

10th July, 1985.

Court of Appeal

Sir Patrick Neill, Q.C. (President); J.J. Clyde, Esq., Q.C.,
J.D.A. Fennell, Esq., O.B.E., Q.C.

BETWEEN	The Housing Committee of the States of Jersey	APPELLANT
AND	Phantesie Investments Limited	RESPONDENT

Judgment of the Court

SIR PATRICK: "This is the judgment of the Court in Housing Committee of the States of Jersey against Phantesie Investments Limited. It's an appeal from the decision of the Royal Court, the Inferior Number, delivered on the 30th May, 1984. The substance of the decision under appeal was to strike down a condition attached by the Housing Committee in giving its consent to the sale of valuable residential property by an individual owner to Phantesie Investments Limited, hereinafter called 'the Company'. The condition was struck down by the Royal Court because they regarded it as unreasonable, indeed the Court said that they were unable to understand how the Housing Committee came to the decision which it did. It will be necessary to elaborate the facts later in this judgment but by way of introduction and putting the matter in summary form, the property involved is "Les Champs", La Route de Rozel, Trinity, and may be described, to use the words of the application in this case to the Housing Committee, as a detached house with four bedrooms, two bathrooms, three reception rooms, kitchen and utility room with a separate out-building - staff flat above, comprising living-room, two bedrooms, bathroom, kitchen, garage below, large garden, and an extensive meadow. The Company wanted to buy the property and were willing to pay £227,000 for the realty and £3,000 for the furnishings. The intention was that a Mrs. Stephanie Krelle and her family would be the occupiers. The Housing Committee in granting consent, attached one condition, that is number 3, in relation to the main house and another condition, number 4 in relation to the

separate unit which we will call 'the flat'. I will just read those conditions so that the matter can be made plain. "That the property shall be occupied by Mrs. S. Krelle or should be let unfurnished to, or be otherwise occupied by, persons approved by the Committee as being persons of a category specified in regulation of 1(1) (a) (b) (c) (d) (e) (f) (g) (h) or (j) of the Housing General Provisions (Jersey) Regulations 1970 as amended;" and condition 4, "that the remaining existing unit of private dwelling accommodation of the property should be let unfurnished to, or be otherwise occupied by, persons approved by the Committee as being persons of a category specified in regulation 1(1), (a) to (h) of the Housing Regulation as amended." What the Court below did was to strike down condition 4 on the ground of its unreasonableness. As the provisions of the Housing (Jersey) Law, 1949 as amended and the legislative policy underlying that enactment, featured largely in the argument before us, it's necessary to set out the statutory scheme before considering what happened in this case. The purpose of the law, according to its heading, was a law "to provide for the constitution of a Committee of the States to administer matters relating to the housing of the population, to empower the States to acquire land by compulsory purchase for the purposes of housing and to control sales and leases of land in order to prevent further aggravation of the housing shortage". That's from the 1949 Act. In 1969, the powers conferred on the Committee were extended by the Housing Extension of Powers (Jersey) Law, 1969, article 1 of which said: That the powers, and I am summarising the 1949 Act, and here I quote: "are hereby extended to include a power to control such sales and leases in order to ensure that sufficient land is available for the inhabitants of the Island". And then various consequential amendments were made to give the effect to that policy. Returning to the 1949 Law, that provided in Article 2, as follows: "2(1) A committee of the States to be called the Housing Committee shall be constituted for the purpose of exercising the powers conferred and performing the duties imposed a) upon the Committee by this law". I omit b) and c) which are irrelevant for the present purposes. The precise manner in which the Housing Committee is from time to time appointed is a matter regulated by the States. We were referred to the States of Jersey Law, 1966, Article 28. I will read paragraphs 1 and 2 of that. "Committees shall be appointed by the States and shall each consist of a president and other members of the States - the terms of office and number of members of the Committee shall be such as the States may determine, either a) generally or at the time of the appointment". I have shortened a) and b) in reading that provision. In the 1966 States of Jersey Law, we may further take note of Article 33: names of members present to be recorded, the text saying - "names

