Citation Number: BB 2016 HC 33
Case Name: ST HILL v. CHIEF TOWN PLANNER AND ATTORNEY GENERAL
Country: Barbados
Court: High Court
Date: November 25, 2016
Judge: Cornelius, J.
Suit No.: 1617 of 2011

Appearances:

Mr. Gregory P.B. Nicholls for the applicant

Mrs. Donna K. Brathwaite Q.C., Deputy Solicitor-General with Mrs. Caroline Ward-Sargeant for the respondents

CORNELIUS, J.:

[1] This is an application for judicial review of the refusal of the Chief Town Planner to permit change to the use and development of 210 acres of agricultural land at Six Men's Plantation, Saint Peter owned by the principle of the claimant.

BACKGROUND

[2] The applicant, Leonard E. St. Hill (St. Hill) was appointed as agent for the land owner, Mount Six Men's Company Limited (The Company) by virtue of an agreement between St. Hill and Rev. Cameron Broomes on behalf of the company. The first respondent, The Chief Town Planner (CTP) is the statutory functionary who by virtue of the Town & Country Planning Act Cap 240 has responsibility for planning control and enforcement matters.

[3] The applicant submitted an application for planning permission to develop lands situate at Six Men's Estate on 12th October 2007. The application required permission for a change of use from Agriculture, further subdivision of the land into lots and the comprehensive development of the land. The applicant presented the application with the following inscription on it:

"Permanent Secretary, Prime Minister's Office. Please note that this OUTLINE APPLICATION is under Section 18 of the Act Cap 240 and S.I. 1986 No. 103 for submission to the Minister immediately after recording in the Statutory Register."

[4] The CTP replied indicating that the application was incomplete and the applicant aggrieved by the response, appealed to the Minister.

[5] The Permanent Secretary (Special Assignments) Prime Minister's Office responded on 19th April 2011 telling the applicant and the first respondent that the Minister refused

"planning permission for the proposals contained in the said Application No. 2213/08/2008/C:- Change of use from agriculture and subdivision into lots for the following uses:- (a) a quarry, (b) hotels, (c) residential, (d) institutional, (e) recreational, (f) open space, (g) heritage at Six Men's Estate, St. Peter."

[6] The applicant contends that the process by which the application was determined by the Minister was occasioned by a series of unlawful administrative acts or omissions on the part of both respondents and as a consequence the said decision on the part of the Minister to refuse town planning permission ought to be impugned by the courts in the exercise of its supervisory jurisdiction.

THE INSTANT APPLICATION

[7] The applicant seeks the following relief

i) A declaration that the development plan inclusive of amendments made under the Town & Country Planning Act, Cap 240 is a Statutory Instrument in accordance with the meaning of the Interpretation Act Cap 1 of the Laws of Barbados

ii) A declaration that the directions given by the Minister under the provision of Section 18 of the Town and Country Planning Act, Cap 240 prescribe the removal of such applications from the jurisdiction or discretion permitted to the Chief Town Planner implying objection or representation with respect to the Development Plan in force under Part III of the Act instead of routine Planning Control exercised by the Chief Town Planner under Parts IV and V of the Act:

iii) A declaration that the first respondent acted in excess of his jurisdiction prescribed by the Statutory Instrument S.I. 1986 No. 103 by dealing with the application for planning permission numbered 2213/08/2008/C as if the same was submitted for his determination and consideration.

iv) An order of Certiorari to quash the recommendations of the first respondent as ultra vices and unlawful regarding the determination of the application for planning permission numbered 2213/08/2008/C;

v) A declaration that the Minister failed to satisfy and observe the conditions and procedures required by Section 4(3) of the Town & Country Planning Act in determination of the said application without reference to the Town and Country Planning Advisory Committee established with a view to the proper carrying out of the provisions and objects of the said Act;

vi) A declaration that the process which occasioned the decision of the Minister to refuse planning permission for the proposal described by the application for the reasons submitted by the Chief Town Planner acting ultra vines is an improper exercise of discretion acting on instruction from an unauthorized person.

vii) An order of certiorari to quash the decision of the Minister to refuse planning permission for the proposals contained in the Application No. 2213/08/2008/C;

viii) An order of Mandamus that the Minister submit the said Application No. 2213/08/2008/C to due process prescribed for the interpretation of the provisions of the Development Plan as a Statutory Instrument including compliance with section 9(5) of the Town and Country Planning Act as a procedure for alteration and addition to the Development Plan pursuant to the objections or representations in the form of an application for comprehensive development of any area under Part VII of the Second Schedule of the said Act as matters for which development plans may be made.

ix) An order of Mandamus that applications referred to the Minister be dealt with by the Town & Country Planning Advisory Committee established with a view to the proper carrying out of the provisions and objects of the said Act.

x) An award of Damages by reason of the inordinate delays, the acts of public maladministration and misfeasance in such amounts as this Honourable Court deems fit;

xi) An order for the applicant to have his costs of and occasioned by this action

xii) Any further order that this Honourable court may deem fit.

[8] The grounds of the application are as follows:

i) The first respondent in purporting to exercise functions and powers in relation to the said application No. 2213/08/2008/C for planning permissions failed to satisfy, to observe the conditions or procedures required by the said Act in so far as he failed or refused to inform the Applicant that the said application had been referred to the Minister for determination (Re: Sub-section 4 (c) of the Administrative Justice Act (AJA));

ii) The first respondent in purporting to exercise functions and powers in relation to the application for planning permission acted in excess of his jurisdiction by purporting to make a decision in respect of the said application for planning permission and by purporting to refer his recommendation to the Minister thereafter which said referral frustrates the object of the scheme in the Act that such advice to the Minister should be sought from and given the Town and Country Planning Advisory Committee pursuant to section 4 of the Act (Vide subsection 4 (b), 4 (c) and 4 (i) of the AJA);

iii) The Minister in purporting to exercise functions and powers in relation to the application for planning permission failed to satisfy to observe the conditions or procedures required by the said Act by requiring the Company within 30 days to submit a written response to the recommendations of the first respondent to the Minister to refuse the application for planning permission in order to commence a review of that said decision of the first respondent. (Vide: Sub-section 4(c) of the AJA);

iv) The Minister in purporting to exercise functions and powers in relation to the application for planning permission failed to satisfy to observe the conditions or procedures required by the said Act by failing or refusing to consult the Town & Country Planning Advisory Committee which was required to convene a hearing at which the Applicant or Company would be heard on the application prior to the submission of the Committee's recommendation to the Minister for a decision in determination of the said application for planning permission pursuant to section 18(3) of the Act (Vide: Sub-sections 4 (c) and 4 (i) of the AJA).

