



IN THE SUPREME COURT OF THE TURKS AND CAICOS ISLANDS

CL 24/2020

IN THE MATTER OF AN APPLICATION BY ERIC JOHN LEVIN, DANIEL JOSEPH LEVIN AND THE PROPRIETORS, STRATA PLAN NO. 84 FOR JUDICIAL REVIEW

REGINA

(ex parte (1) ERIC JOHN LEVIN, (2) DANIEL JOSEPH LEVIN, (3) THE PROPRIETORS STRATA PLAN NO. 84)

APPLICANTS

AND

- 1. THE DIRECTOR OF PLANNING**
- 2. THE CABINET OF THE TURKS AND CAICOS ISLANDS**
- 3. THE PHYSICAL PLANNING BOARD**
- 4. HIS EXCELLENCY, THE GOVERNOR OF THE TURKS AND CAICOS ISLANDS**

RESPONDENTS

AND

THE YARD LIMITED

INTERESTED PARTY

CORAM: AGYEMANG CJ

**MR. JONATHAN KATAN QC OF MILLER SIMONS O'SULLIVAN FOR THE APPLICANTS
MS LIBBY CHARLTON, SENIOR CROWN COUNSEL FOR THE RESPONDENTS
MR CONRAD GRIFFITHS QC OF GRIFFITHS & PARTNERS FOR THE INTERESTED PARTY**

DELIVERED ON 14TH SEPTEMBER 2020

EXECUTIVE SUMMARY

Facts:

1. The Interested Party, the Yard Ltd., was granted Outline Development Permission (ODP) to build an 87 bed hotel in an area zoned as medium density residential. The Applicants sought judicial review of the decision to grant ODP as well as the process followed by the Respondents in considering the application for ODP.

Result and Reason:

HELD: Notice of Motion for Judicial Review dismissed.

2. The court found that the Director of Planning acted properly in accepting the Yard's application as the application was not one for rezoning, as submitted by the Applicants. It was an application for Outline Development Permission (ODP) made under s 41(a) of the **Physical Planning Ordinance (PPO)** which the Director of Planning was empowered to receive. (paras 79-83).
3. The Director of Planning acted within his lawful remit when he treated the Yard's application as one requiring rezoning. By requesting that the Yard advertise the application, and securing the necessary informed participation of impacted members of the public, he was ensuring that the Physical Planning Board was fully aware that this ODP application triggered s 39(2) of the **PPO**. However, treating the application as one requiring rezoning does not mean it should have been described as such. **S 39(2)** uses the words "*inconsistent with a plan which has been approved*" and this is what should have been communicated (paras 84-92).
4. Even though s 39(5) of the **PPO** purported to oust the jurisdiction of the Court to review decisions made under s 39, it is important for the Court to inquire into whether the Board carried out its duty properly and within its jurisdiction (para 94): *Anisminic Ltd. v Foreign Compensation Commission* [1969] 2 AC 147 at 182 HL considered.
5. The Physical Planning Board acted correctly when, in compliance with s 39(2) of the **PPO**, it sent the application to the Minister, for transmission to the Governor, the Governor in Cabinet being the only one who could approve such an application (paras 98-100, 104).

6. The Cabinet and Governor in Cabinet acted *intra vires* when approval was granted for the inconsistent development (para 100, 107). In so doing, the Governor was not in breach of his s **26 PPO** duty to ensure consistency and coherence in land development (para 109).
7. The **PPO** does not impose a duty to consult in the consideration of an ODP inconsistent with the approved plan, but empowers the Director of Planning, at s **42(2)(a)**, to require an applicant for development permission to publish the application. The application was extensively published and the public was engaged. Responses by the public were collated and included in the s. **47(2)** advice by the Director of Planning to the Board (paras 110-112).
8. The **PPO** gives the Director of Planning a discretion to require an Environmental Impact Assessment at s **45(1)(b)**. *R (Barker) v Bromley London Borough Council and Commission of the European Communities v UK* [2006] QB 764 per Lord Hope considered. The ODP is the first of a 2 step process to granting development permission and where it is conditional, informs the applicant that certain requirements must be met before the application may progress to the next stage in development permission. **S 50 PPO** provides that an ODP will lapse if no application for Detailed Development Permission is made within a year. Therefore, the ODP is not binding and does not prevent the Board from resiling from it (paras 148-159).
9. The Court rejected the submissions by the Applicants that: the Governor acted under s **55 PPO** rather than s **39(2)** (paras 102-104); ss **31-36** of the **PPO** were applicable to this matter (para 106); that there was a breach of the Government s **19(2)** constitutional duty of candour and to provide reasons (paras 114-123); that there was a breach of the ss **3** and **26 PPO** duty to secure consistency (paras 124-125); that the advertisements for the change of use did not amount to consultation, in breach of the Applicants' entitlement to be consulted due to their legitimate expectation to live in a residential area (paras 126 – 142) *R (on the application Moseley) v London Borough of Haringey* [2014] UKSC 56 at para 35 per Lord Reed considered, *R v Brent London Borough Council ex parte Gunning* [1985] 84 LGR 168 considered, *R (on the application of Robson) v Salford City Council* [2015] EWCA Civ 6 considered; that the decisions of the Physical Planning Board and of Cabinet were irrational (para 163-177) *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 per Diplock LJ considered.