

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

MONTSERRAT

MNIHCVAP2022/0005

DAVID MCKEAND

Applicant

and

[1] H.E. THE GOVERNOR OF MONTSERRAT
[2] THE ATTORNEY GENERAL OF MONTSERRAT
[3] THE CHAIR, PLANNING AND DEVELOPMENT AUTHORITY

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Trevor Ward
The Hon. Mr. Eddy Ventose

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Applicant in person
The Respondents did not appear and were not represented

2023: September 19;
November 22.

Application for leave to appeal – Realistic prospect of success on appeal – Whether the proposed appeal has a realistic prospect of success for the grant of leave to appeal

Before the Court was an application for leave to appeal the trial judge's decision to dismiss the applicant's application for leave to apply for judicial review of the decision of the Montserrat Governor in Cabinet (the "GIC") to redesignate Lot 12/1/207 (the "Land") from recreational use to residential use based on a recommendation of the Planning and Development Authority (the "Authority") (the "Redesignation Decision").

The applicant is the owner of a plot of land which is adjacent to the Land. The Land has been owned by Paradise Development Company Limited ("Paradise Limited") since 2016. The current Development Plan (2012-2022) designates the Land for recreational use. Between 2018 and 2019, Paradise Limited made multiple requests to the Authority to redesignate the Land from recreational use to residential use. The Authority sought public consultation on the request and invited comments from the public in 2019. The applicant was one member of the public who submitted comments as part of the consultation process. Cabinet decided on 6th August 2020 to redesignate the Land from recreational use to residential use. Following the recommendation of the Authority, the GIC made the Redesignation Decision. The notification of the Redesignation Decision was published in two local newspapers.

The applicant, on 25th November 2021, filed an application for leave to apply for judicial review of the GIC's Redesignation Decision. The trial judge refused the application concluding that (i) the Redesignation Decision under section 9 of the Physical Planning Act (the "Act") is not a 'development' requiring development permission under section 13 of the Act; (ii) the Redesignation Decision does not require an environmental impact assessment ("EIA") pursuant to section 18; and (iii) under the Act, the Planning Register does not strictly require the record of the submissions and reasons relating to the Redesignation Decision.

Being dissatisfied with the trial judge's ruling, the applicant sought leave to appeal. The applicant intended to pursue, if leave were granted, the following grounds of appeal: (1) that the trial judge erred in finding a distinction between a 'potential change of use to land' and the 'material' or 'actual change of use of land' as a defining characteristic of 'development'; (2) the trial judge erred in finding that a change of land use (referred to as 'redesignation' or a 'potential use of land') is not amenable to public oversight or appeal and no alternative remedy existed; (3) the trial judge erred in finding that the reasons provided by the Deputy Governor were adequate; and (4) the trial judge erred in not accepting the applicant's evidence of arguable grounds of review challenging the Redesignation Decision. Based on the applicant's intended grounds of appeal, the main issue before the Court was whether the proposed appeal had a realistic prospect of success for the grant of leave to appeal.

Held: dismissing the application for leave to appeal and making no order as to costs, that:

1. The definition of 'development' under section 15(1) falls under Part 4 of the Act, which deals with development control. Under section 12, any 'development' must have permission issued. Any person, being the owner of land, or a person having a sufficient interest in land may apply to the Authority for permission to develop that land under section 13(1). Under Part 3, section 9 allows the Authority to modify or revise the Development Plan if the consultation process outlined in section 7 is followed. On the facts, there was no application by Paradise Limited to the Authority under section 13(1). Furthermore, section 13 would not apply to a modification of the Development Plan since the Authority would be seeking its own permission and this could not have been the intention of the drafters. Thus, any decision by the GIC to approve a revision or modification of the Development Plan needs only to comply with the requirements in Part 3 (sections 7 and 9). It does not need to comply with

any of the procedures outlined in Part 4, which are, in any event, inapplicable. Consequently, the judge did not err and this ground of appeal has no realistic prospect of succeeding if leave to appeal were granted.

Parkes v Secretary of State for the Environment [1978] 1 WLR 1308 distinguished.

