Judgment 21/2009 **Boulton v Housing Department – Royal Court (Civil Action File 1313) – 1 May 2009**

Housing (Control of Occupation) (Guernsey) Law, 1994 (s 56) – tenant's appeal from refusal of application for housing licence – 'open market' dwelling removed from the Housing Register at the instance of the landlord – tenant's decision to move, and therefore to apply for a licence, was due to increase of rent to market rate rather than States Policy on de-registration – Department held not to have been unreasonable in its consideration of other factors, such as period of residence in Open Market dwelling, familial connections etc – appeal dismissed (See Judgment 47/2006)

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1313

The 1st day of May, 2009 before Richard John Collas Esquire, Deputy Bailiff:- present Michael Henry De La Mare, Stephen Murray Jones and Peter Sean Trueman Girard, Esquires, Jurats.

In the action of ADRIAN JOHN BOULTON ("the Appellant") against THE MINISTER OF THE HOUSING DEPARTMENT ("the Respondent") in the terms attached hereto;

WHEREAS on the 22nd day of April, 2009 the Court having heard Advocates S.R. Geall and K.E. Walder Counsel for the Appellant and Respondent respectively, RESERVED JUDGMENT;

THE COURT this day handed down written Judgment in the terms attached hereto, and DISMISSED the appeal.

M A TOSTEVIN
Her Majesty's Deputy Greffier

Atkinson Ferbrache Richardson
3rd November 2008
(PR)

ADRIAN JOHN BOULTON, of 25 Maison Faite, Mon Plaisir, Green Lanes in the parish of Saint Peter Port, whose address for service is at Court Place, Rue du Manoir, in the said parish of Saint Peter Port (hereinafter called "the Appellant")

A C T I O N S

THE MINISTER FOR THE HOUSING DEPARTMENT (hereinafter called "the Department") whose address for service is at Saint James' Chambers in the said parish of Saint Peter Port, to show cause why the decision of the Department, not to grant an application for a housing licence, communicated to the Appellant's Advocate by letter dated the 13th day of August 2008, should not be set aside or varied on the grounds that the decision was ultra vires and/or unreasonable/irrational and/or an unreasonable exercise of its powers, the material facts upon which the Appellant relies being as follows:

1. The Appellant has lived continuously in Guernsey since 2 March 1993.

2. The Appellant previously resided permanently at 25 Maison Faite, Mon Plaisir, Green Lanes ("the Property") where he lived continuously since 1 April 2000 as a tenant. He was given notice to quit the Property by 30 September 2008 and acquired a berth and live aboard licence at Beaucette Marine. The Appellant is currently in the process of acquiring a boat and has been provided with a local market licence valid until 31 October 2008 to enable him to live with a friend in the interim.

3. The Property is inscribed in Part A of the Housing Control Register ("the Register").

4. The Landlord of the Property, Island Development Limited, first notified the Appellant by letter dated 31 May 2002 that it intended to seek de-registration of the Property from the Register.

5. The Landlord of the Property re-confirmed that it remained under contractual obligations to seek de-registration of the Property from the Register by letter dated 2 March 2004.

6. By letter dated 5 April 2005, the Landlord of the Property confirmed that it would seek to de-register further open market units at the Mon Plaisir development as they became available.

7. By letter dated 3 March 2008, the Landlord of the Property notified the Appellant that it intended to increase its Open Market rent by £350 from 1 April 2008, an increase of 28%. In addition, it intended to increase its Open Market rent by a further £350 (21.9%) on 1 April 2009. The increases were both above inflation and above the rent increases of between nil and four per cent that were previously imposed.

8. The Landlord of the Property notified the Appellant by letter dated 14 July 2008 that it was giving formal notice to the Appellant to quit the Property on or before 30 September 2008 so that the Property could be de-registered.

9. The Appellant is not a qualified resident within the meaning of the Housing (Control of Occupation) (Guernsey) Law, 1994 ("the Law") and accordingly faces the prospect of losing his home unless he is granted a housing licence under the Law.

10. In July 2000, the States of Guernsey debated the proposed inscription in the Register of new open market dwellings to be constructed on the site of the former Savoy Hotel. The Respondent prepared a report on 29 December 2000 entitled "Housing Control Law - Review of the Open Market" ("the Policy Letter") which concluded that there was no reason why the open market Register should be expanded. The States approved a proposition that a portion of the dwellings to be constructed on the site of the Savoy Hotel could be inscribed in the Register as open market properties if the equivalent number of existing dwellings were deleted from the Register. In light of the States' resolution, the Respondent prepared a policy statement to be approved by the States.

