NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 132/2000

SUIT NO.E. 460 of 1999

BEFORE: THE HON. MR. JUSTICE FORTE, P.
THE HON. MR. JUSTICE LANGRIN, J.A.
THE HON. MR. JUSTICE SMITH, J.A. (Ag)

BETWEEN	**TEMPLE OF LIGHT CHURCH OF RELIGIOUS SCIENCE OF KINGSTON JAMAICA LIMITED**	**APPELLANT**
A N D	**THE MINISTER OF ENVIRONMENT**	
A N D	**THE TOWN AND COUNTRY PLANNING AUTHORITY**	
A N D	**THE KINGSTON AND ST. ANDREW CORPORATION**	
A N D	**THE CITY ENGINEER**	
A N D	**THE ATTORNEY GENERAL**	**RESPONDENTS**

Dr. Lloyd Barnett instructed by **Norman Wright & Co.,** for Appellant

Miss Rose Bennett for Kingston and St. Andrew Corporation

Mrs. Beecher-Bravo for City Engineer

Lackston Robinson for Minister of Environment, Town and Country Planning Authority and Attorney General

2nd ,3rd ,4th ,5th ,29th ,30th ,31st , October 2001 and 31st July 2002

FORTE, P:

I have read in draft the judgments of Langrin, J.A. and Smith, J.A. (Ag.) and agree that the appeal should be dismissed. However, as I disagree on one fundamental issue, I am compelled to record a few words of my own.

The 1978 approval for change of use granted by the Town and Country Planning Authority was granted to R.L. Villiers for Metaphysical Study Group and specifically mandated that it applied only to the applicant and/or owner and is not transferable. The change of use related to a change from use as a residence to a center for Religious group meeting. The approval was granted to the Metaphysical Study Group, who at that time was the owner of the property.

Since that time, however, the group was incorporated to become Metaphysical Study Group of Jamaica Ltd and the title to the land was thereafter vested, in the Company. Three years later in June 1983 the group changed its name to become Temple of Light Chuch of Religious Science of Kingston Jamaica Ltd. Consequently, the issue arose as to whether the registered company could be the beneficiary of the permission granted in 1978 for the change of use. In my judgment, the appellant is a different entity than the persons to whom the permission was granted. The Town and Country Planning Authority had the authority to place the condition on its permission (see Section 15(4) of the Town and Country Planning Act) and as a result that permission was not transferable to the new company – the appellant. In any event that permission related solely to a change of use, and not to any other development, which is now sought.

As my brothers have dealt in detail with the other issues in the case, I will confine myself to making a comment on the application to the circumstances of this case, of the

provision of the two relevant Acts – the Town and Country Planning Act, and the Kingston and St. Andrew Building Act.

The Town and Country Planning Act created per section 3(1) a Town and Country Planning Authority (the "Authority"). By virtue of section 5(l) the Authority has the responsibility for "preparing so many or such provisional development orders as it may consider necessary in relation to any land, in any urban or rural area, whether there are or are not buildings thereon, with the general object of controlling the development of the land comprised in the area to which the respective order applies, and with a view to securing proper sanitary conditions and conveniences and the co-ordination of roads and public services, protecting and extending the amenities and conserving and developing the resources of such area."

"Development" is defined by section 5(2) as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The sub-section thereafter creates exceptions which are not here relevant.

The Town and Country Planning Act, therefore is the machinery by which development is controlled in particular areas, obviously with the intention of achieving organized development programmes. The erection or alteration or for that matter the change of use of a building is merely a part of the overall consideration for determining the structured development of a particular area. Consequently, any such permission must be granted in that context.

To deal specifically with individual applications in respect of privately owned premises, the legislature provided per the Town and Country Planning (Kingston) Development Order 1966, the process by which such applications should be considered. Paragraph 6(1) of the Development Order provides that an application for planning

permission must be made on a form supplied by the Local Planning Authority or the Authority. Such an application must be accompanied by:

(i) a plan sufficient to identify the land to which it relates, and

(ii) such other plans and drawings as are necessary to describe the development which is the subject of the application.

Important in the context of this case is paragraph 6(2) of the Development Order which provides that an applicant may make an OUTLINE APPLICATION under sub-paragraph (1) for permission for erection of any building subject to the making of a subsequent application to the Local Planning Agency with relation to any matters relating to the siting, design, or external appearance of the building or the means of access thereto. In that event particulars and plans in regard to "these matters" shall not be required and permission may be granted subject as aforesaid (with or without conditions) or refused.

A relevant proviso is that such permission must be expressed to be granted as an outline application and the approval of the Planning Authority shall be required with respect to the matters reserved in the planning permission before any development is commenced.

These provisions clearly indicate that the Development Order is concerned not with the mere structural integrity of the building, but with the granting of planning permission, in the context of relevant matters in respect of the development of any particular area. Mr. Lascelles Dixon, deponed that in October of 1992 he submitted on behalf of the appellant, an application which was accompanied by preliminary design drawings consisting of a copy of the title of the property, site lay-out drawing, floor plan of the proposed facility showing its relationship to the existing building and general layout of the building, building sections and elevations which gave a full description of the proposed building. He exhibited a copy of the "preliminary drawings". In response to

this application, he received a letter from the Town Clerk of the Kingston and St. Andrew Corporation, which informed him that the application had been approved as an Outline approval. The exact content of this letter will be addressed later in this judgment.

It appears that in 1998 the appellant made two applications in respect of its proposed development, which are relevant to the present issues. The first was made in April of that year on prescribed form headed -

"Town and Country Planning (Amendment) Act 1987

Kingston Development Order."

This application clearly made under the Development Order requested permission to construct a Multi-Purpose Building. In his affidavit Mr. Lascelles Dixon, architect for the appellant avers that this application was submitted with "the detailed building plans." However, except in respect to an "outline application", paragraph 6(1) of the Development Order requires as stated earlier, that the application should be accompanied by:

(i) a plan sufficient to identify the land to which it relates,

and

(ii) such other plans and drawings as are necessary to describe the development which is the subject of the application.

The detailed building plans must therefore not have been in an effort to satisfy (i) and (ii) above. I will return to this later.

The other application was made on a form from the Kingston & St. Andrew Corporation, headed "BUILDING APPLICATION FORM". This form appears to represent an application for permission to erect a building in terms of its structural integrity as it speaks to e.g. total area of existing structure in ground, and of land, of habitable rooms, approximate cost of construction, building heights, drainage, surface

water etc. This was an application obviously made under section 10 of the Kingston & St. Andrew Building Act.

At the time these applications were made, the Kingston and St. Andrew Corporation was (as of 1992) the local planning authority, and appears to have exercised this jurisdiction through its Building and Town Planning Committee.

The first application that was made in 1998 under the Kingston Development Order, was as stated earlier seeking permission by virtue of paragraph 6(1) of that Order. It was not an application which was outline only, as provided for by paragraph 6(2). The appellant contends that an outline application had already been made and approved in 1993 and consequently, it was only necessary to submit detailed plans in keeping with the condition set out in that approval. This is evidenced by a letter to the offices of the appellant's representative and architect Mr. Lascelles Dixon. This letter was addressed by Errol A. Bennett the Town Clerk of the Kingston and St. Andrew Corporation and reads as follows:

"9th March, 1993

> Re: Building Application (Outline) Under the Town and Country Planning Act and the Kingston and St. Andrew Building Act. 4-6 Fairway Avenue – Seymour Lands, Kingston 10.
>
> I am directed to inform you that the Council's Building and Town Planning Committee of the Kingston and St. Andrew Corporation at its meeting held on the 20th January 1993 approved of your Outline Building Application to erect a Religious Group Centre at the above address on the following condition –
>
> (1) That detailed building plans are submitted for consideration and approval prior to the commencement of any construction work." [Emphasis added]

As the only statutory reference to "Outline Building Application" appears in paragraph 6(2) of the Development Order, it is clear that the above letter was giving

approval to such an application with the requirement as provided for in paragraph 6(2) for the making of a subsequent application with relation to "any matters relating to the siting, design or external appearance of the Building or the means of access thereto." This grant of permission was also faithful to the proviso in sub-paragraph (a) of paragraph 6(2) which states that an "outline permission" must state that it is granted as an outline application and the approval of the Planning Authority shall be required with respect to the "matters reserved in the planning permission before any development is commenced." The reference in the letter to the Kingston and St. Andrew Building Act is, however difficult to understand, as there is no provision for an "Outline approval" under that Act.

Significantly, the matters required to be provided in the subsequent application under paragraph 6(2) had already been met in the 1992 application in respect of which only an "Outline approval" was granted, reserving of course approval of detailed building plans.

In March 1999, the Town and Country Planning Authority refused the 1998 application by the appellant by letter addressed to Lascelles Dixon and Associates in the following terms:

> "Re: Planning application for the construction of a multi-purpose building at 4-6 Fairway Avenue St. Andrew By Lascelles Dixon and Associates.
>
> The Town and Country Planning Authority (TCPA) at its meeting held on December 16, 1998 refused permission for the captioned development, as illustrated on plans (annex 1) date stamped by the Town Planning Department June 19, 1998.
>
> The proposal consists of an auditorium and complementary facilities such as meeting rooms, lavatories and parking facilities etc.
>
> The reasons for refusal are as follows:

> 'The proposal is inconsistent with the character of the area and would result in the establishment of a multi-purpose use alien to this predominantly residential community.
>
> The proposed development would result in an undesirable noise intrusion in the community.
>
> The proposed accesses at this busy intersection would be an impediment to road safety and the free flow and movement of traffic'."

By letter dated 23rd April 1999, the Town Clerk of the Kingston and St. Andrew Corporation informed the appellant of the refusal by the Council's Building and Town Planning Committee at its meeting of 7th April 1999 of its application "to erect a multi-function building consisting of a main auditorium, hospitality meeting room, Minister's room and sanitary facilities at the above address in accordance with the plans submitted." He thereafter lists as the reasons for the refusal, the exact reasons stated in the letter to the appellant by the secretary of the Town and Country Planning Authority.

In effect then, both applications were refused; that is, the application for development, as also the application for the construction of the building.

Dr. Barnett for the appellant contended however that the application made in 1998, was in furtherance of the Outline Building approval granted in 1993.

An Outline Building approval by virtue of Section 15(4) runs with the land, and remains to the benefit of persons who are from time to time interested in the land.

Section 15 (4) states as follows:

> "Where permission to develop land is granted under this Part, then, except as may be otherwise provided by the permission, the grant of permission shall enure for the benefit of the land and of all persons for the time being interested therein, but without prejudice to the provisions of Part V with respect to the revocation and modification of permission so granted."

Section 22(1) which is under Part V of the Act gives the local planning authority the power to revoke or modify the permission granted under Part III (Sec. 15(4)) if it appears to the authority expedient so to do, having regard to the provisions of the development order and to any other material consideration. Such an order for revocation or modification cannot take effect, unless it is confirmed by the Minister [See Section 22(2].

In the case of ***Heron Corporation Ltd and another v Manchester City Council*** [1978] 3 All ER 1240 Lord Denning M.R. dealing with an English Statute, which is similar in terms to the Jamaican Act, had this to say:

> "... Once granted, an outline permission is a valuable commodity which is annexed to the land. It runs with the land from purchaser to purchaser and enhances its value considerably. Often enough contracts of sale are concluded only subject to planning permission being granted. Everyone realizes that it is of great worth."

In the English Statute, there is a time limit to the life of an outline permission. An application for approval must be made within three years of the grant of the outline permission i.e. all reserved matters must be dealt with, and approval sought within that period. In our jurisdiction, there is no such time limit required in our Statute, and consequently, the outline permission will apparently run with the land indefinitely.

There is no evidence that the outline permission granted in 1993, has been revoked or modified. This was not an issue before the Minister, who treated the appeal, as he ought to have, as one from a refusal of planning permission under paragraph 6(1) of the Development Order. There was no evidence that he had been required to confirm a revocation of the 1993 Outline approval.

There is no doubt then, that the outline approval granted in 1993 is still in existence. Was the application in 1998, an application in furtherance of the 1993 approval? If it were, it did not say so. Of relevance, however is the allegation by the

appellant, that detailed plans were submitted with this application in furtherance of the matter reserved in the outline approval which was:

> "That detailed building plans are submitted for consideration and approval prior to the commencement of any construction work."

The respondent per the affidavit of Ms. Blossom Samuels, the Government Town Planner admits that "detailed drawings" for the construction of a multi-purpose Building" were submitted with the 1998 application. It is evident from the substance of Ms. Samuel's affidavit that the application was treated as a new application. After stating that the application was referred by the Kingston and Saint Andrew Corporation to the Town and Country Planning Authority, she continues:

> "9. The reference to the Town and Country Planning Authority by the Kingston and St. Andrew Corporation was in keeping with the procedure that where an application for planning permission for development is not in conformity with the Kingston Development Order, then that application is referred to the Town and Country Planning Authority for approval.
>
> 10. That the matter was considered by the Town and Country Planning Authority at its meeting held on December 16, 1998. That the siting, design, external appearance, the means of access, the suitability for the locality and the extent of the intensification of user including the increased noise level and traffic were considered against the fact that the area is zoned as a residential area.
>
> 11. That since it was a planning permission that was being considered, the results of a community survey was also taken into consideration.
>
> 12. That by letter dated March 1, 1999 the Applicant was notified of the decision of the Town and Country Planning Authority to refuse Planning Permission, along with the reasons."

