REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2013-00804

BETWEEN

PUNDIT RAMESHWAR MAHARAJ	First Claimant
CONCERNED RESIDENTS OF CUNUPIA	Second Claimant

AND

MINISTER OF PLANNING AND SUSTAINABLE DEVELOPMENT	Defendant

AND

R.P.N ENTERPRISES LIMITED	Interested Party

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES
Mr. Ramesh Lawrence Maharaj S.C., Ms. Marina Narinesingh Attorneys-at-law for the Claimant.
Mr. Avory Sinanan S.C., Ms. Donna Prowell, Ms. Elena Da Silva and Ms. Petal Alexander, Attorneys-at-law for the Defendant
Mr. Prakash Deonarine and Ms. Saajida Narine, Attorneys-at-law for the Interested Party

JUDGMENT

Introduction

1. This was an application for judicial review against the decision of the Minister of Planning and Sustainable Development.

2. Having received complaints from the first claimant and other residents of Cunupia, the Town and Country Planning Division, investigated the establishment of a Concrete Batching Plant which stood on the premises of the RPN Enterprises Ltd ("the Interested Party"). In the name of the Minister of Planning and Sustainable Development, the Town and Country

Planning Division refused to grant planning permission to the RPN Enterprises Ltd, for the operation of the Concrete Batching Plant. Upon an appeal by the Interested Party, the Minister overturned his first decision.

3. In the course of this judgment, the Court considered the circumstances in which a public authority could review its own decision, and when the review of an earlier decision could amount to an illegality.

Procedural History

4. On the 28th February, 2013, the claimants filed an application for leave to apply for judicial review, pursuant to Part 56.3 of the ***Civil Proceedings Rules (CPR)***[1].

5. Two (2) applicants were named in the application, namely:

   a) Pundit Rameshwar Maharaj

   b) Concerned Residents of Cunupia, a non-profit organisation registered under the ***Companies Act 1996***[2]

6. The proposed defendant was the Minister of Planning and Sustainable Development.

7. By their application for leave to apply for judicial review, the claimants sought the following relief:

   "1. A declaration that the said Planning Decision to permit the development of the said Concrete Batching Facility dated December 03 2012 is unlawful and/or unreasonable and/or irrational and/or null and void and of no effect.

   2. An injunction restraining RPN Enterprises Limited its servants and/or agents or any person acting through it or by it or howsoever from operating the said

[1] Civil Proceedings Rules 1998 as amended
[2] Chapter 81:01

Concrete Batching Plant until the hearing and determination of this action and/or further order.

3. *An interim order staying the said Planning Decision and all further decisions and/or actions arising from and/or pursuant to the said Planning Decision pending the determination of the claim herein;*
4. *An Order of Certiorari quashing the said Planning Decision of the Intended Defendant;*
5. *An Order of Mandamus directing the Intended Defendant to reconsider the said Planning Decision in accordance with the findings of the Court pursuant to Section 21 of the Judicial Review Act, No. 60 of 2000("JR Act")*
6. *Leave be granted to the Intended Claimants to read and use the affidavits of (i) Rameshwar Maharaj (ii) Balroop Seenath on behalf of the second intended claimant (iii) Dr. Mark Lloyd Chernaik (iv) Wayne Sooknanan (v) Horace Abraham (vi) Rena Ramdeo (vii) David Bissoon (viii) Helene Wilkie (ix) Jagdeo Ramhit (x) Dr. Rae Julien Furlonge (xi) Margaret McDowall-Thompson and (xii) Ryan Lalsingh and Dr. Mark Lloyd in support of its Claim;*
7. *Leave be granted to the Intended Claimants to file and serve in further support of the claim, in lieu of the Affidavit prescribed by part 56.7(4) of the Civil Proceedings Rules, an Affidavit by the Claimants: (i)stating the matters prescribed by part 56.7 (4), (a), (b), (c), (d), (f), and (g) of the CPR; and,(ii) Verifying and confirming the facts contained in the Affidavits of Rameshwar Maharaj and Balroop Seenath*

8. *Such other Orders, Directions or Writs as the Court considers just and as the circumstances warrant pursuant to the powers given to the Court by virtue Section 8(1)(d) of the JR Act;*

9. *Damages including aggravated damages;*

10. *Costs, and;*

11. *Such further and/or other relief as the Honourable Court may deem just and necessary.*

8. The claimants relied on the following grounds:

"a. illegality

b irrationality

c. bad faith

d. failure to take into account material considerations

e. taking into account irrelevant matters

f. abdicated his and/or surrendered his jurisdiction

g. acted in conflict of the land use policies of Trinidad and Tobago and of the Town and Country Planning Division ("TCPD") Chapter 35:01

h. acted contrary to legislative intent of the Town and Country Planning Act Chapter 35:01 ("TCP Act")

i. acted contrary to the rules of natural justice

j. acted contrary to principle of sustainable development

k. acted in breach of a legitimate expectation of both a substantive and procedural benefit

l. acted unconstitutionality."

9. Twelve (12) affidavits were filed in support of the application.

10. On 28th March, 2013, the Honourable Justice Charles granted leave to the claimants to file and serve their claim for judicial review. Thereafter the claim was transferred to the docket of this Court.

11. Pursuant to the grant of leave by the Honourable Justice Charles, the claimants filed their fixed date claim on the 9th April, 2013. By their fixed date claim, the claimants abandoned their applications for interim orders and restricted their claim seeking the following relief:

> *"1. A declaration that the said Planning Decision to permit the development of the said Concrete Batching Facility dated December 03 2012 is illegal and/or unreasonable and/or irrational and/or an act of bad faith and/or a failure to take into account material considerations and/or taking into account of irrelevant matters and/or an abdication of duty and/or a surrendering of jurisdiction and/or in conflict with policy and/or a breach of natural justice and/or contrary to the principle of sustainable development and/or a breach of legitimate expectation and/or unconstitutional and is hereby null and void and of no effect.*
>
> *2. An order of certiorari questioning the said planning decision of the Intended Defendant*
>
> *3. An Order of Mandamus…*
>
> *4. Such other Orders, Directions or Writs as the Court considers just…*
>
> *5. Damages including aggravated damages*
>
> *6. Costs…"*[3]

[3] See the Fixed Date Claim Form filed herein on the 9th April, 2013.

12. By their notice of application filed on the 6th May, 2013, RPN Enterprises Ltd sought an order that they be joined as an Interested Party in these proceedings. An order in terms of the application was granted on the 27th July, 2013.

13. Affidavits were filed on behalf of all parties. The affidavits are itemized at paragraph 17 below. Expert Reports were filed, as well, on behalf of the claimant and the Interested Party.

14. On the 25th February, 2014, the claimant sought an order that the Court appoint a mutually agreeable expert. Counsel for the Interested Party objected. The Court gave directions for the filing of a formal application for the order.

15. Numerous extensions of time were granted to enable the parties to discuss the appointment of an expert. This issue was eventually resolved on the 17th June, 2014, when the Court granted permission to the claimant to rely on the expert evidence of Dr. M. M. Mc Dowell, Dr. Mark Chernaik and Mr. Rae Furlonge. Permission was granted to the Interested Party to rely on the expert evidence of Dr. Victor Coombs.

16. On the 17th June, 2014, the Court directed that expert reports be filed on or before the 31st July, 2014. The Court directed further that Written Submissions be filed on behalf of all parties and that supplemental submissions be heard on the 19th February, 2015.

17. On the 9th February, 2015, learned attorneys-at-law for the defendant and those for the Interested Party sought an adjournment. Learned Senior, Mr. Maharaj agreed that the supplemental submissions be heard on the 11th, 12th, and 13th May, 2015.