of the members present at a meeting of a Committee should be recorded". Article 34 - "the minutes of the proceedings of a meeting of a Committee shall be drawn up and entered in a book kept for that purpose by the Greffier of the States and shall be signed at the same or an ensuing meeting of the Committee by the person presiding at the meeting;" and clause 27: "until the contrary is proved, a meeting of a Committee in respect of the proceedings of which a minute has been so made and signed should be deemed to have been duly convened and held and the members present at the meeting should be deemed to have been duly qualified and the Committee should be deemed to have been duly constituted and to have had power to deal with matters referred to in the minutes". There is a further indication of the importance attached to the minutes of a Committee, further to Article 51 of that Law: "a copy of any minutes of the States or of a Committee signed by the Greffier of the States shall be received in evidence without further proof". Reference may be made at this point to the Bundy case: Bundy against the Housing Committee 1979, Jersey Judgments 99. Following passage at page 106; it is the judgment of the Inferior Court delivered by the learned Deputy Bailiff. He says this: "First, it may very well be administratively inconvenient, but the reasons for reaching decisions of the Committee are recited in its minutes. Nevertheless, we think it important that any Committees' minutes, particularly where an application of this nature is concerned, should be a proper and full record of the Committee's deliberations. Secondly, an applicant is entitled to more than a mere recital of the relevant parts of the law under which his or her application has been refused. He or she must be told specifically what the grounds are". That is a further elaboration of the statutory provision dealing with the importance of minutes of a Committee of the States. Finally, in the 1966 Law, one may notice in Article 36, that every member of the Committee has a vote - if the votes are equally divided, the President has a casting vote and Committees may regulate their own proceedings. I return then to the 1949 Housing Law and go straight to part 3, headed "control of sales and leases of land". In Article 5 the Court is defined as meaning the Inferior Number of the Royal Court and the words transaction to which this part of this law applies, has a meaning assigned thereto by Article 6 and in that Article we can note that it includes as a relevant transaction, a registered contract for the sale of any land in perpetuity. Article 7 makes it clear that prior consent to a transaction of sale is essential otherwise the transaction is not lawful and Article 9 deals with applications for consent, I will read the first part of 9: "Every application for the consent of the Committee to any transaction to which this part of the law applies, shall contain or be accompanied by such particulars,

information and documents as may be required by the Committee". Then Article 10(1) - the heading is 'Grant or Refusal of Consent' - "the Committee shall grant consent, either unconditionally or subject to such conditions as the Committee thinks fit, to the sale, I'll leave out the other words, of any land of a class for the time being specified by the States by the regulation made under this part of this law and shall refuse consent to any sale not so specified". Then we come onto 2, which was substituted by a 1974 law - the Housing Amendment No. 4 (Jersey) Law of 1974, expressly put in to deal with purchases by companies and accordingly is directly applicable to our case. I quote 2: "Without prejudice to the generality of the foregoing provision of this Article, every consent granted by the Committee to the sale of any land to a body corporate, shall be subject to the following condition: "Any unit of dwelling accommodation on the land at the time of the grant of this consent or created on the land thereafter, shall not, without the consent of the Committee, be occupied other than by a person who falls within any class specified by the States by regulations made under part 3 of the Housing (Jersey) Law 1949 as amended, being a class to which this condition is specifically stated to refer by those regulations". As will be seen, that provides that provision for a mandatory statutory condition to apply to every consent on a sale of land to a company. This statutory condition contemplates that regulations will in due course specify the category of acceptable persons who may be occupiers in addition to those categories to be enumerated in a regulation, the Committee has given a specific power to consent to occupation by any other person. It is important to note at this stage that the Housing Committee, in a transaction of sale to a company will or may be involved in considering the issue of two quite different types of consent. First, a consent to the transaction of sale, that will flow from an Article 9 application and the exercise of a consent power under Article 10(1) and secondly, an application for consent to the occupation by a person who does not fall within the category covered by the regulation; that need not happen in every case because there may be cases where the purchaser is perfectly content with the categories enumerated in the regulation. That second consent - giving power will involve the exercise of the consent power confirmed by the statutory condition. We stress this, these features of the legislation, because here, the applications for both consents were made simultaneously and in the documents placed before us, the distinction between the source of the two consent powers is perhaps not made particularly explicit. Before leaving the 1949 law, we must refer to two further provisions, Article 10(3), so far as relevant, says: "without prejudice to the generality of the foregoing provisions of this article, the 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, c) the maximum price at which the land is to be sold or leased". Then the final provision in the Article, Article 12(1) appeals: "any person aggrieved by the refusal of the Committee, to grant consent to any transactions to which this part of this law applies, or by any conditions attached to any such consent or by the revocation of any such consent, may appeal to the Court against the decision of the Committee within 1 month after the date on which notice of such decision was sent to him. 2) On any such appeal the Court may either dismiss the appeal or may give to the Committee such directions in the matter as it considers proper and the Committee shall comply with any such direction". I omit 3 and 4 of Article 12. The point which has been argued here and to which we will revert later in this judgment is that the words "may appeal" in Article 12(1), confer an unrestricted right of appeal with the effect that the Royal Court is in the position to exercise precisely the same powers as the Housing Committee - that is to say that the hearing before the Royal Court will be a hearing de novo. I move from the Housing Law to the regulations made to give effect to it - these are the Housing General Provisions (Jersey) Regulations 1970 as amended. Regulation 1(1) sets out the categories (a) to (h) of persons who may be accepted for having a residential qualification and I will summarise broadly (a) to (h) by saying that it encompasses local residents and those with established links with the Island. It is not a wholly accurate summary but for the present purposes, I think it will suffice. Categories (j) and (k) are as follows: (j) - the lead into this is: "subject to the provisions of this regulation, for the purposes of Article 10 of the law, consent to the sales of land shall be granted by the Housing Committee in any case where, '(j)' the Committee is satisfied that the intending purchaser is or will be essentially employed in the Island and the consent can in the best interests of the community be justified" or "(k), the Committee is satisfied that consent can be justified on social or economic grounds". Category (k) is in practice applicable where there is a property which, because of its high price, is out of the price range of Jersey residents, and (the expression that has been used in this case) there is no unsatisfied demand for such property and where there is a rich purchaser from overseas who desires to come and live in Jersey. In such cases, social or economic grounds may exist sufficient to satisfy the Housing Committee that consent should be granted - for example, the Island may get the benefit of the wealth which the outsider will bring in and the property will be occupied. None of the regulation 1(1) categories to which I have referred has any direct application where a company is the purchaser. This follows from regulation 1, sub-regulation