2. Under Part 4, section 20 provides that an appeal would be available to an applicant or any person aggrieved by a decision to grant or refuse development permission under section 19. Under Part 3, however, there is no provision for an appeal in respect of any revision or modification of the Development Plan under section 9. Even so, this does not prevent an applicant, or any person who has standing, from seeking leave to apply for judicial review against a decision of the GIC to revise or modify the Development Plan. The judge was therefore correct to accept that there was no appeal under Part 3. Moreover, the applicant was incorrect to assert that as there was no appeal under Part 3, he had no alternative remedy to challenge the exercise by the Respondents of their powers under the Act. In fact, the applicant exercised that very remedy by way of his application for leave to apply for judicial review. The trial judge therefore did not err, and this intended ground of appeal also fails to meet the threshold for the grant of leave.
3. Even if not strictly required under a statute, the reasons for a public authority's decision will be required where they are necessary to permit the courts to scrutinise the underlying decision effectively. While public authorities are not required at common law to provide reasons for administrative decisions, the Deputy Governor provided an adequate explanation of the reasons for the Redesignation Decision namely: (1) the overwhelming support by public responses to the proposed change; (2) the current and future development patterns; (3) the amenity and character of the area; (4) the heritage and environmental features of the area; (5) the housing market demand; (6) the taxation value; (7) the need for recreational space; and (8) the public opinion and comments received on the proposed changes. These reasons were essentially the same as those provided by the Chief Planning Officer as the basis for the Authority's decision in proposing the change of use reflected in the Redesignation Decision. These reasons far exceed the requirement at common law to provide adequate reasons even where they are not strictly required in the interest of fairness. The trial judge therefore did not err in holding that the reasons provided by the Deputy Governor were adequate and this intended ground of appeal also fails to pass the threshold for the grant of leave.

R (on the application of CPRE Kent) v Dover District Council and another [2017] UKSC 79 applied.

4. The trial judge carefully examined the grounds of review and the evidence of the applicant. The power granted to the Authority under section 9(1) was to review the approved Development Plan and prepare such proposals for its revision and modification as it thinks fit. The words 'as it thinks fit' show that the legislature intended to vest in the Authority the power, in its own discretion, to determine when

and if any proposals are to be made. This power must be exercised on reasonable grounds. The applicant has not shown that the Authority did not have reasonable grounds for proposing the change in the use of the Land and the evidence of the Deputy Governor shows that there were reasonable grounds for making the Redesignation Decision. Accordingly, the applicant has also not met the threshold test for the grant of leave to appeal in this intended ground of appeal.

Burroughs and Another v Rampargat Katwaroo (1985) 40 WIR 287 applied.

5. In determining whether or not leave to appeal ought to be granted, the applicant must be able to demonstrate that he or she has a realistic, as opposed to fanciful prospect of succeeding on the appeal. On the facts, the intended grounds of appeal as proposed by the applicant, were nothing more than fanciful and as a result, the application for leave to appeal was dismissed.

Smith v Cosworth Casting Processes Ltd. (Practice Note) [1997] 1 WLR 1538 applied.

JUDGMENT

- [1] **VENTOSE JA [AG.]**: This is an application for leave to appeal the decision of Morley J dated 27th May 2022 in which he dismissed the applicant's application for leave to apply for judicial review of the decision of the Montserrat Governor in Cabinet (the "GIC") made on 21st October 2021 to redesignate Lot 12/1/207 (the "Land") from recreational use to residential use based on a recommendation of the Planning and Development Authority (the "Authority") (the "Redesignation Decision"). The applicant believes that requests for redesignation must comply with sections 15 and 19 of the **Physical Planning Act**¹ (the "**Act**") rather than be achieved through a revision or modification of the National Physical Development Plan (the "Development Plan") for Montserrat. Additionally, the applicant is also of the view that, before the Redesignation Decision was made, section 18(1) and the Third Schedule of the **Act** that includes the requirement for an Environmental Impact Assessment (the "EIA") should have been complied with.

¹ Cap. 8:03, Revised Laws of Montserrat 2019.

