condition that the dwelling should form part of an integrated unit with the glasshouses on the site. At that time the dwelling had a small curtilage which was constrained by the presence of the glasshouses immediately to the west of the house During the later 1980s the glasshouses were demolished and the ground around the house was converted into a private garden. It appears that the then owner of the property did not obtain planning permission for the conversion of the ground into a private garden. In late 2001 or early 2002, the Respondents

obtained planning permission to erect a new conservatory attached to the rear of their house but, as I have said, they were refused permission to build the garage and studio building.

Planning policy

6. In 1994 the States adopted the Rural Area Plan (Phase 1) which sets out the policies for the plan area, which covers a significant proportion of Northern part of the island and includes the area in which the Respondents' property is located. The Respondents' property is located within an area designated as an Area of Landscape Value (Green Zone 2).

7. Policy CE 6 provides:
"In Areas of Landscape Value (Green Zone 2) the overall policy is to protect the character, quality and generally open nature of the rural landscape. New development will only be permitted in certain specific and limited circumstances and then only in relation to agriculture, horticulture, recreation or tourism use. The erection of new housing will not be permitted."

8. The explanation of this policy in the Rural Area Plan (Phase 1) (p.11) is:
"The purpose of this zone is to define and protect areas of open, predominantly agricultural land which are of importance for their high quality rural landscape. It is drawn to include land which falls within one or more of the following categories:
    (i) areas of good quality landscape which are representative of the range of landscape types occurring in the Plan area, but where the presence or proximity of glass or built development makes them unsuitable for inclusion in Green Zone 1;
    (ii) important open spaces, recreation areas, or other open land, especially where it creates significant gaps in residential or glasshouse development;
    (iii) areas where there is significant potential to enhance degraded landscapes of high intrinsic value."

9. Policy CE 10 provides:
"Within designated Enhancement Target Areas (ETAs) the IDC will seek to encourage appropriate environmental enhancement schemes."

10. The explanation for this policy (pp.15-16) states that the purpose of ETAs is to define areas which offer particular opportunities for targeted environmental initiatives so that limited resources can be directed to achieve enhancement schemes in those areas. The explanation emphasises that the presence of an ETA does not alter the planning policies which will apply, as these are determined by the underlying zoning.

11. Policy HT 10 provides:
"Where glasshouses and associated buildings are cleared, there will be a presumption against the change of use of cleared sites into domestic gardens. Such sites should either be restored for agricultural use or used for landscape enhancement schemes as appropriate, except in the case of small sites which already lie within the curtilage of an existing house."

12. The explanation for this policy (p.47) is:
"Many sites cleared of derelict glass have been incorporated into private gardens. This reduces the potential of these sites to contribute to maintaining the area of land available for the agricultural industry. It also adds to the suburbanisation of the Plan area since most gardens have a quite different character to the open countryside. Conversion of horticultural sites to gardens is a change of use and requires planning permission. Policy HT 10 has been included to emphasise the need to restore cleared sites to agricultural use and/ or landscape enhancement schemes. The only exceptions are small glasshouse sites which are already effectively within the curtilage of an existing house and could not reasonably be used for purposes other than private gardens."

13. Policy AG 2 provides:
"Proposals to extend existing residential curtilages by using adjoining agricultural land as gardens related to private dwellings will not be permitted."

14. The explanation for this policy (p.30) is:
"There has been widespread extension of gardens, or other amenity land related to private dwellings, to incorporate adjacent agricultural land. This not only reduces the overall area of land available for farming, but also has the effect of suburbanising the countryside. For both these reasons the IDC wishes to resist such changes, and therefore reminds owners that such changes constitute a change of use which requires planning permission. Similar concerns relate to the after-use of sites which have been cleared of derelict glass, as covered in policies in Section 5.0 (Horticulture)."

15. Other policies which are of relevance to the appeal are policies H 2 and H 3.
Policy H 2 provides:
"In ...Areas of Landscape Value (Green Zone 2) ..., permission for minor works within the curtilage of a dwelling will generally be granted provided that the setting of the building is not adversely affected, and that buildings which the IDC considers to be of architectural or historic interest are protected from damaging change."
The explanation for this policy is that minor works within the curtilage of a dwelling are likely to be acceptable provided that sufficient care is taken to protect the setting and character of the building.
Policy H 3 provides:
"In Areas of Landscape Value (Green Zone 2) permission to alter, rebuild or make limited extensions to existing dwellings may be given but cases will be treated on their merits. Proposals are most likely to be acceptable where they satisfy the following criteria:-
(i) they will not adversely affect the character and quality of the surrounding landscape, or the character and appearance of buildings of historic or architectural interest;
(ii) in the case of rebuilding, they are of broadly similar size and location to the original building;
(iii) they lead to upgrading of habitable but substandard dwellings to provide adequate living conditions;
(iv) they provide demonstrable improvements in the appearance of unsightly buildings and their contribution to the rural character of the locality.
Particular attention will be given to the scale of any works proposed and to the appropriateness of the design and of the materials to be used in the particular setting."