Those reasons, we have already looked at in the letter of March 1999, all of which appear to relate to matters, which must have been considered earlier, when the outline approval was given in 1993.

Significantly, no mention is made by Ms. Samuels of the 1993 outline approval, a factor which leads to the inference that the 1998 application was in fact treated as a new application. Even thereafter, when the decision was appealed to the Hon. Minister, in his dismissal of the appeal in August 1999, he said, inter alia,

> "The proposed development contemplates both a change and an intensification of the current usage, which will not be compatible with the character of the area. My decision therefore is to dismiss the appeal."

That statement is a clear indication that the Hon. Minister was treating with a refusal of an application being made for the first time because the matters to which he referred, are all matters which would have had to be considered, in determining whether an outline approval should have been given in 1993.

It can reasonably be concluded then, that the Town and Country Planning Authority did not address its consideration to the fact that there was already in existence, an outline approval. Had it done so, it would have been faced with the fact that all these matters that it determined adversely to the appellant's application were already decided in 1993, in its favour. There is no indication that the detailed plans submitted by the appellants were considered and examined, on the basis that an outline approval had already been given. If it had, and the Town and Country Planning Authority wanted to rescind it one would have expected a revocation or modification of the Order, assuming of course that the detailed plans submitted were not approved, or some other consideration led the authority to the conclusion that it was expedient so to order. In that event, the Minister's confirmation had to be obtained before the revocation or modification took effect.

It should be re-emphasized that a new application made under paragraph 6(1) of the Development Order, must be accompanied by:

(1) a plan sufficient to identify the land to which it relates
(2) such other plans and drawings as are necessary to describe the development which is the subject of the application.

As I earlier stated, detailed "building plans" which the appellants maintained were submitted with the 1998 application would not by themselves satisfy the requirements of (1) and (2) above. It is more likely, that the detailed building plans referred to by Mr. Dixon was in relation to the condition set out in the "outline approval" obtained in 1993.

In my judgment, although there was no specific reference to the 1993 outline approval in the application of 1998, the Town and Country Authority ought to have known from their own records that the outline approval existed, and should have treated with the 1998 application on that basis. They did not. It appears however that the Authority considered the detailed plans submitted in the 1998 application for planning permission and in the end did not approve it. As in the outline approval, the Authority reserved the right to do so. I would hold that even though the Authority considered the plans in the context of a new application, it has been demonstrated that it would in any event have come to the same conclusion had it been dealing with the application as a subsequent application made in furtherance of an outline approval. That being so, it would no doubt have revoked the outline approval. In those circumstances, I am constrained to conclude, that no useful purpose would be served in sending the matter back to the Authority to be considered on the basis of the outline approval, and consequently would find in favour of the respondent.

The application for Building approval made under the Building Act was also refused. In the arguments, both applications were treated as one by the appellants, and consequently all the submissions focussed on the refusal of planning permission,

seemingly subsuming the application under the Building Act in the complaints re the refusal of planning permission. In the end, no sustainable argument has been made in respect of that refusal, nor can I see any valid complaint that can be made against it. For these and the reasons advanced by Langrin, J.A. I would conclude that the appeal in respect of the refusal of permission to erect the building cannot be sustained. In the circumstances, I would not disturb the decision of the Kingston and St. Andrew Corporation Building Committee to refuse building permission.

As a result, in spite of my conclusion in relation to the refusal of planning permission I nevertheless agree that the appeal should be dismissed.

LANGRIN, J.A.:

This is an appeal from the judgment and order of Mrs. Harris J. made on the 17th October, 2000 dismissing an application by way of Judicial Review in which the appellant sought orders of certioriari mandamus, declarations and damages with respect to its application for permission to construct a multi-purpose building at 4-6 Fairway Avenue, St. Andrew.

The relevant facts are that on June 27, 1978 R.L. Villiers, the applicant for the Metaphysical Study Group, made an application to the Town and Country Planning Authority (hereinafter called (the "TCPA") for the change of use of the premises to a religious centre for group meetings.

By September 14, 1978 the TCPA approved the application for change of use from a residence to a centre for religious group meetings. The said approval was made subject to certain conditions, the most noteworthy being: "this approval applies only to the applicant and /or owner and is not transferable".

There was also an indication at the end of the letter of approval, that the permission granted does not include permission under the local building regulations. An application was made under the local building regulations and by letter dated October 17, 1978 the City Engineer advised that the application had been granted.

On May 29, 1979 the Metaphysical Study Group was incorporated. In consequence, the title to the land was vested in the Metaphysical Study Group of Jamaica Ltd. as owner in fee simple on June 5, 1980. Approximately three

years later, on June 14, 1983 the appellant changed its name to the Temple of Light Church of Religious Science of Kingston, Jamaica Ltd. hereinafter called the "appellant".

The appellant made an application on February 23, 1989 to the TCPA for planning and building permission for the construction of a multipurpose building with stage for performance. The TCPA refused the application on August 8, 1989.

The Kingston and St. Andrew Corporation (hereinafter referred to as the "KSAC") became the Local Planning Authority in 1992 and in October 1992 the appellant applied to the KSAC for outline building permission. By letter dated March 9, 1993 the Building and Town Planning Committee of the KSAC approved the outline building application that was made by the appellant. This gave the appellant permission to erect a Religious Group Centre based on the following conditions:

> "That detailed building plans are submitted for consideration and approval prior to the commencement of any construction work".

An application was made in the Supreme Court by way of Originating Summons to modify and discharge certain restrictive covenants on the Title. A suit was filed on September 9, 1993 and served on the KSAC and the TCPA. Neither body offered any objection to the discharge and modification of the relevant covenants.

In particular the appellant succeeded in discharging the restrictive covenant that read:

> "No building other than one private dwelling house with the necessary outbuildings appurtenant thereto costing not less than Eight Thousand Pounds shall be erected on each of the said parcel of lands and such building shall be used for no purpose other than a place of private residence"

Further, the appellant also successfully modified the following restrictive covenant so that the underlined portions hereunder were omitted:

> "Not to erect on the said land or on any part thereof any building to be used as a shop, storehouse, dairy place of trade, church, chapel place of worship, school, house, meeting house or place of amusement and the said land shall not be used as a dumping ground or receptacle for stones bush or any other material or materials."(emphasis supplied)

The order by which the above restrictive covenants were either modified or discharged was made on July 31, 1997.

In April, 1998 detailed plans were submitted to the KSAC pursuant to the Kingston and St. Andrew Building Act (hereinafter called the "KSABA"). Objections were received but copies were never supplied to the appellant despite repeated requests.

On June 2, 1998 a notice was received by the appellant informing him of his right to appeal to the Minister if he did not have a response by August 8, 1998. Since there was no response an appeal to the Minister was duly lodged on August 27, 1998.

On March 1, 1999, the TCPA advised the appellant that planning permission had been refused.

The Honourable Easton Douglas, Minister of Environment and Housing conducted a hearing on April 7, 1999 at the end of which he stated that he would reserve his decision in order to seek the advice of the Attorney General. By letter dated August 3, 1999 the Minister informed the appellant that the decision of the TCPA was to be upheld and further stated:

> "The proposed development contemplates both a change and an intensification of the current usage, which will not be compatible with the character of the area".

The judgment in favour of the respondents was challenged on several grounds on appeal. In support of the primary grounds of appeal Dr. Barnett submitted in the main as follows:

> "The Kingston and St. Andrew Building Act was enacted in 1883 before there was any comprehensive planning legislation for the entire Island. In respect of those areas of the parishes of Kingston and St. Andrew to which the Act applied provision was made by virtue of section 10(1) for the approval to be given in respect of:
>
> (i) approval of the suitability to the locality or neighbourhood of the frontage, elevation and design of the proposed building (planning approval); and
>
> (ii) approval of **accurate** plans and if required of detailed working drawings (building approval).
>
> Section 20 of the Act required the buildings to be constructed in accordance with the regulations set out

in the Schedules to the Act. Thus the scheme of this Act was for the obtaining of outline (or planning) approval and subsequently building (or engineering approval). Under this Act a dispute as to the approval of the plans can be taken on appeal to a statutory Tribunal of Appeal, comprising of the Chief Technical Director."

The Statutory Framework
The Town and Country Planning Act (1958)

The Town and Country Planning Act is primarily planning legislation with the object of controlling the manner in which development takes place. Section 5(2) of this Act defines "development" as the carrying out of building, engineering, mining and other operations or the 'material change in use' of any building or land. The section sets out the operations or uses of land that will not be termed a development.

It is significant to note that the change of use in the instant case is not covered by any of the six exceptions. Therefore the change of use in the instant case must be deemed to be a 'development' within the meaning of the Act.

Section 5(1) deals with the preparation of provisional development orders. This is done by the TCPA after consultation with the Local Planning Authority. Section 5(3) stipulates that the provisional development order shall be published in the Gazette and in three issues of the local newspapers. The section also specifies what is to be contained in the publications.

Section 6(1) deals with objections that can be made by interested persons to the provisional development orders. Section 6(2) requires the objections to be made in writing to the TCPA within 14 days of the publication.

Section 6(3) defines interested persons to mean, any local authority concerned, any person in whom is vested any freehold estate within the locality; any person who is entitled under the Water Resources Act and whose interest will be affected by the application of the order.

Section 7 deals with the procedure whereby the objections may go to the Minister who may confirm the development order with or without modification. Section 8 gives the Minister the right to amend any confirmed development order.

Section 10(1) states what every confirmed development order should specify and defines clearly the area to which it relates. According to section 10 (2) the confirmed development order may be granted either conditionally or subject to conditions. Section 10(3) states that provision for development may require the approval of the Local Planning Authority (hereinafter called the "LPA") with respect to the design or the external appearance thereof. Section 10(4) states that in order to enable development to be carried out in accordance with the provisions granted, a development order may direct that an enactment passed before or after the Act shall not apply or apply with modifications.

Section 11(1) states:

> "Subject to the provisions of this section and section 12, where application is made to a local planning authority for permission to develop land, that authority may grant permission either unconditionally or subject to such conditions as they think fit or may refuse permission, and in dealing with any such

> application the local planning authority shall have regard to the provisions of the development order so far as material thereto, and to any other material considerations".

It should be observed that the LPA in the instance of Kingston and St. Andrew is the Council of the KSAC.

Section 12(1) states that the TCPA may give directions to the LPA that applications for permission to develop land shall be dealt with by the TCPA. Section 12(1A) provides that where there is an application that is not in conformity with the confirmed development order, it shall be referred to the TCPA. A proviso to the section states that before such application is decided the applicant or the LPA should be given an opportunity to appear and make representation before the TCPA.

Section 13(1) provides for an appeal to the Minister. An appeal lies where an application was made to the LPA for permission to develop land and same is refused by the LPA or the TCPA. Section 13 (2) empowers the Minister to allow or dismiss the appeal or alternatively to reverse or vary any part of the decision. Section 13(3) gives the applicant or the Authority concerned the opportunity of appearing before the Minister.

Under Section 14(1) application may be made to the LPA to determine whether the proposed operations or the particular change of use shall constitute a development.

Sections 16 to 21 deal with compensation for refusal or conditional grant of planning permission.

Section 22(1) states that the LPA may revoke or modify the permission granted. However, no such order shall take effect unless confirmed by the Minister Section 22(2) provides that where such matters are referred to the Minister, the LPA shall serve notice on the owner to be heard by the Minister. Section 22(3) stipulates that the power to revoke in the case of change of use may be exercised at any time before the change of use has taken place. Section 22(4) states that there can be compensation for the revocation of the permission.

