MONTSERRAT

IN THE HIGH COURT OF JUSTICE

A.D. 2002

CLAIM NO. 2 of 2002

BETWEEN:

BLAKES ESTATE LIMITED

APPLICANT/CLAIMANT

AND

THE ATTORNEY GENERAL

RESPONDENT/DEFENDANT

APPEARANCES:
Mr. Elliott Mottley, Q.C. instructed by Phoenix Chambers Counsel for Claimant
Mr. Kenneth Allen, Q.C. instructed by Allen Markham & Associates Counsel for Defendant

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16th May, 2002, 31st July 2002

JUDGMENT

1. **EDWARDS J**: This is an Application for an Administrative Order by way of a Fixed Date Claim pursuant to PART 56.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000. The Applicant/Claimant is the Owner of approximately 700 acres of prime property situated in North Montserrat known as Blakes Estate. It's President is Dr. Roy Lee.

INTRODUCTION

2. The Affidavits and Documents exhibited that were filed and relied on by both Parties along with the oral evidence disclose the following Facts.
   In or about 1996 the Volcano eruptions in Montserrat caused about two thirds of the lands in the East, West, and South of Montserrat to become inaccessible. The Government declared lands in those areas to be a part of the Exclusion Zone where entry was prohibited by law. With the exodus of people from these areas to the

North, this increased the demand for land in the North; and it became clear to the Government by 1998/1999 that there was an urgent need to acquire land in the North for a Public Cemetery.

3. The Government through its Chief Physical Planner, Ministry of Agriculture Trade and the Environment / Ministry of Agriculture Land Housing and the Environment / Ministry of Agriculture, Lands, Health and Environment and other Government Officers had consultation with various interest groups in the Society including the Christian Council, in its efforts to find a suitable site in North of Montserrat for the Public Cemetery. At the end of the consultations, and decision making process, the Government of Montserrat compulsorily acquired approximately three (3) acres of the Claimant's land at Blakes Estate in North, Montserrat for the Public Cemetery. This land was subsequently licensed as a Public Cemetery by a Proclamation of the Governor in Council before an Application for Planning Permission was made to the Planning and Development Authority. The Claimant has brought this Application because of certain procedural requirements under the Laws of Montserrat which were not complied with before the Proclamation by the Governor was made.

THE PHYSICAL PLANNING ACT AND THE DEVELOPMENT PLAN

4. The Chief Physical Planner is Mr. Franklyn Greenaway, and he is attached to the Ministry of Agriculture, Land Housing and the Environment, and works in the Physical Planning Department where there is the Physical Planning Unit.

5. The Physical Planning Unit carries out the day to day operation of the Planning and Development Authority which is a Statutory Body established under Section 3 of The Physical Planning Act No. 4 of 1996 ('The Act')

6. By virtue of Section 12 of this Act, "no development shall be commenced on land in Montserrat except with a permission" issued by the Planning and Development Authority ('The Authority').

7. Section 5 of the Act assigns to the Authority the task of Preparing a National Physical Development Plan ("the Development Plan") for Montserrat. This Development Plan should include among other things:-

> "5 (3) (a) a statement of the principal aims and objectives with respect to the development and use of land in each area of Montserrat;
>
> (b) a Report on the existing conditions of each area of Montserrat including:-
>
> (i) the principal physical, social, economic and environmental characteristics of each area including the principal purposes for which land is used; ….
>
> (v) any other matters which may affect the development and use of land;

(c) a statement of the policies, proposals and programs for the future development and use of land in each area including principles for regulating and promoting the use and development of land and measures for the maintenance and improvement of the environment".

8. Section 6 of the Act requires the Authority to publicize the matters it intends to take into consideration for the Development plan and permit the public; interested persons and organizations to make representations.

CHRONOLOGY OF THE RELEVANT EVENTS BEFORE THE CLAIM

9. The Government it appears complied with Section 6 of the Act; and after such representations concerning the site for the Public Cemetery; the Government began focusing on the Blakes Estate lands as a possible site for the Public Cemetery.

10. There was much communication between the Claimant's President, Dr. Roy Lee, the Chief Physical Planner, and other Government Agencies regarding the suitability of that area of land called Blakes Yard and other areas on the Estate for the Public Cemetery.

11. Between February 1999 and November 2000, Dr. Lee sought to dissuade the Government from choosing the Blakes Yard area on his Estate, by identifying three (3) other sites on the Claimant's lands at Blakes Estate as alternatives for the Public Cemetery and other lands elsewhere. Mr. Lee was unsuccessful. These alternative sites on Blakes Estate were visited by the Chief Minister, other Government Ministers and the Chief Planning Officer, Mr. Franklyn Greenaway and subsequently declared unsuitable. While this was happening; the Physical Development Plan for North Montserrat 2000 – 2009 was prepared by the Authority, Approved by the Governor in Council, and Published in January 2000.

12. The Development Plan States as its purpose at page 5:-

> "….. to guide and direct from a physical planning perspective the development and rebuilding of Montserrat in the North of the island….. to provide a framework for land use and development by Government, the Private Sector and the Community, and to help instill confidence in the future of the island……."

13. The area of Blakes Yard on the Claimant's property at Blakes Estate is designated as one of the Historic Sites to remain in open use, and that one of the Plan's Development goals is "To conserve and protect sites of landscape, ecological, historic and cultural value and ensure they fulfill a role in the future of the island".

14. The Plan recognizes the urgent need for more than five (5) acres of land for Cemetery purposes, and proposes that Government should acquire private land at a site or sites,

to be determined. The persons or Agencies designated with the head responsibility for this are identified in the Plan as the Physical Planning Unit and the Christian Council.

15. Dr. Lee in his many discussions and correspondence with the Chief Physical Planner and other relevant Government Officers, emphasized the goals and objectives in the Development Plan. His dissuasive arguments against focusing on Blakes Estate as a Public Cemetery, included the fact that the Claimant had earmarked the area near the proposed Cemetery site on Blakes Estate for the construction of homes in the Bentley Subdivision Development and he had plans to build his house in the Blake Yard area. That the proposed Public Cemetery site would impact negatively on the Claimant's Subdivision plans, devalue its adjoining lands, deter private investment and probably lead to the harmful contamination of a pond on the Estate.

