

1985 June 28

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

[L. LOIZOU, J.]

C & R SEVERIS ESTATES LTD,

*Applicant,*

v.

THE MUNICIPAL COMMITTEE OF NICOSIA,

*Respondents*

(Case No. 440/79).

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*Administrative Law—Streets and Buildings Regulation Law, Cap 96, section 5—Meaning of proviso to the said section—Distinction between an application for renewal of a building permit and an application for a new building permit—To renew a building permit means to renew it as it originally was—as in the present case the proposed building was entirely different from the one envisaged by the original permit, respondents rightly treated the relevant application for the proposed building as an application for a new permit (and not as an application for renewal of the original permit)* 5 10

On the 16.1.1978 and upon application submitted to them on the 12.8.1977 by R D., who was at the time the registered owner of a plot of land situated at Themistocles Dervis Street in Nicosia, the respondents issued to the said R. D Building Permit No. 11736 for the erection of a building R D. paid the fee of £634 - payable in respect of such permit 15

For reasons referred to in the judgment, the applicants, who in the meantime had become the registered owners of the said property, submitted to the respondents an application dated 9.12.1978 intituled "Application for a Building Permit" whereby new modified plans for the proposed building were submitted to the respondents. 20

In view of the proposed modifications the applicants, through their architect, applied by letter dated 27.11.1978 to the Director of the Department of Town Planning and Housing for a relaxation of the Regulations in respect of the height and building angle of the proposed new building. It was further stated in the said letter that the applicants would be willing to cede to the public street without compensation a strip of land at whatever width which might be affected by a Street Widening Scheme which was in accordance with the applicant's information being considered at the time by the respondents.

Respondents by letter dated 1.12.1978 informed the said R. D. that the scheme would not be proceeded with.

By a letter to the applicants dated 26.1.1979 the Department of Town Planning and Housing gave its consent for the relaxation applied for by the applicants.

By letter dated 19.2.1979 the applicants applied for the renewal of Building Permit No. 11736.

The respondents informed the applicants by letter dated 1.3.1979 that the said permit could not be renewed without relaxation by the Council of Ministers as the proposed building contravened regulation 61, as amended on 27.10.1978.

By another letter dated 31.3.1979 the respondents informed the applicants that so that they would be able to consider their application dated 9.12.1978 certain documents including inter alia, a relaxation of the Regulations by the Council of Ministers should be produced.

Eventually the applicants did not apply for relaxation but modified their plans so as to comply with the Regulations and on 8.6.1979 submitted the new modified plans for the erection of a basement, larger than the one shown in the plans submitted on 9.12.1978, shops with a mezzanie and six floors of Offices.

In compliance with a request to that effect by the respondents the applicants on the 24.7.1979 ceded to the public street the strip of land agreed by them as a condition for the relaxation given as aforesaid by the Department of Town Planning and Housing.

Finally by letter dated 14.9.1979 the respondents requested the applicants to pay £656 as fees for the issue of the building permit applied for on 9.12.1978. The applicants protested and eventually filed this recourse against the decision contained in the last above mentioned letter. 5

In effect the respondents treated the application for a permit dated 9.12.1978 and the application for renewal dated 19.2.1979 as two separate and distinct applications.

It should be noted that the Form in use both for an application for a new building permit and for renewal of a building permit is the same. 10

The question for determination was whether the application dated 9.12.1978 (as the same was later modified) was rightly treated by the respondents as an application for a new building permit. 15

*Held*, (1) As there is no provision in the Law to the effect that a permit may be renewed where the original plans in respect of which it was issued have been changed, the answer to the above question for determination must be sought in the true meaning and effect of the proviso to section 5 of Cap. 96. To renew a permit means to renew it as it originally was. The practice of the respondents, whatever it may be, where there are minor or insignificant changes to building plans, is of no consequence in the present case where the changes were such that the proposed building was entirely different from the one envisaged by the original permit. 20 25

(2) The fact that the intention of the applicants might all along have been to renew the old permit and not to apply for a new one is immaterial as the abandonment of the original plans and the preparation of new ones was not suggested by the respondents. 30

(3) The condition as to the cession of part of the applicant's land to the public street is also immaterial as this was not a condition for the renewal of the original permit. 35

(4) In the light of the above the respondents correctly treated the application for a Permit dated 9.12.1978 and

the application for renewal dated 19.2.1979 as two distinct and separate applications.