The Town and Country Planning (Kingston) Development Order, 1966

Paragraph 6(1) and (2) of the Development Order, which deals with applications for planning permission, provides:

> "(1) An application to the local planning authority for planning permission shall be made in a form issued by the local planning authority and obtainable from that authority or from the Authority, and shall include the particulars required by such form to be supplied, and be accompanied by a plan sufficient to identify the land to which it relates and such other plans and drawings as are necessary to describe the development which is the subject of the application together with such additional number of copies (not exceeding five) of the forms and plans and drawings as may be required by the directions of the local planning authority printed on the form; and the local planning authority may by a direction in writing addressed to the applicant require such further information to be given to them in respect of an application for permission made to them under this paragraph as is requisite to enable them to determine that application.
>
> (2) Where an applicant, so desires, an application expressed to be an outline application may be made

under sub-paragraph, (1) of this paragraph for permission for the erection of any building, subject to the making of a subsequent application to the local planning authority with respect to any matters relating to the siting, design or external appearance of the buildings, or the means of access, thereto; in which case particulars and plans in regard to those matters shall not be required and permission may be granted subject as aforesaid (with or without other conditions) or refused: Provided that--

(a) where such permission is granted it shall be expressed to be granted under this paragraph on an outline application and the approval of the planning authority shall be required with respect to the matters reserved in the planning permission before any development is commenced; (emphasis supplied)

(b) where the planning authority are of the opinion that in the circumstances of the case the application for permission ought not to be considered separately from the siting, design or external appearance of the building, or the means of access thereto, they shall within the period of one month from the receipt of the outline application, notify the applicant that they are unable to entertain such application, specifying the matters as to which they require further information for the purpose of arriving at a decision in respect of the proposed development, and the applicant may either furnish the information so required (in which event the application shall be treated as if it had been received on the date when such information was furnished and had included such information) or appeal to the Minister under section 13 of the Law within one month of receiving such notice, or such longer period as the Minister may at anytime allow, as if his outline application had been refused by the planning authority."

The Kingston and St. Andrew Building Act

Section 10 sets out the procedure to be adopted by persons proposing to erect or re-erect buildings as follows:

> **10.**—(1) Every person who proposes to erect or re-erect any building or any part thereof, or to extend any building or any part thereof, shall give notice thereof to the Building Authority, and such notice shall be accompanied by—
>
> (a) An accurate ground plan showing the land or site, the frontage line for length of twenty feet, of any building, whether standing or in ruins, adjacent on each side thereof, and the full width of the street or streets immediately in front and at the side or back thereof, if any.
>
> (b) An accurate plan showing the several floors of such building and the front elevation thereof and at least one cross section and such other cross or longitudinal sections and further particulars, as the Building Authority may from time to time by regulation or in any particular case require.
>
> (c) An accurate plan showing the frontage of such building on any street or lane.
>
> All such plans shall be to a scale not smaller than one eighth of an inch to one foot, and the Surveyor shall, if he approve of such drawings, notify his approval of the same in writing to the builder, or he may call for amended drawings for approval or otherwise. In case of dispute the matter shall be submitted to the Building Authority. (emphasis supplied)
>
> Provided always that no plans shall be approved as hereinbefore mentioned unless the class of building and the frontage, elevation and design are in the opinion of the Building Authority suitable to the locality or neighbourhood and unless they make provision for sanitary arrangements to the satisfaction of the

Surveyor or the Building Authority or in cases where house sewers cannot be required, to the satisfaction of the Corporation, nor unless plans under the Kingston Improvements Act have been approved by the Building Authority. The Building Authority may also at any time before or after the work has been commenced, require the builder or owner to submit such working drawings or detailed plans as, and drawn to such scale as the Surveyor may prescribe. The procedure in regard to approval or otherwise of such working drawings or detailed plans shall be in all respects as above described:

Provided also that the Surveyor may in his direction accept a notice unaccompanied by plans and approve of the building proposed subject to such written instructions or directions as may from time to time be given by the Surveyor or Building Authority, and in such case any failure to comply with any of such instructions or directions shall for the purposes of the next subsection be deemed to be a deviation from the approved plan.

(2) Every person who shall erect, or begin to erect or re-erect, or extend, or cause or procure the erection, re-erection or extension of any such building or any part thereof, without previously obtaining the written approval of the building Authority; or, in case of dispute, of the tribunal of appeal, or otherwise than in conformity with such approval; and every builder or other person who shall, in the erection, re-erection or extension of any such building or part thereof deviate from the plan approved by the Building Authority; or, in the case of detailed or working drawings, by the Surveyor or the tribunal of appeal, shall be guilty of an offence against this Act, and liable to a penalty not exceeding fifty thousand dollars, besides being ordered by the Court to take down the said building or part thereof, or to alter the same in such way as the Surveyor shall direct, so as to make it in conformity with the approval of the Building Authority or the tribunal of appeal."

Section 16 of the Act states:

> **"16.** The approval of the Building Authority of any plans or particulars, or any sanction, or conditional assent by the Building Authority shall be signified by writing, under the hand of the Surveyor or of any person duly authorized so to do by the Building Authority by resolution, and counter-signed by the Clerk or Secretary of the building Authority, and shall bear the date of such approval."

Section 20 stipulates that:

> **"20.** All new buildings, other than temporary buildings built in accordance with law, shall, subject to the provisions of this Act, be built in accordance with the regulations, in the First and Second Schedules, or made pursuant to the provisions of this Act".(emphasis supplied)

Status of the 1978 Approval

It is undisputed that the relevant area is zoned residential and the appellant wished to use the premises for purposes other than residential. Permission was sought to change the use of the premises and to use the building as a religious centre for group meetings. On the 14th September, 1978 the TCPA granted a conditional approval for "change of use from residential to (a) centre for religious group meetings".

The following conditions were imposed:

(1) The level of noise resulting from the proposed use shall not be such as to cause justifiable ground for complaint by the residents in the immediate area.

(2) No alteration being undertaken that will in any way impair the residential character of the premises.

(3) Parking facilities being confined to the rear of the premises.

(4) There being no breach of existing covenants or supportable objections from adjoining owners.

(5) This approval applies only to the applicant and/or owner and is not transferable) (emphasis supplied).

Section 15(4) of the TCP Act provides as follows:

> "**15** (4) "Where permission to develop land is granted under this Part, then except as may be otherwise provided by the permission, the grant, or permission shall enure for the benefit of the land and all persons for the time being interested therein, without prejudice to the provisions of Part V with respect to the revocation and modification of the permission so granted."(emphasis added)

Section 15(4) gives the approval precedence over the other statutory provisions. Therefore, where the approval, as in this case, is specifically restricted to the owner and/or appellant and is not transferable, it cannot run with the land. The approval which was granted related specifically to the applicant namely, "R.L Villiers or the owner i.e. Metaphysical Study Group." The approval is therefore not transferable to any other person or persons who may have an interest in the property at the time when approval was granted, and neither could it be transferred to persons who obtained an interest in the property subsequent to the grant of approval.

In 1978 when the application for change of use was granted, Metaphysical Study Group was not incorporated. In 1979 Metaphysical Study Group of Jamaica Ltd. was registered as a company and that company

subsequently changed its name in 1983 to the Temple of Light Religious Science Jamaica Ltd.

It follows that when the change of use approval was granted the appellant did not exist. There is no factual basis for contending that Metaphysical Study Group comprised the same persons or group as the company which was subsequently incorporated since there are no documents indicating the names of the members of the group or the names of the directors of the company. Indeed as Lord McNaughten said in ***Salomon v Solomon*** [1897] A.C.22 even if the company was comprised of exactly the same persons, it would be a different entity in law.

Dr. Barnett, on behalf of the applicant cited several cases to show that "owner" encompasses the person who is beneficially entitled to the property from time to time. Therefore the fact of a subsequent incorporation or a change of name is not sufficient to deprive it of the benefit of a planning permission.

I accept the respondent's submission that pursuant to condition 5 of the conditional approval dated 14th September, 1978, the appellant was not entitled to the benefit of the 1978 approval and the Metaphysical Study Group could not transfer that approval to the appellant.

In my view the approval for the change of use enured exclusively for the benefit of Metaphysical Study Group and not for the benefit of the land. It was not transferable and extended only to the owner of the property and

applicant at the date of the approval. Once the owner changes the approval comes to an end.

It is therefore not relevant to examine the meaning or definition of the word "owner" in relation to these facts as it is not being disputed whether or not Metaphysical Study Group was the owner of the premises in 1978.

Based on the plain and ordinary meaning, the owner would have to be the person whose name is endorsed on the Title. The Title was issued in the name of the Metaphysical Study Group of Jamaica Ltd. Legally the company is the owner as distinct from the members. The fact that the permission is stated to be " not transferable," shows that there was an intention to limit the persons to whom the permission applied. If "owner" were to be interpreted in the way contended by the appellant eg. equitable owner, then the permission would have been applicable to a wide cross-section of persons. The fact that the Authority specifically sought to restrict and did restrict the approval to "the applicant and/or owner" shows a clear intention to limit the range of persons and/or entities who were entitled to the benefit of the approval- namely, the applicant and/or owner at the material time.

Did the 1978 approval permit the appellant to erect a new building?

On the 27th June, 1978 an application was made for a change of use of the premises from residential and to use the building as a religious centre for group meetings.

A response from the Kingston and St. Andrew Corporation, City Engineer's Office dated 17th October, 1978 which was addressed to Metaphysical Study Group c/o R. L. Villiers reads:

> "re: Building Application (Recommended)
> 4-6 Fairway Avenue (Change of Use)
>
> With reference to your application dated 27/6/78, to change the use from residential to centre for Religious Group Meeting at the above named premises, I have to inform you that the Building and Town Planning Committee of the Kingston and Saint Andrew Corporation at its meeting held on 4/10/78, approved your application on the following conditions:
>
> 1. That the level of noise resulting from the proposed use shall not be such as to cause justifiable ground for complaint by the residents in the immediate area.
>
> 2. That no alteration be undertaken that will in any way impair the residential character of the premises.
>
> 3. That parking facilities be confined to the rear of the premises.
>
> 4. That there be no breach of existing covenants or supportable objections from adjoining owners.
>
> Kindly arrange to take delivery of one set of approved plans from Building Section of the Kingston and Saint Andrew Corporation.
>
> Yours truly
> FOR CITY ENGINEER"

It is abundantly clear that the application made on the 27th June, 1978 was an application for change of use and not for permission to erect additional buildings. There were two approvals in 1978, both in response to one

application for change of use. There was one approval emanating from the KSAC and the other from the TCPA. The appellant contends that the second approval constituted an expression of approval for the change of use under both the Planning and Building Statutes. It is argued that the approval under both statutes did not necessitate detailed plans or working drawings.

It became necessary, pursuant to condition 4 of the approval to modify and discharge the restrictive covenants in 1997. Great reliance was placed by the appellant on paragraph 6 of the Development Order 1966 in support of that contention.

Paragraph 6 of the Development Order states that applications for planning permission shall be made to the Local Planning Authority. Planning permission is defined in the TCP Act 1958 to mean "permission for development" and development has the meaning ascribed to it in section 5 of this Act which defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Since permission for development includes building it would be logical to believe that there would be no need to go on to seek approval under the KSABA. However, the KSABA by way of section 10 requires a notice to be submitted along with accurate plans to the Building Authority. The notice is in the way of an application and that word is actually used in section 10 of the Building Act.

The TCP Act and the KSABA both deal with permission in relation to building. The former deals with developments which includes, building as well as, change of use of the building, while the latter deals with erection of a new building. It is the intention of the legislature that an application should be first made to the LPA followed by an application to the building authority pursuant to the KSABA. This is borne out when one examines the note at the bottom of the LPA's approval which reads:

> "This permission does not imply or include permission under the local building regulation."

This approval with this noted limitation makes it pellucidly clear that it granted approval for the change of use under the TCP Act and not under the building regulations. Since no plans were submitted it was an application under paragraph 6(2) of the Development Order for outline approval. Consequently an application was now necessary under the local building regulation.

Miss Bennett for the respondent Corporation submitted that there is no evidence of an application to the building authority nor is there anything to indicate that accurate plans were submitted. This is a powerful submission because it supports the inference that there was a referral to the Authority in accordance with the provision of section 12(1) of the TCP Act. Additionally it serves to explain the caption of one of the approvals:

"Re: Building Application (Recommended)
4 and 6 Fairway Avenue (Change of Use"

The significance of the above is that a building application now needs to be made and is in fact recommended. Further the governing words of the approval are:

"With reference to your application dated 27/6/78, to change the use..." (emphasis supplied)

It must be noted that there is no reference to an application to erect a building.

Essentially the "Building Act" (the KSABA) is not concerned with planning control. This Act is limited in scope, in that it merely affects the way in which buildings and other structures are erected and maintained. Planning control encompasses most uses of land and is concerned with any development in, on, over or under land. The Town and Country Planning Act is the primary legislation. An application for planning permission must proceed under that Act. The Building and Town Planning Committee of the KSAC has a dual function. It considers applications under the Building Act and it also considers applications under the TCP Act.

On an application for building approval the Committee considers the constructive requirements under the Building Act to ensure that these requirements are met. The Committee is concerned only with the structural integrity and safety of the building or other structure which is to be erected. On an application for planning permission the Committee must have regard to any

material consideration including environmental issues and public as well as private interests.

Harris J was correct in her assessment that there is no evidence of an application or plans submitted to the Building Authority as required by section 10 of the KSABA. The 1978 approval, in my view ,was therefore limited in its scope and tenor and did not satisfy the legal requirements under the KSABA.

The 1989 Application

In 1987 the functions of the Local Planning Authority for Kingston and St. Andrew were transferred from the KSAC to the Town and Country Planning Authority and the functions of the Building Authority were transferred from the KSAC to the Government Town Planner.

