JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 123 OF 2005

BEFORE: **THE HON. MR. JUSTICE COOKE, J.A.**
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)

BETWEEN:	**JAMES CHISHOLM**	**1ST APPELLANT**
	CHISHOLM & CO. LTD.	**2ND APPELLANT**
	CHISHOLM & CO. DEVELOPMENT LTD.	**3RD APPELLANT**
AND	**MINISTER OF ENVIRONMENT AND HOUSING**	**1ST RESPONDENT**
AND	**GOVERNMENT TOWN PLANNER**	**2ND RESPONDENT**
AND	**ST. MARY PARISH COUNCIL**	**3RD RESPONDENT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**4TH RESPONDENT**

Miss Carol Davis for the Appellants.

Mr. Curtis Cochrane and Miss Lisa White instructed by the Director of State Proceedings for 1st, 2nd and 4th Respondents.

Georgia Gibson-Henlin and Miss Catherine Minto instructed by Nunes Scholefield, DeLeon & Co. for the 3rd Respondent.

July 16, 17, 18 & 19, 2007 & July 25, 2008

COOKE, J.A.

I have read in draft the judgment of Harrison, J.A. I agree with his reasoning and conclusion. There is nothing further that I wish to add.

HARRISON J.A:

1. This is an appeal from an order made by Marsh J., on October 6, 2005 refusing the Appellants' applications for judicial review with costs to the respondents.

The Remedies Sought Below

2. The Appellants had sought the following remedies in the court below:

> "1. An order of Certiorari to remove and quash decisions of the 3rd Respondent handed down by resolutions dated 16th December, 1996, refusing to sanctions (sic) Applicant's application for subdivision of lands, part of Georgia Pen in the parish of St. Mary.
>
> 2. An order of Certiorari to quash the decision of the 1st Respondent handed down by letter dated December 11, 1997 and received on the 6th January 1998, dismissing the Applicant's appeal with regards to the said subdivision of the Georgia Pen lands in the parish of St. Mary.
>
> 3. An order of Certiorari to quash the decisions of the 2nd Respondent handed down by letter dated 21st March, 1995 and 15th May, 1996, respectively, refusing to sanction the application to subdivide lands part of Georgia Pen, in the parish of St. Mary.
>
> 4. A declaration that the 1st and 2nd Applicants are entitled to have their applications to subdivide lands part of Georgia Pen, in the parish of St. Mary, sanctioned and confirmed by the 1st and 3rd Respondents.
>
> 5. An order of Mandamus directed to the 1st Respondent requiring him to confirm the decision of the 3rd Respondent sanctioning the subdivision of Lot 82 of the Huddersfield land in the parish of St. Mary.
>
> 6. An order of Certiorari to quash the decision of the 2nd Respondent handed down by letter dated the 5th May, 1995, refusing the application of the 3rd

Applicant to subdivide Lot 82A of the Huddersfield land into 15 residential housing units.

7. An order of Mandamus directed to the 3rd Respondent directing it to sanction the Applicant's applications for subdivision of Lot 82A of the Huddersfield land into 15 residential lots.

8. A declaration that the 3rd Applicant is entitled to have its application to subdivide the land known as Lot 82A part of Huddersfield in the parish of St. Mary sanctioned and confirmed by 1st and 3rd Respondent (sic) respectively.

9. A declaration that the decision of the Respondents in refusing to sanction subdivision of the said lands at Georgia Pen is discriminatory and in breach of the Applicant's constitutional rights."

The Appeal

3. The Appeal will be dealt with under two heads, namely: (1) the Georgia Pen subdivision and; (2) the Huddersfield subdivision.

THE GEORGIA PEN SUBDIVISION

The Background Facts:

4. Lots 19 & 20 are farm lots and form part of the Georgia Pen subdivision which is comprised of several lots varying in size from nine (9) to twenty (20) acres. James Chisholm ("the first Appellant") is the owner of Lot 19 which is registered at Volume 1133 Folio 998 of the Register Book of Titles. Lot 20 is owned by Chisholm and Company Ltd. ("the 2nd Appellant") and is registered at Volume 1259 Folio 83 of the Register Book of Titles.