3, in the following terms: "this regulation shall not apply in any case where the intending purchaser is a limited liability company". The case of companies is specifically dealt with by regulation 2 in these terms: "for the purposes of Article 10 of the law, consent to the sale of any land shall be granted by the Housing Committee in any case where the intending purchaser is a company and the Committee is satisfied that consent can in the best interests of the community be justified". We have said that regulation 1(1) has no direct application where a company is the purchaser but in practice it may have a very significant bearing on an application when we consider whom the company is putting forward as the actual occupier. It not infrequently happens, so we understand, that the occupier proposed by a company is an individual who potentially falls within the scope of category (k) or would if that individual were the proposed purchaser, himself or herself. In such circumstances, it is open to the Housing Committee to conclude that consent to the proposed acquisition can be justified in the best interests of the community, I quote from regulation 2, and that consent should be given to the category (k) person as an occupier and that is what, in fact happened here. We now turn from the law to the facts and we can take the position as it was, let's say, at the beginning of the year 1983. At that time a Mrs. Poole was then the owner of "Les Champs"; the factual position was that she occupied the main house having purchased in 1976, the flat was separately occupied by a person who fell within one of the categories (a) to (h) in regulation (1). There was therefore a locally qualified resident in the flat. This result had been secured by the imposition of a condition in the same terms as condition 4, in the document with which we are concerned. That condition having been imposed, no doubt, at the time of the consent - it would have been given for Mrs. Poole's purchase. At some stage in the Spring of 1983, it seems that there was a proposal for a sale to some purchaser other than Phantesie Investments Limited. In connection with that proposal the officers of the Housing Committee visited the site and concluded that the property as a whole was suitable for a category (k) purchaser - that is to say, the property was in a price range that put it out of the reach of locals. There was, excuse me for using a phrase I have used before - "no unsatisfied local demand for it". It seemed probable though I don't think we have the evidence for it, that the interested purchasers at that stage were not a limited company. Then in June 1983 came the proposal that the company should buy from Mrs. Poole, while the company would be the purchaser, it was made plain that Mrs. Stephanie Krelle and her family would be the occupiers. Mrs. Krelle was already known to the Housing Committee, the company owned a flat at 51 Marina Court and Mrs. Krelle had been permitted to occupy it. This