Blossom Samuels in paragraph 5 of her affidavit said that Lascelles Dixon on behalf of Temple of Light made an application for planning and building permission on the 23/2/89.

By notice dated August 8, 1989 Lascelles Dixon was informed that the Town and Country Planning Authority had refused outline permission and three copies of the plan were returned to him.

The fact of the 1989 applications were brought to the attention of the Minister when he heard the appeal and Mr. Dixon said he did not have a record of it.

No mention of these applications were made by Elma Lumsden or Lascelles Dixon in their Affidavits supporting the application for leave in the

Supreme Court Mr. Dixon only mentioned them in response to Blossom Samuels' affidavit.

The uncontradicted evidence is that an application for Planning Permission was made in 1989 and was refused in the said year by the Town and Country Planning Authority.

The Status of the 1993 Approval

On the 9th March 1993 a letter addressed to Lascelles Dixon & Associates from the KSAC reads:

> "Dear Sir,
>
> Re: Building Application (Outline) Under the Town and Country Planning Act and the Kingston and St. Andrew Building Act. 4-6 Fairway Avenue Seymour Lands, Kingston 10
>
> I am directed to inform you that the Council's Building and Town and Country Planning Committee of the Kingston and St. Andrew Corporation at its meeting held on 20th January, 1993 approved of your Outline Building application to erect a Religious Group Centre at the above address on the following condition:-
>
> (1) That detailed building plans are to be submitted for consideration and approval prior to the commencement of any construction work.
>
> Yours faithfully
>
> ERROL A. BENNETT
> FOR TOWN CLERK"
> (emphasis supplied)

design drawings. This would not have been sufficient to comply with the requirements of Section 10 of the Building Act.

Section 10(1) of the KSABA sets out the procedure to be adopted by any person proposing to erect a building. Notice shall be given to the Building Authority. Such notice shall be accompanied by :-

> "(a)An accurate ground plan showing the land or site, the frontage line from length of twenty feet of any building, whether standing or in ruins adjacent on each side thereof, and the full width of the street or streets immediately in front and at the side or back thereof, if any;
>
> (b) An accurate plan showing the several floors of such building and the front elevation thereof and at least one cross section and such other cross or longitudinal sections and further particulars, as the Building Authority from time to time by regulation or in any particular case require.
>
> (c)An accurate plan showing frontage of such building on any street or lane".

All such plans shall be drawn to scale not smaller than one eighth of an inch to one foot, and the Surveyor shall, if he approves of such drawings notify his approval of the same in writing to the builder, or he may call for amended drawings for approval or otherwise. In case of dispute the matter shall be submitted to the Building Authority.

The first proviso of Section 10(1) of the KSABA is critical because it clearly requires that matters relating to frontage, elevation and design of the building be determined <u>before</u> approval can be given under Section 10.

The condition expressed in the approval which states:

> "That detailed building plans are submitted for consideration and approval prior to the commencement of any construction work"

is more consistent with the provisions of the Development Order rendering it more likely that the approval was done pursuant to the Town and Country Planning legislation.

In my view the appellant therefore received outline building approval pursuant to paragraph 6(2) of the Development Order. However, the condition was never complied with, as there is no evidence of any subsequent plans being submitted. Further there is no application made to the Building Authority under the KSABA which would have been the next step.

The Development Order under the TCPA appears to encroach on the parameters of the KSABA since both Acts make provisions in respect of buildings. However, in light of the rule of statutory interpretation that the specific must prevail over the general, the KSABA must prevail and the appellant must comply with the procedure laid down under the Building Act.

The 1998 Application

This application was made by Lascelles Dixon, architect and consultant for the appellant in April of 1998. The precise nature of the application was not stated in his affidavit but the forms that were submitted were exhibited thereto and appear at pages 42-47 of the record. Page 42 appears to be evidence of an application to the LPA pursuant to the Development Order for the planning permission to construct a multi-purpose building, while pages 43-47 is evidence

of a building application under the KSABA. The learned trial judge was therefore correct to conclude at page 154 of the record that:

> "The application in 1998 must be construed as two separate applications, one with respect to planning permission and one for building permission pursuant to the TCPA and the KSA Building Act respectively."

The building application which appears to be first under the KSABA was not accompanied by 'accurate plans' as section 10 requires. Instead, it was submitted with 'detailed plans'. The terminology may not be significant since the contents may be accurate. However, there is no evidence on which it can be definitively decided.

It is also the evidence of Lascelles Dixon, in reference to the application to the LPA, that there were objections to the permission being granted on the basis that there was excessive noise from the appellant's demolition activities. He deposed that there was no response from the LPA on the status of the application. That was in contravention of section 13(4) of the TCPA. That section states that within the period prescribed in the Development Order the LPA should give notice of their decision. Paragraph 6(7) of the Development Order requires notice to be given to the applicant within three months of the LPA's decision. The decision of the LPA was taken on or around April, 1998.

The notice was however, not forthcoming until March 1, 1999 but there was a letter received before the notice which arrived on June 2, 1998 stating that since the appellant had not received a notice from the LPA, an appeal

could be lodged to the Minister. This was done. In fact, the minutes of the meeting show that it was convened pursuant to the TCPA.

Despite the irregularity on the part of the LPA, the learned trial judge found that the Minister had jurisdiction to hear the appeal and in the alternative, the appellant appeared at the hearing and submitted itself to the jurisdiction of the tribunal and is therefore estopped from asserting lack of jurisdiction on the part of the Minister.

Section 13(3) of the TCP Act states that the Minister shall afford the applicant an opportunity to be heard. This was done as the appellant through Mr. Dixon, made representation at the hearing. Whatever advice the Minister intended to seek from the Attorney General's Chambers had been clearly indicated during the conduct of the proceedings. It cannot therefore be shown that the Minister acted unfairly.

Dr. Barnett submitted that the appellant had a legitimate expectation that the application for planning and building approval would not be refused based on the 1993 approval. The appellant contends that the 1998 refusal is tantamount to a rescission of the 1993 approval which they understand to be granted under both the building and planning legislations. The appellant also asserts that the 1998 application was made under both the building and planning legislations. However, if the appellant had thought that the 1993 application was still effective, they would not have duplicated it in 1989 and again in 1998. All that would have been necessary would be an application to

the building authority. The appellant elected to treat the 1993 approval as ineffective. It does not seem that a claim to a legitimate expectation can now be advanced.

The 1993 approval was clearly pursuant to the Development Order and it was still necessary to obtain approval under the KSABA. The appellant never received approval under the KSABA as that application was refused in 1998.

The misconception that there can be an application for planning permission, which includes permission to build without also seeking the approval of the KSABA has arisen throughout the case for the appellant. The misconception arises because there is admittedly a duplication in the KSABA and the TCPA regarding permission to build. However, since the KSABA is the legislation which specifically deals with building, then it cannot be ignored. So the procedure is to first obtain approval under the Development Order and then to get the approval of the building authority under the KSABA. Technically then, there was no reversal of planning permission and nothing to give rise to a legitimate expectation since there was always a failure, on the part of the appellant, to observe the correct procedure.

The requirements that need to be fulfilled by a person seeking to establish a legitimate expectation have been clearly outlined in the case of ***CCSU v. Minister of Civil Service*** [1894] 3 All E.R 936 . There it was said that in order for an aggrieved party to successfully establish legitimate expectation, it must be shown that the decision of the public authority deprives him of some advantage

which he had previously enjoyed and which he could legitimately expect to continue to enjoy. The appellant has not been deprived of any rights. It has just failed to adopt the correct procedure in order to obtain the final approval necessary.

I accept the submission of the respondents that neither the 1978 nor the 1993 approval could form a basis for a legitimate expectation that detailed building plans would be approved. The following lists some of the reasons why the appellant could not successfully argue that it had a legitimate expectation as claimed.

The 1978 **application** pertained only to use of the premises as a centre for religious group meetings. The appellant was neither the applicant nor the owner of the property in 1978 and the permission specified that it was **not transferable**. The 1978 **approval** for use of the premises was only for change of use. As such it was limited in tenor and scope and could not and would not have formed the basis for a legitimate expectation that the premises could be **used** as a multi-purpose building. The 1978 approval was granted to an entity other than the applicant. The 1992 **application** was for outline building approval. A subsequent application remained to be made under paragraph 6(2) of the Development Order. A further application remained to be made in relation to matters reserved. The 1992 application could not fall for consideration under the Kingston and St. Andrew Building Act which had certain specific requirements.

The 1993 **approval** was for outline building approval only (not user or any other development). The 1993 approval it was stated "approved of your Outline Building Application to erect a Religious Group Centre." The 1993 approval could not form the basis for a legitimate expectation that the premises could be **used** in a multi-purpose manner. The 1993 approval was conditional and no work could commence until the condition was complied with and approval received.

The Discharge of Restrictive Covenants is wholly unrelated to the requirement to obtain planning approval under the Planning Laws and approval of plans under the Building Act. While the discharge of covenant may be made a condition of planning approval, it is not a statutory or other requirement for planning permission.

Also, neither the 1978 nor the 1993 approval could form the basis for the legitimate expectation that detailed building plans would satisfy the requirements of the Kingston and St. Andrew Building Act (Section 10, 22 & 23) and/or any of the number of the Kingston and St. Andrew Building Regulations.

Conclusion

The 1978 approval did not apply to the entity that is now the appellant because of that change of name and the incorporation. The 1978 approval was unaccompanied by plans and was consequently an application under paragraph 6(2) of the Development Order. That section requires a subsequent application to be made accompanied by plans. The plans were never forthcoming from the appellant.

The appellant made in 1993 another application for permission to develop under paragraph 6(2) of the Development Order. There were still no plans accompanying the application or any received subsequently.

In 1998 the appellant made both a planning and building application. This was curious since they assert that the approval in 1993 was valid and still remains so. Yet they elected to ignore it, duplicating it in 1998. This is the fourth

application being made by the appellant to the LPA and the first to the building authority pursuant to the KSABA. If it were always the appellant's intention to rely on the 1993 approval, they would only have made an application to the building authority under the KSABA. Having chosen this course they cannot now seek to treat the 1993 approval as still valid. One cannot approbate and reprobate at the same time. The appellant cannot then ground a claim to a legitimate expectation when that entity did not conduct itself as if the 1993 approval was one which was "previously enjoyed", and one which the appellant could "legitimately expect to continue to enjoy". The appellant made that choice.

The 1998 application was refused based on objections received and the appeal to the Minister was dismissed.

The procedure is, briefly put, that an application is made under the Development Order, whether under paragraph 6(1) or 6(2), and then a subsequent application is made to the building authority under section 10 of the KSABA.

The Kingston and St. Andrew Building Act and the Development Order make provisions concerning approval for building. The Development Order stipulates that applications should be made to the LPA while the KSABA states that the application should be made to the building authority. The intention or the scheme of the legislation is that the application under the Development Order should come prior to that under to the KSA Building Act. However, it is not difficult to see how a prospective builder would be confused as the appellant seems to have been.

Throughout the appellant's submissions, there was constant reference to an application being made to the LPA as being all that is required. This view is obviously a contributing factor to the state of the appellant's case. They are clearly, labouring under the misconception that the specific legislation (the

KSABA) can be ignored. However, the specific legislation must prevail over the general. Indeed, in Cross Statutory Interpretation Butterworths 1987 Edition page 4 it was stated that:

> "...General words in a later enactment do not repeal earlier statutes dealing with a special subject."

When the legislature has given its attention to a separate subject and make provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms: see per Lord Hobhouse in ***Barker v Edger*** [1898] AC 748 at p.754.

However, the state of the legislation itself leaves much to be desired. That matter is further compounded by the fact that there are constant re-adjustments of the KSAC and the TCPA and the responsibilities they bear from time to time.

In the final analysis, the appellant has itself abandoned the various outline approvals made, by making the exact same application subsequently. The appellant is therefore estopped by its conduct from later asserting that it has a legitimate expectation that the 1998 approval should be granted. Even if an argument could be advanced that the 1993 outline application is still valid and subsisting, the TCPA, by way of Part V, gives the LPA power to revoke and modify permission to develop.

For the foregoing reasons the appeal should be dismissed with costs to the respondents to be taxed if not agreed.

SMITH, J.A. (Ag.):

The appellant, a religious organisation, is a company duly incorporated under the Laws of Jamaica with registered office at 4-6 Fairway Avenue in the parish of St. Andrew. Prior to the 14th June, 1983 when it assumed its present name, the appellant was known as the Metaphysical Study Group of Jamaica Ltd. It was incorporated on the 29th May, 1979. Before its incorporation, the Metaphysical Study Group, by agreement for sale dated the 1st June, 1978, became the owner of the premises at 4-6 Fairway Avenue registered at Volume 1160 Folio 311 of the Register Book of Titles (hereinafter called "the said premises"). The said premises are zoned in the Kingston Development Order for residential purposes.