18. The trial of these proceedings commenced on the 12th May, 2015 and ended on the 15th May, 2015.

The Evidence

19. The evidence before the Court, in these proceedings, was by affidavit only. All parties filed affidavits of facts, while the claimant and the Interested Party filed reports of experts in respect of which they had obtained the Court's permission.

20. The claimants filed twelve affidavits in support of the application. The deponents were:

- Rameshwar Maharaj
- Balroop Seenath
- Dr. Mark Lloyd Chernaik
- Wayne Sooknanan
- Horace Abraham
- Rena Ramdeo
- David Bissoon
- Helene Wilkie
- Jagdeo Ramhit
- Dr. Rae Julien Furlonge
- Margaret McDowall Thompson and
- Ryan Lalsingh

21. On the 9th April, 2013 and following the grant of leave to apply for Judicial Review, the claimant filed two supplemental affidavits. They were: the affidavit of Rameshwar Maharaj and that of Ramdath Ramcharitar. On the 17th April, 2013, a further affidavit was sworn by Balroop Seenath and filed on behalf of the claimants.

22. In opposition, the defendant filed three affidavits. The deponents were:

- Timothy Mooleedhar whose affidavits was filed on 8th November, 2013

- Kerry Pariag whose affidavit was filed on 16th December, 2013
- Bhoehendradath Tiwary whose affidavit was filed on 16th December, 2013

23. Four affidavits were filed on behalf of the Interested Party. The deponents were:
    - Roopchand Ramhit
    - Abdel Khan
    - Mikaiel Dookie
    - Ramdeo Ramnarine
24. All four (4) affidavits were filed on the 25th October, 2013. On behalf of the claimants, seven (7) affidavits were filed on the 31st January, 2014, in reply to the affidavits of the defendant and the Interested Party. The deponents were:
    - Rameshwar Maharaj
    - Balroop Seenath
    - David Bissoon
    - Wayne Sooknanan
    - Margaret Mc. Dowall Thompson
    - Ryan Lalsingh
    - Dr. Mark Lloyd Chernaik

Expert Evidence

25. The claimants relied on three expert reports in these proceedings. The experts were Dr. Mark Lloyd Chernaik, Margaret Mc. Dowall Thompson and Dr. Rae Julien Furlonge.
26. The Interested Party also relied on an expert report, being that of Dr. Victor Coombs.

Facts

27. This claim arose out of facts which were almost identical to those which arose in ***Indarjit Singh v. The EMA*** ("the related matter")[4].

28. It was therefore common ground that in late 2011, the first claimant, Pundit Rameshwar Maharaj and Helen Wilkie visited the North Regional Officer of the Town and Country Planning Division (TCPD) in order to lodge a complaint concerning the establishment of a concrete batching plant, which was situated near to their home in Cunupia.

29. Their complaints were received by Kerry Pariag, Town Planner II. Mr. Pariag researched the complaints books and records of TCPD and on the 14th December, 2011 indicated to the claimants that the Interested Party had received planning permission for a housing development and that he needed to inspect the lands.

30. On the 18th January, 2012, Pundit Maharaj again visited Mr. Pariag, who confirmed that he had visited the land.

31. On 26th January, 2012, Mr. Pariag issued to Motilal Ramhit and Sons the "Letter of Advice", which was dated the 26th January, 2012.[5]

32. The full terms of the letter of advice are set out below:

> *"Motilal Ramhit & Co.*
>
> *L.P. # 56, Chin Chin Rd.*
>
> *Dear Sir,*
>
> ***Re. Development of Land at LP#56 Chin Chin Road, Cunupia.***

[4] CV 2013-0804, Indarjit Singh v. The EMA

[5] The Letter of Advice is exhibited as "R.M.8" and annexed to the affidavit of Rameshwar Maharaj filed on the 28th February, 2013.

1. *TAKE NOTICE that the Town and Country Planning Division has observed that development as defined under S. 8(2) of the Town and Country Planning Act Ch. 35:01 has been carried out on the land situated at Corner LP#56, Chin Chin Road, Cunupia, of which you are reputed to be the owner or occupier to wit: by the carrying out of unauthorised engineering operations, namely the processing and transport of raw materials, the parking of heavy machinery and vehicles and the unlawful change of use from residential to light industrial.*
2. *The Town and Country Planning Division has searched its register of applications which revealed that the Minister with responsibility for town and country planning did not grant permission required under Section 8(1) of the Act to carry out the development outlined above. This section requires that permission be obtained for any development of land carried out after the commencement of the Act.*
3. *YOU ARE HEREBY ADVISED that you are in breach of the provisions of Section 8(1) and you are to immediately cease any further unauthorized building operations on the subject site.*
4. *YOU ARE FURTHER ADVISED that within fourteen (14) days of this letter to you, you are required to submit an application for planning permission pursuant to Section 14(1) for the retention of the building or works described at 1 above. Note however that under S.11(1) the Minister may grant permission either unconditionally or subject to such conditions as he thinks fit or may refuse permission.*
5. *AND FURTHER TAKE NOTICE that in the absence of planning permission the Minister may initiate enforcement action against the owner or occupier of land*

pursuant to S.16(1) of the Act. Failure to comply with the Notice is an offence that renders the owner or occupier liable on summary conviction to the payment of a fine in addition to the removal of the unauthorized development."

33. In response to the Letter of Advice, RPN Enterprises Ltd submitted an application dated the 2nd February, 2012 for permission to retain their existing development[6]. The application was refused by notice dated the 20th March, 2012[7].

34. Set out below are the salient portions of the Notice of Refusal of Permission to Develop Land.

"To RPN Enterprises,

c/o M. Ramhit and Sons,

LP 62, Chin Chin Road,

Cunupia.

You are hereby refused permission to develop land situated at LP 62 Chin Chin Road Cunupia...by the retention of existing development and the continuation of use of a portion of the site for light industrial use in accordance with proposals set out in your application dated the 2nd February, 2012 and as shown on the plans submitted therewith for the reasons given below.

The reasons for refusing ...are as follows:

The site of your proposed development is located in an area which under present planning policy as framed in accordance with the development for Trinidad and Tobago is allocated for residential use and as such ancilliary uses which would

[6] The Application dated the 2nd February, 2012 is exhibited to the affidavit of Kerry Pariag as "K.P.3"

[7] The Notice of Refusal is exhibited as "K.P.4" to the affidavit of Kerry Pariag filed on the 16th December, 2013

complement the residential development and be non-traffic generating. The proposed industrial use would be traffic generating and adversely affect the residential character of the neighbourhood by way of noise and the introduction of non-residential traffic into the residential neighbourhood.

Site investigation has revealed that the current use of the site is taking place without the benefit of relevant approvals. You are advised to cease operations until such time as you have been granted written approval…by the relevant agencies"[8]

35. In the interim, RPN Enterprises Ltd received a Notice of Violation from the Environmental Management Authority. The facts pertaining to the interface between the Interested Party and the EMA are set out in the Related Matter[9]. For the purpose of this application, the relevant fact is that on the 12th April, 2012, the EMA entered into a Consent Agreement with the Interested Party. The EMA also granted a Certificate of Environmental Clearance to the Interested Party.

36. The full terms of the Consent Agreement are set out in the judgment of the Court in the Related Matter[10]. Of relevance to these proceedings, are the conditions set out in the Consent Agreement.

37. A public consultation was held by the Interested Party on May 10th, 2012. A verbatim record of the meeting was produced and exhibited to the affidavit of Kerry Pariag as *"KP2"*[11]

38. By letter dated the 4th June, 2012, the Interested Party filed an appeal against the refusal by the TCPD to grant planning permission. The letter by which the Interested Party appealed was exhibited to the affidavit of Kerry Pariag and marked *"KP7"*.