5. In 1994 the 1st Appellant wrote to the Government Town Planner ("the 2nd Respondent") and enquired of her whether a further subdivision of Lots 19 & 20 into ¾ acre farm lots would be approved. The 2nd Respondent was not in support of the subdivision and referred the matter to the Ministry of Agriculture and the Natural Resources Conservation Authority ("NRCA") for their comments. The 2nd Respondent's letter of the 24th March 1994 to the Ministry of Agriculture stated inter alia:

> "The Department does not support such a subdivision for reasons including:
>
> 1. A precedent would be created whereby the remaining lots would have to be similarly treated.
> 2. The policy of a minimum of 80966m² (5 acres) for a viable agricultural unit would be violated.
> 3. A residential subdivision could be developed and this would be outside of any growth centre."

6. The Minister of Agriculture by letter dated January 25, 1995 supported the 2nd Respondent but stated that if the applicant was willing to subdivide the property into agricultural lots of at least five (5) acres, approval may be granted.

7. It is not quite clear how the 1st Appellant became aware of the letter of the 25th January 1995, but by letter dated January 26, 1995 he wrote to the 2nd Respondent stating that he accepted the subdivision proposal made by the Ministry of Agriculture. The 1st Appellant then sought approval for the subdivision of Lots 19 and 20 into two lots respectively. The 2nd Respondent gave no assurance to the 1st Appellant that if an application was made for subdivision into five acre lots that it would be approved.

8. Lots 19 and 20 and other lots in the Georgia Pen subdivision were subsequently inspected by the 2nd Respondent. The merits of the proposed subdivision were assessed and the 2nd Respondent refused to recommend the proposed subdivision to the 3rd Respondent for the following reasons:

> "(1) Fragmentation of good Agricultural land is against government policy...
>
> (2) Precedent would be set whereby other owners of land in the same subdivision would demand similar treatment, the end result of which would be the creation of more lots for speculative purposes in this subdivision, when most of the Lots were not being farmed.
>
> (3) The infrastructure (namely road) in the existing subdivision is in a very poor condition and creation of additional Lots should not be encouraged."

9. On December 16, 1996, the 3rd Respondent convened its Planning and Economic Development meeting and considered the applications regarding Georgia Pen. A Resolution was passed refusing the applications having regard to the advice which was given by the 2nd Respondent.

10. The appellants lodged an appeal to the Minister of Environment and Housing ("the 1st Respondent) pursuant to section 15 of the Local Improvements Act ("the Act") in respect of the 3rd Respondent's refusal to grant sub-division approval for the lands at Georgia Pen. That appeal was dismissed by the 1st Respondent.

The Ground of Appeal in This Court

11. Ground (iii) sets out the complaint and states as follows:

"(iii) With respect to the land part of Georgia Pen, the Learned Trial judge erred in that he failed to properly consider the evidence and/or apply the law in determining whether

(a) The decision of the Government Town Planner was ultra vires.

(b) That the decision of the Parish Council was ultratravires.

(c) That the decision of the Government Town Planner and/or the Parish Council and/or the Minister of Environment and Housing was unreasonable.

(d) Whether there was an error on the face of the said decisions of the Government Town Planner and/or the St. Mary Parish Council and/or the Minister of Environment & Housing.

(e) Whether the respective decisions of the Government Town Planner, the St. Mary Parish Council and the Minister of Environment & Housing was in breach of their duty to act fairly."

12. In determining this ground of appeal two questions need to be determined. The first is whether it was open to the 1st and 2nd Appellants to seek judicial review of the 3rd Respondent's decision when the statute makes provision for an appeal process. Second, what is the role of the 1st Respondent in the appeal process?

The Judicial Review Process

13. The issue for determination is whether there should be judicial review of the 3rd Respondent's decision regarding the Georgia Pen application where an appeal process is provided by statute.

14. Many years ago, Denning LJ., stated in ***Regina v Medical Appeal Tribunal ex parte Gilmore*** [1957] 1 QB 574 at p.583:

> '...the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words'.

This statement remains true today.

