

**THE EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 2021**

Claim No. AXA/HCV 2020/0006

IN THE MATTER of Part 56 of the Civil Procedure Rules
2000 of the Eastern Caribbean Supreme Court

AND
IN THE MATTER of a claim for Judicial Review

AND
IN THE MATTER of the inherent jurisdiction of the Court

AND
IN THE MATTER of sections 4, 5, 6 and 7 of the Land
Development (Control) Act R.S.A. c. L15 and section 4 of
the Land Development (Control) Regulations R.R.A L 15-
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BETWEEN:

SOF 82 ANGUILLA HOLDINGS, LLC

Claimant

AND

EXECUTIVE COUNCIL OF ANGUILLA

Defendant

Appearances:

Ms. Tara Carter instructed by Carter & Associates for the Claimant.

Mr. Thomas W.R. Astaphan QC, with him Ms. Erica L.P. Edwards, Attorney General (Ag.) for the
Defendant.

2021: January 14;
April 16.

JUDGMENT

- [1] **Ward, J.:** SOF 82 Anguilla Holdings, LLC, the Claimant seeks to quash the decision of the Executive Council of Anguilla, the Defendant refusing it permission to construct storage and staff housing facilities on the Four Seasons Resort and Residences, which it owns.

Background

- [2] The claimant is a limited liability company registered in Anguilla and is the owner of the Four Seasons Resorts & Residences located at Barnes Bay, Anguilla. This property was originally owned by a company called Barnes Bay Development Ltd pursuant to a Memorandum of Agreement (“the MOA”) entered into with the Government of Anguilla on 30th September 2004. The claimant’s involvement with the development of the property dates back to 2010 when it entered into a Memorandum of Understanding (“the MOU”) with the Government on 17th September 2010. It subsequently acquired an Alien Landholding Licence issued to it on 5th October 2011, which was made subject to the said MOU and amendments made thereto.
- [3] By 2018, the claimant perceived that there was a need for storage facilities and staff accommodation to be erected on the property. The reasons for this are detailed in the affidavit of Mr. Roy Shanholtz on behalf of the claimant company. In summary, he states that as time progressed the local economy declined. This state of affairs was exacerbated by the ravages of Hurricane Irma in 2017, which depleted much of the available housing stock. Banks became increasingly reluctant to lend for construction of housing. The project was therefore left to source private housing for its managers and temporary staff. The availability of suitable accommodations in close proximity to the Resort became impossible. Meanwhile, the Resort continued to expand and required additional storage for its efficient operations and to enhance the property.
- [4] These circumstances served as the catalyst for the claimant’s decision to lodge a planning application on 18th June 2018, for the construction of storage units, 24 apartments to serve as temporary staff housing and a three-bedroom general manager’s unit. The application was considered by the Land Development Control Committee (“LDCC”) on 19th June 2018 but deferred for reasons, including consultation with the Ministry of Economic Planning, the Ministry of Lands and Planning, the Department of Inland Revenue, the Department of Tourism and the Ministry of Tourism. On 17th August 2018, the claimant’s agent received notification from the LDCC via a letter dated 31st July 2018, that the LDCC had refused permission.
- [5] On 5th August 2018, pursuant to section 7 of Land Development (Control) Act (the Act), the claimant appealed the decision to Executive Council. The appeal was heard by Executive Council on 24th October 2018, when it refused permission but failed to state reasons for its decision.