11. Paragraph 5 of the Policy Letter requires that for deletion from the Register, the Property must be "unoccupied or occupied by a qualified resident". Although the Appellant currently resides at the Property with the effect that the Property cannot be so deleted, the Policy Letter has caused the Owner of the Property (Island Development Limited) to only offer a short tenancy to the Appellant in order to facilitate the vacation of the Property following the expiry

of the current lease on 31 March 2006. Thus the issue underlying this appeal is a prospective change in the status of the Property (arising from the Policy of the Department approved by the States of Guernsey) rather than from a change in the Appellant's personal circumstances or aspirations.

12. The grounds upon which the Appellant will rely are as follows:

Ultra Vires/Irrational

a) the Department has placed undue reliance on the terms of the Policy Letter which does not have force of law, in particular on paragraph 5 which provides as follows:-

> *"The fact that the dwelling is the subject of an application for the deletion of the inscription from the Housing Register under this policy would not be regarded as a reason which, of itself, would justify the grant of a housing licence to an occupier or former occupier."*

b) the Department has, in making the decision, unlawfully allowed its decision to be fettered by the terms of the Policy Letter and the resulting States Resolution;

c) the Department has failed to take any or sufficient or adequate notice of and/or has failed to have regard to the fact that the Appellant's application for a housing licence is a direct result of the States of Guernsey policy;

d) the decision of the Department amounts to an interference with the Appellant's right to respect for his private and family life and his home under Article 8 of the Convention of the Protection of Human Rights and Fundamental Freedoms;

e) the decision of the Department lacks proportionality since the Department has failed to have any or sufficient or adequate regard to the fact that only three open market units remain at the Mon Plaisir development, and therefore only a very limited number of people remain to be affected by the States' resolution and Policy Letter;

Unreasonable

f) the Department has failed to take any or sufficient or adequate notice of the significant increase in rent that the Appellant will incur should he be required to re-house himself in alternative comparable open market accommodation and of the resulting impact on the Appellant's standard of living and lifestyle;

g) the Department has failed to take any or sufficient or adequate notice of the stress and anxiety the Appellant is experiencing as a result of the precarious position in which the Appellant finds himself;

h) the Department has failed to take any or sufficient or adequate account of such other factors which it should have deemed necessary or expedient to consider in accordance with Section 6(5)(e) of the Housing (Control of Occupation) (Guernsey) Law 1994;

i) the Department has placed undue reliance on the fact that 29 of the Appellant's 45 years were spent elsewhere than in Guernsey and on the fact that the Appellant's residence in Guernsey has been in non-qualifying resident in open market properties in Guernsey;

j) the Department has failed to take any or sufficient or adequate notice and has fettered a discretion by adopting a rigid policy and not taking into account the Appellant’s familial and like connections;

k) the Department has placed undue weight on the fact that the Appellant took up occupation of an Open Market dwelling thus not building up any rights to occupy a Local Market dwelling;

l) the Department has placed undue reliance on the argument that to grant a licence in these circumstances could result in the pool of Local Market dwellings available to local people being significantly reduced which would lead to an inflation of house prices;

m) the Department did not address the issue of how many other Open Market residents are being forced to leave their homes because of the Resolution by the States and have ignored the unique circumstances of the case;

n) the Department's decision points to a possible abuse of power;

o) the Department has unreasonably dismissed the aforementioned factors individually as being insufficient in isolation to justify the grant of a housing licence and has failed to have any or sufficient or adequate regard to the combined weight of the aforementioned factors;

p) the Department has otherwise misconstrued the Appellant's application and has failed to discharge its duty to act fairly.

Accordingly, the Appellant asks the Court to:

i) set aside the decision of the Department;

ii) make such other Order or Orders as it may consider just and expedient;

iii) order the Respondent to pay the Appellant's costs.

ADVOCATE PAUL RICHARDSON

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between **ADRIAN JOHN BOULTON** **Appellant**

- and -

THE MINISTER OF THE HOUSING DEPARTMENT **Respondent**

Before: Richard John COLLAS Esq., Deputy-Bailiff

and

Michael Henry De La Mare, Stephen Murray Jones and Peter Sean Trueman Girard Esquires, Jurats of the Royal Court

Judgment handed down: 1st May 2009

Advocate for Appellant: S R Geall
Advocate for Respondent: K E Walder

Cases, texts and statutes referred to:

1. *Campbell v States Housing Authority*, July 2002
2. *Perkins v States Housing Authority [1995] 20 G LJ 36*
3. *Matheson v States Housing Authority, [1998] 26 GLJ 82*
4. *Thomas v Minister of the Housing Department*, Royal Court 26 February 2008

Introduction

1. This is an Appeal under Section 56 of the Housing (Control of Occupation) (Guernsey) Law of 1994 against a decision of the Board of the Housing Department refusing to grant a Housing Licence to the Appellant.

2. The decision was reached at a meeting of the Board on 3rd July 2008 and communicated to the Appellant by letter dated 13th August 2008 (Tab 19). References in this Judgment are to documents contained either in the bundle entitled "Final Hearing Bundle" or the bundle entitled "Skeleton Arguments Bundle" prepared for the purpose of the hearing. We will refer to the Housing Law as the "1994 Law" and to the Respondent as the "Department".