v) The Minister in purporting to exercise functions and powers in relation to the application for planning permission failed to satisfy to observe the conditions or procedures required by the said Act and failed to Act in accordance with the principles of natural justice and procedural fairness by failing or refusing t provide a report to the applicant of all the proceedings of the said Town & Country Planning Advisory Committee and the circumstances under which the Minister came to an independent decision to refuse planning permission (Vide: Section 4 (c), 4(d), 4(h) and 4(1) of the AJA);

vi) The Minister in purporting to exercise function and powers in relation to the application for planning permission abdicated his statutory duty and responsibility to consider and determine the said application for planning permission on the advice of the said Town & Country Planning Advisory Committee and failed to satisfy to observe the conditions or procedures required by the said Act by wholly adopting of the said decision of the first respondent to refuse permission by way of a verbatim recitation of the said reasons previously adumbrated by the first respondent for refusing the said application (Vide: Sub-sections 4(a), 4(c), 4(h) and 4(1) of the AJA);

vii) The Minister in purporting to exercise the functions and powers in relation to the application for planning permission failed to take relevant considerations into account or failed to establish on the balance of probabilities that the said decision to refuse the application for planning permission took

into consideration any of the submissions made on behalf of the company that were presented by the applicant in writing and kore particularly by the applicant in person at (a) hearing held under the Chairmanship of Emerson Graham on the 22nd day of April 2010; (Vide: Sub-sections 4(a), 4(c), 4(h), 4(i), 4(k) and 4(1) of the AJA)

viii) The whole process by which the said application for planning permission was determined after it was submitted under the cover of a letter bearing date the 12th day of October 2007 was 42 months which in the circumstances was inordinately lengthy and therefore constituted an unreasonable and improper exercise of the statutory discretion of the Minister to determine the said application (Vide: Sub-sections 4(d), 4(e), 4(h) and 4(1) of the AJA);

Particulars

Date of Submission of the initial application for planning permission: 12th October 2007

Date of Notification of the Minister's Decision:

19 April 2011

ix) The process by which said decision of the Minister to refuse the Application for planning permission was occasioned by bad faith and an abuse of power (Vide: Sub-sections 4(f) and 4(g) of the AJA)

[9] In total, the applicant has submitted that the entire process which occasioned the Minister's decision to refuse planning permission was predicated on errors of law; ultra vices actions of the Chief Town Planner; the abdication of the Minister's statutory duties and the failure to take relevant considerations into account.

[10] The respondents first argue that the Attorney General is improperly joined as a party, and further maintain that the entire process was conducted in accordance with the Laws and Regulations of Barbados.

THE APPLICABLE LAW:

[11] The statutory provisions which govern applications for planning permission are contained in the primary act Town and Country Planning Act Cap 240 and the subsidiary provisions found in the Town and Country Planning Regulations 1972 and the Town and Country Planning Development Order 1972.

[12] They govern and provide the framework under which town planning matters in general, are assessed. Section 16 of the primary act makes provision for the determination planning permission. It states:

"(1) Subject to this section and sections 17 and 18, where application is made to the Chief Town Planner for planning permission, that officer, in dealing with the applications, shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations, and

(a) may grant planning permission either unconditionally or subject to such conditions as he thinks fit; or

(b) may refuse planning permission.

(2) Without restricting the generality of subsection (1), conditions may be imposed on the grant of planning permission 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 Chief Town Planner 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 end of a specified period, and the carrying out of any works required for the re-instatement of land at the expiration of that period;

(c) for requiring the commencement or completion of any development before a specified date on or before the completion of any other development being carried out or to be carried out by the same applicant;

(d) for requiring the provision of proper services including gas, water, electricity and roads before the sale, lease or other disposition of any land for which permission has been granted for sub-division for housing purposes or commercial or industrial purposes.

(3) Any planning permission granted subject to any such condition as is mentioned in paragraph (b) of subsection (2) is in this Act referred to as "planning permission granted for a limited period".

(4) Where

(a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced or completed before a date specified in the condition; and

(b) any building or other operations are commenced or completed after the date so specified, then

(i) the commencement and carrying out of those operations in the case of a condition requiring the commencement of those operations before a date specified in the condition; or

(ii) the carrying out of any operations after the date specified in the conditions, in the case of a condition requiring those operations to be completed before such date, do not constitute development for which that permission was granted."

[13] Section 17 provides supplemental provisions and is in the following terms:

"(1) Application to the Chief Town Planner for planning permission shall be made in such form and shall include such drawings and other particulars as may be prescribed; and in particular if requested by the Chief Town Planner, may be accompanied by an assessment of the impact that the development in respect of which planning permission is being applied for is likely to have on the environment of Barbados.

(1A) The Chief Town Planner shall request an assessment referred to in subsection (1) where part or all of the development or use of land is proposed to occur in the coastal zone management area.

(1B) The Chief Town Planner may by notice in writing require the applicant to submit such further information as the Chief Town Planner thinks fit.

(1C) Before granting or refusing planning permission under section 15, the Minister shall consult with the Director of Coastal Zone Management.

(2) Provision may be made by a development order for regulating the manner in which applications for planning permission are to be dealt with by the Chief Town Planner and in particular

(a) for enabling the Minister to give directions restricting the grant of planning permission by the Chief Town Planner during such period as may be specified in the directions in respect of any such development, or in respect of development of any such class, as may be so specified;

(b) for requiring the Chief Town Planner before granting or refusing planning permission to consult with the Town and Country Planning Advisory Committee or with such other authorities as may be prescribed by the order or by directions given by the Minister thereunder;

(c) for requiring the Chief Town Planner to give to any applicant for planning permission such notice as may be prescribed by the order as to the matter in which his application has been dealt with;

(d) for requiring the Chief Town Planner to furnish to the Minister and to such other persons as may be prescribed by the order, such information as may be so prescribed with respect to applications for planning permission made to him, including information as to the manner in which any such application has been dealt with.

(3) The Chief Town Planner shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed, with respect to applications for planning permission made to him, including information as to the manner in which such applications have been dealt with.

(4) Every register kept under subsection (3) shall be available for inspection by the public at all reasonable hours."

[14] Section 18 provides for the reference of planning applications to the Minister and is in the following terms:

"(1) The Minister may give directions to the Chief Town Planner requiring that any application made to that officer for planning permission or all such applications of any class specified in the directions shall be referred to the Minister instead of being dealt with by the Chief Town Planner, and any such application shall be so referred accordingly.

(2) Subject to subsection (3), where an application for planning permission is referred to the Minister under this section notice of the reference shall be given to the applicant by the Chief Town Planner and subsections (1) and (2) of section 16 shall apply, with any necessary modifications, as they apply to an application for planning permission which falls to be determined by the Chief Town Planner.

(3) Before determining an application referred to him under this section, the Minister shall, if either the applicant or the Chief Town Planner so desire, give each of them an opportunity of appearing before, and being heard by, a person or persons appointed by the Minister for the purpose.

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

[15] Section 19 makes provision for reference of planning applications for review by the Minister. It provides as follows:

"(1) Where an application is made to the Chief Town Planner for planning permission or for any approval of that officer required under a development order and that permission or approval is refused or is granted by that officer subject to conditions or he fails to give notice in accordance with section 20(1), then, subject to subsection (2)) the applicant, if he is aggrieved by the decision of the Chief Town Planner or by the Chief Town Planner's failure to give notice, may, in the prescribed manner and within the time prescribed or within such further time as the Minister may in his discretion allow, request that officer to refer the decision for review by the Minister.

(2) No request for the review of a decision may be made under subsection (1) where a notice has been given to the applicant under subsection (2) of section 18 that the application has been referred to the Minister.