- [6] Being aggrieved by this decision, the claimant filed a claim for judicial review on several grounds. The claim succeeded on the sole ground that Executive Council had failed to provide reasons for its decision. The matter was remitted to Executive Council for the Appeal to be heard afresh.
- [7] Executive Council conducted the re-hearing on 7th November 2019. In a letter to the claimant dated 16th December 2019, it relayed its decision to confirm the decision of the LDCC on the basis that (i) *“the proposed development would be contrary to Government’s abiding policy approach that residential accommodation for the developer’s staff be afforded by private proprietors in Anguilla for economic reasons, and should not be part of the touristic development project; (ii) this policy is clearly and consistently set out in various Memoranda of Understanding and Alien Land Holding Licences contracted with developers; including those in respect of this development...”*
- [8] This decision was subsequently amended in the terms reflected in the Executive Council’s minutes of the 215th Meeting of the Eleventh Anguilla Executive Council held on Thursday, 9th January 2020 specifically EX MIN 20/02. The parties are agreed that the reasons conveyed to the claimant by the defendant for disallowing the appeal are, in substance, the same.
- [9] Being aggrieved thereby, the claimant seeks the following declarations:
- (i) that there was no policy, written or otherwise, at the time when the Executive Council considered the claimant’s application for planning permission that restricted a hotel development from constructing staff housing or storage on its own property; or in the alternative, if there was such a policy it is arbitrary, unreasonable, unfair, irrational and unlawful;
 - (ii) that the Alien Land Holding Licence and the various Memoranda that apply to the claimant’s development do not restrict the claimant from obtaining approval for the development;
 - (iii) that Executive Council took into account irrelevant considerations in coming to its decision to deny the claimant’s appeal; and
 - (iv) a Prerogative Writ of mandamus requiring the Executive Council to allow the appeal or reconsider the decision from the LDCC.

The claimant's submissions

- [10] Learned counsel, Ms. Tara Carter, submitted that the Executive Council erred by taking into account irrelevant considerations, namely the claimant's Alien Landholding Licence, the MOU and a purported but non-existent Government policy that the construction of staff accommodation facilities should be reserved for local proprietors for economic reasons. Ms. Carter further contended that the various Memoranda and the Alien Land Holding Licence that apply to the claimant's development do not restrict the claimant from obtaining approval for the development of staff housing and storage.
- [11] The claimant invites the court to consider sections 4, 5, 6 and 7 of the Act and section 4 of the Regulations under the said Act. In short, they submit that the Act regulates the application process and stipulates a prescribed form on which the application must be made. The nature of the information required relates primarily to land use, materials and land ownership. There is no field on the form that requires information relating to an alien land holding licence or any memorandum of understanding that a land owner may have entered into with Government. The Regulations set out the documents and information required to accompany an application. Section 4 (4) in particular requires the plans, certificates and any other document set out in the Act. While Section 9 of the Regulation permits the Director of Lands & Survey to request additional information in respect of the application, Ms. Carter submitted that the information requested must be directly connected to the scope of information statutorily required by an applicant on the prescribed form.
- [12] In view of the foregoing submissions, Ms. Carter submitted that the MOU is irrelevant to the determination of an application for planning permission.
- [13] As it relates to the Alien Land Holding Licence, the claimant says that the Aliens Land Holding Licence is granted pursuant to the ***Aliens Land Holding Regulation Act, R.S.A. A55*** and gives a non-belonger permission to own land or an interest in land subject to conditions that it "*comply with the laws of Anguilla from time to time including the Land Development Control Act, the Registered Land Act, the Valuation and Rating Act, the Building Regulations, the Control of Employment Act, the Immigration and Passport Regulations any statutory modification or re-enactment thereof and any rules or regulations made thereunder*".
- [14] The claimant's Alien Land Holding Licence therefore vests it with an indefeasible title to the lands with the right to develop the lands, subject to the foregoing conditions. Accordingly, in the context of

an application for planning permission, consideration of the Alien Land Holding Licence is irrelevant as it is unrelated to land use considerations.

- [15] Ms. Carter submitted that Executive Council ought to have considered the application before it and any applicable laws, regulations or policies in effect in relation to the development of land and land use and not the extraneous points in an MOU and Alien Land Holding Licence sought to be relied upon by the defendant. They rely on the following passage in *De Smith's Judicial Review* (Eight Edition, Sweet & Maxwell) to buttress this argument:

When exercising a discretionary power a decision-maker may take into account a range of lawful considerations. Some of these are specified in the statute as matters to which regard may be had. Others are specified as matters to which regard may not be had. There are other considerations which are not specified but which a discretionary power has been influenced by considerations that cannot lawfully be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised.

- [16] Yet further, Ms. Carter submitted that the purported policy that informed the defendant's decision is not stated in the MOU nor is it stated in the Licence. In fact, there has never been the production of such a policy by the defendant. Such a policy, if it existed, would be irrational, unreasonable and unlawful. Reliance is placed on the following commentary in *De Smith's Judicial Review* at page 310: -

"As we examine elsewhere, a public body may have several different standards of legality in relation to the policies it adopts. Policies must be rational and not contrary to Convention rights. The adoption of a policy may create a legitimate expectation, which should not be resiled from without justification. The adoption of a rigid policy about how a discretion will be exercised may unlawfully fetter that discretion. There may be a duty to promulgate a policy. The question has also arisen as to whether or not a circular may amount to an authoritative account of the law at all, and thus be subject to judicial review. Normally policy will be expressed through a

government circular or a code of practice which lacks binding effect. A policy need not normally have been promulgated in any particular way, but after-dinner speeches do not qualify. Draft policy statements may or may not qualify. ...