3. Section 56(1) of the 1994 Law provides that the grounds for an appeal against a decision of the Department are that the decision was ultra vires, or was an unreasonable exercise of the Department's powers.

4. This is the decision of the Court. Pursuant to Section 14(2) of the Royal Court (Reform) (Guernsey) Law, 2008 the Deputy Bailiff did not sum up to the Jurats in open Court, but instead retired with the Jurats. The Deputy Bailiff reminded the Jurats of their respective roles; the Deputy Bailiff as the sole judge of questions of law and procedure and the Jurats as the sole judges of questions of fact.

5. The Deputy-Bailiff directed that the burden of proof is on the Appellant (Section 56(3) of the 1994 Law) and the standard of proof is the civil standard of the balance of probabilities; to establish something on the balance of probabilities means to prove that something is more likely so than not so.

Facts

6. The Jurats took account of all the facts presented to the Department in connection with its decision. The key facts include that:

    a. The Appellant arrived in Guernsey on the 2nd March 1993 with his parents and brother. He was then aged 30 years.
    b. Prior to the date of the decision to which the Appeal relates ("the Decision"), the Appellant had lived all his time in Open Market accommodation save for a short period of time in local market accommodation which is of no relevance to the present Appeal.
    c. The Appellant's father sadly died in Guernsey, but his mother and brother still live here.
    d. The Appellant works as a Senior Fund Administrator and his salary is as stated in paragraph (d) of Advocate Richardson's letter on his behalf to the Department dated 14th May 2008 (Tab 16).

Open Market

7. Before continuing with the summary of the facts, the Deputy Bailiff explained the Open Market Register.

8. At the time of the decision, the Appellant occupied a dwelling inscribed in Part A of the Open Market Register. That means it was a residential dwelling available for occupation by any person regardless of whether he possesses local residential qualifications and without any requirement to hold a Housing Licence.

9. The list of Open Market dwellings has been closed for a number of years. However, in July 2000, the States of Deliberation approved a policy permitting eight new dwellings in a new development to be constructed on the former Savoy Hotel site to be inscribed on the Open Market, provided that eight other Open Market dwellings elsewhere were deregistered. Twenty-eight dwellings were to be constructed in total on the Savoy site, of which eight would be Open Market, so there would be a net gain

of twenty-eight additional Local Market properties including the eight deregistered properties.

10. As a result of that policy, eight existing Open Market dwellings were de-registered and in June 2004, the States approved the Housing (Control of Occupation) (Amendment of Housing Register) Ordinance 2004 (No. XXV of 2004) permitting the Department to inscribe eight dwellings constructed on land comprising the site of the former Savoy Hotel in Part A of the Housing Register.

11. In the meantime, in March 2001, the States of Deliberation debated and approved another policy letter, dated 29th December 2000 (Tab 2), adopting a general policy ("the States Policy") permitting the inscription in the Housing Register of new dwellings to be created on a Mixed Use Redevelopment Area, or on a site where there are other strategic issues (whatever that might mean) subject to certain conditions, including the following at page 191 of the Billet d'Etat (Tab 2):

> *"3. In return for each dwelling to be inscribed, one existing dwelling must be deleted from Part A of the Housing Register.*
>
> 5. *The dwelling to be deleted must be unoccupied, or occupied by a qualified resident, at the time of the application to delete the inscription. The fact that the dwelling is the subject of an application for the deletion of the inscription from the Housing Register under this policy would not be regarded as a reason which, of itself, would justify the grant of a housing licence to an occupier or former occupier.*
>
> 6. *The number of dwellings which can be inscribed on a one to one exchange basis will be limited to one third of the total number of dwellings in the development or a maximum of eight dwellings whichever is the lesser:"*

12. These policy developments are described in further detail in Day DB's judgment in *Campbell v States Housing Authority*, July 2002 (Tab 2(c) of the Skeleton Arguments Bundle), a decision which the Jurats have read. In this second (December 2000) Policy Letter, the Department (or its predecessor the States Housing Authority) acknowledged that it was likely that the policy would lead to the de-registration of lower value Open Market properties (page 190 of the Billet d'Etat at Tab 2):

> *"However, it is important to note that it is likely that there will be a limited number of dwellings, which can be acquired for the purpose of deleting them from the Register, to satisfy this requirement. They are likely to be at the lower end of the Open Market price range in order for the exchange to be viable; and any depletion in the number of dwellings at the lower end of the Open Market is likely to increase the scarcity value of the remaining similar properties. Thus the overall scope for the use of this policy is likely to be limited."*

13. As Day DB observed at page 20 of *Campbell*, the Authority (as it then was) did not address how it would approach Housing Licence applications from persons displaced

from an Open Market dwelling which was proposed to be de-registered as a result of the States Policy.