16. Dr. Lee also focused on the need for the relevant Government Agencies to carry out an Environmental Impact Assessment before deciding that the proposed site was suitable for the Public Cemetery.

17. In a letter written by the Chief Physical Planner, Mr. Allan Gunne-Jones on the 16th February, 1999 to Dr. Lee, the Criteria for the proposed Cemetery site was stated thus:-

> "….. the site should be accessible and conveniently located in relation to population centers. In addition ground conditions should be suitable for excavation and no watershed areas should be impacted".
>
> In another letter dated 13th May, 1999 from the Chief Physical Planner to the Permanent Secretary, Agriculture Trade and Environment, Mr. Gunnes Jones further stated that the proposed Cemetery site "….. should be accessible to the population and can with good design and landscaping , coexist with residential communities……"

18. It appears that on the 26th October 1999 the Chief Physical Planner Mr. Franklyn Greenaway by letter informed the Claimant that the Executive Council on the 9th September 1999 had decided that it's land at Blakes Estate was "required for a Public Purpose, namely the development as a Public Cemetery". And that "a preliminary ground study to confirm the suitability" of this site would be undertaken.

19. Mr. Lee authorized the Government's Entry on his Land after Notice of Entry to Land pursuant to Section 4 of the Land Acquisition Ordinance Cap. 251 was served on Claimant.

20. It is not clear whether the letter of the 26th October 1999 referred to that parcel of land in the present Claim as this is disputed by Mr. Lee.

21. Apparently, soil tests were carried out after the 30th November 2000 by the Government. On the 27th May 2001 and 30th June 2001 the Government's

Acquisition of the land in question; approximately three (3) acres for a Public Cemetery, was Gazetted.

22. By letter dated 13th July 2001 ("EM2" referred to in para. 10 of Mr. Roy Lee's Affidavit in Support of the Application for Leave to apply for Judicial Review's sworn to and filed on the 26th February 2002). Claimant's Counsel Mr. Mottley, Q.C. wrote to Mr. Franklyn Greenaway, Chief Physical Planner-

> "…… I am instructed that the Government of Montserrat is in the process of acquiring a portion of land at Blakes for the purposes of building a Cemetery. I should be grateful if you would let me have copies of the following documents:
>
> (i) application for development of the land at Blakes as a Cemetery
> (ii) permission for the development of the land at Blakes as a Cemetery
> (iii) the environmental impact statement carried out in relation to the application to use the land at Blakes as a Cemetery;
>
> Kindly let me have a copy of the notification sent to Blakes Estate Limited and all other persons affected by the proposal for establishing a Cemetery at Blakes".

23. By letter dated 13th July 2001, ("EM1" referred to in the said Affidavit of Roy Lee at para. 7). Queen's Counsel Mr. Mottley also wrote to the Chief Minister on the Claimant's behalf-

> "……. I act on behalf of Blakes Estate Ltd. Dr. Roy Lee its President has instructed me that the Government of Montserrat has initiated proceedings to compulsorily acquire a portion of land at Blakes for the use of a Cemetery.
>
> I am instructed that the portion of land which has been identified for acquisition is in an area which has been earmarked for the construction of homes.
>
> My Client is prepared to offer the Government of Montserrat an alternative site at Blakes for the use of a Cemetery.
> Dr. Lee is therefore requesting a site meeting to show the Government the alternative site that he is suggesting.
>
> If you are willing to have this site meeting; kindly let me know what date is suitable to you as it is my intention to attend this meeting".

24. There was no response to these two (2) letters.

25. On the 27th August 2001 the Claimant was informed by a Notice under the Land Acquisition Act about the Gazetting of the compulsory acquisition of its land. The Chief Physical Planner who is also the Authorized Officer under the Land Acquisition Ordinance Cap. 251 requested that the Claimant state its interest and the interest of every person in the acquired land within one (1) month from the 27th August 2001.

Subsequent correspondence concerning the Acquisition was sent to the Claimant by Mr. Franklyn Greenaway and Dr. Roy Lee replied to the correspondence.

26. By a Proclamation made by the Governor in Council dated 10th January, 2002 the approximately three (3) acres of land which was compulsorily acquired by the Government from the Claimant was licensed as a public burial ground under Section 3 of the Burial Grounds Ordinance 1944.

27. On the 11th January, 2002, the Ministry of Education Health and Community Services made an Application in Form A No. 1/02 to the Planning and Development Authority for Planning Permission for the development of the Public Cemetery.

THE PLANNING AND DEVELOPMENT AUTHORITY

28. The structure of the Authority is defined by Section 3 (1) of the Physical Planning Act No. 4 of 1996 (the Act). The Authority is comprised of ten (10) members who are presently-

1. CHAIRMAN - Permanent Secretary in the Ministry of Environment
2. EXECUTIVE SECRETARY – The Chief Physical Planner (he is the Technical Advisor to the Authority)
3. - The Director of Public Works
4. – The Principal Environmental Health Officer
5. – The Director of Agriculture
6. – The Chief Surveyor
7. – The Director of Development
8. – Managing Director of Montserrat Water Authority
9. - Representative; Montserrat Chamber of Industry and Commerce
10. – Representative; Montserrat Association of Architects and Engineers

29. Under Section 3 (5) of the Act, the Authority has power to regulate its own proceedings, subject to Rules in the First Schedule to the Act which sets out the Constitution of the Planning and Development Authority.

30. The Constitution provides that a Quorum for its meetings shall comprise six (6) members and this does not include a member who is disqualified from taking part in the deliberations or decision of the Authority because he/she has declared an interest. The Quorum does not include the Chief Physical Planner who has no vote. The decisions of the Authority are to be by consensus or alternatively, by majority votes

with the Chairman having a casting vote in addition to his/her original vote where there is a tie.

31. The Minutes of the Meeting are to be recorded by the Chief Physical Planner and after they are approved as correct at the subsequent Meeting of the Authority, the Minutes must be signed by the Chairman.

THE PUBLIC CEMETRY AS A DEVELOPMENT

32. The Act defines "development' in Section 15 (1) as –

> "the carrying out of building, engineering, mining, or other operations in, on, over or under land, the making of a material change in the use of any building or land, the sub-division of land and the display of advertisements".