16. The explanation for this policy emphasises that such developments may be acceptable if it can be clearly demonstrated that there will be no significant adverse effects on the landscape and indeed that there will be positive improvements.

17. Policy AG 1 provides:
"There will generally be a presumption against the permanent loss of agricultural land for development. Where development or other proposals affecting agricultural land are considered, decisions will take account of the capability of the land, its use in relation to the operation of the farm holding within which it lies and its contribution to the overall rural character of the Island."

18. In the planning report to the IDC, officials recommended refusal of all three schemes, on the ground of non-compliance with policies CE 6, CE 10, AG 1 and AG 2, and on the grounds that the siting, design and exterior appearance of the building would be incongruous with the surrounding land, that the development was to be on agricultural land and that the development would detract from the character and amenity of the locality (see the 1966 Law section 17 (a),

(c), (d) and (e)). The report emphasised that the scale and massing of each of the proposed buildings would make each of them highly visible in the landscape from outside the site and that the relevance of policy AG 1 was more to preserve the rural character of the area than the need to safeguard the site for agricultural purposes. In the report it was also argued that the three proposed schemes were located outside the curtilage of the dwelling and that policy H 2 was therefore not relevant.

19. In the event, as I have mentioned, the IDC in its decision referred to policies CE 6, CE 10, H 10 and AG 2 and did not rely on policy AG 1.

The jurisdiction of the Royal Court

20. Section 26 of the 1966 Law provides:
    1. Any person aggrieved by any decision of the Committee under any of the provisions of this Law may, within the four months next following the date of the said decision, appeal therefrom to the Royal Court sitting as a Full Court on the grounds that the decision of the Committee was ultra vires or was an unreasonable exercise of its powers.
    2. …
    3. On any appeal under this section the burden of satisfying the Royal Court that the decision of the Committee which is the subject of the appeal is intra vires or reasonable shall be discharged by the Committee and the Committee shall be entitled to a final right of reply.

21. The Royal Court in exercising its powers under section 26 is acting as a court of appeal and is not exercising a judicial review jurisdiction. See *Walters v States Housing Authority* 1997 GLJ 39 and in particular Beloff J.A. at pp.44-46. In that case the Court of Appeal considered wording in section 56 of the Housing (Control of Occupation) (Guernsey) Law 1994 which is substantially similar to section 26(1) above. The Court held that the relevant section gave the Royal Court appellate powers over the issue of ultra vires which was a question of law and also over the issue of the reasonableness of the exercise of a power which was a question of fact. This is not a jurisdiction which allows a general appeal on merits but it is a more extensive jurisdiction than a judicial review jurisdiction. See also *Island Development Committee v Portholme Properties Limited*, Court of Appeal, 20 September 2002, in which the Court applied the approach in *Walters* to section 26 of the Island Development (Guernsey) Law. Further support for this approach is found in the Jersey case of *Island Development Committee v Fairview Farm Limited* 1996 JLR 306, 315-317 *per* Le Quesne J.A. which is a planning case and is persuasive authority.

22. As a result the Royal Court in exercising its powers under the second ground in section 26 (on the issue whether the IDC's decision was an unreasonable exercise of their powers) is not asking the question whether any reasonable body could have reached the decision which the IDC reached. That is the test of *Wednesbury* unreasonableness (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223) which Lord Diplock described as "irrationality" (see *CCSU v Minister for the Civil Service* [1985] AC 374, 410). The Royal Court can subject the decisions of the IDC to a somewhat more intensive form of scrutiny than that of *Wednesbury* and conclude that a decision is unreasonable where the decision is not irrational in the sense in which Lord Diplock used that word, that is to say "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".