25 Maison Faite

14. At the time of the Decision, the Appellant occupied an Open Market flat known as 25 Maison Faite, Mon Plaisir, Green Lanes, St Peter Port, which was, apparently, at the lower end of the Open Market in terms of its rent and value.

15. Prior to the adoption of the States Policy, the Appellant's landlord owned eighteen Open Market flats at Mont Plaisir. The landlord advised its tenants that it intended to de-register a number of Open Market units. By the time of the Decision, the landlord had de-registered fifteen of the dwellings, so that only three of its properties at Mont Plaisir remained inscribed on the Open Market Register, including the Appellant's flat. The Appellant believed that his landlord wanted to de-register his flat and as a consequence of that, he has sought to obtain a Housing Licence to enable him to continue to occupy 25 Maison Faite after it was de-registered, or to occupy suitable alternative accommodation. (At the hearing before us, Advocate Geall appeared to base his submissions on the assumption that the landlord wished to de-register the flat in order to facilitate the inscription of an apartment at the Savoy Hotel site. After the Court drew the 2004 Ordinance to his attention, he appeared to accept that any de-registration would be in connection with some other new development, not the Savoy Hotel development).

16. Much of the Appellant's argument turns upon the question of whether the Appellant's need for a Housing Licence arose as a direct consequence of the States Policy, as he alleged, or whether he was required to find alternative accommodation because he was unable to continue to afford the accommodation as a result of decisions by the landlord unconnected with the States Policy, as the Department alleged. The Court therefore looked in detail at the correspondence and documents relevant to this issue.

17. On 31st May 2002, the landlord, Island Development Ltd, sent a letter to the Appellant, which appears to be in standard form so, it is likely that a similar letter went to other tenants of the landlord in similar Open Market properties. The letter (Tab 4) advised that eight flats had already become vacant and had been re-let as local market units and the letter continued:

> *"This de-registration process is ongoing, and further units will be de-registered over the next two years or so.*
>
> *The Board of Island Developments is very conscious of the disruption to your lives that any move entails. For this reason, let me reassure you that no lease will be terminated before it is due for renewal. Furthermore, if the renewal date falls within twelve months from the date of this letter, then – on your specific written request – your Lease can be extended so that you have a notice period of at least twelve months from 30th June 2002. This does, I hope, provide ample time for anyone who may be affected to arrange alternative accommodation."*

18. Thus, the Appellant was on notice that he could continue to occupy his flat for at least twelve months but thereafter his lease might not be renewed and in that event he would have to move unless he had been able to obtain a Housing Licence to continue to occupy the flat as a Local Market dwelling.

19. The next communication (at Tab 5) from the landlord is a letter, dated 2nd March 2004, advising the Appellant that his current lease was expiring and enclosing a renewal lease. The letter added "*the new lease is again for one year only, since Island Development Limited remains in contractual arrangements as regards further de-registrations of Open Market units"*.

20. The impression given by that letter was that the Appellant should expect that his flat might be de-registered from the Open Market at the expiration of his lease on 31st March 2005.

21. A letter from the landlord dated 17th September 2004 (Tab 7) emphasized that the flat could not be de-registered until it becomes vacant and added:

> *"Only then (a point made very forcibly by Housing when dealing with de-registration of your Mother's unit), is it possible to apply to remove the vacant open market unit from the register, and have the de-registration recorded as being for the benefit of a named third party. (This is what the owners need to achieve).*
>
> *I foresee no difficulty in your continuing as tenant of a local market flat at Mon Plaisir, subject to the terms of any licence, on lease terms that will be agreed at that time. However, you should be clear that if you succeed in obtaining a local licence, then you will have to vacate your present home, removing all your belongings, before the application to de-register can be made by Island Development."*

22. Following receipt of that letter the Appellant wrote to the Department on 28th October 2004 (Tab 8) to apply for a Housing Licence to enable him to either continue to occupy 25 Maison Faite after it was de-registered or to occupy suitable alternative Local Market accommodation. In the letter he referred to the landlord's correspondence and said:

> *"From this correspondence it is clear that the reason my tenancy is being terminated is to enable my flat to be de-registered pursuant to the States Resolution, and not for any other reason."*

23. It is clear from his letter that the basis of his application was that he needed a Licence as a direct consequence of the States Policy.

24. His application was rejected by the Department by letter dated 19th November 2004 (Tab 9). The Appellant wrote again on 12th January 2005 (Tab 10) requesting a reconsideration. The Department replied on 8th March 2005 (Tab 11) with a further rejection. The Appellant appealed to the Royal Court and the Appeal was heard by the Full Court, Lieutenant Bailiff Finch presiding, in October 2006 and the Appeal was unanimously dismissed. (None of the Jurats sitting on the present Appeal sat on

the earlier Appeal). We do not need to go into the detailed issues raised in that Appeal, save to note that they covered similar ground to most of the issues raised in the present Appeal. (A copy of the Court's decision is at Tab 4 of the Skeleton Argument Bundle).