[8] "K.P.4" Ibid
[9] CV 2013-0804, Indarjit Singh v. The EMA
[10] CV 2013-0804, Indarjit Singh v. The EMA
[11] Affidavit of Kerry Pariag filed on the 17th December, 2012.

39. Following the filing of the appeal, Mr. Pariag attended a meeting of the Advisory Panel to consider the appeal. Mr. Pariag deposed that the following documents were placed before the meeting of the Advisory Panel:

- The Report of the Town and Country Planning Division
- Representation and presentations made by the claimants
- Reporting notes of the Public Consultation
- The CEC[12] and the Consent Agreement with the EMA

40. The Advisory Panel, considered the application for review in accordance with its function to provide advice to the Minister

"...on any matter within their knowledge or which the Minister may seek their advice..."[13]

41. On the 13th September, 2012, the Advisory Panel visited the site and witnessed the operation of the plant, which was being operated for the purpose of inspection only. Mr. Mooleedhar, in his capacity as Chairman of the Advisory Town Planning Panel, set out the observations of the Panel.

"a. The Plant is electrically driven and there is little or no noise emanating from the conveyor belts which take aggregate and cement to the batching hopper.

b. Aggregate is stored close to the batching plant and is kept in a wet condition through the use of a sprinkler system. In addition there is a system of fabric screens around the aggregate;

[12] Certificate of Environmental Clearance
[13] Pursuant to Section 3 of the Act

c. *Aggregate ready for batching is stored in an enclosed hopper while cement is stored in silos.*

d. *The batching hopper is enclosed and has an enclosed vacuum system..."*

Mr. Mooleedhar continued at paragraph 20 of his affidavit:

"The level of noise was comparable to that of a reversing vehicle..."[14]

42. The Minister decided to grant Planning Permission and directed the Chairman of the Advisory Panel to communicate his decision to the Interested Party. By a letter dated the 10th October, 2012, the Chairman of the Advisory Panel, advised the Interested Party of the decision of the Minister[15].

43. In arriving at his decision the Minister considered the Report with the advice and recommendation of the Advisory Panel. At paragraph 11 of his affidavit, the Minister had this to say:

"Among the many matters to which I gave careful consideration were

- *the complaints and representations of the claimants and the extent to which those complaints were substantiated;*
- *my discussion with residents in the presence of their Attorneys-at-law based on my meeting with then on June 13, 2012;*
- *the question of land use policy as set out in the various policy documentation and the decisions which might be permitted under that policy for the application in question;*
- *the reports and position articulated by the Ministry of Health;*

[14] Paragraph 20 of the affidavit sworn by Timothy Mooleedhar and filed on the 8th November, 2013.
[15] Paragraph 12 of the affidavit sworn by Dr. Tiwary and filed on the 16th December, 2013.

- *the Certificate of Environmental Clearance and the Consent Agreement entered into between the EMA and the Interested Party and the protective stipulations set out there in;*
- *The Report of the Planning Officer Mr. Pariag which was placed before the Panel;*
- *The Report, advice and recommendations of the Panel itself and discussions with the Chairman of the Panel, Mr. Mooleedhar."*[16]

44. By letter dated the 6th December, 2012, the Minister wrote to attorney-at-law for the claimants setting out a detailed summary and listing his reasons for granting conditional planning permission. The following are the reasons which were identified in the Minister's letter:

> *"1. The Town and Country Planning Division in determining application T5D:0181/2012 did not pay sufficient regard to the use of the site for light industrial use since 2005.*
>
> *2. The comparative impacts of already approved development in relation to this site development in terms of traffic.*
>
> *3. The present use of the land is probably less impacting than the levels of impact allowed by planning permission originally granted.*
>
> *4. The light industrial use of the site is more than four (4) years old and is no longer subject to enforcement action. This means that it can continue to operate legally. Permission for operation of a concrete batching operation falls within the meaning of light industrial use.*

[16] Paragraph 11 of the affidavit sworn by Bhoehendradath Tiwary and filed on the 16th November, 2013.

5. *Approximately 20% of the site is used for light industrial purposes, transport yard, garage and batching plant. The light industrial use is ameliorated by the extent of greenery and landscaping through well maintained agriculture, landscaping, pond and amenity facilities. The site inclusive of the light industrial use his significant environmental character and quality. This was taken into account.*
6. *The extent of the site, location and aspect, creates a reasonable buffer from surrounding uses.*
7. *Clean site conditions of the batching plant and transportation yard were evident according to the report of Advisory Town Panel.*
8. *Negligible environmental impact from noise, dust or water pollution from operation of the batching plant. Claims by residents of noise, dust, traffic, pollution and illness are not substantiated by observations on site visit and by operation of the plant according to the Advisory Town Panel investigation.*
9. *The EMA could not identify nuisance and /or pollution and reported no violations so far.*
10. *No evidential support was found by the County Medical Officer of Health in relation to complaints about noise and pollution.*
11. *The batching plant has not been in operation. Concrete mixing trucks have only been licensed since June 16th, 2012 and therefore concrete could not have been transported from the site before that date, as commercial operation.*
12. *EMA Consent agreement with RPN Ltd establishes a very strict regime of operations and compliance for the concrete batching plant. There was*

satisfaction that there is minimal possibility of nuisance or negative environmental impacts arising from operation of the concrete batching plant as installed.

13. *Observations show that plant maintenance and installed mitigation measures are of a high order, with back-up measures should the automatic system fail or a nuisance emission occurs.*

14. *Should the plant violate the standards set by EMA, penalties can be imposed, including the cessation of concrete batching operations and my letter to the applicant advised accordingly."* [17]

45. On May, 10th, 2012, officials of the Ministry of Planning and Sustainable Development attended a meeting with residents to hear their complaints. A verbatim record of this meeting was exhibited to the affidavit of Kerry Pariag and marked *"KP2"*.

46. The record of the meeting reflected that there were residents of Cunupia who held the view that the development exerted a positive influence on the community.

Law

Town and Country Planning Act Chap 35:01 [18]

47. Section 3 reads as follows

"3. The Minister shall secure consistency and continuity in the framing and execution of a comprehensive policy with respect to the use and development of all land in Trinidad and Tobago in accordance with a development plan prepared in accordance with the provisions of Part II."

[17] Exhibit "B.T.5" of the affidavit of Bhoehendradath Tiwary
[18] Town and Country Planning Act Chap 35:01, "The Act"

48. Section 4 reads as follows

"4. (1) There is hereby established an Advisory Town Planning Panel.

(2) The constitution and procedure of the Panel shall be in accordance with the First Schedule.

(3) The Panel shall, with a view to the proper carrying out of the provisions and objects of this Act, advise the Minister on any matter within their knowledge or on which the Minister may seek their advice."

49. The learned attorney at law for the claimant made reference to section 5(1), 5(2), and 5(3)(b) of the ***Act***[19]. These sections state:

5(1) "As soon as may be practicable after the commencement of this Act, the Minister shall carry out a survey of the whole of Trinidad and Tobago."

5(2) "Not later than seven years after the commencement of this Act, or within such extended period as Parliament may by resolution allow, the Minister shall submit for the approval of Parliament a development plan consisting of a report of the survey together with a plan indicating the manner in which he proposes that land in Trinidad and Tobago may be used (whether by the carrying out of development or otherwise) and the stages by which any such development may be carried out."

5(3) "A development plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals mentioned above with such degree of particularity as may be appropriate to different parts of Trinidad and Tobago; and a development plan may in particular—

[19] Town and Country Planning Act Chap 35:01

(b) allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan;…"

50. Sections 6(1) and 6(2) are set also set out below:

6 (1) "At least once in every five years after the date on which a development plan for any area is approved by Parliament, the Minister shall carry out a fresh survey of that area, and submit to Parliament a report of the survey, together with proposals for any alterations or additions to the plan that appear to him to be required having regard thereto.