*(Page 311)... planning policy issued by the responsible central government Department, although only advisory in nature, have been held to be material planning considerations to which regard must be had by both local authorities and the Secretary of State in making decisions about development control... **A policy cannot make a matter that is an irrelevant consideration, or outside the purpose of the statute, relevant or lawful.**" (Claimant's emphasis)*

- [17] Ms. Carter submitted that the purpose of the Act is to ensure that use of land development is carried out in accordance with approved principles of land use, such as set-backs, types of construction and other physical land use features. The Act has nothing to do with socio-economic factors such as the reservation of certain types of construction for private proprietors. In fact, the claimant is a private proprietor with all of the rights of use of their land as any other freehold owner. A restriction placed on the use of their land in reliance on a non-existent policy is unreasonable and irrational submitted Ms. Carter.

The defendant's submissions

- [18] On behalf of the defendant, learned Queen's Counsel, Mr. Thomas Astaphan, submitted that the evidence establishes that there was in fact a policy held by successive governments of Anguilla that staff residency be procured from private properties for economic reasons rather than have them reside on the touristic development itself. The claimant must be taken to have been aware that in order to be permitted to construct residences in the subject property it would have to be with the approval of the Government of Anguilla, and subject to planning approval. The superseding MOU and its subsequent amendments entered into by the claimant do not address the construction of onsite staff residences. To accomplish this, the claimant would have been required to engage the mechanism for amendment provided in the MOU itself.

- [19] Mr. Astaphan, invites the Court to note that the MOA entered into between Barnes Bay and the Government expressly provided for the construction of 4 units for staff under Phase IV of the development. The claimant must be taken to have known the contents of the Barnes Bay MOA when it entered into its MOU. When therefore, it deliberately chose to exclude that term of the Barnes Bay MOA from its MOU, it must be taken to have known that in order to build staff residences on the development it would require Government's agreement - independent of planning permission. This it failed to obtain.
- [20] In view of this, submitted Mr. Astaphan, the claimant cannot now claim, either that they were not aware of the policy of the Government which undergirded its decision on the appeal, or that it does not exist. Nor can it be said that the policy is arbitrary, unreasonable, unfair, irrational and unlawful. A policy that requires non-belongers to procure staff housing from private, non-development sources is reason based as it seeks to provide economic opportunities to the people of Anguilla in the home rental business.
- [21] Further, Mr. Astaphan, submitted that the claimant, a non-Anguillian entity, holds the subject property, and is permitted to undertake touristic development on it, by virtue of, and pursuant to both the MOU and the Alien Land Holding Licence which incorporates the terms of the MOU by reference. Learned Queen's Counsel submitted that it must follow that in considering an application of a non-Anguillian entity seeking planning permission to build on property, which is subject to an MOU and an Alien Land Holding Licence, the LDCC and the Executive Council on an appeal must, in the case of the LDCC, examine the application in the context of the MOU and the licence, which together provide the lawful basis for the applicant to own and develop the property, and, in the case of the Executive Council on appeal, to confirm that both the application and the LDCC's decisions were made in the proper context.
- [22] Accordingly, the Executive Council acted within the prescript of its statutory powers and did not err in principle either by failing to take into account relevant factors or giving too little or too much weight to relevant factors; nor did it take into account, or was influenced by irrelevant factors and considerations.

Issues

- [23] As I see it, the first issue to be resolved is one of fact: was there a government policy held by successive governments of Anguilla that “residential accommodation for the developer’s staff be afforded by private proprietors in Anguilla for economic reasons”? If the answer to this is no then the decision of the Executive Council would be unlawful for having taken into account an irrelevant consideration. If however, there was such a policy, is such a policy a relevant consideration in the context of an application for planning permission; is it arbitrary, irrational, unreasonable, unfair and unlawful? Did the MOU or the Alien Land Holding Licence restrict the claimant from obtaining approval for the construction of staff housing on site? These are the issues for resolution.

