

JERSEY / JUDGMENT

AG -v- Keenan [2011] JRC 143 (22 July 2011)

[2011] JRC 143

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JUDGMENT

THE commissioner: 1. So far as the facts of this case are concerned, we are satisfied that what you did started because of family difficulties not because of any intention to profit illegally from avoiding the planning or the housing law. It is quite clear from what you have set out in the letter, which we have read, that you had serious family problems and that was at the base of what you did in relation to the alterations. We are prepared to accept that you telephoned the planning authority, we do not accept that you had given them a full picture as to what you intended to do. It looks as if you probably said something like "I am doing a bit of internal alteration". What is clear also though is that after the children had gone you then must have realised that starting to let the premises out on a commercial basis was unlawful, and that is the factual basis upon which we approach these offences. 2. Of course there is overlap between the planning offences and the housing law offences but they meet different objectives and so they are properly brought as separate charges and properly sentenced separately. Looking at the two kinds of offences, so far as the housing law offences are concerned, we followed the principles set out by this Court in AG-v-Muren and Peters 2000/166 which may broadly be stated to be these, that although the Court will find a relevant factor in the amount of illicit profit made in these sorts of cases, it is not a matter of mathematical exercise either to ascertain that profit nor to impose penalties that relate directly to it. In the present case we also accept on your behalf that the actual illicit profit must have been quite small by the time one takes into account the fact that you had to pay for the alterations, however incompetently done they may have been, and also pay for them to be put back in place. The seriousness of course of the housing law offences is that by letting those who are not entitled to go into occupation of the premises you prevent people who are entitled from potentially living in your let premises. So far as the planning offences are concerned, not only were the alterations not covered by planning permission, but they were badly done and as we have heard caused a fire hazard which is a serious matter. 3. So far as mitigation is concerned your plea of guilty is important. We also regard in this case the delay as being important. It has no explanation for it. Quite rightly the Crown in opening the case has indicated that it was their fault, it is not your fault that there has been a delay. We also accept, having read the documents that you have given to us, that that would have imposed considerable additional stress on you and hence has made you position worse because you have had a much longer wait to find out what was going to happen than you otherwise would have done. 4. All of that said, these were not trivial matters, with one exception, the third charge contrary to the housing law, where your

tenant who was in fact qualified, that is effectively a technical offence. Had you and he notified the authorities, he would have been permitted to stay there, but save for that, these are not technical offences, but are serious. Of course in looking at the amount of the fines we have regard to the totality principle and also to your ability to pay. In approaching that we acknowledge that you have little enough means to pay on a weekly basis, but you do have assets, of a capital nature, which it may well be you are going to have realise in order to pay these fines and also other civil liabilities that you have, as we see from your documents. 5. For the three charges relating to the housing law, on Counts 1 and 2 you will be fined £1,500 on each, with one month's imprisonment in default, to run consecutively to make a total of £3,000; and Count 3, which we regard as technical, you will be fined £100, with 1 week's imprisonment in default, to run concurrently. For the planning offences, we regard those as being more serious, Count 1 you will be fined £3,000 and on Count 2 you will be fined £2,000, to run consecutively to make a total of £5,000, on each of those Counts there will be 3 months' imprisonment in default. We obviously hope very much that that will never become something that you have to serve. 6. We do not think it is realistic to make you pay a certain amount per week. You have not got the income to do that, we are going to allow you 12 months to pay, during which, as we say, you will need to realise some of your assets in order to pay off those fines. Authorities Planning and Building (Jersey) Law 2002. Housing (Jersey) Law 1949. AG-v- Muren and Peters 2000/166. AG-v-Bracken-Smith

[2007] JRC 192 . Housing (Jersey) Law 1949. AG-v-Vieira

[2006] JRC 055 . Bye-Law Building Bye-Laws (Jersey) 2007. Page Last Updated: 18 Aug 2016 BAILII:
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