15. ***Ridge v Baldwin*** [1964] AC 40 has decided that administrative remedies are highly desirable. Wade on Administrative Law (7th Edition) page 722 summarizes that decision as follows:

> "In ***Ridge v Baldwin*** the Court of Appeal held that since the chief constable had appealed to the Home Secretary unsuccessfully he had thereby waived his right to seek a declaration from the court that his dismissal was legally invalid. The House of Lords reversed this decision, which rests on an obvious confusion between appeal on the merits of the case and judicial review of the legality of the whole proceeding. Since these are quite different things, it would be an illogical trap if they were mutually exclusive. Administrative remedies are highly desirable and people should be encouraged to use them. But to allow unlawful action to stand, merely because it has been appealed against on its merits, is indefensible".

16. In ***R v Chief Constable of the Merseyside Police, ex parte Calveley*** **and others** [1986] 1 All ER 257 at 261–262, Donaldson MR was very explicit when he said:

> "This, like other judicial pronouncement on the interrelationship between remedies by way of judicial review on the one hand and appeal procedures on the other, is not to be regarded or construed as a statute. It does not support the proposition that judicial review is not available where there is an alternative remedy by way of appeal..."

17. In ***R v Paddington Valuation Officer, ex parte Peachey Property Corp Ltd*** [1965] 2 All ER 836 at 840, Lord Denning MR, with the agreement of Danckwerts and Salmon LJJ, held that certiorari and mandamus were available where the alternative statutory remedy was "nowhere near so convenient, beneficial and effectual".

18. And in ***R v Hallstrom and another ex parte W*** [1985] 3 All ER 775 at 789–790, Glidewell LJ, said:

> "Whether the alternative statutory remedy will resolve the question at issue fully and directly, whether the statutory procedure would be quicker, or slower, than procedure by way of judicial review, whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body, these are amongst the matters which a court should take into account when deciding whether to grant relief by way of judicial review when an alternative remedy is available."

19. The weight of authority therefore makes it impossible to accept that the jurisdiction to subject a decision to judicial review can be removed by statutory implication.

20. I would therefore hold that the provisions in section 15 of the Act do not prevent a court from enquiring into the validity of the Minister's decision or for that matter a decision of any body or official which is considered *ultra vires* or unreasonable.

The Appeal Process

21. The question which has to be decided is whether the 1st Respondent, has validly dealt with the appeal brought before him under the provisions of section 15 of the Local Improvements Act (the Act).

22. Miss Davis for the 1st and 2nd Appellants has in substance made the under-mentioned submissions in support of their appeal:

(A) The reasons given by the 2nd Respondent for her refusal to recommend the subdivision approval in respect of the Georgia Pen lots were unreasonable and in breach of her duty to act fairly. "(Issue (A))"

(B) No rules were made for the appointment of an Appeals Committee so the 1st respondent and the Appeals Committee had acted *ultra vires*. "(Issue (B))"

(C) The respondents acted illegally and/or irrationally and/or with procedural impropriety. "(Issue (C))"

Issues (A) and (C)

23. It is my view that these two issues can be dealt with together. The learned judge made certain findings at page 19 of the judgment in respect of the complaints made against the 2nd Respondent. This is what he said:

> "There is no obligation on the Government Town Planner to make her recommendations based on the views taken by a majority. She would be failing in her statutory duty to bring her own expertise to the situation when making recommendations. I agree that the recommendations made by other agencies are but one consideration when the Government Town Planner

> looks at the overall picture when making her recommendations.
>
> Applicant sought orders of Mandamus and Certiorari against the Government Town Planner; Mandamus "to confirm and/or sanction the subdivision of Lots 82 and 82A part of Huddersfield in the parish of St. Mary and Government Town Planner refusing applications for subdivision of the aforenamed lots.
>
> It is factually inaccurate to say that the Government Town Planner made a "decision". Hers was a recommendation; the decision to grant or refuse approval being the gift of the St. Mary Parish Council..."

24. The learned judge also held that the Government Town Planner could not properly be said to be "an authority to determine" and that she was not a tribunal with power to give a decision. At page 21 of the judgment he states inter alia:

> "... A recommendation cannot be reviewed by this Court. There is nothing about it that can be called a determination. The application for orders of Mandamus and Certiorari respectively against the Government Town Planner are therefore refused ..."