explains the file reference given on paragraph 5 of the application form to which we now turn. This official form seeking consent under part 3 of the law was submitted on the 27th June, 1983, and I will just refer to the material parts of it. The application as I have said was by Phantesie as proposed purchaser. The property was described, it was stated quite correctly that the regulation under which consent was regulation 2, then the file reference to Mrs. Krelle was given - she having been permitted a residential occupation of the flat, the other flat at Marina Court which I have referred to. Property is described in paragraph 7 and then in 10 - "full names of proposed occupiers: give details of residential qualifications" and in answer to that is filled in the name of Mrs. Stephanie Krelle and her family. Then details about the vendor, the price is given, proposed purchase price and that is signed on behalf of both the intending vendor and the intending purchasers. The declaration that the particulars are true and both purchaser and vendor seek the necessary consent. Now that was accompanied by a letter from Mr. Bailhache who was acting on behalf of the intending purchasers - letter dated 27th June, 1983, of which I think I must read three paragraphs: "We now enclose an application for the purchase by Phantesie Investments of "La Maison des Champs", La Route de Rozel, Trinity, and in the event that the Committee approves the purchase, it would intend that Mrs. Krelle and her family occupy the property. It is of great importance to my clients that the Committee does not impose conditions of occupation upon the flat which is built above one of the garages of the property. If consent is given to the company to purchase, my clients have in mind that the flat would be occupied by persons employed by them to assist with the house and with the garden and it would not necessarily follow that such persons would have residential qualifications. I am well aware that the flat has hitherto been treated as a separate unit of accommodation but I urge to the Committee to the view that one cannot reasonably expect that a property of this value would attract purchasers prepared, as the previous owners have been prepared, to rent out a portion of the property. It is unlikely indeed that my clients would be interested in completing the purchase if the Committee were to impose conditions of occupancy on the flat and in that connection I ask the Committee to bear in mind that the property has been on the market for quite some time. My clients would naturally accept that if they were to offer the flat for letting or accommodation for gain then it should be occupied by persons approved. They would however, wish to be able to put employees in the flat on a service basis". Now that letter, accordingly is spelling out that the new purchasers did not want the flat to be regarded as a separate unit of accommodation - it was

to be used for employees and such employees might not themselves be qualified persons. It follows further from the analysis of the Housing Law which we have already given, that this letter has to be regarded as an application for consent under the statutory condition imposed by Article 10(2) of the law. The application/letter were in fact, dealt with at officer level and one sees in the application form on the first page on the right hand corner, a tick which presumably means a decision giving approval followed by the initials L.O.M. which I take to be Law and Loans Manager and date, 11th July. The consent was in fact issued the following day dated the 12th July, signed by the Law and Loans Manager and by that document it stated: "the Housing Committee in pursuance of the Housing (Jersey) Law 1949 as amended has consented to the following transaction -the sale in perpetuity of "Les Champs" by Mrs. Poole to Phantesie Investments Limited for a sum not exceeding £227,000 for the realty and £3,000 for the contents". There follow five conditions -1, 2, and 5 are not relevant for present purposes, I have already read into the record conditions 3 and 4. We were told that the work flow before the Housing Committee was such that it would be impossible for the Committee itself to deal with all applications and that it is common for the officers to issue consents in the name of the Committee even in circumstances where no member of the Committee has ever considered the case and where certainly no meeting of the Committee as such has been convened to determine whether consent should be given. We will not refer to any provision of the law that authorises the officers to act in this way as if they were the Committee - it may well be that such a power does exist but in the event it is not necessary for us to go into the point because the Committee did in fact, subsequently meet and consider this very case. What happened was that Mr. Bailhache wrote a letter in protest to the Housing Officer on the 14th July objecting to the condition which had been imposed and his letter so far as material says this: "We are disappointed to note condition 4 which has been attached to the consent and we are considering with our client whether or not an appeal should be lodged against this condition. Two matters, however arise from the consent and we would be grateful if you would let us have your comments without delay. They are: 1) As the application for our client Mrs. Krelle was put to the Committee under regulation 1(1) (k), could you please indicate why it is that the Committee has approved the occupation by Mrs. Krelle and has gone on to provide by condition 3 that, if not occupied by her the property should be occupied by persons falling into categories specified in 1(1) (a) to (j) of the regulations. The second point -condition 4 of the consent - provides that the remaining existing unit in the private dwelling accommodation of the