33. Section 15 (2) tells you what types of operation are not regarded as a 'development' and Section 15 (3) tells you what types of use of land will constitute 'development'. The Third Schedule to the Act lists the types of use of land that require an environmental impact assessment. The use of land as a Public Cemetery is not included in any of the categories set out in Sections 15 (2); 15 (3) and the Third Schedule.

34. Use of land as a Public Cemetery is a 'development' under the Act because it is not excluded under Section 15 (2) and it is in an "operation in, on, over or under land" and depending on how you see it, you may very well say in the present set of circumstances that it is "a material change in the use of land".

THE APPLICATION

35. The Act and Regulations made under it pursuant to Section 64, provide for three (3) types of Applications to be made to the Authority and the type of Form that you should use for each Application –

(a) Section 14 of the Act deals with an 'OUTLINE APPLICATION' that is an Application for approval of the purpose for which the land is to be used. Regulation (5) sets out the Requirements for this Application which must be made in Form A.

(b) Regulation 3 deals with the requirements where you make an Application to construct, alter or extend building – Form A must be used.

(c) Regulation 4 deals with the requirements where you make an Application to subdivide – Form B must be used.

(d) Regulation 6 deals with where you make an Application to display advertisements - Form A must be used.

(e) Regulation 7 deals with where you make an Application for Permission to change the use of land or buildings - Form A must be used.

It is evident from the Application in Form A that was made for Planning Permission that the Application is either an 'Outline Application' or an Application for permission to change the use of the land. If it is an "Outline Application, then it relates to development categorized as "other operations in, on, or over or under land" according to the specific meaning of 'development' under Section 15 (1) [SEE paragraph 32 of this Judgment].

36. Regulation 5 requires that the 'Outline Application' should be accompanied by -

> "(a) a plan of the land which is the subject of the Application drawn up at a scale of 1:1250 or 1:2500; and
> (b) a statement of –
> (i) existing and proposed use; and
> (ii) services to be provided e.g. water supply, electricity, sewage access".

37. Section 14 of the Act provides that where you make an 'Outline' Application to the Authority, the Authority may give approval "respecting the use of the land but shall not permit the commencement of development until" the Application is fully compliant with Regulation 5.

38. In considering the Application, the Authority must have regard to the provisions of the Approved Development Plan and give effect to it "except where the Authority considers it inexpedient so to do". This is what Section 11 states.

39. Section 19 states that the Authority must also have regard to –

> "(a) …….
> (b) the proposed development as it affects the interest of a person or body of persons interested, or the interest of residents of a locality;
> (c) the requirements of the Montserrat Building Code or any planning standards, guidelines or regulations that are currently in force.
> (d) the sustainability of the proposed development;
> (e) the content of any environmental impact assessment; and
> (f) any other material planning consideration".

40. A very important provision for the purposes of these proceedings is Section 16, and because of its importance, it is necessary to set it out in its entirety for its full terms and effect.

> "16 (1) Before determining an application for development permission. The Authority shall notify all Departments of Government, Agencies, Statutory Authorities **OR** persons who may be affected by the proposed development.
>
> (2) A notification under subsection (1) shall contain sufficient information to enable the persons OR bodies notified to determine the manner in which their interest may be affected.

(3) A person OR body notified under subsection (2) shall forward any comments on the proposed development to the Authority within fourteen days of the receipt of notification or within such longer period as may be agreed by the Authority.

(4) The Authority shall not determine an application for development permission until the period specified in subsection (3) has elapsed and all comments received in respect of the proposed developments have been considered".

The implications of Section 16 of the Act are discussed in Paragraphs 74 et sequiter of this Judgment.

THE EVENTS AFTER THE APPLICATION FOR PLANNING PERMISSION

41. On the 11th January 2002 the Chief Physical Planner Mr. Franklyn Greenaway prepared an APPLICATION FOR DEVELOPMENT PERMISSION - CONSULTATION Document ("the Consultation Document") which was circulated to the Members of the Authority. This Document required each of the Members to state their individual comments On the Application. Mr. Greenaway's evidence was that the comments were summarized by him and presented at the Board Meeting of the Authority at the time of their decision.

42. This Document discloses that of the nine (9) members of the Authority who have a vote in making decisions under the Constitution [See paragraph 28 of this Judgment] seven (7) of them made comments in favour of the application. The Principal Environmental Officer did not comment at all, and the Representative from the Association of Architects and Engineers wrote "No, Comment". Of peculiar interest is the fact that the Planning Permission was granted on the 1st February, 2002 yet the comment of the Director of Development was made on the 8th of February 2002 and the comment of the Director of Public Works was made on the 5th February, 2002.

43. It was observed also that the comments of the Director of Agriculture; Chief Surveyor; and the Manager of the Montserrat Water Authority were all unsigned. Of a far more disturbing feature was the comment of the Manager for Montserrat Water Authority. It appears from the original document that what was written as the comment was -

> "The location of the new cemetery has a negative
> impact on anything pertaining to the Montserrat Water Authority.
> Adequate water supply is in the area".

However, the word "Negative" was then "whited out" and "a" before it was crossed out, and the word "No" inserted in the "whited out space" in an obviously different handwriting and with a different pen. The Court was not impressed with Mr. Greenaway's explanations or lack of explanations for these irregularities and they reflect negatively on their decision making process.

44. While this process was going on, the Applicant applied to the Court under PART 56 of CPR 2000 for leave to file a Claim for Judicial Review on the 22nd January, 2002.

45. This Court granted leave to the Applicant/Claimant on the 8th February, 2002 which was to operate as a stay of the proceedings to license the said land as a public burial ground.

46. The Respondent/Defendant was served with the Order of the Court on the 12thFebruary 2002 and a further Application was made by the Applicant on the 14th February 2002 on the grounds that the Respondent had circumvented the Order on purely technical grounds and the Minister of Lands had given orders for the construction work on the Cemetry which had begun on the 12th February 2002, to continue.

47. The Court made a further Order on the 20th February, 2002, Amplifying the Order of the 8th February 2002 and the Amplified Order was set aside on the 25th March, 2002 on the Respondent's Application filed on the 22nd February 2002, to set it aside. The matter was fixed for hearing on the 10th April 2002.