Discussion

Was there a policy?

- [24] This is a straightforward question of fact. The defendant has adduced evidence of the existence of the policy. In his affidavit of 12th November 2020, Deputy Governor, Mr. Perin Bradley states:

“It is the policy of the government held by successive administrations before the Anguilla United Front administration, under which the Council decided this appeal, that for economic reasons, resort developers’ staff and management are to seek residential accommodation from private proprietors, rather than reside on the touristic development itself.

I am aware of this policy even before becoming Deputy Governor in 2016 as I had functioned earlier as the Comptroller of Inland Revenue and participated in the negotiations for the Zemi Beach Resort project. The Government approached negotiations with the developers from that standpoint in relation to this issue.”

- [25] Mr. Mervyn Rogers, a former Permanent Secretary in the Ministry of Lands and Physical Planning and Chairman of the LDCC, also addresses the issue. In his affidavit of 12th November 2020, he states:

“...[T]he assertion at paragraphs 19 and 20 of the Shanholtz Affidavit, that there is no known Government Policy of the kind referred to at paragraph 2.1 herein above, is not accurate, neither is it informative of the context and content of successive government approach to touristic development on the island.” (Para. 6.1.)

[26] Contrary to these assertions, the claimant argues that no such policy exists or existed. In this regard, the first affidavit filed on its behalf by Mr. Roy Shanholtz requires scrutiny. He states:

“4. By way of background, the Government of Anguilla and the developer at the time, Barnes Bay Development Ltd entered the first Memorandum of Association (sic) ("MOA") in relation to the project on 30th September 2004. Part of the development included at that time a Phase IV which would have included onsite manager's/engineers' residences. Subsequent to that MOA, the government of the day took the view that the local economy should have been sufficiently stimulated so that Anguillians could develop private housing in close proximity to the resort to serve as employee housing. The developer did not for those reasons develop the employee housing at that time. The most recent agreement in relation to the project is between the Government of Anguilla and SOF-VII-HOTEL II ANGUILLA HOLDINGS, LLC entered into on 17th September 2010 (the "MOU").

5. As time progressed, the local economy began to decline and banks were less inclined to lend for construction of housing. The government's vision to stimulate local development of housing did not manifest itself and the project was therefore left to source private housing for its managers and temporary staff. The banking crisis and passage of Hurricane Irma have crippled any future efforts on the local market to develop housing. The availability of suitable accommodations in close proximity to the Resort became impossible.”

[27] These paragraphs establish that the claimant was aware of the following: i) that in 2004 there was an express provision in the Barnes Bay MOA for the construction on site of manager's/engineers' residences during Phase IV of the project; ii) that subsequent to that MOA, the government of the day took the view that the local economy should have been sufficiently stimulated so that Anguillians could develop private housing in close proximity to the resort to serve as employee housing; iii) on account of this policy the developer did not construct on-site residences but sourced private housing for its managers and temporary staff.

[28] It seems to me that this evidence constitutes acknowledgement by the claimant of the existence of the policy dating back at least to some time after 2004. While it is true that this was before the claimant became involved in the project, it is of significance that when the claimant entered into the MOU in 2010 which superseded the MOA of 2004, that provision that allowed for the construction of on-site staff residences was omitted. It may be reasonably inferred, that such an omission was

consistent with the existence of the post 2004 policy then in force and which Mr. Shanholtz describes at paragraph 4 of his affidavit. This gives rise to the inference that the claimant was aware of the policy of the Government that staff accommodation was to be provided by private proprietors. Indeed, this is exactly what it had been doing prior to its application in 2018.

- [29] Accordingly, I find as a fact that there was such a policy in force at the time that the claimant entered into its MOU with the Government. I accept the evidence of Mr. Bradley that this was an abiding policy of successive governments of Anguilla.

Was the policy arbitrary/irrational

- [30] Further, I can find nothing arbitrary or irrational about a land use policy that a luxury tourism development project should be just that and not include the construction of staff residences. The evidence is that it applied across the board and not just to the claimant. If the objective and upshot of a policy restricting the use to which alien tourism project developers may put the land is that it benefits the local economy because the developer would have to source accommodation from local providers, I fail to see that there is anything arbitrary, unfair or unreasonable about such a policy.