property should be let to local residents: would you please confirm that the Committee does not take the view that our client company will be in breach of condition if the second unit of private dwelling accommodation remains vacant". And then there was a further letter of the same day, from Mr. Bailhache following a telephone conversation clearing up, in the second paragraph, the point on 1(1)(k) and Mrs. Krelle, which I don't think I need to go into but the third paragraph is very important, so I will read it. "I shall be grateful if you would arrange for the Sub-Committee to visit the property in connection with the second unit of private dwelling accommodation. My client's view is that a property of this nature as an approved (k) property should not carry a mandatory, if lawful, imposition of a condition that requires part of the property to be let. It is inconsistent with such status, in my submission, for the owners to be subjected to the loss of privacy inevitably connected with the leasing of part of the property. In this instance, the second unit of accommodation is no more than 40 yards from the main house and overlooks part of the garden, it also overlooks the entrance to the house and if it were to be occupied by those qualified as local residents, there might well have to be additional motor vehicles parked which would cause congestion. All these items would be subject to control by the purchasing company if such accommodation was available on a service basis but not so easily controllable if such accommodation is to be offered to persons qualifying on the local market. I shall be grateful therefore, if the Committee reconsider these matters as soon as possible". So in effect there, the request that the full Committee or "Sub-Committee" phrase is used at the end of the letter, they talk about the Committee, should meet almost on an appeal basis from its own office and consider the case. On the 22nd July, 1983, the Housing Committee did in fact visit the site - we were told that they had visited the flat, amongst other parts of the property and looked to see the lie of the land from that position. At the site meeting, apparently Mr. Bailhache argued his case and he brought out a point which I think is not in the correspondence so far, that the flat might be wanted for guests of Mrs. Krelle and her family if not for staff. The next document we have is the minute of the Housing Committee, duly authenticated by the signature of the Deputy Greffier and I have already referred to Article 51 of the States of Jersey Law 1966 and that minute is in the following terms: "22nd July, Housing Committee - paragraph 31 - the Committee, having met Advocate Bailhache at "Les Champs", Trinity, considered an appeal by Advocate Bailhache contained in a letter dated the 14th July, 1983 on behalf of his clients - Phantasie Investments Limited -against the condition imposed that the flat at the property should be let or otherwise occupied by persons approved by the

Committee as being persons of a category specified in Regulation 1(1) (a) to (h) of the Housing General Provisions (Jersey) Regulations, 1970 as amended, as they wish to use it as staff accommodation or for guests. The Committee was advised that permission had been granted by the Island Development Committee to build an additional one-storey wing at the back of the house which could be used for staff accommodation and that it was hoped to extend this to two-storeys. It was noted that the flat was at a distance of approximately 40 yards from the house and therefore any loss of privacy by the occupiers of the main house would be minimal. The Committee therefore decided to maintain the condition that the flat at Les Champs should be let to persons approved by the Committee as being persons of a category specified in regulation 1(1) (a) to (h) of the regulations as amended. In essence, the Committee were refusing the appeal, one calls it that and were refusing consent, they were saying, in effect, no, to guests, and they were saying no, to non-Jersey staff. There is a short letter from the Law & Loans Manager of the 26th July communicating to Mr. Bailhache the unsuccessful result of his appeal. It says very little - "I refer to recent correspondence from the Committee's site visit to the above property with regard to the conditions imposed on the separate unit of accommodation above the garage. I regret to advise you that the Committee, despite having considered very fully and carefully all the facts put before it, including your own submissions, is not prepared to amend the terms of the consent granted to your clients to purchase this property". That letter obviously was the first opportunity which the Committee had to give the reasons for the decision and as will be seen, no reason is there vouchsafed. Formerly, a document of the same date, 26th July, 1983, was issued as a consent - it is in identical terms apart from the date, to the Law & Loan Manager consent issued some little while before, but this is clearly, this time a formal consent from the full Committee and signed on behalf by the Greffier on behalf of the Committee. Mr. Bailhache having had this disappointing response sought reasons and addressed a letter of 3rd August to the Housing Department in these terms: "My understanding from my clients is that it is likely that they will go ahead with the purchase of the property, notwithstanding the conditions being imposed but will however, wish to consider appealing to the Royal Court on the matter and in those circumstances I shall be causing a notice of appeal to be served upon the Greffier of the States. Would you please let me have without delay, the reasons which led the Committee to arrive at its decision not to amend the consent as I have requested. You will appreciate that one of the bases of an appeal is that the Committee has reached a decision which is wholly unreasonable taking into account

