

19th November, 1981

The defendant company in this action owns Corbière Pavilion. In the course of its business dealings it submitted an application dated the 9th September, 1975, to the Housing Committee for permission to acquire that property. The application was signed by Mr. Frank Thomasson, a director of Thomasson Holdings Limited. Paragraph 7 of the application form is as follows - "Full postal address and description. In the case of land give field numbers and area." If property is commercial, give details of all private dwelling accommodation on the premises." The reply to that question or ~~or~~ request for information is as follows - "Corbière Pavilion Hotel land and appurtenances. Manager's flat on premises comprises two bedrooms, lounge, kitchen and bathroom." It may therefore be said that that reply is susceptible of two interpretations, namely, that the full postal address and description is comprised in the whole of what I have just read out, or that the full postal address and description is comprised only in the first line, that is to say "Corbière Pavilion Hotel land and appurtenances" and the description of the private dwelling accommodation is comprised in the details given about the manager's flat. Be that as it may, no investigations appear to have been made at the time as to whether that second interpretation which I've mentioned was the correct one. In paragraph 10 there is written in manuscript in reply to the question which is as follows - "Full names of proposed occupiers. Give details of residential qualifications and insular insurance number." "Present manager will continue to occupy manager's flat. Rest of property does not include dwelling accommodation." Mr. Thomasson gave evidence that he had not written that himself and he was not aware of its contents although he admitted that he had signed the form. Now that paragraph again could be interpreted in two ways. It could be said that the applicant is admitting that the dwelling accommodation occupied by the manager

is such that it is subject to conditions which might be imposed by the Committee and therefore mentions it, or else it may be that the company thought that the occupation by the manager of certain parts of the property was not the occupation of dwelling accommodation in the premises and that is why the words "Rest of the property does not include dwelling accommodation" were used. Again there is an ambiguity there. On the 28th October, 1975, the Committee gave consent to the application and imposed a number of conditions. We were not told but we infer that condition 2 was a standard condition. It is that "the private dwelling accommodation at the property shall be offered for sale to or let unfurnished to or otherwise occupied by persons approved by the Committee, being persons of a category specified in Regulation 1(1)(a), (b), (c), (d), (e), (f), (g) or (h) of the Housing (General Provisions)(Jersey) Regulations, 1970, as amended." At the time the application was submitted, the Housing (Jersey) Law, 1949, had been amended some years previously so that the Committee had to exercise its powers to control leases and sales in order to ensure that sufficient land was available for the inhabitants of the Island. Clearly single rooms in the curtilage of another house can be dwelling accommodation. There is ample authority for saying that. But whether in this particular case the rooms in question were private dwelling accommodation, those occupied by the manager or the two which do not appear to have been declared, and which Mr. Sugden found were occupied by staff, would be a matter for the Committee to have decided for itself at the time of the application. It could do this by causing the premises to be inspected and until the Committee had so inspected it, either itself through its members or through its officers and received a report from them, it could not know whether the kind of private accommodation, if it was private accommodation, which was on these commercial premises was the kind which, in fulfilling its duty to carry out the Law and provide land for the inhabitants of the Island, it felt proper to control. Until it had done that it was unable to judge if the accommodation there was of the kind which, according to Mr. Connew, it

considered to be private dwelling accomodation. This Court has said on many occasions before that it is the duty of the Committee to receive an application, examine it and, if necessary, to visit the premises. In this case, I repeat, until the Committee had visited the premises, either personally as the elected members of the Committee, or through its officers, and had fully acquainted itself with the exact lay out, it could not, in our opinion, have come to a decision first of all as to whether it was private dwelling accomodation and, secondly, whether it was of the sort which, in the exercise of its duties, it felt right to control. In the absence of having done either of the two things, we have come to the conclusion that the condition which it sought to impose appeared to be a blanket condition, and because the Committee did not fulfil the two requirements I have mentioned the condition is unenforceable and the action is dismissed. That does not mean to say we are going to give the costs to you, Mr. Benest, or to your client company, because we are satisfied from the evidence of Mr. Thomasson that he knew that there was something under control, he knew the Committee was attempting to control the occupancy of the accomodation there and he deliberately set out to remove it. Under those conditions we are not prepared to make an order for sosts in favour of the defendant.