(3) Where the Chief Town Planner has been requested to refer a decision, he shall refer the decision accordingly with all reasonable dispatch.

(4) Notwithstanding subsection (1), the Minister may refuse to review a decision referred to him under this section in respect of an application for planning permission if it appears to the Minister that planning permission for that development could not have been granted by the Chief Town Planner or could not have been so granted otherwise than subject to the conditions imposed by that officer having regard to the provisions of sections 16 and 17 and of the development order and to any directions given under that order.

(5) Where a decision of the Chief Town Planner is referred under this section to the Minister, the Minister subject to the following provisions of this section, may confirm or may reverse or vary any part of the decision of that officer, whether or not the request for review relates to that part and may deal with the application as if it had been made to him in the first instance.

(6) Before reviewing any decision referred to him under this section, the Minister shall, if either the applicant or the Chief Town Planner so desire, give each of them an opportunity of appearing before and being heard by, a person or persons appointed by the Minister for the purpose.

(7) Subsections (1) and (2) of section 16 shall apply, with any necessary modifications, in relation to the review of a decision by the Minister under this section as they apply in relation to an- application for planning permission which falls to be determined by the Chief Town Planner.

(8) The decision of the Minister on review of any decision referred to him under this section shall be final.

(9) On the review of any decision referred to him under this section, the Minister

a) shall, by notice in writing under the hand of his Permanent Secretary, inform the applicant and the Chief Town Planner of his decision;

(b) may in such notice direct that the Chief Town Planner, or the applicant, as the case may be, shall pay such costs not exceeding $50 as the Minister thinks fit;

(c) shall, if requested to do so by the applicant, furnish the applicant with a written statement of the reasons for his decision.

(10) All costs directed to be paid under subsection (9) shall be paid within 1 month of the date of the notice under subsection (9) informing the applicant and the Chief Town Planner of the decision of the Minister and in default of payment may be recovered on a complaint made by the person entitled to the same before one of the magistrates of District "A"."

[16] Section 20 makes provision for appeals in default of planning decisions. It provides:

"(1) Where an application is made to the Chief Town Planner for planning permission or for his approval under a development order, then, unless before the expiration of 2 months from the date of the receipt by him of the application, the Chief Town Planner

(a) gives notice to the applicant of his decision on the application; or

(b) gives notice to the applicant that the application has been referred to the Minister in accordance with directions given under section 18,

section 19 applies in relation to the application as if the permission or approval to which it relates had been refused by the Chief Town Planner and notification of his decision had been received by the applicant at the expiration of that period.

(2) A decision of the Chief Town Planner is not invalidated by reason of its having been issued after the expiration of the period of 2 months mentioned in subsection (1).

THE APPLICANT'S EVIDENCE

[17] Mr. St. Hill was a Chartered Town Planner and Civil Engineer holding academic and professional qualifications in both disciplines. His professional experience in Barbados included being in the Public Service on contract to the Government of Barbados in the TCPD from 1964-68 as Development Officer and later as Chief Town Planner. He had been contracted by Mount Six Men's Company Limited to be engaged as a consultant/agent and part of his responsibilities included designing and seeking planning permission to develop the property. The proposed development of the property concerned land that at all material times was of a class specified in directions issued by the Minister as Statutory Instrument S.I. 1986 No. 103 which required applications of that class to be referred to the Minister for planning permission instead of being dealt with by the CTP.

[18] It was his view that the legislation provided a distinction between an application seeking planning permission for determination by the CTP under section 17 of the Town & Country Planning Act on the one hand and an application directed to be referred to the Minister under section 18 of the said Act on the other hand. There was no prescribed application form to be presented to the Minister for consideration and applicants requiring such permission had to use the form prescribed for use under section 17. Accordingly, he prepared an application form for planning permission to develop the 210 acres in accordance with the provisions of sections 18 and 21 by adapting the prescribed form to reflect the fact

that the application was to the attention of the Minister and not to the first respondent. The said adaptation was inscribed as follows:

"Permanent Secretary, Prime Minister's Office. Please note that this OUTLINE APPLICATION is under Section 18 of the Act Cap 240 and S.I. 1986 No. 103 for submission to the Minister immediately after recording in the Statutory Register."

The applicant stated that the application for planning permission bearing the above inscription on the prescribed form as adapted along with the proposed plan and the relevant enclosures was presented under the cover of a letter dated 17th October 2007.

[19] By Letter dated 30th October 2007, the CTP replied advising that the application was incomplete. All of the documents submitted including the cheque presented with the application were returned. The CTP noted that

"the application form was not filled out correctly. The notation at the top of page 1 needs to be removed. Questions 2, 3 and 8 are incorrect"

[20] In a letter dated 6th November 2007, Mr. St. Hill stated that he wrote to the Minister advising that the CTP returned the application without notice of reference to the Minister. He was therefore referring the said application in the form submitted to the Minister. The Minister replied by letter dated 8th July 2008, some eight months later, advising that the initial application was `incomplete' and could not be accepted by the first respondent whose job it was to refer the applications to the Minister as advised.

[21] Mr. St. Hill was of the view that the Minister's reliance on the propriety of the form of the application as affecting the application should have been guided by reference to advice sought and obtained from the Town and Country Planning Advisory Committee established under the Act for that purpose. He wrote to the CTP alerting that the inscription on the application was for the attention of the Minister, would be deleted and seeking directions for corrections to question 2, 3 and 8. The CTP replied by letter dated 28th July 2008 advising that the application was to be submitted on the prescribed form without any alteration to the wording and further that in accordance with Si 1986 No. 103 the CTP would refer the application for the decision of the Minister. There was no reply with respect to questions 2, 3 and 8 of the application.

[22] On 6th August 2008, Mr. St. Hill resubmitted the application on the prescribed form without the inscription and with all the relevant and supporting documentation. By way of Standard Notice dated 6th August 2008, the CTP advised the company that the application for planning permission had been resubmitted and was now numbered 2213/08/2008C. The Notice advised further that if by 6th October 2008, the company was not given notice by the CTP of his decision or that the application had been referred to the Minister in accordance with section 18 of the Act, the company was entitled to request the CTP to refer the matter for review by the Minister.

[23] Having received no formal notice of the referral to the Minister, Mr. St. Hill made an enquiry to the Town & Country Development Planning Office for the reason why the CTP failed to give the notice. He was advised that the CTP had been contemplating a request for an environmental impact assessment. By letter dated 4th February 2009, he outlined his concern, to the Minister as to how the application was being treated by the CTP. He set out the proper procedures which he believed should be followed in consideration of the application and was at pains to point out that the Minister should consult with the Town & Country Planning Advisory Committee.

[24] On 10th February 2009, he wrote to the CTP demanding compliance with Regulation 8 of the Town & Count'', Planning Regulations 1972 and the related directions as given in S.I. 1986 No. 103 as given under section 18 of the Act. Despite this, the CTP failed to comply with the requirement of notifying an applicant that the matter had been referred to the Minister.