25. The Deputy-Bailiff directed the Jurats that, in reaching their decision on this appeal, they were to disregard the outcome of the Appellant's earlier appeal. The Department had treated him as having made a fresh application for a housing licence; the Department had considered it afresh and the Court should do the same. It would not be correct to ask whether there had been no material change in the Appellant's circumstances since the date of the earlier appeal and if there had not, to dismiss the appeal on that basis. It must have been correct for the Department to take a fresh look at all the relevant factors. There had been changes in his circumstances; the mere passage of time meant that he had lived for a longer period of time and that fact, together with any other changes, might have been sufficient to tip the scales in the Appellant's favour when the Department conducted the balancing exercise that is required of it.

26. Whilst the Appellant was pursuing his first appeal, the landlord's agent wrote to the Appellant by letter dated 5th April 2005 (Tab 12). The letter informed the Appellant that the landlord had a contractual obligation to a Third Party to de-register Open Market units as they become available and continued:

> "*The timescale is fairly open-ended, and a number of units have been dealt with in this way over recent years. The Housing Department are well aware of this background.*
>
> *It is also the policy of Island Development Ltd. not to force any tenant to vacate, and all prior de-registrations have either been as tenants have moved, or obtained (sometimes with much screaming and kicking on the part of Housing!) local market status. (You may be aware of the background to your Mother's "saga"). The company has no present intention to change that policy.*
>
> *In such a scenario open market leases are kept at the short end of the time scale to facilitate such moves / de-registrations, and lest company policy be changed.*
>
> *As I have explained to you (and others) on numerous occasions, the company will not force you out of your home – and you cannot therefore expect to use such reasoning in your quest for local market status."*

27. It seems to the Jurats that this letter demonstrates a change of attitude on the part of the landlord. The landlord was no longer threatening that it will not renew the Appellant's lease when it expires. Instead, the landlord stressed that it would not force the Appellant out of his home and therefore he is not to use such reasoning in his request for Local Market status, or more accurately a Housing Licence. The letter advises that the Department is aware of the background, suggesting there had been other communications between the landlord and the Department which have not been disclosed to the Court and, presumably, have not been disclosed to the Appellant.

28. By letter dated 3rd March 2008 (Tab 13) seventeen months after the dismissal of the Appeal, the landlord advised the Appellant of a substantial increase in his rent. The rent had not increased during the years 2004, 2005 and 2006. On 1st April 2007 it had increased by 4.2% and then was to increase by 28% with effect from 1st April 2008 and a further 21.9% with effect from 1st April 2009, taking it in two steps from £1,250 per month to £1,600 per month and then £1,950 per month. At that rate the rent was beyond the Appellant's means, as his Advocate advised the Department, by letter dated 25th March (Tab 14) in which he made a fresh application for a Housing Licence.

29. The letter stated, in the first paragraph, that *"our client finds himself in the unfair position of eventually having to move from his home due to the re-registration of 25 Maison Faite, Green Lanes, St Peter Port from the list of open market properties"*. The letter made it very clear that the basis of the application was that the landlord wanted the Appellant to vacate his flat, so that the landlord could apply to de-register the flat which it would be able to do as soon as the flat was vacant.

30. The Department requested further details from the Appellant by letter dated 22nd April 2008 (Tab 15) and those details were provided by Advocate Richardson by letter dated 14th May 2008 (Tab 16). In that letter at paragraph (f), the Advocate wrote :

> *"..Our client finds himself in the unfair position of eventually having to move from his home due to the re-registration of 25 Maison Faite, Green Lanes, St Peter Port from the list of open market properties."*

31. The decision making of the Board of the Department was assisted by a report prepared by an officer of the Department dated June 2008. The report had not been disclosed to the Appellant before the hearing but it was helpfully provided to the Court by Advocate Walder during the hearing. The report, at paragraph 23, drew to the Board's attention the Advocate's argument that *"as a result of the decision to de-register the open market dwelling currently rented by Mr Boulton and the looming extortionate rent increase, Mr Boulton is being forced out of his accommodation".* The author of the Report wrote:

> *"24. It is understood that if his licence application was successful, Mr Boulton would simply remain in his current accommodation but that there would then be no impediment to the landlord seeking to de-register the dwelling from the Housing Register. It is assumed that Mr Boulton's rent would be adjusted to reflect the changed status of the dwelling.*
>
> *25. Although it would really be the landlord's actions that would be causing Mr Boulton financial hardship to the extent that he looked to move from his current home, it might be argued that as the landlord's action was taken in response to a States Resolution promoted by the department's predecessor, the Department would be interfering with Mr Boulton's Article 8 rights in relation to respect for his 'home' by not facilitating his continuing occupation of that dwelling.*