He continues:

> "...There can be no grant of an order of Mandamus on the basis of the evidence in the Applicants' affidavits. Mandamus does not lie where a discretion is exercised against the Applicant. This would be tantamount to Court exercising an appellate jurisdiction which it does not possess. It cannot be said that on the evidence adduced that the respondents against whom the order of Mandamus is sought acted illegally, irrationally or with procedural impropriety."

25. As to the Declarations sought, the learned judge said at page 22:

> "Declarations lie to declare what are the previous rights in law of the Applicant. As Applicants do not possess any such rights prior to the Application, the granting of

> declarations by the Court would be tantamount to the Court usurping the functions of the Minister (1st Respondent) and the St. Mary Parish Council (3rd Respondent)."

26. It is my view that there is considerable merit in the above findings. I do agree with Mr. Cochrane when he submitted that the evidence before the learned judge did indicate that the 1st and 2nd respondents had acted appropriately and according to the law which governed their actions. I would therefore decide Issues (A) and (C) in favour of the respondents.

Issue (B)

27. The 1st Respondent's affidavit sworn to and filed on the 3rd July 1998 has set out how the Appeals Committee was convened and it states inter alia:

> "...
>
> 7. That the Appeals Committee was convened on the 11th November 1997 and at the hearing the Applicant along with representatives from the Town Planning Department, the Superintendent of Roads and Works, the Council and the Ministry of Local Government and Works were allowed to make submissions.
>
> 8. That the documents pertaining to the Appeal, the findings along with the recommendation of the Appeals Committee were submitted to me for my consideration.
>
> 9. That the findings of fact of the Appeals Committee included:

(a) The Appellant was unable to state conclusively what his plans for the land were when subdivided;

(b) That the land is currently not being used for Agriculture and there are existing houses;

(c) That the quality of the land in question did not fall within the class 1 category that is, prime Agricultural land;

(d) The lots in question formed part of an eighty-five lot Agricultural subdivision and if the Appellants (sic) subdivision is allowed it could result in the creation of a large village without the necessary infrastructure;

(e) There were problems with obtaining water in the area in question.

10. That the Appeals Committee in assessing the merits of the said Appeal among other factors considered the following:

(a) Although the National Land Policy states that five (5) acres is a viable Agricultural unit, this refers to class 1 Agricultural lands. The acreage increases as the quality of the land decreases;

(b) The probability that a large residential subdivision could eventually result without the necessary infrastructure;

(c) The Appellant was evasive with respect to the proposed use of the land;

(d) The Committee was not satisfied that the land would be used solely for Agricultural purposes.

11. That I examined all the evidence and findings and recommendation of the Appeals Committee and decided that the Appeal should be dismissed.

12. ..."

28. In dealing with the application to quash the decision of the 3rd Respondent, in respect of Lots 19 and 20 of Georgia Pen, the learned trial judge said inter alia, at pages 18 – 19 of his judgment:

> "... It is the contention of the Applicant that the appeal process was perverted when the Minister was sent the Council's refusal for confirmation. It denied the applicant the opportunity to be heard by the Minister before the Minister made his decision. Section 15(1) of the Local Improvements Act allows for the Applicant to appeal to the Minister.
>
> The Rules prescribed makes no reference to "An Appeals Committee." Rule 6 makes the Minister's power subject to the provisions of the Rules. There is no requirement in section 8(6) of the Local Improvement Act for an Applicant to make specific request to be heard by the Minister. Such a requirement it was submitted must be stated explicitly as in Section 13(3) of the Town and Planning Act.
>
> The contention that the 1st Respondent acted in excess of his powers in referring the Applicant's appeal to an "Appeals Committee" is unfounded.
>
> The reference to an Appeals Committee is by way of the Minister regulating his own procedure. It seems contrary to good sense and to what is practical that a Minister would be expected to deal with every appeal of persons who are aggrieved by the refusal of the Council."

29. Now, section 15(1) of the Act provides as follows:

> "15. (1) Where any person deems himself aggrieved by the refusal of the Council to sanction the sub-division of any land, such person may appeal to the Minister."

30. There is provision in the Act for the making of rules regarding appeals and section 15(2) provides as follows:

> "(2) The Minister may make rules prescribing the procedure to be followed upon appeal to him under sub-section (1)".