48. The Claimant filed its Claim for the Administrative Order on the 22nd February, 2002 claiming against the Attorney General, in his capacity as Chief Law Officer of the Crown, Judicial Review of a Proclamation dated the 10th day of January 2002 made by the Governor in Council to construct a burial ground pursuant to the said Proclamation and for an Order in the following terms:

> "(a) a declaration that the said Proclamation of the Governor in Council is Null and Void in that it permits the use of such lands as a burial ground without the due observance of and/or conformity with, the procedures laid down in the Physical Planning Act 1996;
>
> (b) a declaration that the Planning Development Authority acted ultra vires and in excess of its powers under the Physical Planning Act 1996 by not giving effect to the Approved Physical Development Plan for North Montserrat 2000-2009 (The Approved Physical Development Plan);
>
> (c) a declaration that the Planning Development Authority acted ultra vires and in excess of its powers under the Physical Planning Act 1996 by not giving and or refusing to give or supply the Applicant with any reasons for not acting in accordance with the Approved Physical Development Plan;
>
> (d) a declaration that the Planning Development Authority acted ultra vires and in excess of its powers under the Physical Planning Act in not giving or permitting or affording the Applicant being a person affected by the proposed development, any or sufficient or reasonable opportunity to make any representation before granting development permission.

(e) A declaration that the Planning and Development Authority acted ultra vires in that being about to depart from the Approved Physical Development Plan; it did not give the Applicant; being a person affected by the development, any or any sufficient or reasonable opportunity to make representation;

(f) An injunction to prohibit the use of the said lands as a burial ground and to prohibit the doing of any act thereon in connection with construction of a burial ground, until the relevant procedures under the Physical Planning Act have been complied with in full.

(g) Damages.

(h) Costs.

49. Subsequent to this, the Application for the Amplified Order filed on the 18th February 2002 was reheard on the 10th April, 2002 in Anguilla. The Court delivered its written decision on the 16th May 2002 granting the Interim Injunction to prevent any further work being carried out at the Public Cemetry Site until the hearing of the Claim.

THE HEARING OF THE CLAIM

50. The Claim was heard on the 16th May, 2002 and the President for the Claimant's Company was cross-examined by Queen's Counsel Mr. Allen for the Defendant. The Claimant's case consisted of the evidence in all of the Affidavits of Dr. Roy Lee that were filed, two (2) Affidavits with Technical Statements dated 9/4/2002 of Mr. Keith Thomas a Civil Engineer (sworn to and filed on the 9th and 22nd April 2002); and the Environmental Impact Assessment Report dated 20/4/2002 and Affidavit of Mr. David Laing, a Soil Scientist and Expert in Environmental Impact assessment (sworn to and filed on the 20th April 2002).

51. The Defendant relied on the Affidavits of the Chief Physical Planner Mr. Franklyn Greenaway (sworn to and filed on the 22nd February 2002 and 15th April 2002); and the Affidavits of Mr. Gerard Gray, who is a Conservation Scientist, Environmental and Natural Resource Manager, an Expert in Geology, Soils, and Environmental Impact and Assessment and Classification of Natural Sites. Mr. Grays Affidavit was sworn to and filed on the 30th April 2002 with his Report on "THE LIKELY ENVIRONMENTAL EFFECTS OF LOCATING A CEMERTRY SOUTH OF BLAKES ESTATE YARD: A Response to Two (2) Consultants Reports" dated 28th April 2002.

52. The Defendant also relied on the Affidavit evidence of Mr. Trevor Howe (sworn to and filed on the 30th April 2002) with his Report – "RESPONSE TO REPORT OF KEITH THOMAS AND DAVID LAING" dated 29th April 2002. Mr. Howe has a Bachelor of Health Science Degree and he is the Principal Health Officer in Montserrat. Mr. Franklyn Greenaway was crossed examined by Q.C. Mr. Mottley.

53. The Court will now focus on the issues arising from the arguments of Counsel, and the Law in the Order of the Remedies sought in the Claim. {See paragraph 48 of this Judgment].

THE GOVERNOR'S PROCLAMATION

54. The Governor's Proclamation is a form of subsidiary or delegated legislation since the Legislature by virtue of Section 3 of the Burial Grounds Ordinance, 1994 have empowered the Governor in Council who is the Crown's Representative to license by Proclamation, any parcel of land in North Montserrat as a public burial ground, which may be required for that purpose. This Proclamation is therefore not an order made in the exercise of the Royal Prerogative.

55. The Law is that a person having sufficient interest who is aggrieved by such a Proclamation can obtain a declaration that the Proclamation is ultra vires where that person can show that his personal interests have been, or is likely to be directly affected by the operation of the Proclamation: See De Smith's Judicial Review of Administrative Action 4th Edition page 485.

56. Where the Proclamation is in conflict with a Statute, or deviates materially from the general law of the land, this is repugnant and it may be pronounced invalid for repugnancy.

57. Though the present Proclamation is obviously not ultra vires the Burial Ground Ordinance; Queen's Counsel Mr. Mottley in his written and oral submissions has argued on behalf of the Claimant, that because the Proclamation was passed on the 10th January 2002, and the application for Development Permission was made on the 11th January 2002; and the Authority granted permission on the 1st February 2002; the effect of the Proclamation was to permit the construction of a Cemetry on the acquired lands before any determination by the Planning Development Authority that the land could be used for a Public Cemetery. Mr. Mottley Q. C. has argued that the Proclamation which is a subsidiary legislation purports to render lawful what a substantive Act of the Legislative Council – The Physical Planning Act No. 4 of 1996 has declared to be unlawful. That this was an abuse of power. Queen's Counsel Mr. Allen did not address these arguments of Mr. Mottley, Q.C. or this issue in his Written and Oral Submissions.

58. Section 65 of The Act states – "The Act binds the Crown", and Section 12 provides that "no development shall be commenced on land except with a permission issued in accordance with the provisions of this Act".

The Question therefore for the Court is whether the mere "licensing" of the acquired land as a Public Cemetery before Planning Permission was obtained can be regarded as development which has commenced on the land.

59. In the Court's opinion, commencing the development of land as a Public Cemetery connotes an active process, doing something actively with the land; while licensing

the land as a Public Cemetery is a passive process which is not synonymous with commencing the development of the land as a Public Cemetery.

The licensing of the land as a Public Cemetery signals the Government's intention to use the land as a Burial Ground. The Physical Planning Act does not make unlawful the expression of an intention by Government or anyone to use the land as a Public Cemetery, what is unlawful is the commencement of using the land as a Public Cemetery, or carrying out Public Cemetery operations on the land without planning permission.