> *26. Therefore, the Department would need to stand by the alternative position that such interference was in accordance with the law and was justified for the protection of the rights and freedom of others i.e. the protection of a housing stock for qualified residents and existing licence holders. The needs of whom are highlighted by the findings of the Housing Needs Survey."*

32. When giving the reason for its Decision, the Department dealt with these arguments at page 2 of its letter dated 13th August 2008 (Tab 19):

> *"In this regard the board was mindful of the fact that, according to the information provided in support of the application, Mr Boulton's rent on his current accommodation increased by 28% from 1 April 2008 to £1,600 per month and was set to increase by a further 21.9% from 1 April 2009. It noted your assertion that the level of these increases meant that the rent was beyond Mr Boulton's means.*
>
> *However, the board considered that, when compared to similar [Open] Market properties available to rent at or about the time of this application, Mr Boulton's current rent of £1,600 per month was in no way excessive for a two bedroomed Open Market flat in today's economic climate. Moreover, the board noted that Mr Boulton had not been subject to any rent increases for a period of three years between April 2004 and March 2007. As such, it was of the opinion that Mr Boulton had benefited from that situation but that his rent was now being brought back in line with market rates for similar properties.*
>
> *The board also noted that Mr Boulton had taken in a lodger to assist with his rent payments and, therefore, was not dependant solely on his salary to meet his housing costs as he did have assistance with the rent.*
>
> *The board also considered its own policy, which formed part of the 2001 policy letter to the States entitled 'Housing Control Law Review of Open Market', that permitted the deregistration of open Market Part A dwellings in order that new dwellings within MURA developments could be inscribed in the Housing Register. It specifically noted that it was a condition of that policy that a dwelling would only be deregistered and its inscription held for use elsewhere, if the dwelling was either unoccupied or occupied by an unrestricted qualified resident.*
>
> *Therefore, the board was confident that it would not permit the dwelling known as 25 Maison Faite to be deregistered whilst Mr Boulton remained in occupation of that dwelling as to do so would cause him to be in unlawful occupation of his home."*

33. The Court asked Advocate Walder what evidence was available to the Department to support its conclusion that the Appellant's rent was being brought back in line with market rates for similar properties. The reply was that the Board relied upon the letter from the landlord's Agent, to the Appellant dated 3rd March 2008 (Tab 13) in which the Agent stated that:

> *"Open Market units do not become available to let very often, but the historic rents have been well below what is charged elsewhere on the Island for many years now. Last year we were able to re-furnish one such unit to the standards that apply in your home. It was re-let at £1,800 / month, which is now rising to £1900."*

34. In the view of the Jurats, evidence of the rent at which a property has been let is satisfactory evidence of market rent.

35. In the Department's letter of 13th August 2008 (Tab 19), it concluded:

> *"In reaching this view the board concluded that it could not be held accountable for any action taken by Mr Boulton's landlord, either in respect of increased rent or the non-renewal of his lease, nor could it speculate as to the motive behind such action. Moreover it was not for this Department to interfere with the terms or duration of a private lease agreement."*

36. The Jurats have carefully considered the documents and submissions of Counsel. They consider that the change of attitude on the part of the landlord, which was first indicated in its Agent's letter dated 5th April 2005 (Tab 12), is significant. Prior to then, the landlord had advised the Appellant that he could expect his lease would not be renewed on termination so that the landlord could obtain vacant possession and, having done so, would apply to de-register the property. After 5th April 2005, the landlord's attitude was that he would not be forced to vacate, he could remain in the flat as long as he wanted, with one important proviso, namely that he should pay the market rent for the property.

37. In the view of the Jurats, it is not unreasonable for a commercial landlord to expect his tenants to pay a fair market rent. The Appellant appears to accept that the rent proposed by the landlord was the market rent, or at least he has not sought to argue otherwise.

38. Also, he has not sought to argue that the increase in rent (which the Department's officer described as "extortionate") is as a result of the States Policy, even though the number of lower value Open Market properties available to rent has been reduced as a result of the de-registration of such dwellings in accordance with the States Policy.

39. The burden of proof was upon the Appellant to show that the Department's decision on this issue is unreasonable. He has failed to do so. The Jurats agreed with the Department's conclusion that the Department could not speculate as to the motive behind the landlord's decision to increase rent to market rates.

40. Having concluded that the States Policy is not the cause of the Appellant's situation in requiring a Housing Licence to occupy alternative accommodation, many of the submissions made by Advocate Geall in support of the Appeal fall away as they were based upon the assumption that the States Policy was the cause of his situation.