all the circumstances of the case. It does seem to me therefore, that it may assist in saving the time of all concerned if full and detailed reasons as to why the Committee decided as it did could be made available". So here is the second opportunity furnished for a statement of reasons. In answer to that letter there is a reply signed on behalf of the Housing Officer by Mr. Morris dated 11th August, 1983, saying this: "As you are of course aware the Committee visited this property so that it could be fully aware of the relationship between the flat and the house. The Committee having noted that this unit of accommodation was at a distance of approximately 40 yards from the main house and in such a position that any loss of privacy by the occupiers of the main house would be minimal decided that it should more properly be maintained as a separate unit for occupation by persons with the necessary residential qualifications". So there is the letter squarely giving privacy as the reason. The view that there would be no substantial loss of privacy as stated, as being the reason. What followed next was that the purchasing company - Phantesie Investments - then appealed to the Royal Court pursuant to Article 12(1) of the Housing Law and by the 7th September they gave notice of their appeal. Pursuant to the Royal Court Rules 1982, rule 11(3), it was then incumbent upon the Housing Committee to lodge a statement of the decision, the so called Committee's statement. Our understanding is, that this is intended to be the counterpart or at least to incorporate the old "relevé des raisons" under the old procedure referred to in *Arbaugh -v- The Island Development Committee* in 1966, Jersey Judgments - 593 at 599. Certainly the observation in the *Bundy* case, to which we have already referred, would apply where the Court said that the disappointed applicant was entitled to more than a playback of the language of a statutory provision. A method of procedure which in some of the American administrative law cases is called "parityng the statutory language". I pass then to the Committee's statement of the 5th October, 1983. Essentially, it can be said of this document that it is a narrative of the events such as I have myself described in this judgment. The material paragraph on which stress was placed by Mr. Whelan in the argument before us is paragraph 10 and I will read that. "Having visited the property, having taken Advocate Bailhache's arguments into account, and having considered its own statutory obligations and terms of reference, the Committee decided that the flat and the separate out-building at the property should continue to be reserved for occupation by persons qualifying for a consent under Regulations 1(1) (a) to (h) of the Housing General Provisions (Jersey) Regulations 1970 and that it was not therefore minded to remove the condition in question. The view of this Court on that paragraph is that in essence that is completely uninformative as to

the process of reasoning that led the Committee to its decision, a mere statement that they considered their statute but it does not say how having considered it they proceeded to apply it to the facts of this case or what policy considerations they took into account. It is really totally uninformative. The appellant's case in answer to that particular paragraph - paragraph 10 - was a challenge, I am referring now to the appellants case, paragraph 4: "save that it is admitted that the Committee visited the property and that they made the decision therein referred to, paragraph 10 of the Committee's statement is denied. The respondent's case which was the last of the pleadings before the matter came on before the Royal Court, has this to say - paragraph 4 of the respondent's case: "It is the respondent's case that, if the respondent Committee were to remove the condition which requires the flat to be let or otherwise occupied by, persons specified in the said sub-paragraphs of the said regulations then the respondent Committee will be acting directly contrary to its statutory obligations to prevent further aggravation of the housing shortage and to ensure that sufficient land is available for the inhabitants of the Island. A unit of accommodation currently reserved for housing local inhabitants would no longer be reserved for that purpose". I pass on now to the hearing in front of the Royal Court and I think it would be sufficient to refer to two important matters in relation to that hearing. The first matter is that no evidence was called by the Housing Committee apart from placing before the Court documents which I have already read in to this judgment and which appear from the stamping on them to have come from their files. In particular, no reports by officers were vouchsafed, and no witness - either an officer or member of the Committee was called to explain the reasons for the decision and in particular to explain or to expand upon paragraph 4 of the respondent's case which I have just read. There was simply no evidence. Second matter of importance about the hearing before the Royal Court was that Counsel for the company, Mr. Bailhache, invited the Royal Court to visit the site. No objection to that course was raised by Mr. Whelan who appeared for the Housing Committee, for the Royal Court did in fact go to the site. Mr. Whelan has submitted to us here that the Royal Court did not put themselves in as good a position as the Housing Committee had been in to form any opinion or view or to review what had already been considered by the Housing Committee because they did not actually go up into the flat. If this was a point of any substance, it seems to us inconceivable that Mr. Whelan would have stood by and let the members of the Court leave the site without inviting them to go up into the flat. We must take it that the Royal Court saw everything that they needed to see or that Counsel