60. It follows therefore that the validity of the Proclamation does not depend on the existence of an application for planning permission or a valid planning permission for the development of the Public Cemetery. The Court does not find that the Proclamation is in conflict with The Physical Planning Act or that it deviates materially from the general law of the land. The Court will not make the declaration requested in paragraph (a) of the Claim.

61. To the extent that the Declarations sought in paragraphs (b); (c); and (e) of the Claim all center around the Approved Physical Development Plan, the Court will now consider whether or not to grant the Declarations sought in those paragraphs [Set out in paragraph 48 of this Judgment].

GIVING EFFECT TO THE APPROVED PHYSICAL DEVELOPMENT PLAN FOR NORTH MONTSERRAT

62. Mr. Mottley, Q.C. argued that under Section 11 of the Act, the Authority can only depart from the Plan if they consider it expedient to do so. Further, that the process of determining whether or not it is expedient to depart from the Plan, that process must necessarily be a transparent process requiring the Authority to state its reasons for its decision. Mr. Mottley also argued that the Claimant and its President and Shareholder Dr. Roy Lee will be affected by the use of the land as a Public Cemetery. That such use of the land is a material change in the use of the land. That the land is designated by the Plan as an Historic Site to be kept as an OPEN SPACE . That since Claimant is going to be affected by this material change; he ought to have been given sufficient or reasonable opportunity to make representations to the Authority; that the Claimant was also entitled to be given the Authority's reasons for not acting in accordance with the Plan. That Natural Justice demand this.

SECTION 16 OF THE PHYSICAL PLANNING ACT

63. Mr. Franklyn Greenaway in his Affidavit sworn to on the 22nd February, 2002 denied that the Physical Planning Development Authority had departed from the scheme of the land use or had altered the Plan in anyway. Mr. Greenaway said-

PARA 4 (a) "The land in question at Blakes is designated as "land to remain in OPEN USE" i.e. as an area that has value as a quiet refuge with

potential for informal recreational pursuits. The use of land as a cemetery is entirely consistent with that designation".

PARA 4 (b) "…..planning permission granted for the development of a cemetery at Blakes does not represent a modification of the development plan, and in any event it is for the Physical Planning and Development Authority to decide whether a proposed development is or is not in accordance with the development plan".

In the Approved Development Plan for North, Montserrat 2000-2009 at Section 11.23 Environment and Conservation Policy EC6 and Figure 6 -

> That part of Blakes Estate which is designated on the map as land "to remain in open use" is in the vicinity of Blakes Yard Historic Site. It is also a part of the East Coast area which "will be reserved primarily for informal recreation use. Only open space uses will be permitted. Public access should be provided to the shore and through ghauts as appropriate together with picnic areas and public conveniences. The development of a small, Caribbean style restaurant, wind forms or a golf course would be permitted in this area".

64. Mr. Mottley, Q.C. addressed Mr. Greenaway's assertions by relying on the interpretation of the words "OPEN SPACE" in Stroud's Judicial Dictionary of Words and Phrases Vol.2 G-P 2000 and also The Third Edition of Words and Phrases Legally Defined Text, Vol. 3 K-Q 1989.

In Strouds's – "OPEN SPACE" is defined as an "unbuilt upon space of land"

In Words and Phrases – "OPEN SPACE" is defined as –

> i) "any land laid out as a public garden or used for the purposes of public recreation, or land which is disused burial ground. (Town and Country Planning Act 1971, Section 290 (1); Housing Act 1985, Section 581 (4)".
>
> ii) "any land whether inclosed or not; on which there are no building or of which not more than one twentieth part is covered with buildings and the whole or remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied. (Open Spaces Act 1906 Section 20)".
>
> iii) "open space includes any public park, heath, common, recreation ground, pleasure ground, garden, walk, ornamental enclosure or disused burial ground under the control and management of a local authority."
>
> iv) "It seems to me that the essential quality which is connected by an open space of land" is the quality of being unbuilt upon. Re Bradford City Premises [1928] Chapter 138 at page 143 per Tomlin J."

Based on the meanings assigned to the word to "OPEN SPACE" in the authorities cited, the Court accepts the view of Mr. Mottley, Q.C that the meanings to be assigned to OPEN SPACE under the Development Plan does not include a Public Cemetery. The Court also finds that the words "OPEN SPACE USES" and "OPEN USE" are used interchangeably within the context of the Development Plan. In these circumstances therefore, to use that area of land designated as "OPEN SPACE" as a Public Cemetery, this must necessarily constitute a material change in the use of the land.

65. Queen's Counsel Mr. Allen for the Defendant, submitted that it is for the decision maker and not the Court to decide whether the proposed development of a Cemetery on lands acquired from the Claimant is or is not in accordance with the Development Plan. Counsel cited several cases in support of this submission which included – Associated Provincial Picture House Ltd. V Wednesbury Corp. {1948} 1KB 223.

66. In this case Lord Greene MR, referred to the well known principles on which a Court can interfere with something primo facie within the powers of the executive authority. At page 228 he stated –

> "The Courts must always remember this:…. we are dealing with not a judicial act, but an executive act. ….. They can only interfere with an act of executive authority if it be shown that the authority has contravened the law…… It is not to be assumed prime facie that responsible bodies like the local authority in this case will exceed their powers; but the Court, wherever it is alleged that the local authority has contravened the law, must not substitute itself for the authority ……it must always be remembered that the Court is not a Court of Appeal".

At page 228 Lord Greene M.R. continued-

> "If in the statute conferring the discretion there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion; it must have regard to those matters…….For instance, a person entrusted with a discretion must, so to speak direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider….."

At page 233

"The Court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or conversely, have refused to take into account or neglected to take into account".