[25] St. Hill's evidence was that the Minister replied 9 months later to his contention that the process embarked upon in the instant town planning application was irregular, unlawful and being wrongfully compromised by the interference of the CTP. It was his view that neither the Minister nor the CTP made any effort to comply with the terms of the statutory regime established for the purpose of considering applications to the Minister for planning permission.

[26] In a letter dated 16th November 2009, the Permanent Secretary (Special Assignments) made reference to the "applicant's request for review of the CTP's decision", issued on the application for planning permission 2213/08/2008C, despite the application not being made to the CTP. No such application had been made to the CTP, so no decision should have issued from him.

[27] The Permanent Secretary further informed Mr. St Hill that the application had been referred to the Minister in accordance with section 20 of the Act, that the CTP had recommended a refusal of the application and that the company now had 30 days to indicate whether it required a hearing before a person appointed by the Minister to conduct a review or to withdraw the request for review.

[28] In a letter dated 24th November 2009, St. Hill replied to the Permanent Secretary pointing out what he viewed as a number of procedural errors namely:

i) No request was made for a review of the first respondent's decision;

ii) The application 2213/08/2008C was not made for the decision of the first respondent;

iii) The application must be referred to the Minister instead of being dealt with by the first respondent;

iv) Notice of the referral to the Minister must be given by the first respondent to the applicant

v) On referral to the Minister the Town & Country Planning Advisory Committee established by section 4 of the said Act should be consulted;

vi) The applicant is entitled to a hearing by the Town and Country Planning Committee if requested before a decision is made by the Minister in determination of the application 2213/08/2008C;

vii) Other considerations of procedural fairness under the provisions of the Administrative Justice Act Chapter 109B of the Laws of Barbados were highlighted.

[29] The letter went on to state that

i) The first respondent failed to comply with the directions given under S.I. 1986 No. 103 by the Minister and Regulation 8 of the Town & Country Planning Regulations 1972 with reasonable dispatch or at all since August 2008;

ii) A request by the applicant under the provisions of Section 18(3) of the Act for an opportunity of appearing with representation before and being heard by a person or persons of the Statutory Town & Country Advisory Committee appointed by the Minister for the purpose, prior to the determination of the application;

iii) As a matter of natural justice and procedural fairness, the applicant requests a written statement of the reasons for the Minister's decision and the report of the proceedings at the Hearing by the Town & Country Planning Advisory Committee.

[30] Four months later by letter dated 25th March 2010 St. Hill was given notice that a 'hearing' of the application was to take place before Mr. Emerson Graham on Thursday 22nd April 2010 at 1:30 p.m. Mr. St. Hill attended the hearing in which Mr. Graham sat alone and he challenged Mr. Graham's jurisdiction to convene such a hearing given that he was not then known to be a member of the statutory Town & Country Planning Advisory Committee. His challenge was rejected by Mr. Graham and the hearing proceeded.

[31] After the submission, the hearing was adjourned. St. Hill stated that he was told to await the decision of the Minister and that no transcript of the proceedings or a copy of the conclusions drawn by Mr. Graham or his advice to the Minister was ever presented notwithstanding his earlier request for same in the letter of 24th November 2009.

[32] One year after the hearing on 19th April 2011, Mr. St. Hill stated that he was then advised that planning permission had been refused. The reasons stated for the refusal were a verbatim recitation of the advice given to the Minister by the CTP. No reference was made to the applicant's submissions at the hearing before Mr. Graham in the notice of refusal. There was also no mention of the report or findings of Mr. Graham at the conclusion of the hearing or of the advice to the Minister rendered by Mr. Graham. The reasons stated in the refusal refer to the failure of the applicant to provide an environmental impact assessment which had indeed accompanied the original application submitted on 12th October 2007.

[33] In reply to the Minister's refusal, Mr. St. Hill stated that he understood that the application conformed to the Government's stated policies for the conservation and good management of agricultural lands; policies which were more particularly adumbrated in the Physical Development Plan (Amended) 2003. The Minister had before him a comprehensive proposal for the development of the said lands and there were a number of material facts that the Minister ought to have taken into account in relation to the application rather than wholly adopting the position of the CTP to refuse planning permission.

[34] To his mind the Minister failed to take into account the proper and relevant considerations in determination of the application for planning permission.

[35] Mr. St. Hill stated further that he was never told that the proposed development was at variance with the stated Government Policy for the conservation and good management of agricultural lands. The Minister never provided him or the Company with an opportunity to directly ascertain the particulars of the alleged variance or to challenge the basis upon which he arrived at the allegation given the detailed application to the Minister and the presentation to Mr. Graham at the hearing.

[36] Under cross examination, Mr. St. Hill maintained that it was his view that the CTP was required by statute to inform him that the application had been referred to the Minister and he had not been so informed. Further he gave evidence that he understood that application was not to be dealt with by the CTP but by the Minister who subject to Regulation 9 had to give reasons for his decision and not just replicate the recommendation of the authorized person who in this matter was the CTP.

[37] Mr. St. Hill refused to accept, that in relation to his application, the CTP followed the proper process and procedures. He did not accept the suggestion that at no time did the CTP act in excess of his jurisdiction or that the procedure which occasioned the refusal of planning permission was proper.

THE FIRST RESPONDENT'S EVIDENCE

[38] The first respondent's evidence was given by Mr. Mark Cummins, the Chief Town Planner. His duties included directing or undertaking the planning of the layout and coordination of plans for the physical development of urban and rural areas; examining and evaluating development proposals submitted and determining acceptance, modification or rejection thereof; analyzing information to establish the nature, extent of growth rate and likely development requirements of areas in Barbados and such other duties as prescribed by the laws of Barbados.

[39] Mr. Cummins stated that he was aware of the application No 2213/08/2008C and confirmed that the applicant was identified as the agent on behalf of Mount Six Men's Co. Ltd. He was aware that the application sought change of use of the land from agriculture and subdivision into lots for the following uses namely quarrying, hotels, residential, institutional, recreational, open space and heritage. He maintained that there was therefore no correlation between the said application and section 9 (5) of the Town and Country Planning Act Cap 240 (which provides for the holding of public enquiries with regard to objections or representation in respect of developments to the development plan).

[40] In reply to the applicant's affidavit, Mr. Cummins stated that there was only one application form on which persons seeking permission to develop land may use. There has never been a prescribed form for the submission of an application which was to be referred to the Minister as required by Statutory Instrument 1986 No 103. There was no provision for such application to be submitted to the Minister either; the application had to first be submitted to the CTP. Any alteration to the form was not accepted and it was unnecessary to alert the CTP since all applications which fell under the ambit of S.I. 1986 No. 103 were referred to the Minister for decision. The application form, all drawings and cheque were returned to the applicant because of the amendment made to the application form by the applicant and the information asserted in response to questions 2, 3 and 8.

[41] Mr. Cummins stated that S.I. 1986 No. 103 gave no particular direction regarding recording of applications in the statutory register. The applicant company was not advised of the referral of the application to the Minister because (St. Hill) acting as agent invoked section 20 of the Act before the (CTP) could refer the application to the Minister in accordance with section 18 of the Act. After receiving (St. Hill's) letter dated 27th February 2009, requesting a referral of the Application to the Minister pursuant to regulations 9 (1) (a) (i) and 9 (1) (b) (ii) of the Town and Country Planning Development Order 1972, the application was referred to the Minister on 8th September 2009.