On the 27th June, 1978, R. L. Villiers on behalf of the Metaphysical Study Group applied to the Town and Country Planning Authority for permission to change the use of said premises from a residence to a centre for religious group meetings. On the 14th September, 1978 the application for change of use was granted subject to certain conditions. The application was then referred to the Building and Town Planning Committee of the Kingston and St. Andrew Corporation. At its meeting held on the 4th October, 1978, the Committee approved the application also with certain conditions. According to Mrs. Blossom Samuels, the Government Town Planner and a member of the Town and Country

Planning Authority, the permission referred to above related only to change of use and did not contemplate the erection of additional buildings.

On the 23rd February, 1989, Mr. Lascelles Dixon & Associates, architects, on behalf of the applicant submitted to the Town and Country Planning Department applications for both planning permission and building permission for the construction of a multipurpose building: (see paragraph 5 of affidavit at p.106 of Record). By an instrument dated August 8, 1989 the Town and Country Planning Authority informed the applicant that outline permission for the proposed development was refused.

In October 1992 Mr. Dixon on behalf of the appellant submitted an application for building approval. By letter dated 9th March, 1993 the applicant was informed that on the 20th January, 1993, (p 25) the Building and Town Planning Committee of the KSAC had conditionally approved an Outline Building Application by the applicant to erect a Religious Group Centre at the said premises.

On the application of the appellant, the Supreme Court on the 31st October, 1997 made an order whereby a restrictive covenant was discharged and another modified, thus permitting the proposed development to proceed without being in breach of the relevant covenants.

The appellant claims that the 1998 application was for approval of detailed plans submitted pursuant to matters reserved in the 1993 approval. Detailed building plans were submitted with the standard form application in accordance with the Kingston and St. Andrew Building Act. The appellant was informed by an officer of the KSAC that objections to the proposed building plans were received from owners of neighbouring lands. These objections were made on the ground of the undesirable noise intrusion in the community.

However, apart from this there was no reply to the appellant's application for building approval. In response to letters from the appellant seeking a decision in respect of the application, the Planning Authority on June 2, 1998 sent the appellant a notice informing it of its right to appeal to the Minister if no reply was received within one month of the date of the notice. Consequently, by letter dated August 27, 1998 the appellant submitted an appeal to the Minister of Environment and Housing.

By letter dated March 1, 1999 the Town and Country Planning Authority advised the appellant that at its meeting held on December 16, 1998 the decision was taken to refuse its application for approval of plans for the construction of a multi-purpose building at the said premises. The reasons for refusal were stated and the appellant was told of its right to appeal to the Minister under s.13 of the Town and Country Planning

Law, 1957. As would be expected the appellant exercised its right of appeal. The appeal was heard on 7th April, 1999 by the Minister who reserved his decision.

On the 23rd April, 1999, the Town Clerk (KSAC) wrote the appellant advising it that the Council of the KSAC's Building and Town Planning Committee had refused its application for building approval. The Town Clerk also advised the appellant of its entitlement to appeal to the Minister. Thus both the Local Planning Authority and the Kingston and St .Andrew Building Authority refused the appellant's application for planning and building approval respectively.

On June 4, 1999 the appellant through Mr. Lascelles Dixon filed an appeal against the decision of the KSAC's Building Authority's refusal of building approval. This appeal, apparently was not heard.

By letter dated August 3, 1999 the Minister informed the appellant that its appeal was dismissed and the decision of the Town and Country Planning Authority should stand. The reason given for the dismissal of the appeal was that the proposed development contemplated both a change and an intensification of the then usage, which would not be compatible with the character of the area.

The appellant sought and obtained leave to apply for judicial review. A notice of motion for judicial review was filed on the 10th May, 2000.

Before the Judicial Review Court

In the court below the appellant sought orders of certioriari to quash:

(i) the order or decision of the Town and Country Planning Authority dated March 1, 1999, whereby permission for the construction by the applicant of a multi purpose building was refused;

(ii) the decision of the KSAC Building and Town Planning Committee dated April 23, 1999 refusing the application of the appellant for building approval;

(iii) the order or decision dated August 3, 1999 of the Minister dismissing the appellant's appeal against the decision of the Town and Country Planning Authority.

Several declarations were also sought, as well as, an order of mandamus to compel the Building Authority of the KSAC to consider and grant approval to the detailed building plans. Damages were also sought against the City Engineer and/or the KSAC.

The declarations sought were as follows:

(i) A declaration that the approval of the development granted by the Local Planning Authority on September 14, 1978 is valid and in effect.

(ii) A declaration that the approval of the building application in respect of the development which was granted on October 17, 1978 by the Building Authority of the KSAC is valid and in effect;

(iii) A declaration that the outline approval of the building application granted by the KSAC Building Authority on March 9, 1993 is valid and in effect;

(iv) A declaration that the detailed building plans submitted to the KSAC are in conformity with the KSAC Building Regulations and ought to be approved; and

(v) A declaration that the City Engineer acted unlawfully and in breach of his statutory duty in failing to consider and approve the detailed plans submitted by the applicant.

After a hearing that spanned four days, the learned trial judge, in a reserved judgment, delivered on the 17th October, 2000 dismissed the applications for orders of certiorari and mandamus and refused the declarations sought.

Before this Court now is an appeal against the order of Harris J dismissing the motion.

The appellant seeks to have the order of Harris J set aside and the applications for the reliefs sought in the Review Court granted. In this regard some seventeen (17) grounds of appeal were filed and argued.

Before addressing the grounds it might be helpful to refer to and comment on the major relevant enactments.

The Enactments

The Kingston and St. Andrew Building Act ("KSA Building Act") was passed in 1883. This Act regulates and provides for the supervision of the erection or alteration of buildings in certain areas of the parishes of Kingston and St. Andrew. It does not relate to the other parishes.

The Parish Council's Building Act which came into operation in 1908 empowered the Parish Council of any parish other than the parishes of Kingston and St. Andrew to make bye-laws generally for regulating the erection, alteration and repair of buildings within any such parish.

In 1952 such bye-laws were made in respect of each parish. The Regulations under the KSA Building Act are quite different from the bye-laws and Regulations pertaining to the other parishes. Under the KSA Building Act the Building Authority is the Council of the KSAC or such other body as the Minister by order may direct.

The Town and Country Planning Act ("TCP Act") came into operation in February, 1958. Unlike the KSA Building Act, the TCP Act applies to the entire Island. It provides for the establishment of a Town and Country Planning Authority ("TCPA") – Section 3 (1). Under this Act in relation to the parishes of Kingston and St. Andrew, the local planning authority is the Council of the KSAC and each Parish Council is its own local planning authority (S.2) Thus the Council of the KSAC is both the local planning authority and the building authority for the parishes of Kingston and St. Andrew.

Further, under the TCP Act (S.5) the TCP Authority may, after consultation with the relevant local authority, prepare and promulgate development orders in relation to any land whether urban or rural. Each parish has its own development order. The development order for Kingston and St. Andrew is the Town and Country Planning (Kingston) Development Order of 1966 (the"Order"). The general object of the Order is to control the development and use of land. The KSAC, when

functioning as a planning authority derives its jurisdiction from the TCP Act and the aforesaid Development Order passed pursuant to that Act.

However, when functioning as a building authority the KSAC derives its jurisdiction from the KSA Building Act. The jurisdiction derived from the separate statutory regimes is not transferable one to the other. In other words when sitting as a planning authority the Council of the KSAC may not exercise the jurisdiction of a building authority and vice versa.

The Erection or Extension of Buildings

A person desirous of erecting or extending a building must ascertain whether or not he needs to obtain a planning permission under the TCP Act and/or a building approval under the KSA Building Act.

Planning Permission

Section 2 of the TCP Act defines "planning permission" as "the permission for development which is required by virtue of Section 10."

Section 5(2) of the Act defines development. This includes the "carrying out of building and the making of any material change in the use of any buildings or other land".

The proviso stipulates that certain operations and uses of land shall not involve the development of land.

A Development Order may itself grant planning permission for any development specified in the Order - S.10(d)(i) of the TCP Act. Paragraph 4(i) of the Kingston Development Order provides that development of any

class specified in Schedule 4 of the Order is permitted and may be undertaken upon land to which the Order applies without permission of the local planning authority. However, the development must be carried out subject to the specified conditions.

In any case in which the development of land in any area covered by the Order is not permitted by the Order itself, an application must be made to the local planning authority in the manner prescribed – see s.10(i)(d)(ii) of the TCP Act and paragraphs 5 and 6 of the Order. Planning permission is not required in relation to an area to which the Development Order does not apply. Application to determine whether or not permission is required to carry out certain operations to effect any change in the use of land may be made to the local planning authority – s.10). Section 11 of the TCP Act empowers the local planning authority to grant permission either unconditionally or subject to condition or to refuse permission. This section also provides that the local authority must have regard to the provisions of the development order.

Under para. 6(1) of the Kingston Development Order the application for planning permission must be accompanied by a plan sufficient to identify the land, and, by such other necessary plans and drawings. However, by virtue of para. 6(2) an application expressed to be an outline application for planning permission may be made without plans.

Under this sub-paragraph a subsequent application must be made to the local planning authority with respect to matters relating to siting, design, external appearance of the building and access thereto.

Under Section 12 of the TCP Act the Authority i.e. The Town and Country Planning Authority may give directions that the local planning authority should refer certain applications to the Authority. An application to a local authority for a development which is not in conformity with the development order must be referred to the Authority – s12 (2). This is referred to as the "call in" procedure.

Building Approval –Kingston and St. Andrew Building Act

A builder who has obtained planning permission or who does not need to obtain planning permission before erecting the building must give notice to the Building Authority –section 10 of the KSA Building Act. Such notice shall be accompanied by accurate plans. It is important to note that the notice does not involve an application for permission to do anything. By giving notice to the Building Authority the builder is simply seeking its approval of the plans submitted. The Building Authority does not have to consider matters of siting, external appearances, and means of access.

The plans will not be approved if in the opinion of the Building Authority the class of building, the frontage, elevation and the design are not suitable to the locality or neighbourhood. The plans will not be

approved if the Surveyor is not satisfied with the sanitary arrangements made. They will not be approved unless plans under the Kingston Improvements Act have been approved by the Building Authority.

The Surveyor (City Engineer) may accept a notice unaccompanied by plans and approve of the building proposed subject to such written instructions or directions as he or the Building Authority may give from time to time.

Having set out the above outline, I will now proceed to consider the grounds of appeal.

Ground 1

The complaint here is that the learned judge erred in holding that the change of use approval granted to the Metaphysical Study Group in 1978 did not enure for the benefit of the appellant.

The 1978 application was for permission to change the use of the premises. Permission was granted by the TCPA for "change of use from residence to centre for religious group meetings". Five conditions were imposed. The relevant one reads:

> "**5.** This approval applies only to the applicant and/or owner and is not transferable."

The learned trial judge found that this condition restricted the approval to the Metaphysical Study Group which was the applicant and owner. She held that the change of use approval enured exclusively for the benefit of the Metaphysical Study Group and not for the benefit of the land.

Before this Court, Dr. Barnett submitted that there is nothing in the wording of the condition to suggest that the word "owner" in the 1978 approval should be limited or restricted to the owner at the time of approval. He contended that the main objective of the Act is inconsistent with treating the planning permission as personal. "Owner", he submitted, encompasses the person who is beneficially entitled from time to time. For this submission he relied on ***Nelsovil Ltd. v Minister of Housing (1962) 1 All ER 423; Pioneer Aggregates Ltd. v Environment Secretary*** [1984] 3WLR 32; ***Camden LBC v Guaby*** [2000] 1 WLR 465; ***R v Minister of Housing and Local Government exp. Corp. of London*** [1954] 2 WLR 103; ***Raymond Lyons & Co. v. Metropolitan Police Commr.*** [1975] 2 WLR 197.

Miss Bennett for the respondents argued that where the approval is specifically restricted to the owner or applicant and is not transferable, it cannot run with the land. In such a case, she contended, it applies only to the applicant and/or the owner" for the time being interested therein." She submitted that it is not relevant to examine the meaning of the word "owner" as it is not being disputed that a wide range of persons can fall within its definition in the context of the TCP Act. The important question she suggested was whether the Authority can and did restrict the approval to the "applicant and/or owner at the material time".

Section 15(4) of the TCP Act reads:

> "Where permission to develop land is granted under this Part, then except as may be otherwise provided by the permission the grant or permission shall enure for the benefit of the land and all persons for the time being interested therein, without prejudice to the provisions of Part V with respect to the revocation and modification of permission so granted."(emphasis supplied)

In light of s.11 which allows the local authority to grant permission "subject to such conditions as they think fit" it is clear to my mind that the local authority was entitled to impose condition 5.

Two questions come to mind. Does the approval apply to the appellant? Does it run with the land?. I will repeat the condition for ease of reference.

> "This approval applies only to the applicant and/or owner and is not transferable."

Section 15(4) specifies that permission shall enure to the benefit of the land and of all persons for the time being interested in the land except where the permission says otherwise. Thus unless otherwise provided the permission would enure not only to the benefit of the land but of all persons with interest therein including of course the owner.