67. Another Case cited by Mr. Allen, Q.C. was Leominster District Counsel Exp. Pothecary [1997] 76 P & Cr (CA) 346. This case emphasizes the extent to which the decision making process of the Authority should be transparent when considering an application for Development Permission. There, the Court had to interpret what was

the effect of Section 54A of the Planning and Compensation Act 1991 (U.K.) on a specific permission for a development which the Authority had granted subject to conditions. Planning permission had been given by the relevant Authority – The Planning Committee – after it had considered the written report of Planning Officers on the particular project. This report contained among other things a Review of the County Structure Plan and Policies of the Leominster Local Development Plan, the Planning Officers comments, and their recommendations. The Planning Committee was comprised of 22 members; and after reviewing the Officers' Report, the Committee had held a site meeting attended by 21 out of 22 of the Planning Committee. At the site the members of the Planning Committee inspected the project which was the subject of the application, debated on possible conditions if the applications were approved, and planning policies and conservation area implications. The Committee also visited the Appellant Mrs. Pothecary's neighboring property and held discussions with Mrs. Pothecary making comments and points to members. At the hearing of Mrs. Pothecary's Application for Judicial Review of the Grant of planning permission, the Chairman of the Planning Committee gave evidence by way of Affidavit, in which he deposed as to how the Committee had carried out its deliberations, and what took place at their meeting at which planning permission was granted, and the reason why they did so.

Section 54A of the Planning and Compensation Act 1991 (U.K.) provided:-

> "…. where, in making any determination under the Planning Acts, regard is to be had to the Development Plan; the determination shall be made in accordance with the Plan unless material considerations indicate otherwise"

68. Section 11 of the Montserrat Physical Planning Act though not identical to Section 54A (U. K.) Act, is never the less similar to it [Section 11 is set out at para 38 of this Judgment].

Section 70 (2) of the Town and Country Planning Act 1990 (U.K.) provided –

> "In dealing with [a planning] application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations".

Section 19 (1) (a) (f) of the Montserrat Physical Planning Act bears some similarity to Section 70 (2) (U.K.) Act to the extent that it states –

> " 19 (1) The Authority shall, in respect of an application submitted to it under this Act have regard to –
>
> > (a) the provisions of the Approved Development Plan …. In accordance with Section 11;…….
> > (f) any other material planning consideration {See entire Section 19 set out in paragraph 39 of this Judgment].

69. In the Leominster case, Walker L.J. at page 359 held that in cases such as Leominster, the first stage must be for the relevant authority to decide whether the proposed development is or is not in accordance with the development plan. That where the development plan contains exceptions, qualifications, and overlapping or even contradictory policies and issues on which value judgments have to be made, in such circumstances, it is desirable that Planning Officers state their perception as to whether or not any proposed development is in accordance with the development plan; and the planning authority should state whether or not it accepts and agrees with the Planning Officers advice. That what is important is for it to be apparent how the Authority has approached the important statutory duty imposed by Section 54 A.

The degree of transparency that was evident in the Leominster case does not exist in the present case. But in the Court's opinion this should not serve to invalidate the decision making process of the Authority.

70. The Affidavits of Mr. Franklyn Greenaway and his oral evidence under cross-examination disclose that the Application for Development Permission Consultation Document was circulated to the Members of the Authority for comments, and after everybody made their comments on it, it was filed. That the Application which was submitted by the Ministry of Health went to the Authority at their meeting which was held on the 30th January 2002 to determine the Application. That the Authority was aware of what is written on the Consultation Document because he prepared a summary of it and submitted it to the Authority. Blake Estate was not afforded the opportunity of seeing this Summary. Mr. Greenaway admitted that he had received a letter from Mr. Mottley on behalf of Claimant and Dr. Lee asking for an explanation as to why the change was made for the Cemetery site on Blakes Estate as it relates to the Draft Development Plan (which was not in evidence) and the Final Development Plan. Mr. Greenaway admitted that he did not provide a reason. Mr. Greenaway in his Affidavit filed on the 22nd February, 2002 at paragraph 8 stated –

> "There is no requirement in the Physical Planning Act that an environmental impact assessment is made in the case of planning a Cemetery. However, it is the practice of the Government of Montserrat in the case of Projects such as this to obtain an Environmental Summary Screening Note. It was obtained and concluded that "the likely environmental impact will be benign. There will be no impact on water supply; agricultural activities and the immediate community".

Mr. Allen, Q.C. argued that the existence of the environmental screening note before granting the planning permission to develop the cemetery illustrates that the Authority at the very least had the objects of the Third Schedule in mind.

Unfortunately, the copy of the exhibited environmental screening note reveals that it is undated and unsigned, and therefore not of much assistance to the Court in the Court's assessment of the Authority's decision making process.

71 Queen's Counsel Mr. Allen also cited City of Edinburgh Council v State for Scotland [1997]/WLR 1447 H.L. This case was in part concerned with the Scottish equivalent of Section 54A of the U.K. Act. i.e. Section 18A of the Town and

Country Planning Scotland Act which is equivalent to Section 11 of the Montserrat Act. There Lord Clyde discussed the impact of the Section on the duties of the Authority and what the approach of the Court ought to be on any Judicial Review Application.

72. Lord Clyde had this to say at page 1458:-

> "By virtue of Section 18A if the Application accords with the development plan and there are no material considerations indicating that it should be refused permission should be granted. If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance. Thus the priority given to the development plan is not a mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given".

At page 1459 Lord Clyde continued:-

> "In practical application of Section 18A it will obviously be necessary for the decision maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails to interpret it properly to. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of them and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse".

73. After a careful consideration of the authorities cited, Sections 11 and 19 of the Act, and the evidence; the Court finds that the Planning Authority in the present case failed to take into account that the use of the land as a public cemetery was a material change in the use of the land, and therefore this is a departure from the Approved Development Plan. The Court also finds that by its failure to do so, the Authority

failed to have regard to a material planning consideration. The Court further finds that Sections 11 and 19 of the Act imposes no legal obligation on the Authority to supply the Claimant with any reasons for not acting in accordance with the plan even though this is desirable. It is also desirable for the decision making process to be more transparent and less flawed and the process carried out in the Leominster case could serve as a useful guide for the Authority in future.

The Court's view also is that based on the structure of the Act; and the provisions in Sections 16 and 20 of the Act; the Claimant was not entitled to any other opportunity under Sections 11 and 19 to make representations where the Authority is about to depart from the Plan.
The Court will therefore grant only the declaration sought in paragraph (b) of the Claim. The Declaration in paragraphs (c) and (e) of the Claim are refused.

