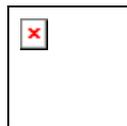


MRS. SHARON JANE OZOUF: 'G' CATEGORY HOUSING CONSENT (P.98/99) - REPORT

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by the Housing Committee**



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REPORT

1. Introduction

The Housing Committee has considered, on several occasions in the last six months, applications by Mrs. Sharon Ozouf to be granted housing consent under Housing Regulation 1(1)(g), and on each occasion the Committee has refused the application. The background to the case and the Committee's reasons for refusing to grant consent are set out below.

2. Housing Law and Regulations

The long title of the Housing (Jersey) Law 1949, as amended, states -

“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 acquisition and sales and leases of land in order to prevent further aggravation of the housing shortage in order to ensure that sufficient land is available for the inhabitants of the Island”.

Regulations enacted under this Law set out the classes of persons to whom the Committee **shall** grant consent, along with the categories of persons to whom the Housing Committee **may** grant consent subject to certain criteria being met, e.g. Regulation 1(1)(j) (essential employees), Regulation 1(1)(k) (wealthy immigrants) and Regulation 1(1)(g) (hardship).

The only Regulation under which the Housing Committee is currently able to consider the request from Mrs. Ozouf is Regulation 1(1)(g), which states -

(The Committee may grant consent if)

“the Committee is satisfied that the hardship (other than financial hardship) which would be caused to the purchaser, transferee or lessee, or to persons ordinarily resident in the Island, if consent were not to be granted outweighs the fact that he does not fall within any sub-paragraph of this paragraph.”

The balance which the Housing Committee is required to make when considering a 1(1)(g) application is, therefore, between the hardship caused by refusal on the one hand, and the fact that the granting of the consent will lessen the accommodation available for those who the States thought should have first claim upon it.

The definition of hardship inevitably causes problems as the very existence of the Housing Law and Regulations can be said to be causing hardship to a number of people lawfully resident and working in the Island. The judgement the Housing Committee is required to make is not simply whether there is hardship, as presumably there is hardship to a lesser or greater extent in any case where an application is refused, but whether that hardship outweighs the applicant's lack of residential qualifications.

Where a marriage breakdown does not occur, the Regulations make special provision for the spouse of a person with residential qualifications, in that they are not required to spend twenty years continuously in the Island before gaining their qualifications. If Mrs. Ozouf had remained married to and living with her husband in the Island for ten continuous years she would have qualified under Housing Regulation 1(1)(n)(iii) which states -

(the Committee shall grant consent where the applicant)

“is the spouse of a person in respect of whom consent would be granted by virtue of any sub-paragraph of this paragraph, with the exception of sub-paragraph (k), is ordinarily resident in the Island at the time of the application and has been so resident for a period of at least ten years in a shared unit of dwelling accommodation with that same spouse.”

3. Current housing situation

That there is a current and historic shortage of accommodation for persons with full residential qualifications is not in doubt. As stated above, the very purpose of the Housing Law is to exercise controls to enable the Housing Committee to prevent “an aggravation of the housing shortage” and, quite clearly, the numbers of persons entitled to have access to the “regulated” market is determined by such persons’ ability to qualify under the terms of the Housing Law and Regulations.

A good indication of the housing shortage is provided by the States rental waiting list, which is specifically designed to accept only those individuals or families who are considered to have a recognised housing need. The introduction of the Private Sector Rent Rebate Scheme for those who might have required States rental accommodation for financial reasons has meant that the persons registered on the List are looking to the Housing Committee as their only possible source of suitable accommodation. The waiting list has increased steadily over the last two years and is currently nearly 400.

It should be noted that the waiting list is not the only indicator of housing need, as there is also a dearth of suitable first-time buyer properties, evidenced by the high prices in this sector of the market and the difficulty in finding any suitable family accommodation for less than £200,000.

The latest Residential Land Availability Report “Planning for Homes” jointly compiled by the Planning and Environment, Housing, Finance and Economics and Policy and Resources Committees indicates that up to the year 2003 there is a shortfall in the number of dwellings required for this period of some 625 social rented dwellings and 350 first-time buyer dwellings.

It is against this background of housing controls and the current housing situation that the Housing Committee is required to adjudicate on cases seeking a discretionary consent.

4. Committee procedures

Currently, at every single Housing Committee meeting a number of 1(1)(g) applications are considered. Almost all involve young children, and include references to associated practical and medical problems caused both to children and parents alike by living in less than satisfactory accommodation. Unfortunately, many of the applicants are single parents which, irrespective of any housing factor, may result in additional stresses and strains on the family.