41. Before considering the Appellant's detailed grounds of Appeal, it is appropriate to observe that we consider that the circumstances of Mrs Campbell can be distinguished from the facts of this present Appeal. Her Appeal was heard by Day DB, in July

2002. Her landlord was, apparently, the same as the Appellant's landlord. The decision in her case therefore arose before the change of approach by the landlord which the Court has observed in its agent's letter dated 5th April 2005 (Tab 12).

42. At the top of page 16 of his judgment, Day LB quoted Advocate Ferbrache's summary of the correspondence in that case:

> *"What the owners are saying in the letter of the 12th June, 2001, is that certain units have already been deregistered and they are looking to occupants of the remaining units to indicate whether they want to go or not. They are also making it quite clear that there is only scope for a limited renewal.*
>
> *Indeed the second document makes it clear that the lease expires on the 1st July, 2002 ...."*.

43. At page 19, Day LB stated the question the Authority had to ask itself, was *"how many other Open Market residents are being forced to leave their homes because of the Resolution by the States.....?"*.

44. Our understanding of that case is that this Appeal proceeded on the basis that Mrs Campbell was being forced to leave her home as a result of the States Policy. The Jurats have decided that is not so in the present case and so this Appeal is distinguishable from the decision in *Campbell*.

The Law

45. The Deputy Bailiff directed the Jurats that in considering the Appellant's application for a Housing Licence, the Department had a mandatory duty to consider the matters set out at section 6(2)(b)(i) and (ii) of the 1994 Law. In addition, the Department could, but was not required to, take into account the matters at section 6(5) including at sub-paragraph (e) *"such other factors as it may deem necessary or expedient"*.

46. As Southwell, JA, observed in *Perkins v States Housing Authority [1995] 20GJ36*:

> *"The Housing Control Laws give the authority draconian powers to control the occupation of premises in Guernsey"*.
>
> and
>
> *"Such powers must be exercised with care and sensitivity to avoid any abuse of those powers"*.

47. Further, Beloff, JA in *Matheson v States Housing Authority*, declared that the Department can have a Policy which conforms with the Law, as long as *"those who apply the Policy are prepared to listen to reasons why it should not be applied in a particular case and in consequence, in appropriate circumstances, to make exceptions to it"*.

Grounds of Appeal

48. As a result of the Court's finding that the Appellant has failed to establish that the Department was unreasonable in concluding that his application did not result from the States Policy, grounds (a), (b), (c), (e), and (m) of paragraph 12 of the Cause do not require further consideration.

49. Counsel agreed that ground (d) concerning Article 8 of the European Convention on Human Rights is for the Deputy Bailiff alone and he deals with that later in this Judgment. With regard to the remaining grounds, the Jurats first considered whether the matters referred to were considered by the Department as part of the balancing exercise it was required to carry out and then the Jurats considered whether the Appellant has established that the Department acted unreasonably in carrying out the balancing exercise.

50. Ground (f). On the second page of its letter dated 13th August 2008 (Tab 19), the Department noted the significant increases in rent and the Appellant's assertion that, as a result of the increases, the rent was beyond his means. It noted that he had taken in a lodger to assist with the rent payments. The Department concluded, on page 4 of the letter, that the Appellant would be able to fund his occupation of the flat, or a similar Open Market flat, with the continuing assistance of rental income from a lodger.

51. The case of *Thomas v Minister of the Housing Department*, Royal Court, 26 February 2008 is distinguishable. In that case, the Department was seeking to impose, as a condition of a Housing Licence, a requirement that the appellant share his dwelling with a lodger when he had not previously done so. In the present Appeal, the Appellant had taken a lodger of his own choice, not under compulsion from the Department.

52. Ground (g). There is no specific evidence that the Appellant had suffered stress and anxiety. For example, he had not produced a doctor's letter or any other specific evidence. There is only a general allegation at the foot of page 4 of Advocate Richardson's letter dated 25th March 2008.

53. The report prepared for the benefit of the Department in connection with its earlier decision, makes reference to stress and anxiety at paragraph 32. The Appellant's assertion in this regard had therefore been drawn to the attention of the Board of the Department. The Court considers there was no evidence presented to the Department to suggest that the Appellant was suffering any greater stress and anxiety than any other individual would suffer when waiting for determination of a Housing Licence application and living in rented accommodation on an annual lease.

54. Ground (h). Having reviewed the evidence, the Court is not satisfied that there are other factors that the Department has failed to consider.

55. Ground (i). In support of this submission, Advocate Geall relied upon the decision of the Court of Appeal in *Matheson v States Housing Authority*, 24th July 1998. In that case, the Court of Appeal held that the circumstances referred to in section 6(2)(b)(ii) of the 1994 Law (periods of residence in Guernsey and elsewhere) were a relevant but not a decisive factor in considering an application. It held that the Housing Authority

had misdirected itself in law in treating the fact that the appellant had lived in Guernsey as an Open Market resident as fatal to his application.

