ROYAL COURT

13th July, 1989

Before: The Deputy Bailiff and
Jurats Hamon and Orchard

Her Majesty's Attorney General
- v -
Jean Hogan, née Quinquis

Sentencing on four infractions of
paragraph (1) of Article 7
of the Housing (Jersey) Law, 1949.
See previous substantive judgment on
the facts of the case dated
the 29th June, 1989.

The Solicitor General
Advocate D.E. Le Cornu for Hogan.

JUDGMENT

THE DEPUTY BAILIFF: The judgment which we delivered in the proceedings on the 29th June, 1989, contained certain criticisms of the Housing Department. We should now make it clear that those criticisms related to the facts and dates of this particular case. The charges related to May, 1986, in relation to the ground floor flat at 14 Museum Street and Mr. Denis Edward Cullinane, to February and March, 1987, in relation to the two bed-sitting

rooms on the first floor at 14 Museum Street and to Miss Andrea Biggs and Mr. Matthew Jack and to Miss Lorraine Eyre and Mr. John Mallarkey, respectively, and to February, 1987, in relation to the chalet at 36 Aquila Road and Mr. and Mrs. Robert Buchanan.

The Court accepts that, since that time, procedures in the Housing Department have been tightened up considerably and that the criticisms would no longer apply to the policy of, and advice given by, the Department at the present day.

However, the Court must pass sentence on the basis of the facts that we found to exist in 1986 and 1987, and earlier and therefore the following factors have to be taken into account:-

Firstly, a refusal to accept insufficiently completed application forms is essential, even if it involves delay to the applicants. The forms are quite clear as to the detailed information that is required and if that information is not given, the application should be referred back from the outset. This was not done in the present case.

Secondly, there was no examination by officers of the Department at the time of the application for consent to buy 14 Museum Street and, consequently, the existence of the separate second floor flat was ignored; to that extent the Department was the author of its own misfortunes.

Thirdly, the Housing Committee should revise the standard conditions attaching to consents in order to allow for exemptions and the anomaly between persons approved and persons specifically approved should be removed.

Fourthly, we find it difficult to punish as a very serious offence that count relating to the chalet at 36 Aquila Road. The Housing Committee had itself decided that the whole property should be treated as one unit. The planning officer said that the chalet must not be occupied as a separate unit and that strictly no one should be living there at all, but if anybody did occupy it, it must be as part of the main house. Accordingly, it cannot be said that there was an aggravation of the housing shortage or even a failure

to ensure that sufficient property is available for the inhabitants of the Island, which are the two objectives of the Housing Law, as amended. Therefore, that particular offence is not, in our view, a very serious one.

The Court has a great deal of sympathy with the Housing Committee and Housing Department over the problems of law enforcement. We have no doubt that if it had sufficient manpower to inspect every property, to check the detail of every application form and to verify every exemption form, many infractions would be prevented and the law and regulations would be very much better enforced.

Having said that, we must stress that it is the duty of every property owner to make himself or herself fully conversant with the Housing Law and regulations and to comply with them. We agree with the Solicitor General that property owners must exercise scrupulous care. It was a deliberate act on the part of the legislature that provided that in any proceedings for an offence, the burden of proving that the consent of the Committee has been granted or that no consent was required, is on the person charged.

Consequently, entering into a transaction without consent, where consent is required, remains a serious offence. At the same time, this legislation is penal legislation and carries severe penalties. It is important therefore, that the Committee should have done everything in its power to assist the citizen and where everything has not been done, this must be reflected in the sanctions imposed. Accordingly, the sanctions imposed today must not be regarded as setting a standard for the future, but rather should reflect the conditions that existed when these offences were committed. Any new case where the Committee's procedures would be beyond reproach would result in very much more severe penalties being imposed than those which we are going to impose today.

Taking into account all the matters to which I have referred, the Court, in this particular case, imposes the following sanctions:-

On Count 1, a fine of £1,000, or in default of payment, one month's imprisonment.

On Count 2, a fine of £1,000, or in default of payment, one month's imprisonment, consecutive.

On Count 3, a fine of £1,000, or in default of payment, one month's imprisonment, consecutive.

On Count 5, a fine of £500, or in default of payment two weeks' imprisonment, consecutive.

Making total fines of £3,500, or three months and two weeks' imprisonment.

In addition, the defendant will pay the sum of £500 as a contribution towards the prosecution's costs in this matter. Four weeks to pay.

Authorities referred to:-

A.G. -v- Hogan (née Quinquis) (29th June, 1989) Jersey Unreported.
A.G. -v- Pennymoor Consulting Services Ltd 1985-86 JLR N-14.