[42] Mr. Cummins stated that the applicant resubmitted the application on 6th August 2009 and it differed from the one previously submitted. The application was properly lodged, a receipt number issued (Receipt No. 008987) and a final determination made 19th April 2011 by the Minister.

[43] Mr. Cummins also stated that since S.I 1986 No 103 came into operation, the Minister had never given any directions regarding the handling of applications except that they be referred for the decision of the Minister and in each case applications were referred to the Minister. The CTP did not determine application 2213/08/2008C; it was referred to the Minister. Whilst section 18, Cummins stated, provided the legal authority whereby the Minister could give directions in respect of any applications or class of applications to be determined by the Minister instead of the CTP, the legislation did not prescribe the manner in which such referral should be made. In this matter, referral to the Minister was not made under section 18 of the Act before the expiration of 2 months, but under section 20 as invoked by the applicant.

[44] Mr. Cummins stated that Mr. St. Hill and the company were requested by letter dated 2nd February 2009 to submit terms of reference for an Environmental Impact Assessment (EIA) for the perusal and approval of the assessment panel. This letter requested information to assist with the assessment of the application prior to its referral to the Minister for his decision.

[45] Mr. Cummins reiterated that he did not issue a decision on the application. He "considered" the application and upon the failure of the applicant to furnish relevant information to assist in its processing, the matter was referred to the Minister for his decision. By invoking section 20, the application was handled as if permission or approval had been refused by the him and thereafter the matter is treated as set out in the legislation as the review of the CTP's decision.

[46] Mr. Cummins went on to state that since the directions given by the Minister under section 18 and the consequential publication of S.I. 1986 No. 103, the practice has been that the office of the CTP would provide the professional and technical assessment of the application in accordance with the procedures required by the legislation, and thereafter make a recommendation to the Minister for his decision. He stated that there was no institutional capacity within the parent ministry of the Minister to deal with the technical and professional aspect related to planning matters, and therefore if the Minister was to be availed of the planning expertise necessary for his deliberations on planning applications and to assist him in making the final decision, the CTP's office carried out the technical and professional assessment of the application. The Advisory Committee advised the Minister on development and policy issues and did not function as a planning committee advising on the determination of individual applications. In his view, the CTP did not fail to comply with the directions under S.I. 1986 No 103 but referred the matter to the Minister in accordance with section 20 of the Act after the professional and technical assessment of the proposal was completed.

[47] The CTP stated thereafter that it was never the practice of the Minister when issuing decisions under section 18 or 19 to make any reference to the presentation by an applicant or the CTP during the hearing. There was no provision in the Act for the Minister to provide transcripts of the hearings and the report, findings or any advice rendered by the person appointed by the Minister to hear the applicant or the CTP. All that was required was to furnish the applicant with a written statement of the reasons for his decision.

[48] Mr. Cummins referred to the EIA. He stated that the applicant sought to change the use of approximately 210 acres, the majority of which fell outside the urban corridor as established by the Physical Development Plan. Given the magnitude of the proposal, an EIA was requested to determine how the likely impacts would have been mitigated. The failure to submit the EIA as requested prevented a thorough assessment of the proposal especially its likely impact on the environment. What Mr. St. Hill purported to be an EIA was deemed to be grossly inadequate. Mr. St. Hill had been furnished with the guidelines to assist with the preparation of the Terms of Reference. When an EIA was requested, it had to be completed satisfactorily.

[49] In his oral evidence, Mr. Cummins stated that the EIA was requested because 1) there was an agricultural area in excess of 25 acres; and 2) one of the uses applied for in the application was quarrying or resource extraction.

[50] In respect of section 18 applications, Mr. Cummins states that there was a consultation process dependant on the nature of the application. According to him, this involved seeking the views of other Ministers or agencies of Government. The proposal was then assessed in relation to what the physical development plan stated and all of that information including the comments of the other agencies was collated and referred to the Minister with a recommendation. Thereafter, he says, the Ministry would advise the office of the CTP of the date and time of the hearing and the person who the Minister had appointed to hear the matter. There was no more consultation after the referral.

[51] In cross-examination, Mr. Cummins stated that his office carried out an assessment of the application. Thereafter he made a recommendation and this was communicated to the Minister via his Permanent Secretary. The recommendation was not shared with the applicant and no notice was given to the applicant since the matter was referred under section 19 where no such notification is required. Section 19 refers to applications to the CTP for planning permission on which such permission had not been granted.

[52] The CTP denied that this was an application under section 19 or 18 of the Act but confirmed that it was an application to develop agricultural land in excess of 2 acres amongst other things. The decision to refer the application to the Minister was based on two things; firstly, the land involved was more than 2 acres of agricultural land, and secondly, the letter dated 27th February 2009 made reference to the fact that that the CTP had not issued a decision within the prescribed time as set out in the Act at section 20 (two months). The matter was then referred to the Minister under section 19. The CTP stated that had the letter not been submitted, the matter would have been referred to the Minister under section 18.

[53] Mr. Cummins confirmed that St. Hill had not cited section 19 of the Act in his letter but that he cited Regulation 9 (1) (9).

[54] He stated that there was no material difference between the work carried out by the department on applications where the CTP made the decision and in those where he made a recommendation. The technical work was the same in either circumstance. After the recommendation to the Minister, the CTP's office played a further part. The office was represented at the hearing on 22nd April and the site visit on 17th May (2010).

[55] In re-examination Mr. Cummins confirmed that there was a seven month period between the date of submission of the application and the referral to the Minister. This seven months had been spent putting together information bearing in mind that his office had not received comments from the Barbados Water Authority or from the Ministry of Agriculture nor had it received an EIA which met the guidelines as set out by the Town & Country Planning Office.

DISCUSSION

[56] The first issue relates to the nature of the application for planning permission under consideration.

[57] In his letter of 28th July 2008, the CTP stated that the area to be considered was approximately 210 acres and that its current land use allocation was agricultural. This application therefore at its simplest was one to change the use of a large portion of agricultural land to a number of other purposes. The Minister by virtue of S.I. 1986 No. 103 gave the following directions under section 18 of the Act:

"The Chief Town Planner shall refer to the Minister for decision of the Minister the following classes of applications made under the Town and Country Planning Act:

(a) All applications made for planning permission to subdivide or materially change the use of agricultural land over 2 acres: and

(b) All applications made for planning permission in respect of beach front properties"

[58] Section 18 of the Act thus provides the basis on which the Minister can give such directions and makes provision for the process to be followed thereafter. This is clearly an application seeking to materially change the use of agricultural land over 2 acres. After submission of the application the undisputed evidence in this matter is that the CTP then proceeded to "deal with" the application.

[59] There was some debate as to whether 'deal with' meant that the CTP rendered a decision on the matter but it is clear that in this matter he assessed the application in the same way that he would if the decision were his to make.

[60] The CTP has argued that the Minister's office does not have the technical expertise to assess the application and consequentially a practice has arisen whereby his office assesses the application and then makes the reference to the Minister with a recommendation.