23. At the same time, before the Royal Court can intervene with a decision of the IDC, it must be satisfied not only that the IDC was mistaken in its decision but also that the decision was unreasonable. The Royal Court must in other words allow the IDC a due margin of appreciation or area of discretion. The IDC is able to make a decision within this area of discretion without being overturned by the Royal Court, even though the Royal Court thinks that the decision is

mistaken. See *Token Limited v Island Development Committee* 2001 JLR 698, *per* Sir Philip Bailhache, Bailiff at para 9 and *Planning and Environment Committee v Le Maistre* 2002 JLR 389, *per* Smith J.A. paras 24 and 25. This is because the test of reasonableness allows the IDC a range of decisions within which the Royal Court should not seek to substitute its view for that of the decision makers.

24. The House of Lords considered the meaning of the word "unreasonable" in the adoption case, *In re W* [1971] AC 682. In his celebrated speech in that case, which in my opinion provides useful guidance in this case, the Lord Chancellor, Lord Hailsham stated (at p.700):
"It does not follow from the fact that the test is reasonableness that any court is entitled simply to substitute its own view for that of the parent. In my opinion, it should be extremely careful to guard against this error. Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. The question in any given case is whether a parental veto comes within the band of possible reasonable decisions and not whether it is right or mistaken. Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable. There is a band of decisions within which no court should seek to replace the individual's judgment with his own."

25. The Royal Court, therefore, in exercising its jurisdiction under the second ground of section 26(1) must be satisfied not only that the IDC's decision is mistaken but also that the decision is outside the band of reasonable decisions, whether right or mistaken, which the law allows the IDC to reach.

The jurisdiction of the Court of Appeal

26. This Court has jurisdiction to hear an appeal from the decision of the Royal Court under section 26(1) by virtue of section 13 of the Court of Appeal (Guernsey) Law 1961. See the decision of the Court of Appeal in *Island Development Committee v Portholme Properties Limited* 20 September 2002.

27. The Court of Appeal may interfere with the decision of the Royal Court which the Jurats reach if the Bailiff has misdirected the Jurats. Where the Jurats decide a case after receiving unexceptionable directions from the Bailiff, the Court of Appeal may interfere with their decision only if it is satisfied that there was no evidence before them upon which they could reasonably have arrived at their findings of fact or that for any other reasons the findings of fact were perverse. See *Guille v Mackay*, Guernsey Court of Appeal, 14 June 1967. Another way of expressing the perversity test is that no reasonable body of Jurats could have reached the decision when instructed and assisted properly by the Bailiff. See *Metropolitan Railway Co v Wright* [1886] 11 App. Cas. 152 and *Australian Newspaper Co Ltd v Bennett* [1894] AC 284.

The parties' contentions

28. Advocate McMahon for the IDC submitted that the Jurats of the Royal Court are not allowed to substitute their own decision for that of the IDC; they were required to consider whether the refusal of planning permission was an unreasonable exercise of the IDC's powers. He founded on the fact that the siting of the proposed building in each of the three schemes was very similar and that the planning considerations which led to the refusal of each of the three schemes were identical or sufficiently similar as to be indistinguishable. The principal reason for refusal was the scale, bulk and massing of the proposed new building and its intrusive impact on Green Zone 2 land (Policy CE 6), whichever of the schemes was adopted. The proposed development was also in each case outside the recognised curtilage of the dwelling house and that Policy H 2 was therefore engaged. The IDC was bound by policies which prohibited the extension of domestic curtilages into areas of agricultural land (see policy AG 2).

29. Advocate McMahon did not initially take issue with the Bailiff's directions to the Jurats. Rather he inferred from the Jurats' refusal of the appeals in relation to schemes 2 and 3 and their granting of the appeal in relation to scheme 1 that the Jurats could not have applied their minds properly to the issue of reasonableness because the planning considerations in relation to each of the schemes were not sufficiently different to justify different findings of reasonableness. He emphasised that the only potentially material difference between scheme 3 and scheme 1 was a difference in location of only four feet. In support of his contentions he referred to decisions of the English Court of Appeal in relation to inconsistent verdicts by juries (*R v Hunt* [1968] 2 QB 433 and *R v Durante* [1972] 1 WLR 1612), which he submitted provided a useful analogy. He submitted that it was correct to infer that in granting the appeal in relation of Scheme 1 the majority of Jurats had simply substituted their own view for that of the IDC and had therefore not performed their function under section 26(1).