(2) Notwithstanding subsection (1), the Minister may at any time submit to Parliament proposals for such alterations or additions to any development plan as appear to him to be expedient".

51. Sections 7(1) and 7(2) are also relevant in this matter and states as follows:

"7. (1) The Minister shall in the course of preparing a development plan relating to any land, or proposals for alterations or additions to any such plan, consult with the council of the local authority in whose district any of the land is situated, and may consult with such other persons or bodies as he thinks fit, and the Minister shall, before submitting any such plan or proposals for approval by Parliament, give to the council of any such local authority and to any such persons or bodies an opportunity to make objections or representations with respect thereto."

52. Sections 8(1) and 8(2) are also relevant in this matter and states as follows:

8. (1) "Subject to the provisions of this section and to the following provisions of this Act permission shall be required under this Part for any development of land that is carried out after the commencement of this Act.

(2) In this Act, except where the context otherwise requires, the expression "development" means the carrying out of building, engineering, mining or other operations in, on, over or under any land, the making of any material change in the use of any buildings or other land, or the subdivision of any land, except that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say—

(a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building;

(b) the carrying out by a highway authority of any works required for the maintenance or improvement of a road if the works are carried out on land within the boundaries of the road;

(c) the carrying out by any local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation);

(f) in the case of buildings or other land that are used for a purpose of any class specified in an Order made by the Minister under this section, the use thereof for any other purpose of the same class.

53. Section 11(1) to (3) are also relevant in this matter and states as follows:

"11. (1) Subject to this section and section 12, where application is made to the Minister for permission to develop land, the Minister may grant permission either unconditionally or subject to such conditions as he thinks fit, or may refuse permission.

(2) Without restricting the generality of subsection (1), conditions may be imposed on the grant of permission to develop land thereunder –

(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the Minister to be expedient for the purposes of or in connection with the development authorized by the permission;

(b) for requiring the removal of any buildings or works authorized by the permission, or the discontinuance of any use of land so authorized, at the expiration of a specified period, and the carrying out of any works required for the reinstatement of land at the expiration of that period,

and any permission granted subject to any such condition as is mentioned in paragraph (b) is in this Act referred to as permission granted for a limited period only.

(3) The decision of the Minister on any application made to him under this section shall be final."

54. Section 13(1) is set out below:

"13. (1) Where application is made under this Part to a local authority to whom functions have been delegated under section 10 for permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority, or is granted by them subject to conditions, then if the applicant is aggrieved by their decision he may by notice served within the time, not being less than twenty-eight days from the receipt of notification of their decision, and in the manner prescribed by the development order, appeal to the Minister."

55. Section 16 (1) is set out below:

"16. (1) Where it appears to the Minister that any development of land has been carried out after the appointed day without the grant of permission required in that behalf under this Part, or that any conditions subject to which the permission was granted in respect of any development have not been complied with, then the Minister may within four years of the development being carried out, or, in case of non-compliance with a condition, within four years after the date of the alleged failure to comply with it, if he considers it expedient to do so having regard to the provisions of the developmental plan,

if any, and to any other material considerations, serve on the owner or occupier of the land a notice under this section."

56. ***Environmental Management Act Chap. 35:05***

Section 62(f) is set out below:

62 "*For the purposes of this Part and Part VIII, "environmental requirement" means the requirement upon a person to –*

(f) apply for and obtain a Certificate of Environmental Clearance;…"

Applicable principles

57. The claimants' submissions included extensive references to Michael Fordham's ***Judicial Review Handbook***[20], as authority for well-established principles of the law of judicial review. The principles are set out below:

In respect of the ground of illegality:

- A decision maker is required to understand the law which regulates his decision-making power and gave effect to it.[21]
- An administrative or executive authority entrusted with the exercise of a discretion must direct itself properly in law.[22]

[20] Michael Fordham, "Judicial Review Handbook" Fifth Edition at page 463, para. 48.1.1
[21] See Council of Civil Service Unions v Minister for the Civil Service [1984] 3 All ER 935 per Lord Diplock at 950 j
[22] See R v Barnett London Borough Council, ex p Shah [1983] 2 AC 309

Re the Ground of Unreasonableness

- An unreasonable decision was one which a reasonable decision-maker would not have made if properly directing himself in law.[23]
- According to Fordham, one sub-category of unreasonable decision include those which are *"illogical",* where the decision does not *"add-up"* in which, in other words, there is an error of reasoning which robs the decision of logic…[24]

Re the doctrine of Legitimate Expectation

- The concept of legitimate expectation *"enables a citizen to challenge a decision which deprives him of an expectation founded on a reasonable basis that his claim would be dealt with in a particular way."*[25]
- In considering application for judicial review, three (3) practical questions arise:
  - (i) To what has the public authority, whether by practice or by promise committed itself;
  - (ii) Whether the authority has acted or proposes to its commitment.
  - *(iii)* What remedy the Court should grant.[26]

"A decision maker is required to follow his published policy unless there is good reason for not doing so."[27]

[23] Re Duffy [2008] UKHL 4
[24] R .v Parliamentary Commissioner for Administration, ex p Balchin [1998] 1 PLR 1 13
[25] Behuli v. Secretary of State for the Home Department [1998] Imm AR 407, at 415 per Beldam LJ
[26] See Fordham (6th Edition) at paragraph 41.2.4 and R (Bibi) v. Newham London Borough Council [2002] 1 WLR 237
[27] See Fordham (6th Edition) at page 69, paragraph 6.2.8 and the words of Lord Dyson in R(Lumba) v. Secretary of State for the Home Department [2012] 1 AC 245 at [26]

- There is a legitimate expectation of consultation before changes are made in technical regulations.[28]
- Generally, fairness does not require that representation of all parties be disclosed before a decision is made. The local authority should disclose inconsistent information from third parties to permit the application to comment on it.[29]

Relevant v. Irrelevant Issues

- A public authority should take into account all relevant considerations and no irrelevant ones.[30]
- The material test is *"whether a consideration has been omitted which, had account been taken of it, might have cause the decision-maker to reach a different conclusion…"*[31]

Basic duty not to abdicate/fetter

- *"A public body's statutory functions, powers and duties are inalienable. It must own its functions and actions. Bodies are not entitled to surrender or ignore their powers and duties, nor fetter their discretion, by over-committing themselves to a particular course or approach…"*[32]

[28] R (Actis SA) v. Secretary of State for Communities & Local Government [2007] EWHC 241
[29] See Fordham (5th Edition) at paragraph 60.7.7
[30] Fordham (6th Edition) at paragraph 56.1
[31] Fordham (6th Edition) at page 560 paragraph 56.1.6 and R .v Parliamentary Commissioner for Administration, ex p Balchin [1998] 1 PLR 1
[32] Fordham (5th Edition) at page 475, para 50.1.1

Authorities relied on by the Claimants

Legitimate Expectation

R(Bibi) v. London Borough Council of Newham Civ 607 [2002] 1WLR 237

58. In ***R(Bibi)***, the Court was required to consider whether the applicants had a claim based on legitimate expectations engendered by the actions of an administrative authority[33].

