

JERSEY / JUDGMENT

# Ag -v- Sarum Hotel [2005]

## JRC 145 (20 October 2005)

[2005] JRC 145

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### JUDGMENT

THE BAILIFF: 1. The defendant company was convicted after a trial of infractions of the Island Planning (Jersey) Law 1964 and the Public Health Control of Building (Jersey) Law 1956 . Both the infractions involved making a material change in the use of certain rooms of the Sarum Hotel. So far as the second charge is concerned, the material consideration is that different and more strict rules apply in terms of noise insulation to private dwelling accommodation than apply to registered tourist accommodation. 2. In a nut shell the defendant company wanted, as the Crown Advocate correctly put it, to have the best of both worlds. It wanted to maintain its tourism registration so that it could benefit from the higher rates paid by tourists at hotels. On the other hand, when tourists were in short supply mainly, but not exclusively, out of season, the defendant company wanted to let its rooms to lodgers, however they might be described. 3. It is an aggravating feature that the principal of the defendant company was at all material times the President of the Jersey Hospitality Association and furthermore conversant with all the relevant statutory provisions. 4. The Crown Advocate has invited us to take into consideration the fact that the defendant company was able as a result of its breaches of the law to derive some financial benefit. It is impossible precisely to quantify such benefit, but we agree that there was some financial benefit in two respects. Firstly, the hotel premises could be run at a reduced cost because part of the premises were being occupied by lodgers. Secondly, the defendant company was able to let rooms as dwelling accommodation or dwellings without up-grading them to the requisite Bye-laws standards. 5. The Court is not concerned with political considerations as to whether or not it might be desirable to change the law so as to enable premises to move between a tourism register and a lodging house register. 6. The gravamen of the offences as far as we are concerned is that the defendant company broke the Planning Laws by using rooms at its hotel for a purpose that was not authorised; that is for dwelling accommodation, or as dwellings. Inter alia that was unfair to those who have converted hotels into lodging houses at great expense and complied with the Building Bye-laws. 7. Mr Weston represented the defendant company with considerable skill, addressed us at great length on the history of the matter and upon various political considerations, but we do not think it necessary to rehearse all those

**submissions.**

He did however, make a number of good points in mitigation. First he pointed out that the defendant company had no previous convictions. Secondly, he submitted that there was an overlap between the two charges and that essentially one allegation was being made, namely that there had been a material change of use of part of the premises. We think that this is a fair submission and we have made allowance for it. Thirdly, the defendant company has recently put matters in order and appears to be operating as an hotel to the satisfaction of the Planning Authorities. Fourthly, immediately after the company's conviction Mr Weston resigned from the presidency of the Jersey Hospitality Association. This was a proper reaction, but we accept that he has been penalised in that respect. Fifthly, there appear to have been no complaints by members of the public to the tourism authorities. 8. Finally, Mr Weston submitted that the defendant company had been totally transparent in everything that it had done and that, through its directors, had simply misunderstood the law. We have found this submission much more difficult and we do not accept it. 9. It is true that Mr Weston did tell different officers of the Tourism Department what he was doing. Amongst other things he submitted his leaflet in relation to so called extended stays which indicated that such persons might be accommodated on that basis outside the period 1 st October, to 31 st May, the winter period in which, apparently by concession, the Tourism Department did allow lodgers to be accommodated in registered premises, and that leaflet of the defendant company was approved. It seems clear that Tourism Inspectors did express concern at the change of use, but that concern was not decisively acted upon at a higher level. 10. We take judicial notice of the fact that during the period in question the Tourism Committee was disbanded and its place taken by a Board composed principally of members of the tourism trade. Whether for lack of direction or otherwise, the hotel remained registered as an hotel during the whole of the period in question, and there can be little doubt that the Tourism Board and the Tourism Department were aware of the manner in which the premises were being conducted. 11. Be all that as it may, the defendant company cannot but have been aware of the conditions attached to the permission by virtue of which kitchenettes were installed in many of the rooms at the hotel, thus enabling its use as dwelling accommodation. The conditions expressly stated: "3. This permission does not permit the carrying out of any works which require consent under the Island Planning (Jersey) Law 1964. 4. That if the use of the units hereby approved changes to a private residential use of any sort work shall be carried out to ensure the walls and floors comply with the requirements of paragraphs 29 and 30 of the Second Schedule of the Jersey Building Bye-laws 1997 prior to the change of use taking place". And there was added by way of information that " if any part of the hotel changes to private, residential accommodation an application shall be made under the Island Planning (Jersey) Law 1964". 12. The defendant company was or should have been aware of its obligations through its directors under the Planning legislation. We make allowance, however, for the acquiescence of the Tourism Department and the other factors to which we have referred and we will reduce the conclusions slightly. 13. The defendant company is accordingly fined on Count 1, the sum of £5,000.00 and on Count 2 the sum of £15,000.00, making a total of £20,000.00. 14. I turn to the question of costs. I am told by the Crown Advocate that considerable costs have been incurred in

this prosecution. The conclusions in this respect seem to me to be reasonable and proportionate and I order the defendant company to pay the costs of the prosecution not exceeding £30,000.00. 15. Mr Weston, the director of the defendant company, has told the Court that an appeal is being brought against the defendant company's conviction which is to be heard in January of next year. We will allow the defendant company until 27 th January, 2006, time to pay the fines and the costs arising out of our judgment. Authorities Island Planning (Jersey) Law 1964. Public Health Control of Building (Jersey) Law 1956. AG -v- Muren & Peters (2000)JRC166. AG -v- Barette (1990) JRC197. AG -v- Channel Islands Carriage Company Ltd (1997)JRC17. AG -v- Gindell (2003)JRC056. AG -v- Lido Bay (1996) JRC62. AG -v- St Aubins Wine Bar (1996) JRC136 and JCR193. AG -v- KPG Investments Limited (1998)JRC221. AG -v- Irwin (2002)JRC78. AG -v- Janvrin Holdings Limited (2001)JRC161A. Page Last Updated: 14 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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