The Local Improvements (Appeal) Rules, 1959 ("the Rules") were brought into operation and Regulation 6 permitted the Minister to regulate his own procedure. The Minister therefore appointed an Appeals Committee to deal with the Appellants' appeals.

31. Miss Davis submitted that although section 15(2) supra, provided for the making of rules, no rules were made for the appointment of an Appeals Committee so that Committee which was appointed by the 1st Respondent acted *ultra vires* when it dealt with the appeal. She also argued that even if the Committee could be constituted, it went "far beyond" its powers as a review body and had erroneously made its own "findings of fact". She argued that in any event, the decision of the 1st Respondent which followed the recommendation of the Appeals Committee was unreasonable and, had taken into consideration irrelevant matters.

32. Mrs. Gibson-Henlin submitted on the other hand, that the role of the Minister in the appellate process is to be determined by what he did and how he conducted the review. She said that his role is to see whether the process was fair and that it should

be balanced by public interest and policy considerations. She argued that Rule 6 permitted the Minister to regulate his own procedure so long as it was not inconsistent with the rules. It was therefore open for him, she submitted, to appoint the Appeals Committee. She referred us to the case of ***Local Government Board v Arlidge*** [1915] A.C 120.

33. There is definitely no express provision in the Rules for the appointment of an Appeals Committee so how should Rule 6 be construed? Some guidance can be derived from decided cases and other authorities.

34. The question is usually asked: must he who decides also hear? The authorities make it abundantly clear that there are many situations in administrative law where it is impracticable or inconvenient for the deciding body, or some members of the deciding body, to hear the evidence when an appeal is brought. In "Judicial Review of Administrative Action" (2nd Edition) by S.A de Smith, the learned author states inter alia at page 208:

> "... If a Minister is constituted as an appellate or confirming authority he cannot conduct the pre-decision hearings himself, and indeed the courts are prepared to accept that (save in exceptional and undefined circumstances) he need not address his own mind to the case at all; the decision may be taken by one of his officials in his name; and the deciding officer, although he must doubtless be properly apprised of all the relevant materials and evidence, does not have to conduct or be present at any antecedent hearing,***(Local Government Board v. Arlidge*** [1915] A.C. 120) unless the power to decide explicitly delegated to the hearing officer. But

> Ministers and government departments stand in a special position. As a general rule, where a function vested in another administrative body incorporates a judicial element, the decision must be made by that body and not by one of its committees or officials unless there is express statutory authority to delegate power to decide. This does not necessarily mean that every member of that administrative body must participate in hearings or other investigations to collect the material on which a decision will be based. Such a function may be entrusted, for example, by a local authority to a committee or sub-committee; natural justice is a flexible concept. Nevertheless, the committee's report must be full enough to enable all the members of the deciding body to discharge their duty to decide; otherwise there will not have been a fair hearing according to natural justice. Judges will differ in their views on the adequacy of such reports. In a recent Privy Council appeal the decision of a dairy board was quashed because the report of the investigating sub-committee on which the decision was founded had merely summarised the submissions made before it but had neither incorporated the text of the written submissions nor stated what evidence had been given, nor had it summarised the evidence. The board, therefore, was held not to have "heard" before deciding." (emphasis supplied)

35. In ***Carltona Ltd. v Commissioner of Works and Others*** [1943] 2 All ER 560

Lord Greene M.R said at page 563:

> "In the administration of government in this country the functions which are given to ministers ... are functions so multifarious that no minister could ever personally attend to them... It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case ..."

36. The head-note in ***Local Government Board v Arlidge*** [1915] A.C 120 reads as follows:

> "Sect. 17 of the Housing, Town Planning, &c., Act, 1909, authorizes and requires a local authority to make a closing order in respect of any dwelling-house in their district if it appears to them to be unfit for human habitation and to determine such order on being satisfied that such dwelling-house has been rendered fit for human habitation, and gives to the owner of the dwelling-house a right of appeal to the Local Government Board against the closing order and against the refusal to determine the same.
>
> By s. 39 the procedure on any such appeal shall be such as the Local Government Board may by rules determine: provided that the rules shall provide that the Board shall not dismiss any appeal without having first held a public local inquiry, and this provision was contained in rules made under this section by the Local Government Board:-
>
> *Held,* (1.) that a properly authenticated order of the Local Government Board dismissing an appeal under these sections is not open to objection on the ground that it does not disclose which of the officers of the Board actually decided the appeal; (2.) that an appellant to the Local Government Board is not entitled as of right, as a condition precedent to the dismissal of his appeal, either (*a*) to be heard orally before the deciding officer, or (*b*) to see the report made by the Board's inspector upon the public local inquiry."