59. Schiemann LJ had this to say:

> *"...In all legitimate expectation cases, whether substantive or procedural, three practical questions arise. The first question is to what has the public authority, whether by practice or by promise committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do."*[34]

60. In ***R v. Jockey Club, ex p RAM Racecourses*** [1993] 2 All ER 225, a Jockey Club, as a private body controlled race horsing in the UK. The Jockey Club carried out a policy review as to the need to allocate additional racing fixtures in the future to accommodate the needs of existing racecourse owners and possible new courses. A report was prepared and copies of the report were sent to existing racecourse owners but not to prospective new racecourse owners, like the applicant in this matter. The applicant sent its proposal for development to the Jockey Club. The Jockey Club responded by stating that notwithstanding the report, the Jockey Club had made no commitment as to the number of fixtures which would be allocated to new racecourses.

[33] See R(Bibi) v. Newham London LBC [2002] 1 WLR 237 paragraph [1] per Schiemann LJ
[34] Paragraph 19 of the judgment

61. The court held that the decisions of the Jockey Club were not subject to judicial review. In considering the doctrine of legitimate expectation, Stuart-Smith LJ stated:

> *"The doctrine has many similarities with the principles of estoppel in private law. In my judgment, the matters that the applicant has to prove in this case are these. (1) A clear and unambiguous representation…(2) That since the applicant was not a person to whom any representation was directly made it was within the class of persons who are entitled to rely upon it; or at any rate that it was reasonable for the applicant to rely upon it without more (see AG of Hong Kong v. Ng Yeun Shui) (3) That it did so rely upon it (4) That it did so to its detriment. While in some cases it is not altogether clear that this is a necessary ingredient, since a public body is entitled to change its policy if acting in good faith it is a necessary ingredient where, as here, an applicant is saying 'you cannot alter your policy now in my case, it is too late,' (5) That there is no overriding interest arising from their duties and responsibilities…which entitled the Jockey Club to change their policy to the detriment of the Applicant"*[35]

R v. North and East Devon Authority, ex p. Coughlan [2001] QB 213

62. In 1971, Ms. Coughlan was grievously injured in an accident. She was tetraplegic, had difficulty in breathing, and also suffered from other health problems. In the year 1993 she, together with seven disabled patients were moved by consent, from the New Court Hospital, which was due to be closed. The patients were transferred to the Marden House. Thereafter, on the 7th October, 1998, the Health Authority and made a decision to close Marden House.

[35] R v. Jockey Club, ex p RAM Racecourses [1993] 2 All ER 225 at 236

63. The issue for determination by the Court was whether there was a legitimate expectation of the patients to continue to reside at Marden House. The Court ruled that in determining whether a legitimate expectation existed, a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion, ought to be done.

64. At paragraph 57 of his judgment, Lord Woolf identified the possible outcomes in this way:

> *"There are at least three possible outcomes. (a) The court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course. Here the court is confined to reviewing the decision on Wednesbury grounds. This has been held to be the effect of changes of policy in cases involving the early release of prisoners (see* ***Re Findlay*** *[1985] AC 318;* ***R v Secretary of State for the Home Department, ex p Hargreaves*** *[1997] 1 WLR 906 (b) On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see* ***AG of Hong Kong v. Ng Yeun Shui*** *[1983] 2 All ER 350, in which case the court will itself, judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires. (c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and*

different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."[36]

Authorities Cited on behalf of the Interested Party

Digicel (Trinidad and Tobago Limited) v. Rory Macmillan and Others CV 2006-03320

65. In ***Digicel***[37], Justice Jones (as she then was) considered the relevance of expert evidence. At page 10 of her judgment, Justice Jones noted the submission which had been made on behalf of Digicel to the effect that:

"expert evidence will assist the court in understanding the technical aspects of the case"[38].

66. The learned Judge accepted and relied on this statement of Collins J in ***R (on the application of Lynch) v. General Dental Council***[39] :

"[24] It is clear that the court's functions must not be usurped…… There is in my view a real distinction between a report from an expert which seeks to explain what is involved in a particular process and one which goes on to opine that it was irrational for the body to have reached the conclusion it did…

However it seems to me that in a truly technical field, where the significance of a particular process is in issue expert evidence can be admitted to explain the process and its significance. Cases where this can be permitted will be very rare and what I have said should not be regarded as opening the door to the admissibility of experts' reports in all cases such as this which involve judicial review of an expert tribunal

[36] See R v. North and East Devon Authority, ex p. Coughlan [2001] QB 213
[37] Digicel (Trinidad and Tobago Limited) v. Rory Macmillan and Others CV2006-03320
[38] Digicel (Trinidad and Tobago Limited) v. Rory Macmillan and Others CV2006-03320 at page 10
[39] R (on the application of Lynch) v. General Dental Council [2203] EWHC 2987

or body. Equally, the court must be careful to recognise and apply the distinction to which I have referred, albeit in some instances it may be somewhat difficult to see where the line should be drawn[40].

67. ***R v Secretary of State for the Environment and another, ex p Powis***[41] was a decision of the Court of Appeal of the UK, in which the Court of Appeal considered a tenant's application for possession of land. However, the Secretary of State granted a certificate, stating that it was required for the purpose of the county council that the use and occupation of the land should be changed by February 1979. The tenant was precluded from applying to the court for a new tenancy under the Tenant Act 1954.

68. The Secretary of State said that the county council genuinely intended to carry out the proposal. The tenant applied for judicial review by way of certiorari on the grounds that the Secretary of State had misdirected himself as to the meaning of 'requisite' and also sought to adduce fresh evidence.

69. The appeal was dismissed in this matter. The Court held that fresh evidence should be admitted on an application for judicial review only in order to show what material was before the Secretary of State or tribunal, to decide a question of fact where jurisdiction depended on it, to inquire into a procedural error or where proceedings were tainted by misconduct of the Secretary of State or inferior tribunal; that the fresh evidence sought to be admitted in the present case did not come within any of those categories, and accordingly should be excluded.[42]

[40] R (on the application of Lynch) v. General Dental Council [2008] EWHC 2987 at paragraph 24
[41] R v Secretary of State for the Environment and another, ex p Powis [1981] WLR 584

[42] R v Secretary of State for the Environment and another, ex p Powis [1981] WLR 584

70. ***Sharma v Brown Antoine and others***[43] was a decision of the Privy Council, from the Court of Appeal of Trinidad and Tobago. The appellant had sought judicial review of the decision of the Director of Public Prosecutions (Ag) to prosecute him for perverting the course of justice.

71. In delivering his judgment, on behalf of the Board, Lord Bingham relied on the case of ***Matalulu v. Director of Public Prosecutions***[44] and said:

"The courts have given a number of reasons for their extreme reluctance to disturb decisions to prosecute by way of judicial review. They include:

(i) 'the great width of the Director of Public Prosecutions' discretion and the polycentric character of official decision-making in such matters including public policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits..."[45]

72. ***NH International (Caribbean) Limited v. National Insurance Property Development Company Limited***[46] This was a judgment of Justice of Appeal Mendonça. At page 26, paragraph 84 of his judgment, Justice of Appeal Mendonça had this to say about expert evidence

"As was pointed out by Kerr LJ in ***Abadom*** *76 Cr. APPR, 48, 52:*

[43] Sharma v Brown Antoine and others [2006] 69 WIR 379
[44] Matalulu v. Director of Public Prosecutions [2003] 4 LRC 712 at page 736
[45] Matalulu v. Director of Public Prosecutions [2003] 4 LRC 712 at page 736
[46] NH International (Caribbean) Limited v. National Insurance Property Development Company Limited Civil Appeal No. 246 of 2009

"...where an expert relies on the existence or non existence of some fact on which he is asked to express his opinion that fact must be proved by admissible evidence"

73. The learned Mendonça J. went on to say:

"The position is I think correctly stated in Civil Appeal 55 of 2003 Sookdeo Ramsaran and others v Lorris Sandy and another. In this case the issue arose whether the court should have accepted the evidence of an expert witness...Nelson, J.A.,...stated:[47]

'33. ...the law is clear that before a court can assess the value of an opinion it must know the facts upon which it is based...If an expert opinion is based on hearsay it must be verified by admissible evidence...