The Housing Committee is not isolated or immune from the reality of the difficulties faced by such people. Every other week, two members of the Housing Committee, by rotation, sit as a Sub-Committee to meet with applicants who wish to appeal against the decisions of the Housing Committee. At these meetings, which are very informal, all the emotions and stresses are blatantly laid bare. On some occasions, members visit such families in their homes and are often distressed to view some of the conditions which are tolerated by these families. In all cases, these visits and meetings are reported back to the full Housing Committee for further consideration.

The Housing Committee wishes it were in a position to agree to nearly all of these hardship cases, but bearing in mind the volume of cases being submitted, it does have to draw a difficult line between showing compassion for individual cases and taking into account the overall needs of the individuals and families with full local residential qualifications who may themselves be living in far from satisfactory housing conditions.

5. Application made to the Committee by Mrs. Ozouf

As stated in the report accompanying Deputy Le Main's Proposition P.98/99, Mrs. Ozouf arrived in Jersey in 1990. In 1991 she met Mr. Ozouf who is Jersey born and qualifies under Regulation 1(1)(a). The couple married in June 1992 and a child of the marriage was born in 1995. During 1998 the couple's relationship broke down, and in January 1999 a formal Separation Agreement was made.

In 1994 the couple jointly purchased by share transfer a two-bedroom flat for £107,000, and Mr. and Mrs. Ozouf each retain 50 per cent of the shares. When the separation was agreed in January 1999, Mrs. Ozouf had decided to leave the marital home and in early February she made a formal application under Regulation 1(1)(g) for consent to lease a three-bedroom house. Mrs. Ozouf did not apply at that time for consent to remain in the flat jointly owned with her husband. The application for consent to lease was refused by the Committee. Subsequently Mrs. Ozouf took on a three-month lease of a regulated property while she considered an appeal against the Committee's decision. A three-month let is permitted by the Regulations to persons without residential qualifications where the property is available only because the lessor is temporarily absent from the Island and the property is also his principal place of residence. The Housing Committee subsequently agreed on compassionate grounds to allow an extension of two months, up to 15th August 1999, of Mrs. Ozouf's consent to occupy the property.

6. Consideration of the application by the Housing Committee

In Deputy Le Main's report it is stated that the Chief Executive of the Housing Department advised Mrs. Ozouf "on two or three occasions" that as she was now separated, with Mr. Ozouf having left the matrimonial home, she also had to leave the matrimonial home as it was a share transfer property. This is incorrect. Mrs. Ozouf did not discuss her case with the Chief Executive until 26th March 1999, some weeks after she had taken the decision, as set out in the Separation Agreement dated 27th January 1999, to leave the marital home.

In the submissions made to the Committee, at no time is it recorded that Mr. Ozouf had left the marital home and that Mrs. Ozouf wished to remain in residence. When Mrs. Ozouf discussed the matter with the Chief Executive she had already taken up occupation of the three bedroom house and simply sought advice on whether she would be allowed to remain there for more than three months.

The Housing Committee first formally considered an application from Mrs. Ozouf on 22nd February 1999, for consent under Regulation 1(1)(g) to lease a specific residential property. The Committee operates a general policy in respect of marriage breakdowns whereby consent will normally be granted under Regulation 1(1)(g) if it is demonstrated that all of the following criteria have been met -

- (a) the applicant has resided in Jersey for ten years or more;
- (b) the applicant has been married and living with a residentially qualified spouse in Jersey for five years or more; and
- (c) there is a child or children of the marriage and custody has been awarded to the applicant.

In the case of Mrs. Ozouf she satisfied two out of the three criteria, but had only been resident in the Island since September 1990, a period of eight years and three months at the time of the marriage breakdown.

The Committee noted that there were no other exceptional features, for example poor health of the applicant or child, and decided to reject the application.

On 15th March 1999, a Housing Sub-Committee received both Mr. and Mrs. Ozouf and their legal representative Advocate Langlois, to hear an appeal against the Committee's decision of 22nd February 1999. Mrs. Ozouf advised the Sub-Committee that she had now moved out of the marital home and had taken a three-month lease on a three-bedroom house for £225 a week. Both Mr. and Mrs. Ozouf emphasised their anxiety over the effect the breakdown of their relationship would have on their daughter if Mrs. Ozouf was forced to return to the mainland. The child would lose contact with her father and grandparents, who took an active role in her development.

On 22nd March the Housing Committee considered a report on the appeal to the Sub-Committee, and decided to maintain its previous decision not to grant consent. The Committee took the view that Mrs. Ozouf, like many hundreds of other non-residentially qualified families with young children, could take up lodgings if she wished to remain in the Island.

