

BARBADOS.

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT**

CIVIL JURISDICTION

No. 519 of 2002

BETWEEN:

HINDS TRANSPORT SERVICE LTD

Plaintiff

AND

THE ATTORNEY GENERAL

First Respondent

THE CHIEF TOWN PLANNER

Second Respondent

MINISTER OF PHYSICAL DEVELOPMENT

Third Respondent

Before the Honourable Madam Justice Margaret Reifer, Judge of the High Court

2006: July 05, 06, 07, 10;

2008: July 09.

Mr. Hal Gollop in association with Mr. Steve Gollop for the Plaintiff:

Mr. Wayne Clarke in association with Mr. Denis Hanomansingh for the Respondents.

DECISION

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THE PARTIES:

- [1] The Applicant is a company carrying on its business of general trucking, container moving and storage and warehousing from premises at Kendal Hill, Christ Church.
- [2] The Respondents are firstly, the Attorney General, sued pursuant to the Crown Proceedings Act, Cap. 197 of the Laws of Barbados; secondly, the Chief Town Planner in his capacity as an authority of government affected by these proceedings; and thirdly, the Minister of Physical Development, substituted for the Minister of Economic Development by Order of the Court dated 12th August 2002.

SUMMARY OF THE FACTS

- [3] Three (3) Town Planning Applications are the central feature in this matter, namely No. 619/3/87; No. 2402/08/87D, and No. 2167/09/00D.
- [4] No. 619/3/87 was an application to the Chief Town Planner seeking permission to change the use of the land from agricultural to light industrial, and to erect a residence there. It is not in issue that this permission was granted.
- [5] No. 2402/08/87D was an application submitted in August 1987 seeking permission for the erection of an office building, and maintenance facilities. This application was approved subject to five (5) conditions, the reasons for which were set out in the said permission, as follows:

"Conditions

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- 1 The Chief Town Planner shall be notified in writing of

the date on which it is proposed to commence any building or engineering operation to which this permission relates and all proposed works shall be properly set out for inspection by that Officer or his representative prior to the commencement of works.

2. The submission to and approval by the Chief Town

Planner of a revised plan making provision in particular

for:-
 - a. Radius curves of 6m. (20t.) at the junction

of the proposed vehicle access and the

public road;

 - b. Surface water drainage to be maintained on

site.

3. No further development of the land shall be carried

out without the prior grant of permission by the Chief Town Planner on an application made in that behalf.

4. The submission to and approval by the Chief Town

Planner of a revised plan showing the landscaping proposals for the site.

5. The area shall at all times be maintained to the

satisfaction of the Chief Town Planner.

Reasons

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1. To ensure the proper development of the land;
 2. To ensure adequate turning space;
 3. To ensure the proper development of the land;

[6] Application No. 2167/09/00D was made in September 2000 under the provisions of section 22 of the Town and Country Planning Act, Cap. 240 for permission to retain existing buildings and works, without complying with the conditions imposed on Application 2402/08/87D.

[7] In the letter of Leonard St. Hill, the Applicant's agent, dated April 23 2001 Exhibited as "HAH4 to the Affidavit of Harold A. Hinds filed March 15, 2002, this application is 'significantly' described as an application seeking the relaxation of the prior condition for a 50 foot buffer zone in light of prevailing circumstances in which residential development permitted subsequent to the establishment of Hinds Transport Warehousing on the site, has adopted a comfortable clearance distance from the fence between the coterminous plots in excess of forty (40) feet.

[8] This point is here specifically made to make clear the basis of this review.

There is no factual basis for the allegation of the Applicant found at paragraph 3 of the Affidavit of March 15 2002 and October 11 2002 that "Application No. 2167/09/00D implied the discharge and modification of conditions attached to the grant of permission as

under buffer zone along the section boundary of the site of the Applicant premises".

[9] Exhibit "MC2" of the Chief Town Planner's Affidavit filed herein on June

11 2002 makes this clear beyond a shadow of a doubt.

[10] This third Application and the events consequent on it, form the subject matter of the application for judicial review pursuant to the provisions of the

Administrative Justice Act, Cap. 109B, Town and Country Planning Act,

Cap. 240, Town and Country Regulations, 1972 and Town and Country

Planning Development Order, 1972, now before this Court.

[11] The events leading up to the submission of this Application are best outlined

in the Affidavit of the Chief Town Planner, Mr. Mark Cummins, filed herein on 17 June 2002 at paragraphs 5 to 9 thereof which states as follows:

"5. By letter dated the 27th day of April 2000 the Applicant

Hinds Transport Services Ltd. wrote to the Chief Town Planner giving notice of its intention to commence building operations on May 2, 2000 of an additional

warehouse. The said letter further stated that the building operations were in compliance with the conditions specified in the Town & Country Planning Development Order 1972 and that no application for planning permission was required. There is now produced to me a copy of the said letter of April 27, 2000 which is annexed hereto and marked Exhibit "MC 1".