5 (5) As applicant's failure to apply to the Council of Ministers for relaxation of the Regulations with which the original plans did not comply any more by reason of their amendment, rendered the renewal of the original permit impossible under the Law, the original permit should be deemed as having been abandoned.

10 (6) In the circumstances of this case it was reasonably open to the respondents to treat the application dated 9.12.1978 as an application for a new building permit. The contention of applicants' counsel that the said application ought to have been treated as an application for alterations to a building cannot be sustained either, in view of the  
15 finding that the application dated 9.12.1978 related to a new building completely different from the one envisaged in the original plans for which the old permit was issued.

*Recourse dismissed.*

*No order as to costs.*

20 Cases referred to:

*R. v. The Licensing Justices of Crewkerne* [1888] 21 Q. B. D. 85.

**Recourse.**

25 Recourse against the decision of the respondent not to renew applicant's building permit No. 11736 and to demand from them the payment of £656.- as fees for a new permit.

*A. Dikigoropoulos*, for the applicants.

*K. Michaelides*, for the respondents.

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*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. The applicants by this recourse challenge the validity of the decision of the respondents whereby they refused to renew building permit No. 11736 of the applicants and demanded from  
35 them payment of £656 as fees for a new building permit,

and pray for a declaration that such decision be declared null and void and of no effect whatsoever.

Applicants are the registered owners of the immovable property under Registration No. 2767, dated 11th September, 1978, plot 827 of Sheet/Plan XXI/54.2.11, situated in Themistocles Dervis Street, in Nicosia. 5

The said property was previously owned by a certain Maria Dingli, to whom a building permit was issued on the 20th June, 1974, which expired on the 19th June, 1975 as no use was made of it. 10

On the 12th August, 1977, Rita Demetriou, the successor in title of the above named previous owner of the said property, applied for a new building permit in respect of the same buildings for which the expired building permit was issued (exhibit 15). The said building consisted of two wings, as follows: 15

- (a) The front wing comprised a basement, shops on the ground floor with mezzanie and 4 floors of offices and flats.
- (b) The rear wing comprised a parking space and four floors of flats above it. 20

On the 16th January, 1978, building permit No. 11736 was issued to the said Rita Demetriou, in respect of the building described above, who paid the fee of £634 in respect of such permit (exhibit 2). 25

On the 24th October, 1978, the applicants, who became in the meantime the registered owners of the said property, wrote a letter to the respondents (exhibit 3) stating that it had come to their knowledge that the Municipal Committee were considering a street widening, scheme which affected their property and expressed their willingness to comply with that scheme provided the respondents would approve their new modified plans by which the rear wing of the proposed building was to be abandoned and be left as a parking place and its cubic content be added to the front wing which would thus comprise six floors instead of four. 30 35

On the 27th November, 1978, applicants' architect wrote a letter (exhibit 4) to the Director of the Department of Town Planning and Housing, asking for a relaxation of the Regulations in respect of the height and building angle of the proposed new building, as modified by the new plans, and also informing him that the applicants were willing to cede a strip of land of whatever width which might be affected by the proposed scheme without claiming any compensation.

Applicants' architect also wrote a letter to the respondents, dated 28th November, 1978, (exhibit 5), enclosing plans showing the proposed alterations and informing them that they had applied to the Director of the Department of Town Planning and Housing for the necessary relaxation of the Regulations.

The respondents replied by letter dated 1st December, 1978, addressed to the said Rita Demetriou (exhibit 6) informing her that the street widening scheme would not be proceeded with for the time being and advising her to apply to the Department of Town Planning and Housing in order to secure a relaxation of the building Regulations.