On 6th April 1999, the Housing Committee acceded to a request from Mrs. Ozouf to be granted an extension until 15th August 1999, of consent to occupy the property on which she had taken a three-month short lease. On 28th June 1999, a request for a further extension beyond 15th August 1999, was refused.

On 19th April 1999, the Housing Committee received Senator Dick Shenton, who wished to meet the Committee to express his views and support of Mrs. Ozouf's application. Senator Shenton raised the matter of how, if Mr. and Mrs. Ozouf had been owners of freehold property, Mrs. Ozouf would have been permitted to remain in the marital home. Simply because they had bought by share transfer, Mrs. Ozouf had been forced to move out and Senator Shenton felt this anomaly was unfair. He requested the Committee to reconsider its decision once again.

The Committee agrees that an anomaly exists in respect of the different housing status of purchasers of freehold property and purchasers by share transfer, but is not prepared to recommend an extension of the legal provision currently available to the purchasers of realty. If the legal provision was extended to all persons other than those purchasing freehold, for example those who purchased by share transfer and also those who take short leases of accommodation, the Committee believes many very short-term residents would remain in regulated accommodation following a marriage breakdown, to the detriment of those who have already gained residential qualifications under the existing provisions of the Law.

7. Reasons for the Housing Committee's decision not to grant consent

When considering applications under Regulation 1(1)(g), the Housing Committee is obliged to weigh up the hardship being experienced by the applicant in relation to that being experienced by other residents in housing terms. This also involves the Housing Committee comparing the applicant's case with that of others in similar circumstances, given that if it were to grant consent to the applicant, it would be more or less bound to do likewise to all others in the Island in similar or worse conditions who do not have residential status under the Housing Law. Whilst it is quite clear that the circumstances of no two applicants will be precisely identical, the Housing Committee has a legal as well as a moral obligation to administer the Regulations consistently.

A former Attorney General gave the following advice on the matter -

“Regulation 1(1)(g) confers a wide discretion upon the Housing Committee. The exercise of that discretion is, generally speaking, a matter for the Committee, and the Royal Court has made it clear in a long line of cases that it will not substitute its own view for that of the Housing Committee even if it disagrees with the Committee unless it could be said that the Committee has acted unreasonably.

‘Reasonableness’ is at the core of the exercise of discretion. It would be unreasonable for a Committee to exercise discretionary powers inconsistently or capriciously. The discretion must be exercised within defined limits, even if the Committee is, to an extent, responsible for defining those limits.”.

The Housing Committee receives many hundreds of applications each year from persons who do not possess residential status and yet wish to be afforded that right in order to have access to the wider housing market. It follows from the comments of the Attorney General quoted above that, to some extent, the Housing Committee

defines its own margins of discretion under this Regulation, and successive Committees have felt that, whilst the housing demand and supply situation was in such great imbalance, it would be failing in its duty to those with residential qualifications to apply a very relaxed view to applicants seeking consent under Regulation 1(1)(g). It cannot be emphasised too strongly that for every additional discretionary consent granted, one more unit of regulated accommodation is required, and the imbalance between supply and demand becomes worse.

The Committee accepts that Mrs. Ozouf will suffer hardship if not granted consent. However, the hardship she will suffer is similar to that endured by hundreds of other non-residentially qualified families with young children who have in excess of ten years' residence in the Island. The Committee believes it is not unreasonable to expect someone to have completed a minimum ten years' residence in Jersey before being granted residential qualifications in their own right, as for example those who are Jersey born.

The Committee accepts that suitable accommodation for families with young children is scarce in the non-residentially qualified sector, nevertheless it does exist. The Committee is not, therefore, saying that Mrs. Ozouf must leave the Island, but simply that she should not be allowed to occupy regulated property. In addition, Mr. Ozouf and his family have expressed the view that they wish to be involved in bringing up the child of the marriage, which may help to alleviate the problem of living in non-qualified accommodation.

The Committee is not aware in this case of any medical factors which might lead to a greater degree of hardship than that suffered by other single parents without residential qualifications.

In summary, the Committee believes that notwithstanding the hardship which may be suffered by Mrs. Ozouf and her child as a result of the Committee's decision, that decision is not unreasonable because -

1. Unless there are exceptional factors - e.g. health of mother or child, an applicant would be expected to complete ten years' residence in the Island before gaining residential qualifications in their own right.
2. Hundreds of families with young children have in excess of ten years' continuous residence in the Island, but do not have residential qualifications and to whom the Housing Committee is not in a position to grant consent.
3. The Island continues to face a shortage of housing, and each consent granted under Regulation 1(1)(g) will exacerbate that shortage.