[61] It is the case for the complainant that this practice is ultra vices the Act and the Court agrees. This practice has not been contemplated by the Act. Section 18 (3) makes provision for the CTP and the applicant to be heard on the application if they so desire by a person or persons appointed for that purpose by the Minister. The Act does not provide for the CTP to make an assessment or a recommendation prior to the Minister addressing his mind to the application before him.

[62] It is clear, that if the Minister can appoint a person to conduct a hearing into the application, that a reasonable exercise of that power would be to appoint a person competent enough to hear the application and report accordingly. Good administration requires transparency, even where resources are limited. I find therefore that the process followed by the CTP's Office prior to submitting this application to the Minister was invalid.

[63] The Act establishes the proper process that should be followed by the department in accordance with the provisions of the Act where applications for a change of use from agriculture are submitted.

[64] Firstly, on submission of an application for a change of use in and/or development of land from agricultural purposes, it must first be ascertained whether the applicant has used the prescribed forms as required by section 17 (1) of the Act and in light of section 3 of the Town and Country Planning Regulations 1972.

[65] Once the applicant has used the prescribed form, the next consideration is whether the application concerns a portion of land over 2 acres. If the land is less than 2 acres then the application is to be assessed in accordance with section 17 and in light of the provisions in section 15 and 16 and all necessary provisions. If however the application relates to land over two acres, the function of the CTP in relation to that application ceases and the application, with all of the required documents should then be referred to the Minister. In either instance, the application should be recorded in the Public Register as prescribed by section 17 (3). Section 10 of the Town and Country Planning Regulations 1972 sets out more precisely what information the Register kept by the CTP should contain.

[66] Secondly, section 8 of the Regulations prescribes that the CTP shall then issue a notice to the Applicant in writing of the terms of the direction under section 18 of the Act including "any reasons given by the Minister for issuing the direction" and informing the applicant that the application has been referred to the Minister. The CTP has 2 months in accordance with section 20 of the Act to either give notice of his decision on the application or that he has referred it to the Minister under section 18 of the Act. If the CTP has not referred the matter under section 18 within 2 months, then section 20 of the Act provides that section 19 which refers to the reference of planning permissions to the Minister applies "in relation to the application as if the permission or approval to which it relates had been refused by the Chief Town Planner and notification of his decision had been received by the applicant at the expiration of that period".

[67] If the CTP has referred the application within the prescribed time then no request for a review of a decision may be made (section 19 (2) of the Act). Where the request for a review has been made however, the CTP must refer the 'decision' "with dispatch" (section 19 (3) of the Act). An aggrieved applicant must make this request within 28 days of the expiry of the 2 month period (refer Regulation 9 (1) (b) (ii)).

[68] Where the CTP has issued the notice in time then the application should now be before the Minister for his decision according to section 18 of the Act. Section 18 (3) provides that if either the applicant or the CTP desire to be heard the Minister may appoint a person or persons to hear the application.

[69] If the notice has not been received within the stipulated time and section 19 is now applicable, once the necessary provisions have been observed, then if either the CTP or the applicant wishes to be heard, the Minister should appoint a person or persons to conduct that hearing (section 19 (6)). It should be noted that the decision under section 19 is a deemed refusal (refer section 20 of the Act). Subject to section 19 (9), the Minister through his Permanent Secretary should inform the applicant and the CTP in writing of his decision. If the applicant so requests, then a written statement of the reasons for the decision should be issued by the Minister.

[70] Where an aggrieved applicant has failed to request a review within the 28 days of the expiry of the two month period, this is not fatal to the request however, because section 18 (3) remains applicable. It is for the CTP to cease his breach of the provisions of the Act at that point and refer the matter to the Minister for decision with all reasonable dispatch.

THE DUTY OF THE CTP TO CONSULT

[71] Where an application has been submitted to the CTP for the granting of planning permission, section 8 of the Town and Country Planning Development Order 1972 provides that the CTP shall consult with a number of parties before granting planning permission. Having found that the process employed by the CTP was not in accordance with the Act, it is necessary to view the duty to consult accordingly. Generally, section 8 (4) of the Order provides that this consultation must be done in not less than 14 days and not more than 21 days. It would stand to reason that the CTP should submit the application to all parties whom he wishes to consult with within the period specified allowing therefore for their simultaneous consideration and thereafter reply from all of the parties within 21 days. Generally therefore, he should then make his determination on the application thereafter. This determination changes however with respect to section 18 and 19 applications in which he ceases to be the decision maker. His determination at this point would relate to submissions or recommendations which he would be entitled to make at a hearing before a person or persons appointed to hear the matter. The duty to consult does not cease because the CTP ceases to be the decision maker. In the absence of any guidelines set by the Minister being presented to the Court, the deadlines prescribed by the Act provide firm guidance as to the length of time for the CTP to consult even in applications where the Minister is the decision maker. Such consultations would inform the CTP's recommendations whether to approve or refuse the application in the same way that they would if he was the decision maker.

THE PROCESS EMPLOYED IN THIS MATTER AGAINST THE ESTABLISHED LEGAL FRAMEWORK

[72] When Mr. St. Hill submitted the application, the CTP was required to ascertain whether the application was indeed submitted using the correct form as required by the provisions of section 17. It is clear therefore that the submission of the application via the amended form in October 2007 was not in accordance with the provisions and the CTP was well within his right to return same to the applicant. At this point the CTP should have returned the said application to Mr. St. Hill with dispatch advising that his submission was not in accordance with the provisions of the Act. The CTP did so return the documents by letter dated 30th October 2007. The court does not find that there was any misdirection at this point on the part of the CTP and the correspondence dated 6th November 2007 from Mr. St. Hill to the Permanent Secretary in the Minister's office asking for directions and guidance was in my view unnecessary.

[73] However, there has been no reason proffered for why it then took another eight months for the Minster to reply. The length of time taken for the Minister to reply is not in issue at this point but none-the-less raises questions of a reasonable response time. I can find no impropriety in the actions of the CTP up until this point.

[74] On or about 6th August 2008, Mr. St. Hill submitted the application again, this time without any amendments and was accordingly notified of the application number. The CTP should have considered whether the application was submitted on the appropriate form and in this instance it was. Mr. St. Hill was advised that if by 6th October 2008, the company was not given notice by the CTP of his decision or that

the application had been referred to the Minister in accordance with the directions given under section 18 of the Act, the company was entitled to request that the CTP refer the matter to the Minister. It is at this point in my view that the process starts to go awry.

[75] The CTP at this point should have first reviewed the application and assessed whether it related to agricultural land over 2 acres or not. In this case it did relate to agricultural land over two acres and the CTP therefore became functus officio in relation to making a decision on the application. This should have alerted him to the decision being one for the Minister and he should have thus ensured that the application was duly recorded in the Register and dispatched to the Minister to be dealt with. Instead the CTP's office embarked on a consultation process and breached the provisions of the Act to refer the application.

[76] Some seven months had passed without the reference being made in breach of the provisions in the Act. There is no provision in the act for any consultation to be done by the CTP on these particular applications before they are referred to the Minister. The procedure therefore is not in keeping with the Act.