- [2] The applicant is the owner of a plot of land which is adjacent to the Land that is located in Woodlands which is a village on the northwest coast of Montserrat. The Land has been owned by Paradise Development Company Limited ("Paradise Limited") since 8th August 2016. The current Development Plan (2012-2022) designates the Land for recreational use. This was not always the case because the previous Development Plan for 2000-2009 zoned the Land for residential use. Between 2018 and 2019, Paradise Limited made multiple requests to the Authority to redesignate the Land from recreational use to residential use. The Authority sought public consultation on the request for redesignation and invited comments from the public for 60 days between 11th March 2019 to 11th May 2019. This period was extended to 13th May 2019. The applicant was one of 98 members of the public who submitted comments as part of the consultation process. Cabinet decided on 6th August 2020 that the Development Plan should be modified to redesignate the Land from recreational use to residential use. As mentioned above, the GIC made the Redesignation Decision. The notification of the Redesignation Decision was published in two local newspapers but as far as we are aware have not been published in the Official Gazette.
- [3] The applicant on 25th November 2021 filed an application for leave to apply for judicial review seeking the following reliefs:
- "1. Permission for leave to apply for Judicial Review regarding the decision to grant approval of a land redesignation (development) application for land known as Lot 12/1/207.
 2. A Declaration on the interpretation of the Physical Planning Act (Cap. 8.03). Specifically, was it the legislative intent to have redesignation requests excluded from compliance with Sections 15(1) and 19 through simple modification of the Physical Development Plan?
 - 3 A Declaration on the interpretation of Section 18(1) and Third Schedule of the Physical Planning Act regarding the requirement for an Environmental Impact Assessment for any proposed redesignation which includes lands containing areas deemed "important bird areas" with "de facto conservation status" within the Physical Development Plan.

4. A Declaration on the duty of planning authorities to provide reasons for significant material changes to the Physical Development Plan.
5. A Writ of Mandamus compelling the Planning and Development Authority to create and maintain a publicly accessible Planning Register in accordance with Section 63 of the Physical Planning Act.”

[4] Morley J gave his ruling on the application for leave to apply for judicial review on 27th May 2022 in which he refused the application concluding that, first, the Redesignation Decision under section 9 of the **Act** is not a ‘development’ requiring development permission under section 13 of the **Act**; second, the Redesignation Decision does not require an EIA pursuant to section 18 of the **Act**; and third, under the **Act**, the Planning Register does not strictly require the record of the submissions and reasons relating to the Redesignation Decision.

[5] The applicant applied on 8th June 2022 for leave to appeal the decision of the trial judge refusing leave to apply for judicial review. The applicant intends to pursue, if leave were granted, the following grounds: (1) the trial judge erred in finding a distinction between a ‘potential change of use to land’ and the ‘material’ or ‘actual change of use of land’ as a defining characteristic of ‘development’; (2) the trial judge accepted there was no provision for public appeal of the modification of the Development Plan because there is no mention of redress or appeal contained in Part 3 of the **Act** and that no alternative remedy existed; (3) the trial judge erred in finding that the reasons provided by the Deputy Governor were adequate; and (4) the trial judge erred in not accepting the applicant’s evidence of arguable grounds of review challenging the Redesignation Decision.

[6] Ground one (1) contains the main question to be determined in this application for leave to appeal, namely, whether the Redesignation Decision falls exclusively under Part 3 (Development Plans) or Part 4 (Development Control) of the **Act** requiring that the procedures under either Part be complied with before the Redesignation Decision can be held to be lawful.

The Legislative Regime

- [7] Part 3 of the **Act** makes provisions for development plans. Section 5 relates to the requirements for preparing the Development Plan. Section 5(1) of the **Act** provides that the Authority shall prepare a Development Plan setting out the scheme of land use and development it proposes for Montserrat. Generally, the Development Plan shall comprise such written statements, diagrams, detailed plans and illustrations as may be necessary to set out the proposed scheme of land use and development (section 5(2)). The Development Plan must include ‘a statement of the principal aims and objectives with respect to the development and **use of land in each area of Montserrat**’ (section 5(3)(a)) and ‘the principal physical, social, economic and environmental characteristics of each area **including the principal purposes for which land is used**’ (section 3(b)(i)) (emphasis added).
- [8] Section 9 makes provision for the revision and modification of the Development Plan. Any proposal for the revision or modification of the Approved Development Plan shall be subject to the procedures outlined in section 7 (section 9(2)). The relationship between the Development Plan and an application for development permission is outlined in section 11 as follows:
- “Status of Development Plan**
11. The Authority shall, in considering an application for development permission have regard to the Approved Development Plan or, where the Draft Development Plan has not yet been approved, to the Draft Development Plan, and shall, except where the Authority considers it inexpedient so to do, give effect to the Approved Development Plan or to the Draft Development Plan as the case may be.”
- [9] Section 7 of the **Act** outlines the process to be followed by the Authority on the completion of the draft Development Plan. Once completed, the draft Development Plan must be published together with a statement of the representations the Authority has received and the responses of the Authority to those representations (section 7(1)). Further representations shall be invited by the Authority for a period of 60 days (section 7(2)). All representations must be considered by the Authority and the Authority may make such revisions as it considers appropriate (section 7(3)). Once