37. Viscount Haldane, Vice Chancellor, who delivered the opinion in the House of Lords said at pages 132 and 133:

> "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a

> tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In ***Board of Education v. Rice*** (1) he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. If the Board failed in this duty, its order might be the subject of certiorari and it must itself be the subject of mandamus".

38. The authorities referred to above make it abundantly clear that once an Appeals Committee is constituted it is under a duty to act in good faith and to listen fairly to all sides. No issue was taken regarding the fairness of the appeal hearing in this matter. The appellant Mr. James Chisholm along with representatives from the Town Planning

Department, the Superintendent of Roads and Works, the Parish Council and the Ministry of Local Government and Works were all present and were allowed to make submissions.

39. It is therefore my view that the learned trial judge was correct to find that the Minister had not acted in excess of his powers in referring the appeal to an Appeals Committee. There is merit in the submissions of Mrs. Gibson-Henlin. I would also decide Issue (B) in favour of the Respondents.

THE HUDDERSFIELD SUBDIVISION

The Background Facts:

40. Chisholm and Company Development Ltd. ("the third Appellant") are registered owners of a parcel of land known as Lot 82 part of Huddersfield in the parish of St. Mary which is registered at Volume 945 Folio 514 of the Register Book of Titles. On November 18, 1992 this Appellant sought sub-division approval for the lot and for it to be subdivided into lots 82A, 82B and 82C respectively.

41. On the 11th August 1993, the 2nd Respondent wrote to the third Appellant as follows:

> "Further to our letter of March 25, 1993, I have to advise that the Town Planning Department will allow semi-detached units on a minimum lot size of 4000 square feet. This is subject to the comments/conditions of various agencies including the National Water Commission, Ministry of Construction (Works) and the Environmental Control Division of the Ministry of Health. No development will

> be allowed on Lots 82B and 82C of the subdivision plan which has been submitted to the St. Mary Parish Council. This area should be reserved for storm water drainage.
>
> As soon as the comments of the agencies are received the subdivision application will be processed and returned to the St. Mary Parish Council."

42. On March 7, 1994 the 3rd Respondent wrote to James Chisholm. The letter stated inter alia:

> **Re: subdivision of land part of Huddersfield (Lot 82)- Chisholm & Company Dev. Ltd.**
>
> "With reference to your application dated August 6, 1992, seeking sanction of the above-mentioned subdivision, I am to advise that the Council proposed to approve same, subject to the attached Conditions..."

43. The decision to approve was submitted to the 1st Respondent for confirmation. He deferred confirmation and a request was made for the original subdivision plan to be submitted in order to determine if the property should be further subdivided.

44. On July 18, 1994 the Appellant applied for further subdivision of Lot 82A into 15 residential lots. This application was submitted before the 1st Respondent had confirmed the approval for the initial lots 82A, 82B and 82C at Huddersfield. However, the application for subdivision of Lot 82 (the parent subdivision) was withdrawn by the third Appellant on June 12, 1995 before the 3rd Respondent had considered the further application.

45. In an affidavit sworn to by James Chisholm on the 4th July 1998 (page 50 of the Record of Appeal) he deposed at paragraph 10 as follows:

> "10...I say that I withdrew my application on the 12th June 1995 because although the Parish Council had approved the subdivision on the 7th day of March 1994, over a year had passed that the Minister had not yet taken a decision. Further, I was advised by one Miss L. Baxter that the Minister intended to refuse the application and for these reasons, I withdrew my application..."