On the 9th December, 1978, the applicants submitted to the respondents an application entitled "application for a building permit" containing the new modified plans to which the application (exhibit 7) related. It should be noted that the form in use both for an application for a new building permit or for a renewal is the same.

On the 26th January, 1979, the Department of Town Planning and Housing wrote to the respondents giving its consent for the relaxation of the building Regulations (exhibit 8). The applicants applied by letter dated 19th February, 1979, addressed to the Civil Engineer of the respondents (exhibit 9) for the renewal of building permit No. 11736, which had expired.

The respondents informed the applicants by letter dated 1st March, 1979, (exhibit 10) that the building permit could not be renewed without a relaxation by the Council of Ministers as the proposed building contravened Regulation 61. This Regulation which was amended on the 27th

October, 1978, provides for the parking place requirements.

The respondents by another letter dated 31st March, 1979, addressed to the applicants (exhibit 11) informed them that so that they would be able to consider their application (exhibit 7) they should produce certain documents, inter alia, a relaxation of the regulations from the Council of Ministers and also that they should modify their plans so that the proposed staircase would afford a safe escape of the residents in case of fire.

The applicants eventually did not apply to the Council of Ministers for relaxation of the Regulations but instead they modified their plans so as to comply with the Regulations and on the 8th June, 1979, they submitted their new modified plans for the erection of a basement larger than the one shown in their application (exhibit 7) shops with a mezzanie and six floors of offices (exhibit 12).

The respondents by letter dated 18th July, 1979, requested the applicants to cede to the public street the strip of land agreed by them, as a condition for the relaxation granted to them by the Town Planning and Housing Department on the 26th January, 1979, which the applicants did on the 24th July, 1979.

The respondents finally on the 14th September, 1979 wrote to the applicants requesting them to pay the sum of £656 as fees for the issue of the building permit applied for by exhibit 7. The applicants protested against such payment by letter dated the 19th September, 1979 (exhibit 13). The respondents replied by letter dated the 28th September, 1979 (exhibit 14) stating that they considered the application to be for a completely new building which had no relation to the one with regard to which the permit sought to be renewed was issued.

As a result the applicants filed the present recourse against the decision contained in the letter of the 14th September, 1979 (exhibit 1).

Learned counsel for applicants argued that an application for alterations to a building either existing or in the

process of being erected, for which provision is made by regulation 5(1) of the Regulations, does not amount to an application for a building permit although it is made on the same form as an application for a new building. Also  
5 that regulation 62, Part 11 (1)(c) makes provision for the fees payable in connection with alterations and such fees are 1% of the assessed cost of such alterations. And that the fees payable for a building permit are based on the cubic content of the proposed building and the applicants  
10 had already paid the fee for such cubic content which did not change by the new plans. Learned counsel lastly argued that the respondents are estopped from claiming the fees they do because they had accepted the application of the applicants for a renewal of the permit and had en-  
15 couraged them to apply to the Director of the Department of Town Planning and Housing, with whose conditions the applicants complied by ceding part of their plot to the public road.

Learned counsel for the respondents, on the other hand,  
20 argued that the letter of the applicants (exhibit 9) related to the renewal of the original building permit (exhibit 15) whereas the application (exhibit 7) was a different one relating to the erection of a new and different building and the two applications were considered separately. That  
25 the application for the renewal of the initial permit was eventually abandoned and it lapsed since the applicants did not comply with the request of the respondents to apply to the Council of Ministers for a relaxation of the Regulations and the application which led to the sub judice decision  
30 related to a building entirely different from the one for which building permit No. 11736 was issued and the respondents had to use their services to consider it from the beginning and this could not be done with the fee of £2 which is the fee payable for renewals.

35 The sole question that falls for consideration is whether the application (exhibit 7) which led to the sub judice decision, relating to the modified plans for the proposed new building by which the rear wing envisaged by the original plans was abandoned and its cubic content was added to  
40 the front wing, as well as exhibits 12 and 16 which contained certain modifications of exhibit 7, were rightly treat-



ed by the respondents as an application for a new building permit.