6. By letter dated May 15, 2000 the Chief Town Planner

advised the Applicant's Managing Director that the development being carried out was contrary to the provisions of the Town & Country Planning Act, Cap.

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240 and the Town & Country Planning Development Order, 1972. The said letter also drew the Managing Director's attention to condition three (3) attached to

planning permission no. 2402/02/87D of January 12,

1988. There is now produced to me a copy of the said letter of May 15, 2000 which is annexed hereto and

marked Exhibit "MC 2".

7. Following the issue of the Chief Town Planner's letter of

May 15, 2000 the Applicant made an application to the

Chief Town Planner on September 20, 2000 seeking

permission for the "Retention and Extension of Existing

Warehouse Floor Space in Building to 3,300m² on site

Area 18,616 m².

8. The Application referred to in paragraph 7 above was

assigned the number 2167/09/00D by the Town &

Country Development Planning Office.

9. The Application was assessed and the Chief Town

Planner issued his decision on the application on April 18, 2001 granting permission subject to eleven conditions and with two informative clauses. The conditions, reasons and informative clauses were as follows —

Conditions

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with the vehicle access to the container park and hard standings including the means of drainage thereof; shall be carried out in accordance with an approved specification and shall be completed to the satisfaction of the Chief Town Planner.

7. No further development of the land shall be carried out without the prior grant of permission by the Chief Town Planner on an application made in that behalf.
8. The Chief Town Planner shall be notified in writing of the date on which it is proposed to commence any building or engineering operation to which this permission relates and all proposed works shall be properly set out for inspection by that Officer or his representative prior to the commencement of works.
9. The parking area shall be delineated and made up to the satisfaction of the Chief Town Planner.
10. Where five (5) or more years expire before the development for which planning permission has been granted takes place, this permission shall be deemed to have lapsed requiring a new application to the Chief Town Planner.
11. All buildings other than houses having a gross roof area 1000 square feet (92.90 sq. m) or more must have installed a water storage tank for secondary uses. The capacity of the tank must be calculated at a rate of four (4) gallons (Imperial) per square foot of roof area at a minimum. (1 Cu. Metre is equivalent to 220 gallons (Imperial). 1 Cu foot is equivalent to 6 'A gallons (Imperial)).

Reasons

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1. Significant portions of these buildings have been constructed within the approved landscaped buffer zone contrary to the approved plan and conditions attached to the relevant planning

permission resulting in a serious loss of amenity to the adjoining residential developments to the west.

2. To preserve the amenity of the adjoining residential developments to the west.
3. To enhance the amenity of the area.
4. To ensure the proper drainage of the site in accordance with an approved specification.
5. To ensure the proper development of the land in accordance with the terms of this permission.
6. To ensure the proper carrying out of the works in accordance with good engineering practice.
7. To ensure the proper development of the land.
8. To ensure the proper development of the land.
9. To ensure a functional car parking area.
10. To ensure compliance with the statutory requirement.
11. To ensure satisfactory provision of water for secondary uses.

There is now produced to me a copy of the permission which is annexed hereto and marked Exhibit "MC 3".

[12] In summary, the Chief Town Planner approved the plans, but however required that a 50 foot buffer zone be established along the western boundary of the property, and that the two buildings, Warehouses A and B, which had been erected within that zone be demolished. The Chief Town Planner further required that new plans incorporating these changes, among others, be submitted for approval.

THE RELIEF SOUGHT

[13] The Applicant now seeks the following relief:

- (i) An injunction to restrain the 2nd Respondent, his servants, agents, and/or his duly authorized delegate from enforcing condition No. 2 set out in the grant of permission in respect of Application No. 2167/09/00D.
- (ii) A Declaration that in the events, a decision, administrative act, advice, and/or recommendation of the 2nd Respondent and/or

his duly authorized delegate to impose the condition No. 2 as set out in Application No. 217/09/00D, and the decision,

administrative act, advice and/or recommendation of the 3rd

Respondent to uphold the said condition attached to the said grant of permission on the development set out in the said Application No. 217/09/00D were contrary to law, ultra vires, and/or void and of no effect.

- (iii) A declaration that the Applicant is entitled to receive the ratification of the 2nd Respondent for the said Application No. 217/09/00D for the retention and extension of existing warehouse floor space in buildings at

Hinds Transport, Kendal Hill, Christ Church.

- (iv) An Order of certiorari to quash the decision, administrative act, advice and/or recommendation of the 2nd Respondent that condition No. 2 of the said permission must be complied with no later than August 6, 2002.
- (v) An Order for damages directed to the Respondent to cause the Applicant to be paid for the loss of income incurred due to the persistent non user of the land, for which permission has been granted on Application No. 691/3/87.
- (vi) Interest on such sums as may be awarded as damages at such rate and for such period as may be just and/or expedient.
- (vii) A declaration that in the events which have happened, the action of the 2nd and 3rd Respondents and/or their duly authorized delegates amounted to a breach of natural justice.