SECTION 16 OF THE PHYSICAL PLANNING ACT

74. In paragraph (d) of the Claim the Claimant seeks –

> "a declaration that the Planning Authority acted ultra vires and in excess of its power under the Physical Planning Act in not giving or permitting or affording the Applicant, being a person affected by the proposed development any or sufficient or reasonable opportunity to make any representation before granting development permission".

75. The evidence discloses that prior to the Acquisition of land in question for a Public Cemetery, the Claimant's President, Dr. Roy Lee had several discussions and communications with the Chief Physical Planner and other relevant Ministry Officials and Ministers of Government. Mr. Franklyn Greenaway has stated in his Affidavits that since there were discussions and communication with Dr. Lee, there was no need to allow the Claimant to make any further representation to the Planning Authority after the compulsory Acquisition of the land and before Planning permission was granted. In his Affidavit sworn to and filed on the 8th March 2002, Mr. Greenaway stated that "the date of the Formal Application Form for Planning Permission was not relevant" since the Planning and Development Authority had always been actively involved in choosing the site in question.

76. Then in Mr. Greenaway's Affidavit sworn to and filed on the 15th April, 2002 he states –

> "4 (j) On the 11th January 2002, the Ministry of Health submitted a formal Application for developing part of 14/16/39 at Blakes Estate as a Public Cemetery and a copy of the Application and drawings were submitted to the relevant departments, agencies and statutory bodies for formal comment and a copy of the application with the relevant comments are exhibited herewith…."

> "4 (k) In the alternative; the defendant contends that the relevant Government Departments, statutory

bodies and agencies were notified of the Application for planning approval and it was therefore not obliged to notify the Applicant".

"4 (l) ……..at all material times the Applicant was notified of the requests and or the Application for placing a Cemetery on the subject land".

77. Queen's Counsel Mr. Mottley has argued that Section 16 of The Physical Planning Act gives the Claimant an express statutory right to be heard before an application for development permission is determined. [See Section 16 set out in its entirety in paragraph 40 of this Judgment].

Although it is not disputed that the Public Cemetery site affects the interest of the Claimant, Mr. Allen, Q.C. argued that under Section 16 (1) of the Act, the Authority was not legally obliged to notify the Claimant before determining the Application Section 16 (1) provides –

> "…….the Authority shall notify all departments of Government, agencies statutory authorities **OR** persons who may be affected by the proposed development".

Q.C. Mr. Allen argued that the disjunctive word **"OR**" means that notification given to the relevant departments should suffice. Q. C. Mr. Mottley's rebuttal argument was that to construe the provision in that manner would result in absurdity. That the disjunctive word "OR" is often legally interpreted as "AND" according to the context in which the word "OR" is used. That Section 16 of the Act could not mean that only statutory bodies and Government departments are to be afforded the opportunity to make representations. Q.C. Mr. Mottley cited the case Chellaram And Sons (London) Ltd V Butlers Warehousing And Distribution Ltd. [1978] Vol. 2 Lloyds 412 as one of the many cases in which the disjunctive word "OR" was read as meaning "AND" as a matter of construction.

78. In the Court's opinion, to accept the argument of Q.C. Mr. Allen would have a bizarre effect, particularly when one looks at Sections 16 (2); 16 (3); and 19 of the Act which provides –

> "19. The Authority shall, in respect of an Application submitted to it under this Act have regard to –
>
> (a) …….
> (b) the proposed development as it affects the interest of a person or body of persons interested, or the interests of residents of a locality";

79. In Section 16 (2), the Authority's notification shall contain sufficient information "to enable the persons or bodies notified to determine the manner in which their interest may be affected".

In Section 16 (3) "a person or body notified under subsection (2) shall forward…. comments….."

It is obvious that those provisions do not support Q.C. Mr. Allen's argument. As a matter of construction of the words used in Sections 16 (1) , 16 (2), 16 (3), and Section 19, Q.C. Mr. Mottley's submissions are correct, and the word "OR" in Section 16 (1) should be construed as "AND".

80 Mr. Mottley Q. C. further submitted that the development permission is a nullity because the Authority failed to duly observe the requirements of natural justice in granting Development Permission. That the statutory scheme in Section 16 was intended to afford a right to all affected persons to make representations in relation to the development. That Procedural Fairness requires that a person be offered a right to a hearing where a decision to be made may adversely affect his/her rights. That even where the scheme under the Act includes a right of appeal this right does not necessarily absolve the Authority from affording the Claimant a chance to make representations. That the New Zealand Case Denton v Auckland City (1969) N2LR 256 held that a local Committee must observe the Rules of natural justice even where a statutory framework provided a right of appeal.

[Section 20 of the Act provides that –

> "The Applicant or any person aggrieved by a decision of the Authority respecting the grant or refusal of Development Permission may within sixty days of the making of that decision appeal to the tribunal setting out the grounds upon which the appeal is based"].

81. In support of his submissions; Mr. Mottley cited several cases including R v Monmouth District Council Ex-parte Jones 1985 P and CR 108 where a planning permission granted by a planning authority was quashed since an objector was not given the opportunity to explain his case. Also the case R v Yarmouth B C Ex-parte Botton Bros. Arcades Ltd. (1987) 56 P and Cr 99 where it was held that a planning authority was in breach of its duty to act fairly in not giving rival traders an opportunity to oppose a grant of permission for an amusement area and arcade.

82. The principles of Natural Justice dictate that when any domestic, administrative or judicial body has to make a decision which will affect the rights of an individual, that individual has the right to be informed of the case to be met, and to reasonable time to prepare a response and then the right to be heard.

83. The Court has focused its attention on the speech of Lord Bridge of Harwich in Lloyd v McMahon [1987] AC 625, 702 which is one of the Authorities as to the criteria by which procedural requirements of any decision making body such as the Authority in the present case, should be determined.

PER Lord Bridge –

> "…. It is well-established that when a statue has conferred on any body the power to make decisions affecting individuals, the Courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced

by way of additional procedural safeguards as will ensure the attainment of fairness".

84. The Court's attention is also riveted on the Australian Case Corio Bay v Minster (1998) 157 ALR 181,186 where the speech of Brennan J in Kioa v West (1985) 1590 CLR 550 at 584-5 was emphasized.