56. In the present Appeal, the Department dealt with Mr Boulton's periods of residence in Guernsey and elsewhere at the foot of page 1 of the letter of 13th August 2008. It then went on to consider other factors before concluding at the top of page 3 of the letter:

> *"The board was of the view that the circumstances of Mr Boulton's residence (i.e. occupation of Open Market Part A dwellings) outweighed his familial and like connections, his periods of residence in Guernsey and the other factors set out above."*

57. In the view of the Court, the letter shows the Department did not consider the Appellant's occupation of an Open Market residence as being fatal to his application. *Matheson* is therefore distinguishable. Instead, the Department weighed that circumstance against the other factors it took into consideration which was the appropriate way of dealing with the matter.

58. Ground (j). Again, the Appellant's arguments were focussed upon his family connections with Guernsey and the fact that his mother was granted a Licence in similar circumstances. In his letter of application dated 25th March 2008, Advocate Richardson had said:

> *"His mother was granted a local licence following a similar situation with the same landlord when she lived at 20 Maison Grue."*

59. In the report prepared for the Department in connection with its earlier decision in respect of the Appellant, the reporting officer had said that (para 33):

> *"In his mother's case, age and health were factors which made a potential interference with Article 8 rights reasonable."*

60. That report was before the Board when it made its Decision, although the fact that his mother had been granted a Licence was not specifically addressed in the report prepared for the Department's meeting on 3rd July.

61. In its decision letter dated 13th August 2008, the Department did not explain why he had been refused a licence when the Appellant's mother had been granted one. Advocate Walder explained that the Department considers each application on its merits and, for reasons of confidentiality would not disclose another person's circumstances. The Court accepts that explanation.

62. Ground (k). Advocate Geall explained this was an adjunct to Ground (i) and relied upon the same submissions as he had made in respect of Ground (i). Similarly, the Court considers it does not need to add to what it has already said in relation to that Ground of Appeal.

63. Ground (l). In its decision, the Department took into account the findings of the States of Guernsey Housing Needs Survey, published as an appendix to Billet d' Etat XXV in December 2007. The Survey found that there was a net fall in the supply of

340 homes each year for single people or couples with dependent children. That was a relevant factor for the Department to take into consideration.

64. Advocate Geall also argued that the Department failed to take account of the circumstances in which the Appellant was required to leave his flat namely as a result of the States Policy but, as we have already explained, the Court has rejected that argument.

65. Ground (m). In support of the argument that the Department's Decision points to a possible abuse of power, Advocate Geall argued that the Department were applying a Policy rigidly without listening to reasons why it should not be applied in the Appellant's particular case, contrary to what was said by the Court of Appeal in ***Matheson***. He submitted that in so doing, the Department has failed to consider the unique circumstances of the Appellant.

66. Having rejected the argument that his situation has been caused by the States Policy, the Court are not persuaded that the Appellant's circumstances are as unique as he alleges. Furthermore, there is no evidence to suggest that the Department are rigidly applying a Policy.

67. Ground (o). The Department had to consider all relevant factors and conduct a balancing exercise in order to decide whether to grant the application for a Housing Licence. The relevant factors included the mandatory factors that the Department is required to take into account under section 6(2)(b) and the other factors that it took into account under section 6(5) of the 1994 Law.

68. The Court is satisfied that the Department took account of all such factors and in conducting its balancing exercise, the Department reached a decision within the band of reasonable decisions open to the Department.

69. Ground (p). The Appellant has failed to persuade the Court that the Department has misconstrued the Appellant's application or failed to discharge its duty to effect fairly.

70. Ground (d). Counsel agreed this was a matter for the Deputy Bailiff alone. The Appellant argued that the Decision amounted to an interference with his right to respect for his private and family life and his home, contrary to Article 8 of the Convention. Advocate Geall argued the issue by analogy with the decision of the Royal Court in ***Thomas.*** However, as we have said above, the two cases are distinguishable because in the present case it was the Appellant's own decision to share his accommodation with a lodger, it was not a requirement imposed on him by the Department as a condition of a housing licence. Furthermore, he was not being required to vacate his home as a result of a decision by the Department; as we have explained the Jurats decided that his need to find alternative accommodation resulted from his landlord's decision to increase the rent for the flat to a market rate. So, Article 8 of the Convention is not engaged in this case.

71. The Jurats felt considerable sympathy for the Appellant who has lived in the Island for over 15 years and regarded 25 Maison Faite as his home. This Appeal illustrates the difficult decisions required of the Department in discharging its responsibilities under the 1994 Law. It is probable that the Department receives many applications

from persons in circumstances that are deserving of sympathy. However, sympathy alone is not a reason for issuing a Housing Licence.

72. The Appellant has failed to persuade the Court that the Decision of the Department is unreasonable. The Appeal is therefore dismissed.