However, the permission specifically restricts the approval to the benefit of the "applicant and/or owner". The permission also specifies that the approval is not transferable.

In the instant case the application was made by Mr. Villers on behalf of the owner. Since the approval is restricted to the owner, and is

not transferable it cannot, in my view, be attached to the land in perpetuity but to the land only while it is the property of such owner that is, the owner at the time the permission was granted.

Now the owner at the material time was the Metaphysical Study Group. The approval may not be transferred to any person who obtained an interest in the land subsequent to the grant of permission.

In 1978 when the application for change of use was granted the appellant was not yet a legal entity. It only became a juridical persona on its incorporation in 1979 ***sub-nom***. Metaphysical Study Group of Jamaica Ltd. Although it can be said that the Metaphysical Study Group was the prototype of the Appellant the submission of Miss Bennett that there is no factual basis for concluding that the former comprised the same persons as the latter is not without merit. In any event the law is that a corporate body is a separate legal person and distinct from its members.

In ***Salomon v Salomon & Co Ltd.*** [1897] AC 22 at p.51 Lord MacNaghten said:

> "The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after the incorporation the business is precisely the same as it was before and the same persons are managers; and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or

> form, except to the extent and in the manner provided by the Act."

Dr. Barnett's argument that there is nothing in the wording of the condition to suggest that the word "owner" should be limited to the owner at the time of approval is not, in my view, tenable in light of the words "and is not transferable". These words clearly indicate an intention to limit the permission to the owner of the land at the time the permission was granted.

The learned trial judge was, in my view, correct in finding that the fifth condition of the 1978 approval operates to deprive the appellant of the benefit of the approval. Her conclusion that the approval enured exclusively for the benefit of the Metaphysical Study Group and not for the benefit of the land, or the appellant cannot be faulted.

Grounds 2 & 3

The gist of the complaints in these grounds is that the learned trial judge erred in holding that the 1978 grant of permission to change the use of the property did not constitute an expression and notification of approval of the relevant statutory authorities under both the Building and Planning Acts. In light of my conclusion in respect of ground 1 it is not necessary to deal with these grounds. However, in the event that I am wrong I will examine those complaints.

It should be noted that the application for change of use was granted in the first place by the TCPA and then by the Building Authority

on 4th October, 1978. The letter of approval granted by the Building Authority is important. It has the letterhead of the KSAC City Engineer's office and is dated 17th October 1978. It is addressed to the Metaphysical Study Group c/o R. L. Villiers, 28 Duke Street, Kingston and reads:

"Sirs:

re: Building Application (Recommended)
4 and 6 Fairway Avenue (Change of Use)

With reference to your application dated 27/6/78 to change the use from residential to centre for Religious Group Meeting at the above named premises, I have to inform you that the Building and Town Planning Committee of the Kingston and Saint Andrew Corporation at its meeting held 4/10/78, approved your application on the following conditions:

1. That the level of noise resulting from the proposed use shall not be such as to cause justifiable ground for complaint by the residents in the immediate area.

2. That no alteration be undertaken that will in any way impair the residential character of the premises.

3. That parking facilities be confined to the rear of the premises.

4. That there be no breach of existing covenants or supportable objections from adjoining owners.

Kindly arrange to take delivery of one set of approved plans from the Building Section of the Kingston and Saint Andrew Corporation.

Yours truly

FOR CITY ENGINEER"

Dr. Barnett for the appellant contended that the grant of approval, as evidenced by this letter, relates both to the TCP Act and the KSA Building Act. He further contended that it is an approval under both Acts of the suitability of the proposed development to the neighbourhood and the appropriateness of the proposed building. The terms of the approval required the removal of restrictive covenants on the property and this was achieved in 1997, he pointed out.

Miss Bennett and Mr. Robinson for the respondents do not agree. They argued that the 1978 approval could not and did not confer building approval and did not give the right to carry out construction. Miss Bennett submitted that the learned trial judge was right in holding that the change of use approval could not be considered general permission and that it was limited in scope and tenor.

An application for permission to change the use of land is, by virtue of s.5(2) of the TCP Act, an application for permission to develop the land. Thus a change of user would necessitate planning permission. An application for planning permission must be accompanied by a plan sufficient to identify the land under para. 6(1) of the Development Order. If under 6(2), a subsequent application would have to be made regarding siting, design and external appearance.

The appellant did apply for and obtain permission to change the use of the land. However, no application was made to the Building Authority. The 1978 application to the Planning Authority relates only to the change of use. There was no indication in the application for change of use of a desire to erect a building or to alter the existing building. Hence, in so far as a change of use is concerned there would be no need to seek building approval at that time: (see s.10 of the KSA Building Act.) However, the formal approval by the TCP Authority indicates that the application for change of use was referred to the KSAC Building Authority. The letter of 17th October, 1978 from the KSAC's Building and Town Planning Committee is without doubt an approval of the proposed change of use on an examination of the plans submitted. The approval granted by the KSAC Building Authority cannot confer building approval since there was no such application before the Building Authority. As previously stated the only application then was for change of use and the approval then was for change of use only. I agree with Miss Bennett that the appellant cannot rely on this approval for anything other than the limited right it conferred; no construction may take place pursuant to this approval.

It might be helpful to state here that according to Mr. Dixon, the first application by the appellant for building approval was made in October, 1992 – (see affidavit of Lascelles Dixon dated 6th November,

1999.) In light of the foregoing the contention that the October 1978 letter constituted an "expression and notification" of the approval of the relevant statutory authorities under both the Building and Planning Acts for the suitability and appropriateness of the proposed building is untenable.

I am inclined to agree with Mr. Robinson that the letter of the 17th October, 1978 is to no avail. First of all it cannot be planning permission because planning permission viz change of use was granted by the TCP Authority and the Building Authority has no jurisdiction under the TCP Act to consider planning permission to erect a building or to engage in any other form of development or activity on the land.

Secondly it cannot be building approval because there was no application for building approval before the Building Authority and the conditions therein apply to "change of use" and the plans submitted related to "change of use" only.

Before leaving this ground it should be stated that the uncontradicted evidence of Ms. Blossom Samuels is that an application for planning permission to construct a multi-purpose building was made by Mr. Lascelles Dixon on behalf of the appellant on 23rd February, 1989 and was refused in the said year by the TCP Authority. Thus the appellant ought to know that at the end of 1989 it had no planning authority to build. There is no merit in these grounds.

Grounds 4,7 and 15

In these grounds the appellant complains that the learned trial judge misdirected herself in holding that the approval obtained in 1993 did not satisfy the requests for preliminary or outline approval under the KSA Building Act and the TCP Act and that such approval was related to building only and not to planning.

Since the 1978 approvals could not enure to the benefit of the appellant, then it would have been necessary for the appellant to get planning permission for the change of use followed by planning permission to erect the multi-purpose building and finally building approval under the KSA Building Act.

Mr. Lascelles Dixon in his affidavit sworn to on the 6th November, 1999 stated that in October, 1992 he submitted on behalf of the appellant an application for building approval. This application was accompanied by preliminary design drawings. By letter dated March 9, 1993 the Building and Town Planning Committee of the KSAC approved the application for building permission subject to the submission of detailed plans prior to commencement of construction. In April, 1998 he submitted to the KSAC, on behalf of the appellant, the detailed building plans together with the standard application form. He was told that neighbours had objected.

Dr. Barnett contends that the approval which was obtained on the 9th March, 1993 (p. 25 of Record) was a valid approval under both the

KSA Building Act and The TCP Act. Furthermore, he argued, the said approval indicated that all that was necessary before proceeding with the construction was the approval of detailed building plans.

Counsel for the respondents submitted that it was not only the approval of the detailed building plans which remained outstanding in 1993. The subsequent application with respect to the siting, design or external appearance or the means of access pursuant to para. 6 (2) of the Development Order had not yet been made and importantly building approval under the Building Act had not yet been obtained.

The letter of approval dated 9th March, 1993 is addressed to Lascelles Dixon & Associates and reads:

> "Dear Sir:
>
> Re: Building Application (Outline) under the Town and Country Planning Act and the Kingston and St. Andrew Building Act. 4-6 Fairway Avenue- Seymour Lands, Kingston 10
>
> I am directed to inform you that the Council's Building and Town Planning Committee of the Kingston and St. Andrew Corporation at its meeting held on the 20th January 1993 approved of your outline building application to erect a Religious Group Centre at the above address on the following condition:
>
> (1) That detailed building plans are submitted for consideration and approval prior to the commencement of any construction work..."

The only provision in law for an outline application is in the Development Order: paragraph 6 (2). This paragraph deals with applications for planning permission. But Mr. Dixon said he submitted application for building approval. The approval given in the above letter is approval of an "outline building" application to erect a building. This is a planning permission for the erection of the building and not a building approval as contemplated by the Building Act. As Miss Bennett, correctly in my view, submitted, by an outline application for planning permission an applicant seeks permission to do something eg. to erect a building: whereas, by an application for building approval the applicant is not seeking permission to do anything he merely seeks approval of the building plans. The fact that an applicant gets planning permission does not necessarily mean that he will obtain building approval and vice versa.

The KSA Building Act makes no provision for an outline building application or for an outline building permission. As Mr. Robinson submitted, if the Building Authority purportedly granted outline building permission it would have acted ultra vires.

An application for building approval must either be:

(i) accompanied by accurate plans which are to be approved by the City Engineer;

or (ii) without plans in which case the City Engineer may give written instructions and directions – s 10.

The Building Authority is concerned with structural integrity, compliance with Building Regulations and safety of the buildings. See for example paras. 3, 6, & 7 of the 1st schedule to the Building Act, whereas the Planning Authority is concerned with the orderly development and use of land.

Although the Council of the KSAC is both the Local Planning Authority and the Building Authority it exercises two separate jurisdictions. As counsel for the respondents said it is a body that wears two hats. As a Building Authority it derives its jurisdiction from the Building Act. As Planning Authority it derives its jurisdiction from the TCP Act. An approval of application under one Act cannot be considered as an approval under the other because different considerations are taken into account. These are separate regimes, separate applications must be made, but one complements the other: (see ***KSAC v Auburn Court Ltd. et al*** 25 JLR 145 at 153 H). Unfortunately, Mr. Dixon did not exhibit a copy of the 1992 application. He said that in April, 1998 he submitted detailed building plans together with standard form of application: (see affidavit dated 6th November, 1999). This he said was pursuant to the condition which attached to outline planning permission granted on 9th March, 1993 (para. 6 of the affidavit dated 8th June, 2000). Ms. Blossom Samuels in her affidavit deponed that in 1998 the appellant made an application for planning permission to erect a multi-purpose building on the said land.

The application was referred to the TCP Authority because it was not in conformity with the Development Order. She went on to say that by letter dated March 1, 1999 (which was exhibited) the applicant was notified of the decision of the TCP Authority to refuse planning permission. The reasons for refusal were also stated in the letter (p. 56 of Record).

Mr. Patrick Aitcheson, the City Engineer at the material time, in his affidavit evidence stated that "the document dated 9th March, 1993 was also conditional and was only "outline approval and specifically required the submission of detailed plans for consideration".

Miss Elma Lumsden, the President of the appellant, made no mention of the 1992 application in her affidavit. She testified that by letter dated March 9, 1993 the Building and Town Planning Committee of the Kingston and St. Andrew Corporation acting as the Building Authority and Local Planning Authority approved the applicant's Outline Building application for the development of the said land. She also swore that in April 1998, the applicant pursuant to the building approval granted on October 4, 1978 submitted detailed plans for approval in accordance with the KSA Building Act.

To say the least the affidavit evidence before the Court is conflicting and I would daresay confused. I agree entirely with Mr. Robinson that the learned trial judge could not have resolved the conflict in the affidavit evidence without cross-examination of the affiants and

therefore the judge had to refuse the orders sought. What is clear to me, nonetheless, is that there is nothing in the law to permit an application and/or approval under one Act to be treated as an application and/or approval under the other Act. Accordingly, the approval which was obtained on the 9th March, 1993 cannot be a valid approval under both the KSA Building Act and the TCP Act as contended by the appellant.

Ground 5

The complaint in this ground is that the learned trial judge erred in holding that the "preliminary drawings" submitted with the 1992 application could not be recognised as "accurate drawings" which are required by the KSA Building Act.

Section 10(1) of the KSA Building Act provides that:

> **"10.** –(1) Every person who proposes to erect or re-erect any building or any part thereof, or to extend any building or any part thereof, shall give notice thereof to the Building Authority, and such notice shall be accompanied by –
>
> (a) An accurate ground plan showing the land or site, the frontage line for length of twenty feet, of any building, whether standing or in ruins, adjacent on each side thereof, and the full width of the street or streets immediately in front and at the side or back thereof, if any.
>
> (b) An accurate plan showing the several floors of such building and the front elevation thereof and at least one cross section and such other cross or longitudinal sections and further particulars, as the Building Authority

> may from time to time by regulation or in any particular case require.
>
> (c) An accurate plan showing the frontage of such building on any street or lane.
>
> All such plans shall be to a scale not smaller than one-eighth of an inch to one foot, and the Surveyor shall, if he approve of such drawings, notify his approval of the same in writing to the builder, or he may call for amended drawings for approval or otherwise. In case of dispute the matter shall be submitted to the Building Authority."