30. Advocate Perrot for the Respondents submitted that the onus was on the IDC to persuade the Royal Court that the decisions of the IDC were reasonable – section 26(3). There were, as the Bailiff pointed out in his summing up, three separate schemes. The IDC did not submit to the Royal Court that it must grant all three appeals or refuse all three. There was an issue of fact whether the proposed development in each Scheme was within the curtilage of the dwelling. While the site had been in horticultural use when the dwelling was built in about 1981, that use had ceased long before the Rural Area Plan came into force in 1994. The Respondents referred to correspondence and documents which had been before the Jurats and submitted that the Jurats were entitled to draw the conclusion that the proposals were within the curtilage of the dwelling.

31. The Respondents submitted that the IDC had failed to draw to the attention of the Royal Court or the Respondents that the IDC challenged the Respondents' contention that the curtilage had evolved over time to include the development proposals. The IDC had failed to adduce evidence as to the extent of the curtilage. If Mr McMahon was asserting that the IDC was prohibited by the Rural Area Plan from granting planning permission, he did not assert that as an issue of law to be determined by the Bailiff alone – see *Grangehurst Limited v The Island Development Committee*, Day L B, 31 December 2002.

32. In relation to the policies on which the IDC relied in their decision letter, the Respondents submitted that no environmental enhancement schemes had been developed for the area in accordance with policy CE 10. In relation to policy HT 10, the site had been cleared before the Rural Area Plan came into effect and in any event the site would fall within the definition of a "small site" under that policy. Policy CE 6 was just a general policy. The prohibition against extending residential curtilages in Policy AG 2 came too late; the Respondents' residential curtilage had been extended years before the Rural Area Plan came into force. The Respondents submitted, by reference to *CP Developments Ltd v Secretary of State for the Environment and Salisbury DC* 1997 JPL 930, 938, that policies in a development plan should be construed on a common sense and straightforward basis, having regard both to context and underlying purpose. The Jurats, they submitted, had done so. The IDC should have had regard also to policies H 2 and H 3.

33. The Respondents also submitted that, although the proposed buildings in each of the schemes were only a few feet from each other, the Jurats were entitled to conclude that the IDC had acted unreasonably in relation to one of the schemes but not the others. The Jurats may have considered all of the schemes to be minor works in terms of policy H 2. It may have been that the Jurats considered that the IDC's decision in relation to scheme 3 was only marginally reasonable, while they considered that the decision in relation to scheme 1, which was less intrusive and more in keeping with the setting of the dwelling, was unreasonable. As the Jurats did not give reasons for their judgment it was not the task of the Court of Appeal to jump to the conclusion that they erred.

34. At the request of this Court last week, both parties produced further written submissions on the status of land which has been developed without authorisation under the 1966 Law. Mr McMahon and Mr Perrot agreed in their submissions that section 35 of the 1966 Law provided for criminal sanctions against a person who carried out unauthorised development contrary to the prohibition in section 14 and that, if he was convicted of such an offence, section 37 gave various powers to the IDC to compel that person to reinstate the land. But there were no powers to require anyone other than the offending developer to reinstate. Thus a successor in title was immune from enforcement action. They also agreed that development which was unauthorised did not become lawful merely because there was no possibility of enforcement action.

35. They differed however on the consequences of this illegality. Mr McMahon submitted that an owner could not use an unauthorised development by his predecessor in title, such as the inclusion of agricultural land in a private domestic garden, to create a new reality so that he could found on the unauthorised extension of the curtilage of the dwelling to bring his proposals within the scope of policy H 2. Mr Perrot on the other hand pointed out that many owners of former horticultural holdings had extended their gardens. He suggested that if the law were to treat that land as tainted so that the planning authorities could or must have regard to the land's planning status before the unauthorised development rather than the current reality on the ground, that would result in extensive planning blight until the Law was changed.

Decision

36. It is clear from the Bailiff's summing up that the Jurats were directed that they were not to substitute their views for that of the IDC but that they had to determine whether the decision was reasonable. The Bailiff explained that that meant something other than that the Jurats may have come to a different decision if they had been the IDC. This in my respectful opinion is correct. I think that it would have been helpful to have gone further and to have explained, as Lord Hailsham did, that this meant that there was a range of decisions which the IDC could have taken which would not be unreasonable, even if the Jurats regarded the decision as mistaken. But I do not consider what the Bailiff said a misdirection. Mr McMahon did not suggest otherwise.

37. The Bailiff also directed the Jurats on the concept of Green Zone 2, policy CE 6 and policy HT 10 and no issue was taken with those directions. I observe that policy HT 10 is not directly engaged in this case as the conversion of the horticultural site into a domestic garden predated the adoption of the Plan in 1994. Mr McMahon however submitted that the IDC had referred to this policy as supporting the view that built development on agricultural land would be even more unacceptable than conversion into a garden which this policy discouraged. The Bailiff also referred to policy CE 10, which Mr McMahon conceded was not a weighty material consideration.