[77] On 10th February 2009, Mr. St. Hill wrote demanding compliance with regulation 8 which relates to the issuance of the notice to him that the matter had been referred. The Act at section 20 specifies that when the CTP fails to issue the requisite notice, section 19 would therefore now apply. The CTP at this point was not empowered to make any recommendation. The matter should have been referred to the Minister with dispatch as is required by section 19 of the Act and the most that the CTP should have done thereafter is indicate to the Minister and the applicant that he wished to be heard on the matter by a person or persons appointed for that person in accordance with section 19 (6). The making of recommendations at this point was an erroneous exercise of the power of the CTP.

[78] Similarly, the Act requires that Mr. St. Hill had 28 days after the end of the two month period to object to the CTP not referring the matter to the Minister. This failing on his part however is not fatal. It means that he cannot invoke section 19 but that in no way blocks the use of the section 18 procedure.

[79] It took the Minister four months to appoint a person or persons to hear the matter and the applicant became aware of this in March 2010. The hearing was held in April 2010 some 20 months after the submission of the August application. Fairness required that at this hearing both the CTP and the applicant should have appeared, and should have at the very least exchanged submissions prior to the hearing with a view to presenting their case at the hearing.

[80] It is at this point and not before that the CTP should then make his recommendations, including the results of any consultation for the consideration of the person hearing the matter. Similarly, the applicant would have been able to present his application and reply to recommendations of the CTP. There is no evidence that the report of Mr. Graham was circulated thereafter but in April of the following year, 2011, the Minister advised that his decision was to refuse the application. In accordance with section 19 (9), the Minister then gave reasons for his decision which were identical to the recommendations submitted by the CTP prior to the hearing. Had the CTP submitted his recommendation at the hearing instead of prior, then at the very least it would be arguable that there was some transparency in the decision making process but in the absence of the report from the hearing and of any of the discussions therein, it is reasonable to assume that the process could be viewed as being unfair.

THE ENVIRONMENTAL IMPACT REPORT

[81] Counsel for Mr. St. Hill argues that the Environmental Impact Assessment is a "red herring drawn through the laws of Barbados". He argues that it is the responsibility of the CTP under section 11 of the Act to survey the Island once every five years and at any time to determine the parameters by which applications will be determined and to ask the applicant to set those parameters would be ridiculous.

[82] He pointed out that Mr. St Hill had described in his covering letter and on the plans submitted the impact or the effect of the application, so an EIA was a ridiculous request and he did not comply because it was not necessary. In respect of the Physical Development Plan, he maintained that the plan was invalid

[83] Mr. Cummins maintains that the Physical Development Plan (Amended) 2003 set out the specific types of development which would require a Physical and an Environmental Impact Assessment. In respect of agricultural land, any land in respect of 10 hectares (approximately 25.7acres) could be subject to an EIA. In this matter the agricultural area was in excess of 25 acres and there were a myriad of uses contemplated in the application including resource extraction or quarrying as set out on the Physical Development Plan. From a planning perspective, an EIA would be necessary to properly process the application.

[84] The first issue to consider is the nature of the Physical Development Plan. Mr. St. Hill argues that it is a statutory instrument. Part III of the Act sets out a statutory framework for the existence and development of a Physical Development Plan for Barbados. Specifically, section 16 requires that the CTP must have regard to the plan in dealing with applications for planning permission. No argument has been advanced by either side that would support Mr. St. Hill's contention that the Physical Development Plan is invalid and accordingly, without evidence of same, I am left to conclude that it has the effect of current law. The Act states that the Physical Development Plan is to be seen as a Development Order as provided for under Part III of the Act.

[85] The plan provides, at section 2.5.2 that an EIA is required to be submitted by applicants for a number of uses including uses within an agricultural area and mining operations including quarries amongst many other uses. The plan also provides at section 2.5.2.1(b) that "the Chief Town Planner may require applicants for planning permission to prepare and submit an Environmental Impact Assessment if, in the opinion of the Chief Town Planner, a proposed development may have a significant negative effect on coastal or other environmental resources, Natural Heritage Conservation or adjacent land uses. The Environmental Impact Assessment, once completed, should be made accessible to the public."

[86] Quite significantly, the plan provides as follows

"The Environmental Impact Assessment shall be prepared in consultation with the Environmental Impact Assessment Panel which will oversee:

1) The formulation of the terms of reference for the Environmental Impact Assessment.

2) Recommendations for staging of Environmental Impact Assessment decisions

3) The processing and evaluation of Environmental Impact Assessments

4) Review and approval of detailed design of construction and operations, mitigation and monitoring as required by the conditions of approval.

5) Advise the Chief Town Planner on the need for enforcement proceedings.

[87] It is clear that in this matter an EIA may be required under the provisions of the Physical Development Plan and that the applicant is responsible for its preparation. I cannot find that the CTP would have exceeded his powers by requesting one if it were for him to so request. This by no means indicates that an EIA is not to be requested in this type of application. To the contrary, it is clear

that the applicant should have submitted the EIA with his application for planning permission given that the EIA is a requirement under the provisions of the Plan. The lack of the EIA, for example, would have been a legitimate reason for the CTP to express to the Minister his desire to heard.

[88] I turn now to the question of the statutory basis for the issuance of the guidelines by the CTP for the preparation of the Terms of Reference. The Physical Development Plan specifically provides that the Environmental Impact Assessment Panel is to oversee the formulation of the Terms of Reference but the Physical Development Plan at section 12 also provides as follows:

"Where Environmental Impact Assessments are required, they shall be completed to the satisfaction of the Chief Town Planner, prior to approval being given, approvals of development subject to EIA may contain conditions of approval to ensure that the adverse impacts of such development are mitigated."

[89] It is clear therefore that the CTP is well within his authority to request EIAs. It is also clear that the CTP can set guidelines for the submission of same to his department but the formulation of the Terms of Reference is to be overseen by the Environmental Impact Assessment Panel. In applications such as this one where the CTP is not to deal with the application however, it may be prudent never-the-less of an applicant to submit the EIA with the application or at latest prior to any hearing which the applicant subsequently expresses a desire to attend in consideration of the application by the Minister. It is clear that without the EIA, this application is incomplete.

[90] In all the foregoing therefore, I cannot hold that the request for an EIA was a ridiculous request. To the contrary, it was quite necessary given the provisions of the Physical Development Plan and given that the plan spelt out quite clearly when an EIA is needed, it should have been done by the applicant in this matter as a matter of course without issue. Mr. Graham's Appointment

[91] The applicant indicated that he challenged Mr. Graham's jurisdiction to hear the matter. In his view the Town and Country Planning Committee was the correct body to hear the matter.

[92] The Court refers to the provisions of the Act and cannot agree with the Applicant. The Act clearly sets out that either the applicant or the CTP if so desired could have their matter heard by a person or persons appointed by the Minister. Similarly, the Act also spells out at section 4 the following with respect to the Town and Country Planning Committee:

"(1) There is hereby established a body to be known as the Town and Country Planning Advisory Committee.

