ROYAL COURT

25th May, 1988

Before: The Deputy Bailiff,
assisted by
Jurats Baker and Hamon

Her Majesty's Attorney General
- v -
Roda Naim Shaban

Acting in contravention of paragraph (1)(a)
of Article 14 of the Housing (Jersey)
Law, 1949.

Advocate S.C. Nicolle for the Crown
Advocate B.A.C. Yandell for the Defendant

JUDGMENT

DEPUTY BAILIFF: The Court finds the infraction proved; however, there are certain matters which the Court wishes to state before 'conclusions' are moved in this case.

Notwithstanding Crown Advocate Nicolle's valiant efforts to the contrary, we consider this action to have been ill-advised. The condition that has been breached is a very wide one, i.e. that no part of the property should be used for, or in connection with, any profession, commerce or

business.

The purpose of the Housing (Jersey) Law, 1949, is as set out in that Law, amended by the Housing (Extension of Powers) (Jersey) Law, 1969, that is to say to prevent further aggravation of the housing shortage and to ensure that sufficient land, as defined, is available for the inhabitants of the Island.

For this purpose the Housing Committee may attach to the grant of consent to the sale of any land, conditions relating to (a) the persons by whom the land may be occupied (b) the use of the land.

The courts have generally declined to construe a power to impose conditions, as investing an authority with an absolute discretion to do as it pleases. The authority must have regard to relevant considerations and disregard the irrelevant. The authority must not promote a purpose alien to the spirit of the law.

Hence, in our view, in this case, the condition should have been restricted to the dwelling-house and should not have embraced the whole property. Whether or not the garage at 37, Chevalier Road, was used to house a motor vehicle or vehicles or for French polishing could neither aggravate the housing shortage nor deprive the inhabitants of this Island of housing. Therefore, we consider that, if we were hearing an administrative appeal, we could find the condition, insofar as it affects the garage and workshop, to be unreasonable and we could sever the garage and workshop from the condition.

However, we cite AG v. Pennington et uxor 1967-69 JJ 715 at page 717 as follows:-

> "To say that conditions must be reasonable is wrong if the word "must" is intended to indicate that an unreasonable condition is "ultra vires". The question whether or not a condition is reasonable can be determined on an appeal .... under the Law and if there is no appeal it must be presumed that the condition has been accepted as reasonable".

In this case there was no appeal against the condition imposed by the Housing Committee and we must presume that it has been accepted as reasonable by the Defendant and he has failed to comply with it. Thus there is a breach of condition, albeit a somewhat technical one. As a breach of the Housing Law we regard the infraction as virtually de minimis.

Of course, we acknowledge the desirability that a garage attached to a dwelling-house should be retained for the use, as such, of the occupants of the house. It is undesirable that the garage should be used commercially and that, as a result, the occupants of the house should have to resort to on-street parking. But that is a Planning Law matter. The change of use from a garage to a French polishing workshop and store required the consent of the Island Development Committee. Since that consent had not been obtained, a prosecution under the Island Planning Law would have been much more appropriate. But the Island Development Committee decided that an enforcement notice was sufficient.

And so we repeat - as an infraction of the Housing Law - although established - it is virtually de minimus and we hope that the 'conclusions' will reflect that finding.

If as a result of what we have said, Crown Advocate Nicolle wishes to have a short adjournment to reconsider her 'conclusions' we shall, of course, be happy to grant one.

We agree that the fine asked for does not sufficiently reflect the de minimis nature of the offence as we have found it to be, and therefore the fine will be one of £250.00 (Two Hundred and Fifty Pounds) or in default of payment imprisonment of two weeks, and in the circumstances the Court will make no Order as to costs.

Authorities cited:-

AG v. Pennington et uxor 1967-69 JJ 715 at p.717.