34. In other words the experts must himself ascertain the primary facts, or if he ascertains them from a second person, that person and no other must give direct evidence of what primary facts he supplied to the expert. Theresa Rampersad, on whose instructions Mr. Libert's report is based, never gave evidence as to what primary facts she submitted to Mr. Libert...

35. On this basis alone the evidence of Mr. Libert should not have been admitted since Mrs. Rampersad had not given evidence of her instructions to Mr. Libert...

36. For these reasons the appellate court with the benefit of hindsight is entitled to treat the evidence of Mr. Libert as inadmissible" [48]

[47] NH International (Caribbean) Limited v. National Insurance Property Development Company Limited Civil Appeal No. 246 of 2009 at page 26 at paragraph 85 of the judgment.
[48] NH International (Caribbean) Limited v. National Insurance Property Development Company Limited Civil Appeal No. 246 of 2009 per Justice Mendonça at pages 26-27.

AG of Hong Kong v. Ng Yeun Shui [1983] 2 All ER 350

74. Following publicity by the Hong Kong government about a stricter policy in relation to illegal immigrants from China, a senior immigration officer publicly announced that in respect of illegal immigrants from Macau, who feared expulsion to China, each case would be treated on its merits. Subsequently, an order was made for the removal of an illegal immigrant from Macau, without allowing him an opportunity to put his case. The illegal immigrant challenged the order, contending that if people whose interests had been adversely affected had legitimate expectations that they would be accorded a fair hearing, then they became entitled to a fair hearing.

75. Lord Fraser of Tullybelton considered the meaning of 'legitimate expectations' and held that they go beyond legally enforceable rights provided they had some reasonable basis[49]. Lord Fraser continued:

> *"The expectations might be based on a statement or undertaking by or on behalf of the public authority which had the duty to make a decision, if the authority had, through its officers, acted in a way that would make it unfair or inconsistent with good administration for a person affected to be denied a fair hearing."*[50]

76. ***Bushell and another v. Secretary of State for the Environment***[51] was a decision of the House of Lords. Their Lordships considered planning procedures adopted on the construction of two new stretches of motorway, and in particular as to whether the Secretary

[49] AG of Hong Kong v. Ng Yeun Shui [1983] 2 All ER 350
[50] Ibid at 350 h
[51] Bushell and another v. Secretary of State for the Environment [1981] AC 75

of State had acted unlawfully in refusing to allow objectors to cross-examine the Department's witnesses.

77. The Court held that he had not acted unlawfully (Lord Edmund-Davies dissenting). Lord Diplock said:

> '*What is fair procedure is to be judged not in the light of constitutional fictions as to the relationship between the minister and the other servants of the Crown who serve in the government department of which he is the head, but in the light of the practical realities as to the way in which administrative decisions involving forming judgments based on technical considerations are reached. To treat the minister in his decision-making capacity as someone separate and distinct from the department of government of which he is the political head and for whose actions he alone in constitutional theory is accountable to Parliament is to ignore not only practical realities but also Parliament's intention… (emphasis mine) Discretion in making administrative decisions is conferred upon a minister not as an individual but as the holder of an office in which he will have available to him in arriving at his decision the collective knowledge, experience and expertise of all those who serve the Crown in the department of which, for the time being, he is the political head.''*[52]

78. ***Tesco Stores Ltd. v. Secretary of State for the Environment and others*** [1995] 2 All ER 636. In ***Tesco Stores***[53], the Court held that 'material consideration' as provided for in the United Kingdom's Town and Country Planning Act 1990 meant a relevant consideration.

[52] Bushell and another v. Secretary of State for the Environment [1981] AC 75 at page 95
[53] Tesco Stores Ltd. v. Secretary of State for the Environment and others [1995] 2 All ER 636

Whether a consideration was relevant was a matter for the courts to decide but it was entirely for the decision maker to attribute to a relevant consideration such weight as he thought fit and unless he acted unreasonably in doing so the courts would not interfere with his decision.

Authorities relied on in Oral Submissions for the Interested Party

Zorad Khan v. The Chairman, Alderman And Burgesses F The Chaguanas Regional Corporation CV2010-03197

79. This case concerned the demolition of the claimant's property by the defendant. The learned Rajkumar J cited the case of ***The Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan*** CA 54/1985 which was a Judgment of Des Iles JA, Warner JA and McMillan JA. In ***Ramlogan***[54], the court held that a person wishing to carry out a development which requires permission pursuant to various statutes must satisfy the requirements of all the relevant statutes and at page 10 of his judgment, Rajkumar J quoted page 18 of the Court of Appeal decision in ***Ramlogan***[55] in this way:

> *"In this jurisdiction also the code of planning law and the code of public health law still run their separate courses side by side.*
>
> *In my view, the coming into operation of the Town and Country Planning Act resulted in a person seeking to erect a new building or to carry out alterations being required to obtain permission or approval of plans from the authority under the Town and Country Planning Act, in addition to the approval already required under the Public Health Ordinance and in San Fernando under the San Fernando Corporation*

[54] The Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan CA 54/1985
[55] The Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan CA 54/1985

Ordinance). There is nothing prima facie inconsistent about requiring approval for the same act from more than one authority.

The short answer is that a person wishing to carry out a development which requires permission under more than one statute must satisfy the requirements of all the relevant statutes. Exemption from or suspension of demolition in respect of the statue does not involve exemption or suspension in respect of the other."[56]

80. Further, at page 15 of his judgment, learned Rajkumar J had this to say about the duty to consult with the Minister:

"It was submitted that the Borough should have gone through the due process of the law first by seeking a meeting with the minister in charge of planning ***to rectify the matter*** *and thus* ***obtain the Minister's guidance*** *in the matter. By not doing so it was contended that the Borough clearly infringed the Claimant's right to the enjoyment of his property under the Constitution.*

However by Section 10 (1) *of the Town and Country Planning Act, the Minister may by instrument in writing and subject to such conditions, reservations and restrictions as he thinks fit, delegate to the Council of any local authority his functions under* ***Section 11(1) and (2)*** *relating to the grant or refusal of permission to develop land.*

Section 13 *provides for* ***appeal*** *to the Minister from any decision of a local authority to whom functions are delegated.*

Section 14 *provides that the power to grant permission to develop lands includes any building or* ***works*** *constructed or carried out thereon upon the lands.*

[56] Zorad Khan v. The Chairman, Alderman And Burgesses F The Chaguanas Regional Corporation CV2010-03197 at page 10 of 20

The basis upon which it is alleged that the borough needed to have met with the Minister is unclear. The minister may hear an appeal from a decision of the local authority. The statute does not require him to provide guidance or to rectify matters, especially when he had delegated his powers to a local authority…"

Presidential Insurance Company Limited v. Mohammed [2015] UKPC 4

81. Both the claimants and the defendant made reference to this case in their speaking notes.

82. In this case, the Judicial Committee of the Privy Council held that in reviewing the exercise of discretion of an inferior body, an appeal tribunal must show that the decision of the inferior body was plainly wrong. It was decided that the decision of that inferior body would be plainly wrong if it is shown to have erred in principle, disregarded relevant considerations or took into considerations irrelevant ones and the decision of the inferior body was against the weight of or cannot be supported by the evidence.

Authorities referred to in Claimants Speaking Notes

Francis Paponette and Others v. The Attorney General of Trinidad and Tobago Privy Council Appeal No. 9 of 2010

83. The Privy Council held that the Government of Trinidad and Tobago had made representations to the claimants that had led to a substantive legitimate expectation on their part which was subsequently breached by the government The Attorney General had not proved that there was an overriding public interest that justified the frustration of the legitimate expectation.