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

(3) The Committee shall, with a view to the proper carrying out of the provisions and objects of this Act, advise the Minister on any matter on which the Minister may seek its advice, on the preparation of development plans and generally as to the planning of development in Barbados."

[93] I accept, therefore, the CTP's evidence that the Town and Country Planning Committee advises on development and policy issues. I do not agree however, in light of the provisions of the Physical Development Plan that the Minister could not consult with the committee on individual plans where such plans had the potential to affect the overall development plan.

THE ORDERS REQUESTED

[94] The applicant has sought a number of orders in this matter including orders against the Minister for Town Planning. Two issues arise: is the Attorney-General properly joined as a party, given that the Applicant seeks orders of certiorari and mandamus against the Minister and not the Attorney-General per se. Can orders against the Minister for Town Planning be made in the absence of a claim against him?

[95] The respondent argues that an 'administrative act or omission' is the act or omission of a Minister, public official, tribunal, board, committee or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or any enactment (refer Section 2 of the Administrative Justice Act Cap 109B). They argue further that they are no allegations that the Attorney-General exercised, purported to exercise or failed to exercise any power conferred and that there is also no relief sought against the Attorney-General and that the Town and Country Planning Act does not confer any duty or power on the Attorney-General in respect of granting or refusing planning permission.

[96] The respondent submits further that judicial review proceedings are different from ordinary civil proceedings against the Crown in which the Attorney-General must be a respondent. There is no dispute between the parties in the proper sense and the applicant ought not to have made the Attorney-General a party to these proceedings.

[97] The applicant argues that the Attorney-General was made party to these proceedings for judicial review as a representative party for the said Minister with responsibility for Town and Country Planning. The applicant, however, has conceded that Judicial Review proceedings cannot be construed as 'civil proceedings' within the meaning of the Crown Proceedings Act Cap 197.

[98] It is clear that the CTP becomes functus officio in relation to the consideration of applications for planning permission once it has been determined that the area concerns agricultural land over 2 acres. It follows that the Act prescribes the Minister for Town Planning to be the decision maker and given that declarations are specifically sought against him, he should have been joined accordingly. There are specific orders being sought against the Minister in this matter and importantly, orders that have not been requested against the Crown per se but against the specific decision of the Minister.

[99] This Court has exhaustively reviewed the regional and local jurisprudence relating to the position of the Attorney General as a proper party to the proceedings in Pearson Leacock v. The Attorney General et al High Court Suit #2251/2007 decided 6th October 2007. This Court holds that judicial review proceedings are not civil proceedings for the purposes of representation by the Attorney-General, in accordance with C.O. Williams Construction Ltd. v. Blackman High Court Suit# 1033/1988 decided 27th February 1989). Nor does this case fall under the "peculiar circumstances" in Hochoy v. Nuge (1964) 1 WIR 174, which would permit the Attorney-General to be sued where judicial review involved an act of the Governor–General, such as Lloyd v. Attorney General (unreported) High Court Suit #979/1996 decided 30th April 1998. This case can be further distinguished from cases where the Attorney General's addition may be regarded as superfluous, insofar as the proper decision maker had also been sued (such as Pearson Leacock, or Harper v. Arthur High Court Suit #533/2004 decided 7th June 2007).

[100] In this case the applicants have neglected to sue the relevant Minister, who is the functionary that actually made the final decision sought to be impugned, and sued the Attorney-General, who made no decision whatsoever. Regretfully, the Court finds that in these circumstances, the Attorney General should not have been made a party, and the application to remove him as a party is allowed. I say regretfully, because the failure to sue the actual decision maker places the Court in an invidious position with regard to the orders which it can make for the proper determination of this case. The Court is fully aware that this leaves the applicant to seek further recourse from the Minister, but this court will not jump through flaming legal hoops to accomplish what the applicant should have clearly asked for.

[101] In summary, the Court's interpretation of the Act is as follows:

a) That the CTP is functus officio once an application for planning permission concerns a change of use of agricultural land over 2 acres, and has no authority to make recommendations prior to the submission of the application for planning permission to the Minister. He can express his desire to be heard after submission of the application as prescribed by the provisions of the Act.

b) That all applications for planning permission must be recorded in a public register within 2 months of their submission and in accordance with the Act that the Register is a public one.

c) That the CTP must send notice to an applicant that an application has been referred to the Minister within two months of the date of application. If he fails to do so, the applicant has 28 days after the date for the period of notice has passed to request a section 19 review by the Minister.

d) That the CTP has no fewer than 14 days and no more than 21 days to consult with other statutory agencies, bodies or persons on applications for planning permission.

e) That the Minister may be advised by a person or persons he appoints to hear matters referred to him under section 18 or 19 of the Act.

f) That the Physical Development Plan is a development order under the provisions of part III of the Act.

g) That the CTP is empowered to ask an applicant for an EIA in light of the provisions of the Physical Development Plan. An EIA is a requirement in this matter where development concerns an agricultural area of more than 10 hectares (1 acre = 0.405 hectares). The physical development plan sets out the criteria to determine whether an EIA is required.

h) That the CTP must approve the Terms of Reference for the EIA and the formulation of same is to be overseen by the Environmental Impact Assessment Panel.

i) That the Minister for Town Planning is the proper decision maker in applications for planning permission referred to him.

j) That the duty of fairness requires full disclosure of all documents to both sides prior to the decision of the Minister.

[102] In light of these findings, and the Court's decision in relation to the Attorney General, the Court grants the following Orders:

i) A declaration that the process which occasioned the refusal of planning permission was procedurally incorrect;

ii) A declaration that the Chief Town Planner acted in excess of his jurisdiction by dealing with application No 2213/08/2008C as if it were submitted for his determination and consideration.

iii)An order of certiorari to quash the recommendations of the Chief Town Planner.

iv) A declaration that the Minister failed to satisfy and observe the conditions and procedures required by Section 4(3) of the Town & Country in determination of the said application without reference to the Town and Country Planning Advisory Committee established with a view to the proper carrying out of the provisions and objects of the said Act.

v) A declaration that the process which occasioned the decision of the Minister to refuse planning permission for the proposal described by the application for the reasons submitted by the Chief Town Planner acting ultra vires is an improper exercise of discretion acting on instruction from an unauthorized person.

vi) An order of mandamus that applications referred to the Minister be dealt with by the Town and Country Planning Advisory Committee established with a view to the proper carrying out of the provisions and objects of the Act under section 4 (3) of the Town & Country Planning Act.

In addition:

vii) A declaration that the development plan inclusive of amendments made under the Town and Country Planning Act Cap 240 is a statutory instrument is refused.

viii) The Minister not being party to this matter, the court declines to grant an order of certiorari to quash the decision of the Minister to refuse planning permission on Application No. 2213/08/2008C.

ix) The Minister, not being a party to this matter, the court declines to issue the Order of Mandamus sought to require him to submit the application to due process prescribed for the interpretation of the provisions of the Development Plan as a Statutory Instrument.

x) There being no submissions as to damages, the Court refuses to award same.

[103] Taking into account the above orders, the applicant shall have 2/3 of his costs certified fit for one attorney-at-law to be assessed if not agreed.

Jacqueline Cornelius

Judge of the High Court