PER Brennan J –

> "The presumption that the principles of Natural Justice condition the exercise of a statutory power may apply to any statutory power, which is apt to affect any interest possessed by an individual whether or not the interest amounts to a legal right or is a proprietary or financial interest….. If a power is apt to affect the interests of an individual in a way that is substantially different from the way in which it is apt to affect the interest of the public at large, the repository of the power will ordinarily be bound…. To have regard to the interest of an individual before he exercises the power……
> When the repository is bound…. to have regard to the intent of an individual, it may be presumed that observance of the principles of natural justice conditions the exercise of the powers for the legislature can be presumed to intend that an individual whose interests are to be regarded should be heard before the power is exercised. Of course the presumption may be displaced by the text of the statute, the nature of the power and the administrative framework created by the statute within which the power is to be exercised".

85. The Court is cognizant of the urgent need for a Public Cemetery in Montserrat, but it cannot ignore the clearly defined procedures established in Section 16 of the Act for the granting of Planning Permission by the Authority. The Authority was entrusted with the power to grant Planning Permission in order to protect public interest and to further the objectives and aims of the Act which are recited in the preamble. The preamble states -

> "An Act to make provision for the orderly and progressive development of land, for acquisition; preservation and management of Historic Sites,….."

It is undisputed that the Claimant's proprietary and financial interest is apt to be affected by the placement of a Public Cemetery on the present site. The Court does not believe that the Claimant's right to procedural fairness in these circumstances inhibits/comprises in any way the proper exercise of the Authority's power which the Legislatures have entrusted to it, since the Legislatures themselves have enacted the Section 16 provisions. It is obvious that the statutory scheme of the Act displays the Legislatures' intention that the Rules of Natural Justice should apply to the decision making powers when considering whether or not to grant Planning Permission under the Act –

a) Section 16 (1) and 16 (2) provides for the Claimant's right to be informed, to be notified.

b) Section 16 (3) provides for the Claimant's right to reasonable time to prepare and forward a response.

c) Section 16 (4) provides for the Claimant's right to be heard.

The Court has no doubt that Section 16 of the Act attracts the rules of Natural Justice and the Claimant's right to procedural fairness ought not to be sacrificed because of the urgent need for a public cemetery.

86. The Defendant's Counsel contended in substance that the Chief Physical Planner's and other Government Officials' discussions and communications with Claimant from February 1999 up to the August 2001 concerning the choice of the public cemetery site and the compulsory acquisition of the 3 acres at Blakes Estate; this should be construed as adequate compliance by the Authority with the Provisions of Section 16 of the Act.

87. Claimant's Counsel has argued, and the Court agrees with Mr. Mottley that the discussions with Mr.Greenaway, in his capacity as Chief Physical Planner and the Authorized Officer under the Land Acquisition Act, prior to the Ministry of Health's Application for Planning Permission cannot constitute compliance with the procedural requirements under Section 16, by the Planning Authority, which is comprised of 10 members. The appreciation of the Authority's duty under Section 16, was apparently blurred because, but for 2 of its members, the Authority was comprised of persons who were public servants who in their capacity as public servants may have been actively or otherwise involved in choosing the public cemetery site.

88. The Court therefore will make the Declaration sought in paragraph (d) of the Claim.

89. Finally, in paragraph (f) of the Claim the Claimant seeks an injunction to prohibit the use of the said lands as a burial ground and to prohibit any act on it concerning the construction of a burial ground until the relevant procedures under the Act have been fully complied with.

90. The Court refers to its written decision delivered on the 16th May 2002, regarding Interim Relief in this case, and in particular to paragraphs 28 to 37 of that decision which must be treated as a part of this Judgment. Since then the Court has had the opportunity to read the Privy Council Decision in the Case Jennifer Gairy (as Adminstratrix of the estate of Eric Mathew Gairy deceased) vs The Attorney General of Grenada at paragraph 9 of the Judgment where Lord Bingham of Cornhill referred to the Eastern Caribbean Court of Appeal Decision in the same Gairy case, and observed that The Chief Justice Sir Dennis Byron gave a reasoned Judgment in which he considered the relevant authorities, including Jaundoo's case and M v Home Office [1994] A C. 377, and concluded -

> "that an order of mandamus could be made to compel performance by a Minister of a statutory duty binding on him in his official capacity".

It would seem therefore that this Court's reasoning at paragraphs 28 to 37 of its decision delivered on the 16th May 2002 accords with that of the Eastern Caribbean Supreme Court, Court of Appeal concerning the availability of Coercive Orders including Injunctions against Ministers of the Crown in Judicial Review Proceedings.

91. The Court will therefore grant the Injunction as sought in paragraph (f) of the Claim. The Court is further guided by PART 56.13 (3) and (4) of the CPR 2000 which states –

3) "The Judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an Application for an Administrative Order".

4) "The Judge may, however, make such orders as to costs as appears to the Judge to be just……"

92. Regarding costs, Q.C. Mr. Mottley has argued that under PART 64 of the CPR costs follow the event and PART 56 13 (4) does not affect the rights of the Claimant to recover costs from the Attorney General in event of success in the Claim for Judicial Review. Q.C. Mr. Allen has urged the Court to make no order as to costs.

93. The Court is of the view that this case presents special circumstances that make it proper for an exception to be made and the Court will make no order as to costs.

THE COURT HEREBY MAKES THE FOLLOWING ORDER -

IT IS ADJUDGED AND DECLARED –

1) That the Planning Development Authority acted ultra vires and in excess of its powers under the Physical Planning Act 1996 by not giving effect to the Approved Physical Development Plan for North Montserrat 2000-2009.

2) That the Planning Development Authority acted ultra vires and in excess of its powers under the Physical Planning Act in not giving or permitting or affording the Applicant, being a person affected by the proposed development, any or sufficient or reasonable opportunity to make any representation before granting development permission.

AND IT IS ORDERED -

3) That the Planning Development Permission granted by the Planning and Development Authority to the Ministry of Health for a Public Cemetery at Part of Block/Parcel 14/16/39 Blakes Estate and signed by the Chief Physical Planner dated 1st February 2002 be set aside.

4) That the Defendant be restrained by himself his servants or agents or any of them or otherwise howsoever from using the said lands as a burial ground or from acting thereon in connection with the construction of a burial ground,

until the relevant procedures under the Physical Planning Act have been fully complied with.

No order is made as to costs.

……
Ola Mae Edwards
High Court Judge