the consultations are completed, the Authority must submit the Draft Development Plan for the approval of the Governor acting on the advice of Cabinet through the Minister responsible for Planning (section 7(3)).

- [10] Section 12 mandates that no development shall be commenced on land except with permission issued in accordance with the provisions of this **Act**. Section 15(1) defines development as follows:

“Meaning of development

15. (1) Subject to subsection (2), “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, the making of a material change in the use of any building or land, the sub-division of land and the display of advertisements.”

- [11] Section 18(1) provides that:

“Environmental impact assessment

18. (1) Unless otherwise directed by the Authority, an application for development permission in respect of a development specified in the Third Schedule shall be accompanied by an environmental impact assessment of the proposed development.”

The Test for the Grant of Leave

- [12] It is well established that the test for the grant of leave to appeal is whether the applicant can demonstrate that he or she has a realistic prospect of succeeding on the appeal: **Smith v Cosworth Casting Processes Ltd. (Practice Note)**.²

Ground 1 - The Definition of Development

- [13] The applicant submits that the trial judge erred in finding a distinction between a ‘potential change of use to land’ and the ‘material’ or ‘actual change of use of land’ as a defining characteristic of ‘development’. The applicant’s main contention is that section 15(1) which provides for a definition of ‘development’ that includes ‘the making of **a material change in the use** of any building or **land**’ governs the Redesignation Decision (emphasis added). Consequently, any change in the use of the Land is caught by the definition of development thereby engaging the procedure

² [1997] 1 WLR 1538.

for permission from the Authority under section 13 and the requirement for an EIA of the proposed development under section 18.

- [14] The applicant, in my view, misunderstands the definition of ‘development’ found in section 15(1) of the **Act**. It is correct that the definition of ‘development’ includes ‘the making of a **material change in the use of any building or land**’. However, this must be read in context as section 15 falls under Part 4 which deals with **development control** (emphasis added). Section 12 and 13 of the Act provides as follows:

“No development without permission

12. Subject to the provisions of this Act no development shall be commenced on land except with a permission issued in accordance with the provisions of this Act.

Application for development permission

13. (1) Any person, being the owner of land, or a person having a sufficient interest in land may apply to the Authority for permission to develop that land.

(2) For the purposes of subsection (1) a person has a sufficient interest in land where, being a prospective owner, developer, part-owner or lessee of the land he obtains the consent of the owner, other part-owner or lessor as the case may be to develop the land.

(3) An application for the development of land shall be made to the Authority in such form, and shall be accompanied by such plans, drawings and other information as may be prescribed by Regulations made under this Act.”

- [15] The first point to note is that any development must have permission issued under section 12 of the **Act**. Any person, being the owner of land, or a person having a sufficient interest in land may apply to the Authority for permission to develop that land (section 13(1)). This means that any person who wishes to make a material change in the use of any building or land must first obtain the permission of the Authority. In the instant matter, there was no application by Paradise Limited to the Authority under section 13(1) to make any material change in the use of the Land. The only material undisputed fact in the proceedings in the court below is a

recommendation by the Authority for a revision or modification of the Development Plan which was subsequently approved by the GIC. It is of no moment that Paradise Limited might have initiated the process of the change in the Development Plan by its requests to the Authority. There can be no doubt that the Authority is authorized to revise or modify the Development Plan (section 9(1)) if the consultation process outlined in section 7 is followed (section 9(2)).

