

PRESS RELEASE

Court decision will make planning delays worse!

It is the threat to the economy that makes this apparently technical planning law case vitally important:

- **We have had two more downgrades.**
- **Foreign currency reserves have dropped below the 12-week guideline.**
- **The Estimates Debate showed the depth of the economic crisis.**
- **We are falling down the rankings for ease of doing business.**
- **The Government and the Opposition seem to agree that public sector inefficiencies are holding us back.**
- **These things are stopping serious overseas investors putting money into Barbados**
- **On top of all this we now have a Court Judgment that actually makes things worse!**

The judgment stops the Chief Town Planner “dealing with” the major planning applications where the decision-maker is the Prime Minister. Instead, he is sending them straight to the Prime Minister’s Office where there are no qualified planning staff to deal with them. Already there are at least ten applications held up in this way.

In some ways the judgment tries to be helpful – saying decisions need to be made more quickly and calling for greater transparency. The net effect, however, is to cause more delays on important beachfront and other major developments.

The judgement did not consider important legal precedents on how public bodies work. It also gave a questionable interpretation of the role of the Planning Advisory Committee. The Government has not yet appealed the judgment but should do so.

Planning decisions on beachfront and agricultural land have always taken too long but the system has been thrown into confusion following a legal decision by Madam Justice Cornelius. As a result of the judgment all of these cases are no longer being dealt with by the Chief Town Planner but are being passed to the Prime Minister's Office to be processed. As the Prime Minister's Office does not to our knowledge employ qualified Town Planners these applications are not currently being dealt with. A solution needs to be found quickly or the system will grind to a halt.

The case concerned proposed development at Mount, Six Men's, St Peter and was complicated by procedural "red herrings" such as the applicant's unilateral attempt to rewrite the standard planning application form. Arguably, these matters wasted the Judge's time and distracted from more important issues. The Judge's task was also made more difficult by the mysterious decision of the attorney for the applicant not to join the Minister responsible for planning, the Prime Minister, to the case but instead to pursue the Attorney General whose responsibilities were not involved in the issues under dispute. This limited the Orders Madam Justice Cornelius could make at the end of the case and she voiced her frustration: "The Court is fully aware that this leaves the applicant to seek further recourse from the Minister, but this Court will not jump through flaming legal hoops to accomplish what the applicant should have clearly asked for."

Nevertheless, the judgment did move the law forward in some important areas. The Barbados Town Planning Society welcomes the Judge's rulings on transparency in planning procedures and the application of the rules of natural justice to Hearings under Section 18 and Section 19 of the Town and Country Planning Act (Cap 240). We particularly welcome her rulings that the applicant and the Chief Town Planner should exchange their submissions prior to any Hearing. Disclosure like this is normal in judicial and quasi-judicial proceedings. We also welcome the Judge's statements about circulation of the report written by the person chairing the Hearing and also about requiring a properly reasoned decision statement by the Minister.

BTPS also welcomes the Judge's comments about timeliness. In this case it took 20 months from submission of a valid planning application for the Hearing to take place. From submission to decision took three years. BTPS members working for developer clients are aware of cases which have taken far longer than this. The Judge also made pertinent comments about the often unreasonable time it takes other Government Departments and Agencies to respond to statutory consultations.

However, the case also drew attention to a number of legal and procedural issues which are as yet unresolved:

1. The Judge's instruction that Section 18 cases (mainly planning applications touching the coast or those involving sub-division of 2 or more acres of agricultural land) should not be "dealt with" by the Chief Town Planner but should go directly to the Minister ignored the realities of staffing in the Prime Minister's Office which does not to our knowledge employ any qualified town planners.
2. The judgement did not refer to the Carltona Principle which established that the acts of government officials are synonymous with the actions of the minister in charge of that



department. Application of this principle would allow the Town & Country Planning Development Office to “deal with” Section 18 cases prior to decision by the Minister.

3. The Judge said the person appointed to conduct a Hearing should be “competent enough to hear the application and report accordingly”. We are not convinced that the present system ensures that Hearings are conducted by people with sufficient knowledge and understanding of planning matters and who can act independently.
4. The judgement has caused confusion about the role of the Town & Country Planning Advisory Committee. Section 4(3) of Cap 240 says its role is to “advise the Minister on any matter on which the Minister may seek its advice, on the preparation of development plans and generally as to the planning of development in Barbados”. The judgement makes this a mandatory requirement rather than a discretionary power.
5. There is also confusion in that the judgement says that the Physical Development Plan is a development order under Part III of the Act but at the same time says it is not a statutory instrument. Clarification is needed on this matter.

Some of the legal issues raised by this case may require further consideration by the Courts and it is arguable that they point to the need for a full review of planning legislation in Barbados to make it fit for purpose in matching the needs of a small island developing state (SID) in the twenty first century. The administrative implications require changes to existing procedures and the application of sufficient and appropriate resources. We hope for an early statement from Government clarifying how these matters will be resolved.