38. The Bailiff suggested that policy AG2 might be a make-weight as Advocate Perrot had submitted. I find that assertion difficult to accept, as the explanation of policy AG 2 makes it clear that it is concerned not only with keeping land available for farming (which would not be a major issue in this case) but also with avoiding the cumulative suburbanisation of the countryside (which is clearly a material issue in this case). But, in any event, the issue appears to have been linked with the submissions which the parties' advocates made to the Jurats on the correct approach to the curtilage.

39. It appears from the Bailiff's summing up that the parties' advocates treated the issue of the extent of the curtilage as a question of fact for the Jurats. The IDC did not argue before the Bailiff that as a matter of law the curtilage of the dwelling could not be extended by

development which was unauthorised so that the only curtilage which could be considered in the context of policies such as policy H 2 was that recognised by the IDC in 1981 when permission was given for the dwelling house together with any extension of the curtilage resulting from the authorisation of the enhanced conservatory in 2001. Had the IDC done so, matters could have been focused more clearly.

40. In my judgment, it was not correct, especially in the context of policies such as policies CE 6 and AG 2 which are designed to protect the rural area's landscape from creeping suburbanisation, for unauthorised and therefore illegal enclosure of horticultural land into a domestic garden to be treated as creating a springboard by which further development could be authorised on the ground that it fell within an extended curtilage. While the Respondents enjoyed immunity from enforcement in relation to the extension of the garden, they did not have the right to found on that unauthorised extension as a basis for further development under the Plan. Section 14 of the 1966 Law by prohibiting development without permission rendered the extension of the garden unlawful. The only lawful curtilage of the dwelling was that which had been authorised by permission under the 1966 Law. So to hold is not to create a fiction that the garden is in fact still a horticultural unit with glasshouses. It is merely a recognition of the legal reality that the extension was and remains illegal, in the absence of any statutory provision deeming it to be legal when enforcement action had ceased to be possible.

41. In my judgment, the Jurats should have been directed that the unlawful extension of the garden did not extend the curtilage of the dwelling for the purposes of applying the policies in the Rural Area Plan (Phase 1). They were not so directed. For this reason, the decision of the Royal Court cannot stand.

42. In any event, if the question of the curtilage were properly treated solely as a question of fact I am not satisfied that the Jurats had a proper basis for concluding that the IDC had failed to show that its decision was a reasonable one.

43. Under section 18 of the 1966 Law, the IDC in reaching a decision on a planning application can depart from a Detailed Development Plan such as the Rural Area Plan (Phase 1) only where the departure is of a minor nature. Section 18(2) envisages the appointment of an inspector to hold a planning inquiry when an approval of an application would involve a more significant departure from such a Plan. In this case, the Respondents did not suggest to the Jurats that there was any departure from the Development Plan; thus section 18(1) cannot have formed part of their reasoning. In assessing the IDC's decision in the context of this appeal, therefore, it must be assumed that the IDC in reaching its decision was required to conform to the Plan. There required therefore to be an applicable policy authorising the development in order to circumvent the restrictions imposed by policies CE 6 and AG 2.

44. In his letter of 17 June 2002 to the IDC, which was submitted to the Jurats, Advocate Perrot argued that policy H 2 applied because the proposal would be a minor work which was clearly within the curtilage of the existing dwelling. But in his written pleadings he adopted the position that the proposal fell "within the curtilage of the existing dwelling house, or so near to that curtilage as not to be considered other than as a natural extension to the built form on the site". This appears to reflect the doubt as to the extent of the *de facto* curtilage which Mr Brewin expressed in his dealings with the IDC in 2001.

45. While I accept that the Jurats may not have been perverse in forming the view that a distinction could have been made between schemes 1 and 3 in relation to the effect of the proposed development on the setting of the dwelling in terms of policy H 2, I doubt whether the distinction would be sufficient to make the refusal of one scheme reasonable and that of the other unreasonable when one allows the IDC their area of discretion. But in any event I do not see how the Jurats could properly have concluded that the IDC was not within its margin of

appreciation when it held, in conformity with the recommendation of the planning officer's report to it, that the proposed development (a) was not within the curtilage of the dwelling and (b) was not minor works, both in terms of policy H 2.