[16] More importantly, section 9 of the **Act** makes provision for the modification of the Development Plan, which includes the use of land in each area of Montserrat which forms part of the Development Plan by virtue of sections 5(3)(a) and 3(b)(i). Section 13, requiring an application to the Authority to develop any land, plainly cannot apply to a change in the Development Plan because the Authority will be seeking permission from itself which could not have been contemplated by the drafters of the **Act**.

[17] The applicant relies on the decision of the Court of Appeal of England and Wales in **Parkes v Secretary of State for the Environment**³ where Lord Denning MR stated (at page 1311) that:

“The Department of the Environment are most concerned by the judge's interpretation of the word “use.” I am not surprised: because it makes a serious gap in planning law. I wish we could have argument on both sides. But we had none on Mr. Parkes' side. He conducted his own case in the court below. Unfortunately we have not had the benefit of his presence here today. But we have considered as well as we can the arguments which could be submitted on his behalf. As a result I am afraid that I take a different view from the judge. I think that the Act divides “development” into two halves. Section 22 (1) says:

“‘development’ ... means the carrying out of building, engineering, mining or other operations in, on, over or under land” (that is one half) “or the making of any material change in the use of any buildings or other land” (and that is the other half).

These two halves are found again in section 45 (4). It says that a planning permission can be revoked:

³ [1978] 1 WLR 1308.

“(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed; (b) where the permission relates to a change of the use of any land, at any time before the change has taken place”

The two halves are found again in section 51 (1) (a) and (b) respectively.

Looking at these various sections it seems to me that in the first half “operations” comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself: whereas in the second half “use” comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land. We were referred to *Coleshill and District Investment Co. Ltd. v. Minister of Housing and Local Government* [1969] 1 W.L.R. 746 when the House of Lords considered whether demolition of a structure could be “development.” There are interesting observations on the construction of these sections but none that affects our present case.

Coming back to the present case, it seems to me, with all respect to the judge, that the storing, sorting and processing of scrap on land amounts to a “use” of land. There is no physical alteration to the land. It is an activity on the land which is clearly a use of the land well within the definition. So an order can be made, and was properly made, for the discontinuance of the use.”

- [18] The decision in **Parkes** does not assist the applicant because it does not provide any guidance on the issues presented here. It is concerned solely with whether a discontinuance order can be made in relation to a particular use of land. It does not relate to whether a planning authority can modify or revise a use of land found in a development plan.
- [19] Any decision by the GIC to approve a revision or modification of the Development Plan needs only to comply with the requirements found in Part 3. It does not need to comply with any of the procedures outlined in Part 4, which are, in any event, inapplicable. Consequently, it is plain that this intended ground of appeal has no realistic prospect of succeeding if leave to appeal were granted.

Grounds 2 and 5 - No Right of Appeal

- [20] The applicant submits that the trial judge accepted there was no provision for public appeal of the modification of the Development Plan because there is no mention of redress or appeal found in Part 3 of the **Act**. This is unlike Part 4 where section 20 provides for an express right of appeal as follows:

“Appeal

20. The applicant or any person aggrieved by a decision of the Authority respecting the grant or refusal of development permission may within sixty days of the making of that decision appeal to the Tribunal setting out the grounds upon which the appeal is based.”

- [21] The applicant also submits that the trial judge erred in finding that a change of land use (referred to as ‘redesignation’ or a ‘potential use of land’) is not amenable to public oversight or appeal as this function is within the exclusive jurisdiction of planners and Cabinet where no reasons or EIAs need to be provided for these decisions.
- [22] The trial judge, in my view, was correct in accepting that there is separately an appeal available under section 20 if an applicant or any person is aggrieved by a decision to grant or refuse development permission under section 19 of the **Act**. There is no provision for an appeal in respect of any revision or modification of the Development Plan under section 9 of the **Act**. However, this does not prevent an applicant or any person who has standing from seeking leave to apply for judicial review if there exist arguable grounds for review having a realistic prospect of success of a decision of the GIC to revise or modify the Development Plan. The applicant is not correct in stating that he had no alternative remedy to challenge the exercise by the Respondents of their powers under the Act. In fact, the applicant exercised that very remedy by way of his application for leave to apply for judicial review. This intended ground of appeal does not meet the threshold test for the grant of leave to appeal.