46. A letter dated 22nd June 1995 at page 198 of the Record was sent by a Miss Baxter to the 3rd Appellant and it states inter alia:

> "Reference is made to the application which was submitted for confirmation by the Hon. Minister for James Chisholm to subdivide 2 acres 3 roods 26.1 perches of land at Huddersfield, St. Mary into three (3) lots for residential purposes.
>
> I have to inform you that after examination of the application, the Hon. Minister has indicated his intention to refuse the application as he considers the explanation presented to support further subdivision of Lot 82 to be unsatisfactory.
>
> We are now in receipt of a copy of a letter addressed to the Council by Mr. Chisholm requesting a withdrawal/cancellation of his application.
>
> In the circumstances, no further action will be taken on the matter and it is our intention to have the file closed."

The Ground of Appeal

47. Ground of appeal (iv) states:

> "(iv) With respect to the Huddersfield Land, the learned trial judge erred in that he failed to properly

consider the evidence and/or to apply the law in determining whether

(a) the decision of the Minister of Environment & Housing refusing to confirm the decision of the Parish Council for St. Mary granting subdivision of the Huddersfield Land into lots was ultra vires.

(b) The decision of the Minister of Environment & Housing refusing to confirm the decision of the Parish Council for St. Mary granting subdivision of the Huddersfield land into 3 lots was unreasonable.

(c) The decision of the Minister of Environment & Housing refusing to confirm the decision of the Parish Council for St. Mary granting subdivision of the Huddersfield land into 3 lots was unfair and unjust.

(d) Whether there was an error on the face of the record of the said decision of the Minister of Environment & Housing.

(e) Whether the decision of the Government Town Planner refusing the 3rd Appellant's application for subdivision of the Huddersfield Land into 15 residential lots is unreasonable and/or unjust and/or ultra vires."

48. Miss Davis submitted that the letter dated August 11, 1993 from the 2nd respondent which had advised the appellant of subdivision approval for Lot 82 part of Huddersfield, had created a legitimate expectation in the 3rd appellant that its application for subdivision approval in accordance with this advice would be approved. She further submitted that in the event that a different position was being taken, the 3rd appellant should have at the very least have been given an opportunity to be heard.

49. Mrs. Gibson-Henlin submitted however, that the 3rd Appellant was not entitled to the relief sought since the 3rd Respondent's decisions in relation to the property was not subject to judicial control. She submitted that in order to qualify as a subject for judicial review, the decision must have consequences which affect some party by depriving him of some benefit, or altered his rights. The Applicant she said, must be an "aggrieved person". See ***Council of Civil Service Union v Minister for the Civil Service*** [1984] 3 All E.R 935. That case held inter alia:

> "An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal."

50. In ***Inland Revenue Commissioners v Federation of*** **Self – *Employed and Small Businesses Ltd.*** [1981] 2 All E.R 93 Lord Diplock said at page 102:

> "... judicial review is available only as a remedy for conduct of a public officer or authority which is *ultra vires* or unlawful, but not for acts done lawfully in the exercise of an administrative discretion which are complained of only as being unfair or unwise ..."

51. I do agree with Mrs. Gibson-Henlin when she submitted that the 3rd Appellant was not an aggrieved party in relation to the decision made by the 3rd Respondent since the Parish Council had sanctioned the application for subdivision approval. She further submitted that (a) the 3rd Respondent had made no decision in respect of Lot 82A; (b)

the Appellant had withdrawn its application before the 3rd Respondent could have considered; (c) that Lot 82 had not existed for the purpose of obtaining subdivision approval and; (d) that no ground of appeal was filed in respect of that property.

52. It is my view that there is merit in these submissions and this ground of appeal also fails.

The Other Grounds of Appeal

53. Grounds (i) and (ii) state respectively:

> "(i) That the learned trial judge erred in refusing the applications sought.
>
> (ii) That the learned judge erred in that he failed to properly appreciate the grounds on which the relief was sought as set out in the Appellants Statement on Application for leave to apply for Orders of *Certiorari* and *Mandamus.*"

These grounds were not argued separately but were discussed as part of the other two grounds. I also find no merit in them.

Conclusion

54. For the reasons given, I would dismiss this appeal with costs to the Respondents.

DUKHARAN, J.A.

I agree

COOKE, J.A.:

ORDER:

The appeal is dismissed with costs to the Respondents.