46. I therefore conclude on this basis also that the Royal Court erred and that the Jurats decision cannot stand.

47. I would therefore allow the appeal.

Postscript

48. We were informed that this is the first planning appeal to the Court of Appeal from a decision of the Jurats in Guernsey. It may be useful therefore to record some observations on the procedure.

49. First, it would be useful if the Jurats were directed that the reasonableness test in section 26 means that the Jurats require to consider whether the IDC's decision falls within the band of possible reasonable decisions which the IDC can properly reach even if the Jurats think that the decision is mistaken. This would conform to Lord Hailsham's guidance in *In re W*.

50. Secondly, as the IDC requires to conform to the Development Plan in its decision-making under sections 16 and 17 unless section 18(1) of the 1966 Law applies, it may be beneficial to instruct the Jurats to have regard in applying the reasonableness test not only to the decision of the IDC as a whole but also to the components of that decision. In other words, the Jurats should be instructed to consider the reasonableness of the IDC's position on the individual policies on which it founds its decision. Thus, for example, in the present case the Jurats could have been asked to consider whether the IDC could reasonably have considered the proposed development to be (a) outside the curtilage of the dwelling and (b) more than minor works and thus (c) unable to enjoy the support of policy H 2.

51. Thirdly, I have significant doubts about the utility of the practice of the Jurats reaching decisions under section 26 of the 1966 Law without giving at least some indication of the reasons why they consider the IDC's decision to be reasonable or unreasonable. Land use planning is an important issue to this Island both to parties who legitimately seek to develop their properties and also to the wider community. The appeal process would be more informed if some means of articulating and recording the basis of such decisions could be devised.

52. SOUTHWELL, JA: I agree, and add only these brief observations.

53. In this case all that is known about the decisions of the Jurats concerning each of the three schemes is the decisions themselves; nothing is known as to the reasoning by which those decisions were reached. It seems to me that this kind of procedure in civil cases may well not prove to be appropriate once the Human Rights Law comes into force. But even without that law being in force, it must be doubtful whether a system of trying civil cases, which leaves the litigant and any Appellate Court with no knowledge of the reasons for the decisions reached by the Jurats, is appropriate today in Guernsey.

54. It seems to me that there are two alternative remedies for this; first, in future a reasoned judgment could be delivered by the Judge presiding in the Royal Court. But it may be that a change in the law would be required before this alternative could be adopted. For my part I would hope that the necessary change in the law could be made at an early date. The second alternative, which is to my knowledge adopted not infrequently in civil cases, is to put to the Jurats a number of questions of fact, leading by a logical route to the decisions they need to make.

55. In the present case Counsel could have been asked to agree a draft set of questions for the approval of the Judge, or in the absence of agreement to put forward their rival drafts, leaving to the Judge the decision as to which questions should be put to the Jurats. If that had been done it might have been possible to learn at least to some extent what were the reasons which led the Jurats to conclude that the IDC acted unreasonably in relation to one scheme and reasonably in relation to the other two schemes. I emphasise this need for disclosed reasons not least because in my judgment there appear to be no valid grounds to be derived from the facts before the Jurats, which could have justified the Jurats in reaching a different conclusion in relation to one of the three schemes.

56. Advocate Roger Perrot in the course of his able and cogent submissions argued that the different conclusion could be justified by the positioning of the new building in line with the existing house. In my judgment such a minor difference could not have justified a conclusion that in relation to one of the schemes the IDC acted unreasonably, while in relation to the other two the IDC acted reasonably.

57. SMITH, JA: I agree with everything that has been said, and I have nothing to add.

SOUTHWELL, JA: Yes, Mr. McMahon?

ADVOCATE McMAHON: Sir, in the light of the Court's judgment I'd ask that costs follow the event of this appeal, so I'd ask for my costs before this Court. In the Court below, the Bailiff gave an order for half of the recoverable costs to go to the Appellant, I would ask that there be a costs order in favour of the Committee, the Appellant in this Court, sir, in respect of the proceedings below as well.

SOUTHWELL, JA: Mr. Perrot?

ADVOCATE PERROT: I can't argue against that, sir.

(Judges confer)

SOUTHWELL, JA: The Court is not minded to adopt the submission that has been put forward by Mr. McMahon and accepted by Mr. Perrot. This has been a case in which there has been an opportunity for certain perhaps misunderstandings about the law and the manner in which the IDC carries out its statutory functions to be considered, and in the judgment of this Court the costs below in the Royal Court and in this Court, the Court of Appeal, in each case each party is to bear their own costs.

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