Section 5 of the Streets and Buildings Regulation Law, Cap. 96 which provides for renewal of building permits reads as follows:

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“5. A permit shall be valid for one year from the date of the issue thereof:

Provided that, if the work or other matter is not completed within that period, the permit shall be renewable at any subsequent time if not conflicting with any Regulations in force at the time of such renewal, upon payment of the fee prescribed for the original permit or of two pounds whichever is the less. The permit so renewed shall be valid for one year from the date of renewal.”

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There is no provision in the law to the effect that a permit may be renewed even where the original plans in respect of which it was issued have been changed and, therefore, the answer to the question that has to be decided must be sought in the true meaning and effect of the proviso to section 5 above cited. To my mind to renew a permit means to renew it as it originally was. You cannot renew something different from what is in existence. I am fortified in this view by the judgment in *R. v. The Licensing Justices of Crewkerne* [1888] 21 Q.B.D. 85 where it was held by the Court of Appeal in England that where a licence was originally granted subject to the condition under s. 49 of the Licensing Act, 1872, requiring the licensed premises to be closed during the whole of Sunday, it can only be renewed subject to that condition, and cannot be renewed as an ordinary seven-day licence. Lindley, L. J. in the course of his judgment said the following: (at p. 87).

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“Now what is the meaning of applying for a renewal of a licence? It can only mean that the licence holder is applying to renew that which is in existence and is on the point of expiring, which in the present case is a six-day, and not a seven-day, licence.”

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It does not appear from the material before me what the

practice of the respondents is when there are minor and insignificant changes; it may well be that as a matter of practice they may renew a permit in such circumstances. But, however that may be, it is of no consequence in the present case where the changes were such that the proposed building was entirely different from the one envisaged by the permit sought to be renewed. The fact that the intention of the applicants might all along have been to renew the old permit and not to apply for a new one, is, in my view, immaterial to the question in issue. The abandonment by them of the original plans and the preparation of new ones was not suggested by the respondents who in fact had accepted the original ones but it was the result of applicants' decision. And the fact that the applicants were required by the Department of Town Planning and Housing to cede to the public road part of their land as a condition for the relaxation of the Regulations with regard to the new plans is also, in my view, immaterial as this was not a condition for the renewal of the original permit.

In the light of the above, the respondents correctly, in my opinion, treated the application for a permit (exhibit 7) and the application for renewal (exhibit 9) as two separate and distinct applications, since it was up to the applicants to choose to proceed either with the original or the new plans. As it was correctly argued by learned counsel for the respondents the original permit was deemed to have been abandoned as a result of applicants' failure to comply with the respondents' request to apply to the Council of Ministers for relaxation of the Regulations with which the original plans did not comply any more in view of the amendment of the Regulations, thus rendering the renewal of the permit impossible under the Law.

Coming now to the applications exhibits 7, 12 and 16; exhibit 7, as I said earlier, related to plans for a different building than the one for which the building permit was issued as a result of the application exhibit 15 and as a matter of fact they contravened certain regulations regarding the height and building angle of the proposed building (see exhibits 4, 5 and 6). The respondents had, therefore, to consider the new plans from the beginning. It was not a matter of certain minor changes for which an ad-

justment of the original plans could have been easily made. As to exhibits 12 and 16 these concerned certain changes to exhibit 7 and not to exhibit 15. I, therefore, find that, in the circumstances of the case, it was reasonably open to the respondents to treat the application (exhibit 7) as an application for a new building permit 5

In view of my finding that the plans which related to the application (exhibit 7) were in actual fact plans for a new building completely different from the one to which the application (exhibit 15) related the contention of counsel for applicants that exhibit 7 should have been treated as an application for alterations to a building cannot be sustained either. 10

For all the above reasons I have to hold that this recourse cannot succeed and, in the result, it is hereby dismissed. In all the circumstances I make no order as to costs. 15

*Recourse dismissed.  
No order as to costs.*