Ground 3 - Duty to State Reasons

- [23] The applicant submits that the trial judge erred in finding that the reasons provided by the Authority and the Deputy Governor were adequate, even though they were

opaque and provided no details of how and why the Redesignation Decision was made. The trial judge accepted that, first, giving some measure of reasons, even if not strictly required under the statute, is in keeping with the decision of the United Kingdom Supreme Court in **R (on the application of CPRE Kent) v Dover District Council and another**⁴ (“**Dover DC**”) that reasons will be required where they are necessary to permit the courts to scrutinise the underlying decision effectively; and, second, the statement by the Deputy Governor was adequate as reasons, not strictly sought under the **Act**, if ever they were required under the principle stated in **Dover DC**.

- [24] In **Dover DC**, an application was made for planning permission for two residential developments and the application included the required EIA. Many environmental groups objected to the development including the claimant. The planning officer recommended approval of the application with some modifications including a substantial reduction in the scale and density of the residential units. The planning committee of the local authority did not agree with those amendments and resolved to grant planning permission as proposed. The claimant brought judicial review proceedings challenging the decision to grant planning permission on the basis that adequate reasons had not been provided by the planning committee for the decision to grant the application. In allowing the appeal from the trial judge’s dismissal of the judicial review claim, the Court of Appeal quashed the planning permission on the ground that the local authority had failed to give legally adequate reasons for its decision. On further appeal to the United Kingdom Supreme Court, Lord Carnwath stated as follows:

“51. Public authorities are under no general common law duty to give reasons for their decisions; but it is well-established that fairness may in some circumstances require it, even in a statutory context in which no express duty is imposed (see *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531; *R v Higher Education Funding Council, Ex p Institute of Dental Surgery* [1994] 1 WLR 242, 263A–D; *De Smith’s Judicial Review* 7th ed, para 7-099). ...

⁴ [2017] UKSC 79.

52. Similarly, in the planning context, the Court of Appeal has held that a local planning authority generally is under no common law duty to give reasons for the grant of planning permission (*R v Aylesbury Vale District Council, Ex p Chaplin* (1998) 76 P & CR 207, 211–212, per Pill LJ). Although this general principle was reaffirmed recently in *Oakley v South Cambridgeshire District Council* [2017] 2 P & CR 4, the court held that a duty did arise in the particular circumstances of that case: where the development would have a “significant and lasting impact on the local community”, and involved a substantial departure from Green Belt and development plan policies, and where the committee had disagreed with its officers’ recommendations. ...

...

54. In my view *Oakley* was rightly decided, and consistent with the general law as established by the House of Lords in *Doody*. Although planning law is a creature of statute, the proper interpretation of the statute is underpinned by general principles, properly referred to as derived from the common law. *Doody* itself involved such an application of the common law principle of “fairness” in a statutory context, in which the giving of reasons was seen as essential to allow effective supervision by the courts. Fairness provided the link between the common law duty to give reasons for an administrative decision, and the right of the individual affected to bring proceedings to challenge the legality of that decision.

55. *Doody* concerned fairness as between the state and an individual citizen. The same principle is relevant also to planning decisions, the legality of which may be of legitimate interest to a much wider range of parties, private and public (see *Walton v Scottish Ministers* [2012] UKSC 44; [2013] PTSR 51, paras 152–153 per Lord Hope). Here a further common law principle is in play. Lord Bridge saw the statutory duty to give reasons as the analogue of the common law principle that “justice should not only be done, but also be seen to be done” ...”

- [25] The statements by the United Kingdom Supreme Court in **Dover DC** related to a decision by the planning committee of the local authority to reject the recommendation of the planning officer without providing any adequate reasons. While the statements of Lord Carnwath related to a decision to grant planning permission, the principles he outlined above are also applicable to any decisions made under the **Act**, including a decision by the Authority to modify or revise the Development Plan. While public authorities are not required at common law to provide reasons for administrative decisions, the Deputy Governor provided an

adequate explanation of the reasons for the Redesignation Decision, namely: (1) the overwhelming support by public responses to the proposed change; (2) the current and future development patterns; (3) the amenity and character of the area; (4) the heritage and environmental features of the area; (5) the housing market demand; (6) the taxation value; (7) the need for recreational space; and (8) the public opinion and comments received on the proposed changes. These reasons are essentially the same as provided by the Chief Planning Officer as the basis for the Authority's decision in proposing the change of use reflected in the Redesignation Decision. In my view, these reasons far exceed the requirement at common law to provide adequate reasons even where they are not strictly required in the interest of fairness. The trial judge was correct, in my view, in holding that the reasons provided by the Deputy Governor were adequate. Accordingly, I am unable to see any prospect of an appellate Court holding otherwise.