84. At paragraphs 37 and 38, Lord Dyson had this to say:

"37. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.[57]

South Bucks District Council v Porter Chichester District Council v Searle and others Wrexham County Borough Council v Berry [2003] All ER (D) 312 (May)

85. This was a decision of the House of Lords in which local planning authorities had applied for injunctive relief to prevent gipsies from living in mobile homes and caravans for which planning permission had been refused. This case considered the Court's jurisdiction and discretionary powers in granting injunctive relief to the claimant. The Court held that the jurisdiction of the court was an original not a supervisory jurisdiction, and in all cases the court had to decide whether in all the circumstances it was just, and proportionate … to exercise its discretion under the section to grant the relief sought against the particular defendant.

86. At paragraphs 28 and 29 Lord Bingham had this to say

[57] Francis Paponette and Others v. The Attorney General of Trinidad and Tobago Privy Council Appeal No. 9 of 2010 at paragraphs 37 and 38

"28. The court's power to grant an injunction under section 187B is a discretionary power. The permissive "may" in Subsection (2) applies not only to the terms of any injunction the court may grant but also to the decision whether it should grant any injunction. It is indeed inherent in the concept of an injunction in English law that it is a remedy that the court may but need not grant, depending on its judgment of all the circumstances. Underpinning the court's jurisdiction to grant an injunction is section 37(1) of the Supreme Court Act 1981, conferring power to do so "in all cases in which it appears to the court to be just and convenient to do so". Thus the court is not obliged to grant an injunction because a local authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction and so makes application to the court…

29. The court's discretion to grant or withhold relief is not however unfettered…The discretion of the court under section 187B, like every other judicial discretion, must be exercised judicially. That means, in this context, that the power must be exercised with due regard to the purpose for which the power was conferred: to restrain actual and threatened breaches of planning control."[58]

Reasoning and Decision

87. It is now well established and accepted by all parties that in an application for judicial review the Court does not exercise an appellate function but directs its attention to the decision making process.

[58] South Bucks District Council v Porter Chichester District Council v Searle and others Wrexham County Borough Council v Berry [2003] All ER (D) 312 (May) at paragraphs 28 and 29

88. In this claim for judicial review, the Court's attention was directed to the impugned decision which had been made by the Minister of Planning and Sustainable Development and communicated to the claimants by letter dated the 3rd December, 2012.

89. By the impugned decision, the Minister of Planning and Sustainable Development considered an appeal which had been lodged by the Interested Party by way of a letter dated the 4th June, 2012. The appeal was in the form of a simple letter. It was formulated on the letterhead of RPN Enterprises Ltd and addressed to the Honourable Dr. Bhoehendradath Tiwary and signed by Roopchand Ramhit, as Managing Director of RPN Enterprises Ltd.

90. By their letter, the Interested Party wrote:

> *"We hereby wish to appeal the Notice of Refusal of Permission to develop land at LP 62 Chin Chin Road, Cunupia...."*

91. There was no reference, in this letter to the basis, on which the appeal was lodged. There was no reference to settled practice or to statute.

92. It was common ground that following the letter of the 4th June, 2012, an investigation was conducted by the Advisory Panel to the Minister. This Panel was spearheaded by Timothy Mooleedhar, Town Planning Consultant. The Panel conducted a review which included a site visit on the 13th September, 2012.

93. The Advisory Panel discussed its findings with the Minister, who directed Mr. Mooleedhar to draft a letter informing the Interested Party of the advice of the Minister.

94. By letter dated the 10th October, 2012, Mr. Timothy Mooleedhar, as Chairman of the Advisory Town Planning Panel communicated the decision of the Minister to the Interested Party. Mr. Mooleedhar had this to say:

"This review was undertaken by the Advisory Town Planning Panel (ATPP) and their findings and recommendations were submitted to the Minister who is satisfied that you should be allowed relief subject to conditions..."[59]

95. The claimants have built their application for judicial review on twelve specific grounds. These are set out at paragraph 5 of this judgment.

"a. illegality

b irrationality

c. bad faith

d. failure to take into account material considerations

e. taking into account irrelevant matters

f. abdicated his and/or surrendered his jurisdiction

g. acted in conflict of the land use policies of Trinidad and Tobago and of the Town and Country Planning Division ("TCPD") Chapter 35:01

h. acted contrary to legislative intent of the Town and Country Planning Act Chapter 35:01 ("TCP Act")

i. acted contrary to the rules of natural justice

j. acted contrary to principle of sustainable development

k. acted in breach of a legitimate expectation of both a substantive and procedural benefit

l. acted unconstitutionality."

96. It may be useful to state at the outset that there is no evidence of bad faith. That ground could therefore be dismissed without further consideration.

[59] See the letter dated the 10th October, 2012 from Timothy Mooleedhar to Roopchand Ramhit exhibited as 'BT3" to the affidavit of Bhoehendradath Tiwary filed herein on the 16th December, 2013

97. I turn now to consider the ground of illegality. By their written submission, it was the contention of the claimants that the impugned decision was flawed on the ground of illegality for several different reasons.

98. One of the reasons submitted by learned Senior Counsel, Mr. Maharaj was that, in conducting a review of an earlier decision, a public authority was required to be satisfied that the first decision was plainly wrong.

99. In support of his submission, learned Senior Counsel relied principally on the words of Carnworth J in ***R v. Cardiff County Council exp. Sears Group Properties Ltd***[60]**.**

> *"But it is, in my view possible to discern in the cases a broad principle...that where a formal decision has been made on a particular subject-matter or issue affecting private rights by a competent public authority that decision will be regarded as binding on other authorities directly involved unless and until circumstances change...in a way that can be reasonably found to undermine the basis of the original decision. That change may be in the factual circumstances or sometimes in the underlying policies affecting the decision."*

100. Learned Senior referred as well to the Privy Council decision in ***Presidential Insurance v. Mohammed***[61] which was essentially a running down action in which their Lordships commented on the circumstances in which an appellate Court should overturn the findings of a first instance judge. In my view, it would be dangerous for the Court to rely on ***Presidential***[62] since it is too far removed from the fact situation which engages my attention in this claim.

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[60] Rv. Cardiff [1998] 3 PLR 55 at p. 64
[61] [2015] UKPC 4
[62] Ibid

101. Mr. Deonarine described this submission as "absurd", and submitted these two cases:

- ***South Bucks District Council v. Porter***[63]
- ***Zorad Khan***[64]

102. In my view these cases, though on the subject of Planning Law, do not directly address the circumstances in which a public authority is empowered to review its own decision. Learned Counsel, Mr. Deonarine argued further that in any event there was a change in circumstances.

103. Learned Senior Counsel, Mr. Sinanan also made submissions in opposition to those made on behalf of the claimant. At page 12 of 13 his Speaking Note, learned Senior Counsel, Mr. Sinanan had this to say

> *"The irresistible inference is that when the Minister made the first decision he was not privy to all the relevant circumstances..."*

104. In considering the submission which had been made on behalf of the claimant, I had recourse, in the first place, to the ***Town and Country Planning Act***[65]**.** By Section 10 of the ***Act***[66], the Minister may delegate to the Council of a local authority his function relating the grant or refusal of permission to develop land. In these circumstances the ***Act***[67] allows a right of appeal to the Minister from the decision of the local authority[68]. Section 13(1) of the Act provides for an appeal in this way:

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[63] [2003] UKHL 26
[64] Zorad Khan v. The Chairman, Alderman And Burgesses F The Chaguanas Regional Corporation CV2010-03197
[65] Town and Country Planning Act Ch. 35:01
[66] Town and Country Planning Act Ch. 35:01
[67] Town and Country Planning Act Ch. 35:01
[68] Section 13 of the Act

"13(1) Where application is made under this Part to a local authority to whom functions have been delegated under section 10 for permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority, or is granted by them subject to conditions, then if the applicant is aggrieved by their decision he may by notice served within the time, not being less than twenty-eight days from the receipt of notification of their decision, and in the manner prescribed by the development order, appeal to the Minister."