Mr. Dixon at paragraph 5 of his affidavit dated November 6, 1999 stated that the 1992 application was accompanied by "preliminary design drawings consisting of a copy of the Title of the property, site lay-out drawing, floor plan of the proposed facility showing its relationship to the existing building and general layout of building, building sections and elevations which gave a full description of the proposed building". A copy of the preliminary drawings was exhibited. It is not difficult to observe that the "preliminary design drawings" submitted by Mr. Dixon as described by him are substantially not the same as the "accurate plans" described by section 10. Further, there is no evidence that the drawings submitted were "to a scale not smaller than one-eighth inch to one foot" as required by section 10.

For these reasons alone, the learned judge was correct in concluding that the "preliminary drawings" submitted with the 1992

application could not be recognised as the accurate drawings which are required by virtue of the provisions of section 10 of the KSA Building Act.

Another reason why the contention of the appellant cannot be accepted is that according to its letter of the 9th March, 1993 the Council granted approval of the applicant's " outline building application to erect a Religious Centre". It is clear here that the Council was exercising its jurisdiction under the TCP Act and not the KSA Building Act. This is so because application for and approval for "outline permission", where particulars and plans are not required, are only provided for under paragraph 6(2) of the Development Order. As said before the Building Act makes no provision for outline building application or approval.

It is true that the second proviso to section 10(1) of the Building Act gives the surveyor a discretion to accept and approve an application unaccompanied by plans. In such a case the surveyor is required to give written instruction or directions to the applicant. However, this approval is final and unlike the outline planning permission is not subject to a subsequent application. Any failure to comply with such directions shall be deemed a deviation from the approved plans.

Yet another reason why the contention of the appellant is untenable is the fact that the approval of the 1992 application was conditional. The condition was that the detailed building plans should be

submitted for consideration and approval prior to the commencement of any construction work.

The TCP Act provides for conditional planning permission – see s.11. There is no provision in the Building Act for conditional building approval. The first proviso to section 10(1) of the Building Act states that the Building Authority may at any time before or after the work has been commenced require the builder or owner to submit such working drawings or detailed plans as the surveyor may prescribe. I accept the submission of Miss Bennett that as work ought not to commence until after plans are approved, then clearly the requirement for working drawings or detailed plans under section 10 is contemplated to be relevant after approval has been given.

Ground 6

In this ground the appellant complains that the learned trial judge erred in finding that the start in the preparation of the site was in contravention of the outline approval. Dr. Barnett's contention is that there is no condition or provision in the outline approval which prohibited the removal of the outhouse or clearing of the site.

Mr. Dixon in his affidavit dated 8th June, 2000 said that the demolition was not a commencement of construction as it was in a state of disrepair and in the interests of safety it was decided to demolish same in anticipation of the construction planned for that site. In an earlier

affidavit he had stated that he was told that the objections had been received from neighbours who had heard the sound of equipment clearing the site prior to the commencement of construction. Mr. Aicheson, the City Engineer on the other hand deposed that if preparation of the site for construction had started, then such would have been contrary to the outline approval dated 9th March, 1993.

The learned trial judge in her judgment said "Mr. Dixon in paragraph 8 of his affidavit of the 6th June, 2000 averred that preparation of the site for construction had started. This would surely have been in contravention of the outline approval". On the evidence before her, the judge was entitled in my view to conclude as she did.

Ground 9

The complaint is that the learned trial judge has misdirected herself in law and on the facts in holding that the 1998 application was the first to have been submitted in compliance with the requirements of both relevant Acts. The learned trial judge held that:

> "The application in 1998 must be construed as two separate applications one with respect to planning permission and one for building permission pursuant to the TCP Act and the KSA Building Act respectively. April, 1998 was the first and only time that detailed plans were submitted. This was the first and only application which could have been considered by the KSAC in its capacity as Building Authority."

The bone of Dr. Barnett's contention is that it was incorrect for the learned judge to hold that the 1998 application was the first and only application which could have been considered by the KSAC in its capacity as Building Authority. As stated before there were three previous applications. These were made in 1978, 1989 and 1993. I have already considered these and I have concluded that the 1978 application was for change of use only and could only have been made pursuant to the TCP Act. The 1989 application was for planning permission and was refused by the TCP Authority. The 1993 was for outline building permission. Thus in applying the law to the evidence before her the learned trial judge was correct in holding that prior to 1998 there was no application made that could fall under the Building Act.

Ground 10

The appellant complains that the learned trial judge erred in holding that the Minister had the statutory right to reverse the planning permission already given.

The evidence is that in 1993 conditional outline planning permission was granted. Mr. Dixon said that pursuant to the condition attached to the 1993 grant of planning permission in May, 1998 he submitted detailed building plans for approval. These plans were not approved within the required statutory period. Protests were made on behalf of the appellant. Eventually the appellant was advised by the TCP Authority that

the appellant was entitled to appeal to the Minister by virtue of section 13 of the TCP Act if it did not receive the decision of the Planning Authority within a certain period of time. As a result an appeal was submitted to the Minister. Dr. Barnett submitted that in law the Minister had no jurisdiction because what was before him was not an appeal but rather a letter complaining of the failure of the Planning Authority to respond to the application for approval of the building construction drawings.

It is necessary to refer to the relevant statutory provisions. Paragraph 6(7)of the Development Order requires the Planning Authority to give the applicant notice of its decision within 3 months of the application or within such extended time as may be agreed upon.

Section 12 of the TCP Act deals with references of applications to the Authority. Section 13 of the TCP Act governs appeals to the Minister. Section 13(1) provides that where an application has been refused the aggrieved party may appeal to the Minister against the decision of the local planning authority or the Authority within 28 days of the receipt of notification of the decision.

By s. 13(2) the Minister is empowered to allow or dismiss an appeal or to vary or reverse a part of the decision. By s.13(3) the applicant and the authority shall be afforded an opportunity to be heard. Section 13(4) is important. It provides:

> "**13**(4) Unless within such period as may be prescribed by the development order, or within

> such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either –
>
> (a) give notice to the applicant of their decision on any application for permission to develop land, made to them under this Part; or
>
> (b) give notice to him that the application has been referred to the Authority in accordance with the directions given under Section 12 the provisions of subsection (1) shall apply in relation to the application as if the permission to which it relates had been refused by the local planning authority and as if the notification of their decision had been received by the applicant at the expiration of the period prescribed in the development order of the extended period agreed upon as aforesaid, as the case may be".

Clearly, the import of subsection (4) is that if the planning authority fails to give the applicant notice of their decision within the prescribed or agreed time, the local authority will be deemed to have refused permission. And in such a case the applicant is entitled to appeal to the Minister under subsection (1). Accordingly, the contention of Dr. Barnett, in my view, is untenable.

Grounds 8, 11, and 12

Grounds 8 and 11 concern the nature and effect of the approval given in 1993 and the application made in 1998. I have already dealt with these and it will serve no purpose to revisit them.

In ground 12 the contention of the appellant is that the learned trial judge erred in holding that outline approval having been given in 1993 it was still open under the same statutory provisions to deny approval of the detailed plans on the ground that the proposed building would not be suitable for the locality.

In this regard Dr. Barnett submitted that once outline permission had been given it was not open to the authorities, except as specifically authorised, to re-enter on these matters which pertain to the area of outline approval which were not expressly reserved. He relied on ***Hamilton v West Sussez County Council*** [1958] 2 WLR 873 and ***Heron Corporation Ltd. v. Manchester City Council*** [1978] 3 All ER 1240.

Miss Bennett for the respondents submitted that outline approval having been granted under para.6 (2) of the Development Order a subsequent application for approval was required to be made and that it was open to the local planning authority to deny approval on the ground that the proposed building would not be suitable to the locality. She relied on the provision of paragraph 6(2) of the Development Order.

This paragraph reads:

> "(2) Where an applicant so desires an application expressed to be an outline application may be made under sub-paragraph (1) of this paragraph for permission for the erection of any building subject to the making of a subsequent application to the local planning authority with respect to any matter relating to the siting, design or external appearance of the

> buildings, or the means of access thereto; in which case particulars and plans in regard to those matters shall not be required and permission may be granted subject as aforesaid (with or without other conditions) or refused. Provided that—
>
> (a)...
>
> (c)..."

The Kingston Development Order, 1966 is patterned on the United Kingdom's Town and Country Planning General Development Order, 1950. Paragraph 6 of our Development Order is identical to Regulation 5 of the United Kingdom Development Order.

In ***Heron Corporation Ltd. and Other v Manchester City Council*** (supra) at p. 1243 Lord Denning MR said:

> "An application for outline planning permission is in law an 'application for planning permission'. It has to comply with all the requirements of the Town and Country Planning General Development Order 1973, and in particular art 5 which requires it to be on a special form and accompanied by all the plans and drawings and in accordance with the notices under the 1971 Act and the various consultations, whereas application for approval of reserved matters need only be in writing under art 6 and without all the various notices and consultations. But apart from these there are often important consequences following on a grant of outline planning permission. Once granted, an outline permission is a valuable commodity which is annexed to the land. It runs with the land from purchaser to purchaser and enhances its value considerably".

This case certainly supports Dr. Barnett's contention that once outline permission has been obtained the applicant need only satisfy the

requirement of the matters reserved and the outline permission remains valid and binding on the authorities.

In ***Hamilton et al v West Sussex County Council et al*** (supra) the regulation which was construed is the same as paragraph 6 of the Development Order. In that case, Donovan J, it seems, was of the view that where outline permission was granted and a subsequent application for approval of detailed building plans was made, the local authority could not refuse approval on the basis of matters which were not reserved specifically in the outline approval.

The outline permission granted on the 9th March, 1993 called for detailed building plans to be submitted for the consideration of the Authority.

For outline approval the following items are necessary;

(i) location and site

(ii) Floor Plan

(iii) Elevations

(iv) Drainage

(see application form paragraph 17 at p.45 of Record)

Thus the grant of outline permission would indicate that the Authority considered the location and site of the proposed development and found them unobjectionable. On "the subsequent application" for approval of matters reserved in the outline permission it seems to me that

the Authority may not refuse approval on the basis that the location and siting of the proposed building are objectionable. If the Authority wishes to revoke the outline permission it must follow the procedure laid down in s.22 of the TCP Act.

However, the important question is whether the 1998 application was a new application as the respondents contend or whether it was submitted consequent upon the grant of the 1993 outline permission as the appellant contends.

If it were a new application then of course the Authority would be entitled to consider everything afresh and to refuse or grant permission. If it were an application for approval of detailed drawings called for by the term of the 1993 outline permission, then the Authority may only consider those matters reserved for its consideration.

As I have earlier stated the affidavit evidence in this regard is conflicting. But the documentary evidence seems to support the contention of Ms Blossom Samuels, the Town Planner, that the 1998 application for planning permission was new. The application was exhibited to Mr. Dixon's affidavit dated 6th November, 1999, para. 7 and is in this form:

> "TOWN AND COUNTRY PLANNING (AMENDMENT) ACT 1987 KINGSTON DEVELOPMENT ORDER
>
> Application for permission to: construct a multi-purpose building

Date of Application: 20th April, 1998

Name of Applicant: Lascelles Dixon & Associates

Address of Applicant: 226 Mountain View, Ave,Kgn.6

Contact Telephone Number: 927-6578/927-6835

Applicant's Interest in the Land: Consultant

Name of Land Owner: Temple of Light Church of Religious Science

Description of development for which planning permission is sought (where application is intended to be an Outline only this should be stated Section 5(2) of the Order.

.....
Signature of Applicant

Two (2) copies of a plan sufficient to identify the land must be submitted together with two (2) copies of such other drawings as are sufficient to describe the intended development."

This application has nothing to indicate that it relates to the matters reserved in the outline permission. It is described as being for permission to construct a multi-purpose building. Furthermore, the application was accompanied by the Standard Application Form. This form is required when an application is being made for planning permission under paragraph 6 of the Development Order. It is not required in the case of a "subsequent application" in relation to matters reserved in the outline permission: (See ***Heron Corp Ltd. v Manchester Chamber of Commerce***)

(supra). These factors to my mind support the submissions of Miss Bennett that the 1998 application was a new application.

In my view the learned trial judge, in light of the state of the evidence, cannot be faulted for rejecting the contention of the appellant that the 1998 application was in pursuance of the outline approval obtained in 1993. In view of this finding, the contention of the appellant in ground 12 is of academic interest only.

Ground 13

The appellant contends that the learned trial judge misdirected herself on the facts in holding that there was evidence to justify the findings of the Authority or Minister that undesirable noise would emanate from the proposed development. Miss Elma Lumdsen in her affidavit dated 8th June, 2000 said that since October, 1978 the applicant has organised and conducted various group meetings and activities on its premises without complaint from residents in the immediate area.