Were the MOU, the Alien Land Holding Licence and Government's policy relevant consideration in the context of the claimant's application for planning permission?

- [31] Related to this question is the further question, whether the MOU entered into by the claimant or the terms of its Alien Land Holding Licence restricted the claimant from obtaining approval for such construction. The claimant says they were irrelevant and contained no prohibition restricting the claimant from constructing staff accommodation on the property. The defendant says these documents were relevant to the decision because the Alien Land Holding Licence issued to the claimant was expressly made subject to the terms of the MOU. That MOU defined the nature of the development that was permitted. Neither the MOU, the two amendments made to it nor the Licence related to the construction of houses for hotel staff on the development itself.
- [32] It is settled that where a decision-maker has failed to take account of relevant considerations or has taken into account irrelevant considerations then the decision will be quashed. In the 7th Edition of **De Smith's Judicial Review**, the learned authors state the principle thus:

“When exercising a discretionary power a decision-maker may take into account a range of lawful considerations. Some of these are specified in the statute as matters to which regard must be had. Others are specified as matters to which regard may not be had. There are other considerations which are not specified but which the decision-maker may or may not lawfully be taken into account. If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised.”

- [33] The learned authors of **Garner’s Administrative Law**¹ describe the approach to be taken by the Court when faced with reviewing a decision on this ground:

“The courts look to the governing statute to see what factors or matters are required to be taken into account in reaching a decision as to the exercise of power; and conversely, what factors or matters should not be taken into account.”

- [34] Such factors or matters may be expressly stated or arise by necessary implication. As Lord Greene explained in **Associated Picture Houses Ltd v Wednesbury Corporation**² at page 228:

“If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters.” (Emphasis added)

- [35] There is authority for the proposition that, “In certain circumstances, notwithstanding the silence of the statute, there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them would not be in accordance with the intention of the Act.” (Emphasis added). See **In re Findlay**.³

- [36] It seems to me, this passage articulates the test to be applied in the case at bar: whether the Alien

1 Garner, Jones and Thompson, *Garner’s Administrative Law* (8th edn), 1996, London: Butterworths, p.223.

2 [1948] 1 KB 223

3 [1985] 1 AC 318.

Land Holding Licence, the MOU and Government's policy were so obviously material to the determination whether to grant planning permission for the type of development contemplated that anything short of direct consideration of them would not be in accordance with the intention of the Act.

[37] While the Act sets out what information and documents are required to be submitted to support an application for planning permission (as described above), it does not in terms expressly state that where the applicant is an alien, the conditions under which its Licence is held or the terms of any MOU into which it may have entered with the Government are factors to be considered. Nor does it expressly provide that the decision making authority may have regard to "any other material consideration" as in other planning statutes. Does it follow that the conditions under which an Alien Land Holding Licence is granted are irrelevant to the determination of an application for planning permission?

[38] The MOU entered into between the claimant and the defendant is expressed to be fully binding on the Executive Council. It contemplates the construction of luxury real estate products, defined in the MOU as including Condominiums, ocean front villas, bluff top villas and back row villas. It is to be maintained as "a 4½ star tourist facility". PART III describes the nature of the project which would consist of 32 dedicated hotel rooms, 134 units for sale and common areas including restaurants, lobby spa, bar, pools, tennis courts etc. as further described in Appendix 1.

[39] Having agreed the nature and scope of the project to be undertaken by the claimant, on 5th April 2011, Executive Council issued the claimant an Alien Land Holding Licence "to HOLD the land more particularly described in the First Schedule And Descriptions of Condominiums set out in the Second Schedule hereto subject to the conditions set out in the Third Schedule hereto. That Schedule provides, so far as material at paragraph 4:

"Notwithstanding anything contained herein, this licence is subject to the terms of the MOU, dated September, 17, 2010, also by the First Amendment entered into as of the 16th day of March, 2011, and Second Amendment entered into as of the 8th September, 2011 to which is in full force and effect."