105. All other applications for planning permission are made to the Minister under Section 11 of the ***Act***[69]. The ***Act***[70] provides at Section 12(3) in plain and unambiguous terms that the Minister may grant or refuse permission and that the decision of the Minister is final.[71]

106. It was in this statutory context that Mr. Pariag issued the Notice of Refusal on the 20th march, 2012. This Notice, issued by the TCPD, was ultimately issued for and behalf of the Minister. It is, in my view, artificial to contend otherwise, artificial to pretend that the March, 2012 decision was not that of the Minister. The Court's view in this regard is based on the words of Lord Diplock on ***Bushell and another v. Secretary of State for the Environment***[72]**.**

107. It was also common ground that the Interested Party had no statutory right of appeal against the first decision of the Minister to refuse planning permission. Nonetheless, S.C. Mr. Maharaj conceded that good administration dictated that a public authority ought to hold the power to review its decision.

[69] Town and Country Planning Act Ch. 35:01
[70] Town and Country Planning Act Ch. 35:01
[71] See Section 11(3) of the Act
[72] See paragraph 77 Supra - Bushell and another v. Secretary of State for the Environment [1981] AC 75

108. The question, which of necessity arises, is whether such power of review is unlimited. As a corollary to the first question, a second question arises as to the boundaries of the power, if it is circumscribed. Learned Senior Counsel, Mr. Maharaj, relied on the decision of their Lordships in ***Presidential***[73] in support of his submission that the public authority must find that the decision which was being reviewed was plainly wrong. I have already expressed my concerns as to the relevance of ***Presidential***[74].

109. In my view, however, the principle stated by Carnworth J in ***Cardiff***[75] is highly persuasive. The facts of that case were different from those before me. In ***Cardiff***[76], there were two separate entities, with the successor highway authority departing from the decision of its predecessor. In the instant case both the original decision and the review decision were made by the Minister.

110. Nonetheless, it seems that the words of Carnworth J ring true. It would, in my view, be contrary to the principles of good administration for a public authority to be continually changing its decision or changing its decision without good reason. Persons affected by the decision have a right to be able to rely on the certainty of administrative decisions and to make their private plans accordingly. Indeed the requirement of certainty in administrative decision-making is one of the principles which requires expeditious consideration of applications for judicial review. Thus in ***O'Reilly v. Mackman*** [1982] 3 All ER 1124, Lord Diplock said at page 1131:

> *"The public interest in good administration requires that public authorities and third parties should not be kept in suspense about the legal validity of a decision the*

[73] Presidential Insurance v. Mohammed [2015] UKPC 4
[74] Ibid at paragraph
[75] R v. Cardiff [1998] 3 PLR 55
[76] Ibid

authority has reached in the purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision…"

The statement of Lord Diplock was quoted and relied upon by Lord Goff in ***Caswell v. Dairy Produce Quota Tribunal*** [1990] 2 All ER 434 at 441.

111. In my view therefore, unless there was a change in circumstances as alluded to in ***Cardiff***[77], it is my view that it would have been wrong for the Minister to depart from his earlier decision.

112. Learned Counsel, Mr. Deonarine argued that there had been changes in circumstances and that those circumstances, which pertained to the original decision were different from the later decision.

113. In my view and according to the evidence there was no change in the circumstances of the site between March, 2012 when permission was refused and October, 2012, when the original decision was reviewed.

114. The site certainly remained the same. The Interested Party has asserted that it was only after the grant of planning permission that the batching plant became operational. According to the evidence there were only two differences. The first was that the EMA changed its mind. The second difference was that a different panel undertook the investigation on behalf of the Minister. The first investigation was conducted by Mr. Pariag of the TCPD, while the second was conducted by the Advisory Panel, chaired by Mr. Mooleedhar.

[77] [77] Rv. Cardiff [1998] 3 PLR 55

115. According to the evidence of the defendant, it is my view that both investigations followed the same paces. Both involved a site visit. The difference was that Mr. Mooleedhar sat as a virtual Court of Appeal on recommendations of Mr. Pariag.

116. Accordingly, it is my view that the evidence has not demonstrated that the review was based on a change of circumstances. This is manifested from the reason provided by the Minister in his letter of the 6th December, 2012 to learned instructing attorney for the claimant. The reasons resonate rather like judgment on appeal.

> *"The Town and Country Planning Division ...did not pay sufficient regard to the use of the site for light industrial use...*[78]*"*

117. The only new factor cited in the Minister's Reasons was the Consent Agreement which had been concluded between the Interested Party and the EMA and the conditions which had been imposed thereby on the user of the subject land.

118. I considered whether this constituted a change of circumstances. In my view, the opinion and actions of the EMA, as a separate entity could not constitute a change in circumstances. Whether or not the conditions imposed by the EMA would achieve their objective was a matter to be determined in the future and could not constitute a change at the time of the review. Whether or not the imposed condition would achieve their objective, depended on many variables, not the least of which, was whether the Interested Party would comply. It seems unacceptable that the Minister would reverse his decision on the basis of a hope of compliance, whose enforcement lay in the hands of a separate legal entity.

119. It follows therefore, that it is my view that there was no change of circumstances between the first decision and the review. It is my view that the Minister's reversal of his original

[78] See Exhibit "B.T.5" in the affidavit of Bhoehendradath Tiwary

decision was contrary to good administration and illegal, particularly in the face of an express statutory provision that his decision was final.

120. Having regard to my finding on the ground of illegality, it is unnecessary for me to consider the remaining grounds. There was a whisper of a submission as to material non-disclosure. In my view, there was nothing that was material in these proceedings that the claimant failed to disclose.

121. For this purpose, the instant claim differs from the related matter[79], where the claimants were relying on the consequences of environmental infractions as the basis for their review. The Court, in that case, held that its decision for leave would have been different had it been drawn to the Court's attention that the Batching Plant had not been in operation prior to October, 2012.

122. By contrast, in these proceedings, I have determined the substantive claim on the two (2) decisions of the Minister. Whether or not the batching plant was operational in 2011 was immaterial.

123. There was no argument that discretionary bars applied. There was no argument that an order of certiorari would have exerted a detrimental effect on third parties or that an order, at this time, would serve no useful purpose.

124. It is common ground that the planning permission which had been granted in 2012 was granted for a period of four (4) years. In any event, permission would soon expire and one would have hoped that the Interested Party would have taken the precaution of making a new application and it may have been for that reason, that no argument was made as to the detriment to the third parties.

[79] CV 2013-0804, Indarjit Singh v. The EMA

Orders

125. Accordingly, it is my view and I hold that there ought to be judgment for the claimants in terms of the application for leave to apply for Judicial Review[80], at paragraph 1 (on the ground of illegality) and paragraph 4, that is to say:

(1) A declaration that the Planning Decision dated the 3rd December, 2012 to permit the development of the Concrete Batching Plant is illegal, null and void and of no effect.

(2) An order of certiorari quashing the planning decision of the defendant.

(3) The defendant to pay the claimants' costs certified fit for Senior and Junior Counsel.

(4) There be a stay of execution of three (3) months.

(5) Liberty to apply.

Dated this 26th day of April, 2016.

M. Dean-Armorer
Judge

[80] Filed herein on the 28th February, 2013