actually wanted them to see. The upshot of the hearing before the Royal Court, as I indicated at the beginning of this judgment, was that they struck down condition 4 on the grounds of unreasonableness. Before further developing that aspect, we must now refer to an entirely new development which has taken place in this Court. Mr. Whelan, who appeared again on behalf of the Housing Committee has told us with commendable frankness, that he is bound to concede that the express reason given by the Committee for its decision as set out in the letter of the 11th August, 1983, is insufficient and inadequate to support the decision to impose condition number 4. This is put in writing in the appellant's case to this Court. I am referring to the foot of page 6, paragraph 9. "The question which arises is whether the Court addressed and answered the query which was actually before it - the appellant Committee will say that, to the question - must the flat be occupied at all? the answer given by the Court - no, there would be a loss of privacy to the main house is a logical answer. However, to the question actually before the Court, i.e. given that the flat is going to be occupied - must the occupants have residential qualifications? The answer, no, there would be a loss of privacy to the main house, is not a logical answer. Paragraph 10 - "The appellant Committee admits that both its act of 22nd July and its letter of 11th August, 1983, record loss of privacy as the reason for its decision so that, ex facie, it has itself been guilty of the very same lack of logic against which it now complains. However, in paragraph 10 of the Committee's statement, the Committee avers that it based its decision upon a consideration of its own statutory obligations and terms of reference". In further elaboration of that in oral argument in front of this Court, Mr. Whelan squarely conceded that the express reason given by the Committee would not suffice to support the imposition of the condition. No further evidence was called as to any other reasons, the matter remains simply a matter of submission or averment and not of evidence. This Court cannot accept statements from the bar as to matters of fact which were capable of proof by oral evidence and which should have been so proved. Had any such evidence been tended, we have no doubt that there would have been cross-examination from the other side. We thus, in this Court, find ourselves in the position that we are told that the Housing Committee has imposed a condition for a reason which, as recorded in the minutes and as set out in a letter following after a meeting of the Committee, cannot support the imposition of the condition. It follows inevitably that that condition must fall to the ground and that the decision appealed from, must be upheld albeit for a different reason than that given by the Royal Court however, it would not be satisfactory to leave the case entirely on that basis and out of

deference to the Royal Court and to the criticisms that have been made by Mr. Whelan, we must now deal with their actual basis for the decision. Everything turns on what it was that they were purporting to decide. They had been told or it had been argued in front of them by the Housing Committee, that they could only get rid of or strike down the condition if it satisfied the standard test. I am now reading from the final paragraph of the respondent's case to the Royal Court: "The appellant has conceded that the proceedings of the respondent were not irregular and bases its appeal upon the single assertion that the decision of the Committee was unreasonable. The appellant is therefore required to show that the decision was one at which, no reasonable authority, possessed of all the facts, could have arrived. The respondent will contend that its decision in the matter cannot be shown to have that character". So, the respondents were there drawing attention to the orthodox test which traces itself back to the *Wednesbury Corporation* case and the famous judgment of Lord Green. We were shown many cases where the *Wednesbury* test has been re-applied - that is the test no reasonable tribunal, no reasonable Committee - could have reached such a decision and the last probably in this line of cases, one I think to which we have not actually referred is the *C.C.S.U. -v- The Minister for the Civil Service* case reported 1984, 3 weekly Law Reports 1174, known popularly as the *G.C.H.Q.*; case we are at page 1196 (d), there is a passage by Lord Diplock where he expresses the *Wednesbury* principle of unreasonableness in terms of irrationality. Now that being the familiar test to lawyers, the question is what was it that the Royal Court was purporting to decide and I turn now to page 4 of the judgment of the learned Deputy Bailiff. "The Committee reached the conclusion that there would be a minimal lack of privacy if it imposed or continued with the previous condition imposed on Mrs. Poole the vendor. I have said the Court visited the scene this morning. The Court is unable to understand how the Committee could have come to the decision it did as regards saying there was a minimal lack of privacy. In the Court's opinion there would be a great deal of lack of privacy in respect of anybody occupying the main house and garden from persons living in the flat. It is high and overlooks most of the garden, it's quite true, as Mr. Whelan said that that part which it directly overlooks is perhaps more vegetable garden but then there is no requirement in the law as to what part of the property a person buying shall or shall not walk on - that person buying the property is entitled to go where he or she likes and there is, as we have already mentioned the difficulty of parking and access. We have little doubt that under these circumstances the Committee misdirected itself and came to the wrong decision. It was unreasonable for it to hold that that the lack of privacy

would be minimal - in fact, to use Mr. Bailhache's words - "the lack of privacy in our opinion would be enormous". Taking the whole of that passage together and cumulatively looking at the force of what they were saying, we think it is clear that the Royal Court was saying that the condition imposed was so unreasonable that it was not one that could have been imposed by any Committee acting reasonably and properly directing itself. In particular, we would stress the words that the Court could not understand how the Committee reached its decision and the contrast between the Committee's view of minimal and the Court's view of enormous loss of privacy. In those circumstances, although we were pressed by Mr. Whelan with the fact that the Court said "in the Court's opinion" and where the submission was that that was the risk of the Court substituting itself for the Housing Committee, we conclude overall that the Royal Court did intend to decide that applying a Wednesbury principle which is now a very well accepted test - the condition was unreasonable in that sense. As a Court of Appeal