- [40] The imposition of this condition in the licence was made pursuant to section 4(1)(b) of the Alien Land Holding Regulation Act which provides that the Governor in Council may make the licence subject to conditions.
- [41] Anguilla's Aliens Land Holding Regulation Act has in common with other Caribbean jurisdictions the objective of prohibiting non-nationals ("aliens") from holding land unless they are issued a licence by the State or Crown to do so. Such licences may be granted subject to conditions. Typically, these may relate to the type of development that may be carried out on the land and the alien's obligations among other matters.
- [42] When the holder of an Alien Land Holding Licence whose licence is subject to conditions applies for planning permission to change the use of the land, it seems to me that any conditions to which its licence is subject must be relevant. During the course of argument, I posed the question to Ms. Carter whether an alien applicant for planning permission must be granted permission once they submit all of the documents and furnish the information required on the prescribed form even though the nature of the development in respect of which permission is sought is in violation of a condition of its Alien Land Holding Licence. Learned counsel answered in the affirmative. If that is correct, it would mean that an applicant could disregard those conditions with impunity provided they supplied the information and documents required under the Act. If correct, it would mean that on an appeal against a refusal to grant planning permission, Executive Council would be obliged to disregard a blatant breach of the very conditions which it imposed when it granted The Alien Land Holding Licence and focus exclusively on such matters as whether set back requirements were met, whether plans, certificates and any other document set out in the Act were submitted and the like. I find this a startling proposition as it would defeat the whole purpose of imposing conditions in the first place. I reject it.
- [43] Where the applicant for planning permission is an alien, the Act must by necessary implication require the decision maker to consider the terms and conditions under which the licence is held and any binding MOU entered into between the applicant and the Government.
- [44] In this case, the claimant's Alien Land Holding Licence was granted subject to the terms of the MOU. Breach of a condition in the licence may render the land liable to forfeiture to the Crown (See section 4 (3) of the Alien Land Holding Regulation Act). Since the licence is expressly made subject

to the terms of the MOU, then that too must be obviously material to the decision as it defines the nature and scope of the development which the claimant is permitted to undertake on the property. The construction of staff accommodation is clearly not permitted by the terms of the MOU. Both documents, therefore, were material and relevant to the decision making process. They were fairly and reasonably related to the permitted development, which was a luxury real estate tourism product.

[45] I accordingly hold that Executive Council did not act unlawfully by having regard to the claimant's Alien Land Holding Licence and the MOU which it had signed with the Government and that these were not irrelevant considerations.

[46] While the claimant was entitled to seek to apply for a change of use of the land given the prevailing circumstances as it perceived them, I am mindful that the Court must always be careful not to look into the merits or substitute its own decision for that of the decision of the decision-maker if his decision is within the confines of reasonableness: **CCSU v Minister for the Civil Service**⁴. I do not find that Executive Council's decision is one which no reasonable decision maker could make having regard to the evidence that accommodation was available from local proprietors, albeit not entirely to the claimant's liking due either to location, cost or quality.

[47] As it relates to the policy, which I have found existed and was known to the claimant, it is said that this particular government policy is not a relevant planning consideration as it does not relate to land use or a planning purpose. I consider that the policy in question does relate to land use because it restricts alien developers of tourism projects from engaging in construction of staff accommodation on the property. It affects the type of development permitted on the property. This policy informed the terms of the MOU which was then incorporated as a condition of the Alien Land Holding Licence. The very basis for the claimant being granted the licence to hold the land in the first place was that its development must be in accordance with the terms of the MOU which confined it to a touristic development in accordance with government's policy. This is unlike the situation in the **R v Resilient Energy Severndale Ltd. and another**⁵ case upon which the claimant

⁴ [1984] 3 All ER 935.

⁵ [2019] UKSC 53.

relies.

- [48] In that case, section 70(2) of the Town and Country Planning Act, required a planning authority to have regard to the development plan and certain other matters 'so far as material to the application' and to 'any other material considerations'. The Court held that this meant considerations material to the change of use which was proposed. In granting permission the planning authority took into account a promise by the applicant to provide a community fund donation. It was held that this was not a material consideration as it was unconnected with the use of the land. As I have already held, the MOU and the Alien Land Holding Licence bear directly on the use that could be made of the land. So too does this policy. It was therefore relevant and material to the Executive Council's decision whether to allow the appeal or confirm the LDCC's decision. 'With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority: **Wade on Administrative Law (8th edition)** at page 365.
- [49] Accordingly, the claim is dismissed with costs to be assessed if not agreed within 21 days.

Trevor M. Ward, QC
High Court Judge

By the Court

Registrar