Ground 4 – Grounds of Review

- [26] The applicant submits that he provided evidence to the trial judge of an irregular procedure, illegality, unreasonableness or bias and predetermination in the decision-making process used in accommodating Paradise Limited's request for a change of use of the Land. At the outset, it must be remembered that there was no decision by the Authority to grant permission to Paradise Limited to develop the Land pursuant to section 19 of the **Act**. The application for leave to apply for judicial review related specifically and only to the Redesignation Decision made under section 7 of the **Act**, namely, to amend or modify the Development Plan to change the use of the Land from recreational to residential.
- [27] The trial judge carefully examined the grounds of review and the evidence of the applicant and held that, first, the GIC did not exceed its powers and there was no procedural error as the process envisaged under section 7 of the **Act** for any revision or modification of the Development Plan was followed by the Authority. Second, there was no breach of natural justice because the Authority had no private interest in a change of use of the Land found in the Development Plan. Third, the applicant was

afforded an opportunity to be heard during the 60-day consultation process in which the applicant participated by providing his responses to the proposed modification of the Development Plan. Fourth, since no decision to develop the Land was made under section 13 of the **Act**, no issues concerning the Planning Register under section 63(1)(a) of the **Act** or the EIA under section 18 of the **Act** can properly arise.

[28] The power granted to the Authority under section 9(1) of the **Act** is to review the Approved Development Plan and “prepare such proposals for its revision and modification as it thinks fit”. The words ‘as it thinks fit’ show that the legislature intended to vest in the Authority the power, in its own discretion, to determine when and if any proposals are to be made. In **Burroughs and Another v Rampargat Katwaroo**,⁵ the Court of Appeal of Trinidad and Tobago had to construe the power granted to the Commissioner of Police to revoke a firearm’s licence ‘if he thinks fit’ under section 21(d) of the Trinidad and Tobago Firearms Act. The Court of Appeal noted, at page 201, that while the power conferred a wide discretion on the Commissioner of Police and connotes an element of subjectivity, that does not ‘in itself indicate that the discretion of the commissioner is wholly unfettered in the area of revocation of a licence as distinct from the grant of such’. The power to revoke a firearm’s licence ‘if he thinks fit’ must be exercised ‘on reasonable grounds and not capriciously or arbitrarily’.

[29] The power granted to the Authority to ‘prepare such proposals for its revision and modification [of the Development Plan] as it thinks fit’ must be exercised on reasonable grounds. The applicant has not shown that the Authority did not have reasonable grounds for proposing the change in the use of the Land and the evidence of the Deputy Governor shows that there were reasonable grounds for making the Redesignation Decision. Accordingly, the applicant has also not met the threshold test for the grant of leave to appeal in this intended ground of appeal.

⁵ (1985) 40 WIR 287.

- [30] The applicant's sixth intended ground of appeal has nothing to do with the lawfulness or otherwise of the Redesignation Decision. It is not therefore surprising that the trial judge in his ruling did not refer to any of the matters referred to by the applicant in that ground of appeal. Likewise, this Court will not consider and adjudicate on matters that are irrelevant to a consideration of whether an intended ground of appeal with a realistic prospect of success has been established.

Disposal

- [31] Based on the foregoing, I am of the view that an appeal from the decision of the trial judge to refuse leave to the applicant to apply for judicial review of the Redesignation Decision would be hopeless. The applicant has no realistic prospect of succeeding on an appeal in persuading this Court that the trial judge was wrong in refusing leave to apply for judicial review on any of the intended grounds of appeal. Accordingly, I would refuse permission to appeal and, like the trial judge in the court below, would make no order as to costs.
- [32] I am grateful for the submissions provided by the applicant as a litigant in person who argued the application for leave to appeal.

I concur.
Dame Janice M. Pereira
Chief Justice

I concur.
Trevor Ward
Justice of Appeal

By the Court

Chief Registrar