.....So in the view of this Court, the Royal Court were right on the ground on which they rely. Now that being the decision of this Court, on two separate grounds the appeal should be dismissed. It would be otiose for us to go into the very important point raised by Mr. Bailhache as to the scope of an appeal under Article 12(1) of the Housing (Jersey) Law 1949. In substance the argument is as I have earlier stated, that the words "may appeal to the Court against the decision of the Committee" coupled with "the power to give such directions in the matter as it considers proper and the Committee shall comply with any such direction" -coupled with the fact that evidence can be called - all point, say Mr. Bailhache, to a re-hearing situation 'de novo' and put the Royal Court in precisely the same position as the Housing Committee and therefore they could take their own view on the merits of this case and would not be restricted to the sort of tests which are applied on an application for a judicial review and would not be restricted to the Wednesbury test which I have said they found themselves satisfied about. As against that argument there is a long series of decisions by the Inferior Number, one by the Superior Number holding that under the Housing Act, Article 12, and indeed in considering some similar legislation, similar provisions, the right of appeal is not of the unrestricted character that I have indicated according to Mr. Bailhache's arguments. The authorities for the narrower view are as follows: Central Steel of Europe -v- The Housing Committee, 1962 - Jersey Judgments 179; Hamon -v- The Housing Committee, 1962 - 197; Simon - I won't repeat the name

of the defendant, it is the same in every case, 1964 - 363; Associated Building Constructors, 1965 - 479; Cottignies, 1969 - 1149; Pinel, 1970 - 1545; Hackett, 1970; Bundy in 1979 - page 99 and then coming in between the last two cases, the decision of the Superior Number, Habin, 1971 - Jersey Judgments 1637 in a very interesting and careful judgment, the learned Bailiff concludes having looked at several examples of statutes with the words 'may appeal', that they all contemplate a much more restricted type of appeal than the one for which Mr. Bailhache has contended before us. What I think emerges is that, from the cases that we have seen, is all those decisions which have been given by the Jersey Courts, in all those cases, no reference has been made to a line of English authorities where the words "may appeal" have been held many many times, I will not say invariably, because unless one has carried out a most exhausting research that would be a dangerous statement, but in all the cases we have seen coming from England rather than from Privy Council on appeal from Canada, "may appeal" has been held given unrestricted right of appeal and to point to a de novo hearing - I think the earliest of the cases we were shown was Fulham Borough Council -v- Santille, 1933, 2 KB - 357; other cases in the same line, Godfrey -v- the Bournemouth Corporation 1968, 3 All England - 315; Greenley -v- Lawrence - I'll supply the year of that; Sagnata Investments -v- Norwich Corporation, judgment of Lord Justice Edmund Davis and Lord Justice Philimore and in that case was a citation back to Archbold's Quarter Sessions Practice of, I think the 1908 edition showing the law as already clearly established to that effect. On the other side, we were referred in reply, by Mr. Whelan to a couple of cases in the Privy Council on appeal from Canada where an opposite approach appears to have been adopted but as seems to continually happen in this field, none of the cases from England that I have just mentioned had been cited and we have not got the advantage of knowing what was the language of the Canadian statute which was being construed in those cases; the references to the two cases I mean are: the Minister of National Revenue -v- Wrights Canadian Ropes, 1947 - Appeal Cases 109 and D.R. Fraser & Co. Ltd. -v- the Minister of National Revenue, sorry, the first one was 1947 Appeal Cases, the second one - 1949 Appeal Cases, page 24. All that we need to say today and all that we propose to say is that there is a serious question to be considered and when that question comes to be considered, the Privy Council cases will have to be before the Court - the text of the Canadian statute will have to be there and it will then be a question for the Courts of this Island to consider whether the English cases are of significance and importance or whether a more restricted meaning on the word appeal should be attached in accordance with the views so far taken here. But

beyond saying that that is a serious question which cannot be resolved and does not need to be resolved today, we say no more about the matter. The upshot is accordingly that the appeal from the judgment of the Royal Court will be dismissed; for the avoidance of doubt and ambiguity in the future, we think it would be desirable that we should give a direction to make explicit that the language of condition 3 should be understood to include the flat above the garage. We will hear counsel on any detailed matter in relation to that language but in broad terms, what we had in mind would be a direction to the Housing Committee that they should amend condition 3 of the consent which they have offered so that the first line of condition would read: "that the property including the flat above the garage shall be occupied..." But subject to hearing counsel on any detailed drafting points and that is the thrust of what we intend to achieve. I think it is desirable that it should be made clear rather than there should later be difficulties or doubts. Mr. Whelan, are you happy with that language? Then, I think the appeal having been unsuccessful, the result would follow on costs that we discussed yesterday unless there are any further submissions that the appeal would be dismissed with costs. I think it is the case Mr. Bailhache that you had the costs below and the order of the Royal Court.