Ms. Samuels in her presentation to the Minister said that a community survey conducted by her revealed that some of the purchasers of apartments and houses objected to the proposed development on the basis of noise nuisance, increased traffic and the character of the neighbourhood. In the Glen Eyre apartments which adjoin the premises in question, the purchasers of nine apartments were interviewed. Six objected, two were unsure and one offered no

objection. On the basis of the survey the Town Planning Department recommended to the Authority that the application be refused.

Separate and apart from the community survey the Glen Eyre Citizens Association on April 24, 1998 wrote the Town Planning Department, KSAC, stating that, the "current activity of this venture is already a nuisance to some of our residents and that further any increase in activity will be a major inconvenience to us". It seems to me that there is sufficient evidence to support the impugned finding of the learned trial judge.

In any event as Ms. Bennett pointed out, Regulation 3 of the Kingston St. Andrew Building (Notices and Objections) Regulation 1938 requires, that anyone who intends to erect or re-erect a building for use as a church, shall not less than three days nor more than seven days before giving the notice prescribed by section 10 of the Act, give notice of his intention so to do.

Regulation 4 requires that such notice of intention be served on the owner and occupier of every holding adjoining the proposed site and a copy thereof be posted on some parts of the proposed site in such manner as to be distinctly visible from the roadway and the original notice together with proof of the service and posting of the copies thereof shall accompany the notice and plans prescribed by section 10 of the KSA Building Act.

Regulation 5 prohibits the approval of building until the expiration of thirty days from service of posting of copies of notices.

Regulation 7 mandates the Building Authority to take into consideration all objections before coming to a determination on the plans submitted.

The appellant has failed to show that it had complied with these Regulations. In light of this failure, I agree with Miss Bennett that the issue raised by the appellant in this ground is irrelevant.

Grounds 14 & 16 – The Rules of Natural Justice and Fairness

In ground 14 the appellant claims that the learned trial judge erred in law and on the facts in holding that the Surveyor/Chief Engineer and/or the Building Authority acted fairly and in accordance with the rules of natural justice in view of the fact that the appellant was not provided with copies of the objections. The appellant was therefore, not given an opportunity to contradict or comment on the statements of those whose opinions were canvassed.

Dr. Barnett relied on ***T.A Miller Ltd. v Minister of Housing & Local Government and Another*** [1967] 1 WLR 992. This case concerns an appeal to the Minister against a decision of the local planning authority to serve upon the owners of a nursery an enforcement notice calling upon them to discontinue using part of their land as a "garden centre" for retail sales. An inquiry was held by an inspector on behalf of the

Minister. Objection was taken on behalf of the owners to the admission of a letter from the director of a company who had previously owned the land. The letter was received as evidence and statements therein accepted although the writer was not called as a witness or cross-examined. The owners' appeal was dismissed by the Minister.

On the owners' application to the Court of Appeal for leave to appeal it was held, dismissing the appeal, that a tribunal such as the inspector's inquiry was master of its own procedure subject to the application of the rules of natural justice and it could admit hearsay evidence. Since the owners had a fair opportunity of commenting on and contradicting the contents of the letter there was nothing contrary to natural justice in admitting it and the enforcement notice was good. Counsel for the appellant also relied on ***Fairmont Investments Ltd. v. Secretary of State for the Environment.*** [1976] 1 WLR 1255 where the House of Lords held that it was contrary to natural justice for the Secretary of State to confirm an order of a local authority on a basis of facts which the owners had no opportunity of showing was erroneous and of an opinion with which they had no opportunity to deal.

The evidence of Mr. Dixon is that at the time of the submission of the 1998 application he was informed by Mr. White, the Acting Deputy Building Supervisor of the KSAC, that objection had been received from neighbours who had heard the sound of equipment clearing the site and

that their objections would have to be taken into account in considering the application.

He further deponed:

> "**9.** I requested Mr. White to provide the applicant with copies of the objections but these requests were refused but he allowed me to look at the objections and to make notes. The objections were made on the grounds that there was noise emanating from the property but this noise was caused by demolition activities with respect to an old house and had nothing to do with the applicant's normal religious activities".

Regulation 6 of the Kingston and St. Andrew Building (Notices and Objections) Regulation 1938 speaks to objections. It provides:

> "**6** – (1) The owner or occupier of an adjoining holding and the owner of any holding within a radius of two hundred yards of a proposed site may object to an approval of any plan submitted in respect of such proposed site by serving (personally or by registered site)upon the owner of the proposed site a notice in writing of such objection and of the grounds thereof and by delivering to the Building Authority a duplicate of such notice together with proof of the service thereof on the owner of the proposed site.
>
> (2) Every such notice of objection shall be in the form No.2 in the schedule and shall be served upon the owner of the proposed site and a copy thereof delivered to the Building Authority within thirty days after the day on which the notice of intention to submit plans shall have been posted on the proposed site".

As said before (when dealing with ground 13) there is a legal duty on the applicant to serve notice of intention to submit plans on the

owners or occupiers of land adjoining the proposed site. Also the Building Authority must take into consideration all objections before coming to a determination on the plans – Regulation 7.

It is my view that the Building Authority would have no jurisdiction to consider the plans if no notice had been served on such owners or occupiers. There is no evidence that such notices were served by the appellant. These objections came about when a community survey was done. If in fact no such notices were served can the appellant complain that copies of objections were not provided them? I think not.

On the other hand if the applicant had duly served notice on the owners and/or occupiers and was not itself served with copies of objections the question as to the effect of this breach of the rules of fairness would arise. Would the procedure of appeal satisfy the requirements of fairness?

Recently this Court in two cases considered the effect of an appeal or the right of appeal on procedurally flawed decisions. In ***Owen Vhandel v The Board of Management of Guys Hill High School*** SCCA No.72/2000 delivered June 7, 2001 and ***Auburn Court Ltd. v. Kingston & St. Andrew Corporation, The Building Surveyor and the Town & Country Planning Authority*** SCCA No. 99/97 delivered July 31, 2001 this court examined a long line of cases dealing with this issue. In the ***Auburn Court*** case this Court held at p.85:

> "The cases do show that in some instances the statutory scheme may be so fashioned that fairness may be achieved by ensuring that the right to be heard is granted not by an appearance and oral representations at the earlier stage but by the grant of the opportunity for an appeal by the person affected by the decisions, at a later stage."

The Court in the ***Auburn Court*** case examined the statutory provisions under both the KSA Building Act and the TCP Act and Regulations made thereunder relating to appeals from decisions of the Authorities and the local planning authorities. The court found that on appeal an applicant's application is treated as an original application. Its plans and drawings will be presented in support and it will be able to make its submissions. In the Court's view, this was the type of ample statutory appeal contemplated by Lord Bridge in ***Lloyd v McMahon*** [1987] A.C 625 at 709 where the learned Lord Justice held that "the scope of the statutory appeal was ample as it could be and more ample than that of judicial review". It is my view therefore that the contention of the appellant in this ground (14) must also fail.

In Ground 16 the appellant claims that the learned judge erred in holding that the Minister had no duty to disclose the nature and contents of the legal advice he had obtained and acted on in adjudicating on the matter. In this regard Dr. Barnett submitted that it was clear from the evidence that the Minister regarded the advice as essential to his arriving at a decision. The opinion he obtained was therefore critical to the

appellant's interests. In order to exercise his appellate functions in a judicial and fair manner the Minister should have invited the law officers to make submissions at the hearing so as to give the appellant an opportunity to respond , he urged. He relied on ***The Board of Education v Rice*** [1911] 3 All ER 36 and ***R v Deputy Industrial Injuries Commr. Ex parte Moore***[1965] 2WLR 89.

The evidence is that at the end of the appeal the Minister said:

> "... I now have to get back to you as quickly as possible with respect to getting the notes so that we can get legal advice from the Attorney General and get back to you."

On August 3, 1999 the Minister wrote Lascelles Dixon and Associates advising:

> "I make reference to the appeal made to me under the Town and Country Planning Act against the decision of the Town and Country Planning Authority to refuse permission for the captioned development.
>
> Having examined all the facts of this case, I am satisfied that the decision of the Authority should stand. The proposed development contemplates both a change and an intensification of the current usage, which will not be compatible with the character of the area. My decision therefore is to dismiss the appeal".

It is important to note that the Minister reserved judgment with a view to getting <u>legal advice</u>. There is no evidence whatsoever that he obtained and considered any <u>new facts</u> or that the advice was not confined to points of law in relation to the facts before the Minister. The question then

is whether the rules of natural justice or of procedural fairness require the Minister to disclose to the applicant the legal advice relating to the facts of the case which he might have obtained.

The cases cited by Dr. Barnett are not in my view helpful in this regard. The rules of natural justice require that a party to a dispute must be given the opportunity to controvert, correct or comment on any evidence or information that may be relevant to the decision. If relevant evidential material is not disclosed to a party, there is prima facie a breach of natural justice whether the material in question arose before during or after the hearing. However, I know of no such rule relating to disclosure of legal advice. A parallel situation that comes to mind is the Justices of the Peace seeking legal advice after their retirement to consider their verdict. They are entitled to receive legal advice from their Clerk but not advice on the facts. It is not improper for the Clerk to go with the Justices to their private rooms for the purpose of advising on points of law. There is no duty on the Justices to disclose the legal advice received from their Clerk to the defendant. Accordingly, I hold that the appellant's contention in this ground cannot succeed.

Ground 17

In this the final ground, the appellant claims that the learned trial judge misdirected herself in holding that the appellant did not have a legitimate expectation that once it submitted detailed plans which

conformed with the Building Regulations they would be approved. Here Dr. Barnett submitted that legitimate expectation was induced by the terms of the grant of outline approval. The indication given by the statutory authorities was that the development satisfied the general planning criteria and that the plans so far submitted were in order. The clear inducement was that detailed plans should be prepared and submitted to satisfy the Building Regulations. Substantial expenses he said were incurred in obtaining revocation of restrictive covenants and in preparing detailed building plans. He placed reliance on the well known case of ***Council of the Civil Service Unions et al v. Minister for Civil Service [1984] 3 All ER 936 and Reg. v North and East Devon Health Authority ex.p Coughlan*** [2000] 2 WLR622. By this ground the fairness of the conduct of the statutory authorities is being challenged on the basis of legitimate expectation.

The cases clearly establish that 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 until he was given reasons for its withdrawal and the opportunity to comment on those reasons.

I agree with Miss Bennett that for the following reasons, among others, the appellants claim to legitimate expectation cannot succeed:

(i) The 1978 application and approval were for change of use only.

(ii) The 1978 grant of permission was not transferable to the appellant who was neither the applicant nor the owner at the material time.

(iii) The 1992 application was for Outline Building Approval – page 31 of Record. It could not be considered under the KSA Building Act.

(iv) The 1993 Outline Building approval was conditional on the appellant submitting detailed building plans for consideration and approval prior to commencement of any construction work.

(v) The 1998 application was probably not made for approval of detailed building drawings pursuant to the condition which was attached to the 1993 Outline Building approval see p.42 of Record and affidavit of Ms. Blossom Samuels.

(vi) The 1998 Application was a new application which the learned trial judge found to have been made under both the Building Act and the Planning Act.

(vii) Up to 1998 there was no application for building approval under the KSA Building Act.

(viii) The refusal of the 1998 application would at least mean that the appellant has failed to obtain the necessary building approval under s.10 of the KSA Building Act.

Conclusion

1. The 1978 application relates only to the manner in which the existing premises was to be used. It enured only to the benefit of the

Metaphysical Study Group and not to the benefit of the Appellant. It was therefore limited in "scope and tenor".

2. Since 1992 the Building and Town Planning Committee of the KSAC had a dual function. It considers applications for building approval under the Building Act and applications for planning permission under the Town and Country Planning Act.

   The 1992 application could not have been made under both the Building and Planning Acts as there is no provision for outline application under the Building Act.

3. The 1993 approval was a valid approval under the TCP Act but not under the Building Act.

   The fact that an applicant gets planning permission does not necessarily mean he will get building approval.

4. On the evidence the learned trial judge correctly held that the detailed building plans submitted in 1998 were not submitted pursuant to the 1993 approval.

5. The 1999 refusal of the planning application for the construction of a multi-purpose building on the said premises by the Town and Country Planning Authority is not unlawful or in breach of its statutory duty.

6. The Minister did not act *ultra vires* in hearing and dismissing the appellant's appeal.

The Minister did not act unfairly and in breach of the rules of natural justice in not disclosing to the appellant the legal advice which he obtained after hearing all the evidence and submissions.

7. The appellant has failed to show that the decisions of the public authorities have deprived 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.

Accordingly I would dismiss the appeal with costs to the respondents to be taxed if not agreed.

ORDER:

FORTE, P:

Appeal dismissed. Costs to the respondents to be taxed if not agreed.