

**PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)**

**Appeal under Article 109 against an enforcement notice served under Article 40(2)**

**REPORT TO THE MINISTER FOR THE ENVIRONMENT**

made under Article 115(5)  
by D A Hainsworth LL.B(Hons) FRSA Solicitor  
the inspector nominated under Article 113(2) from the list of persons appointed  
under Article 107

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**Appellant:**

Mr J M P Salgado

**Enforcement notice reference number and issue date:**

ENF/2020/00003 dated 31/07/2020

**The land to which the notice relates:**

Field No. P747A & P747B, Le Mont Fallu, St. Peter and Uplands Farm, La Route de Beaumont, St. Peter, JE3 7BQ

**The alleged breach of development controls:**

A material change of use of land from agricultural use to a mixed use of agriculture and as:

- a. The operations base, vehicle depot and yard, including the parking and storage of vehicles, trailers, plant and machinery, containers and goods associated with a commercial tarmacadam and resurfacing business;
- b. A material change of use of an agricultural building (marked 'x' on the plan attached to the notice) to a use as a vehicle workshop associated with the tarmacadam resurfacing business;
- c. The construction of two areas of hardstanding (as indicated hatched black on the plan attached to the notice); and
- d. The use of the two areas of hardstanding (as indicated hatched black on the plan attached to the notice) for the parking and storage of commercial and non-commercial vehicles, boats, containers, plant and machinery.

**The requirements of the notice:**

- a. Cease the use of the land as an operating base for the commercial vehicle depot and storage yard associated with tarmacadam resurfacing operations;
- b. Cease the use of the agricultural building for any non-agricultural use including its use as a vehicle repair/maintenance workshop

associated with the tarmacadam resurfacing business and remove all vehicles, spare parts, equipment and machinery facilitating that use;

c. Remove from the land all vehicles, trailers, plant, machinery and containers associated with the tarmacadam resurfacing operations and any other vehicles, trailers, plant, machinery or container that is not in use for the purpose of agriculture within the unit;

d. (1) Remove the two areas of hardstanding shown hatched black on the plan attached to the notice and all materials comprising their construction and (2) Re-cover those areas with topsoil to a minimum depth of 300mm, levelled to a gradient with that of the surrounding land and reseed those areas with grass.

**Compliance period:**

3 months from the issue date.

**The grounds of appeal:**

The appeal has been brought on grounds (f) and (g) specified in Article 109(2), namely:

(f) that the requirements of or conditions in the notice exceed what is reasonably necessary to remedy any alleged breach of control or make good any injury to amenity; and

(g) without prejudice to the generality of sub-paragraph (f), that any time period imposed by the notice for compliance with its requirements falls short of the time which should reasonably be allowed for such compliance;

**Inspector's site visit date:**

28 September 2020

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**Procedural matters**

1. When an appeal is brought under Article 109 against an enforcement notice, the notice by virtue of Article 117(2) ceases to have effect until the appeal has been determined. On the determination of the appeal the Minister may by virtue of Article 116(2) allow the appeal in full or in part, dismiss the appeal and reverse or vary any part of the decision-maker's decision. I interpret this as including the power to vary the terms of the enforcement notice.
2. With the agreement of the parties, the appeal has been dealt with by way of written representations and an accompanied site visit.
3. There is an irregularity in paragraph 3 of the enforcement notice ('The Breach of Development Controls'). The opening words refer only to a change of use, but subparagraph c. relates to operational development in addition. It appears to me that the Minister could vary the notice, without causing injustice, by redrafting the paragraph so that both a change of use and operational

development are specified. The parties have been consulted about this course of action and have raised no objections. I have included the redraft at paragraph 12 in my recommendations.

### **Ground (f)**

4. The requirements of an enforcement notice will be excessive if they do not match up with the matters stated to be the breach of development control, or if they extend beyond what is necessary to remedy those matters, or if they purport to prevent persons from doing something they can do without being in breach of development control. Requirements b. and c. in this notice are both excessive for these reasons.
5. Requirement b. requires the use of the agricultural building to cease for “any non-agricultural use” whereas the breach is defined as the use of the building “as a vehicle workshop associated with the tarmacadam resurfacing business”. By requiring any use other than agriculture to cease, the requirement extends beyond what is necessary to remedy the breach. It also excludes non-agricultural uses that may not require planning permission or are already authorised.
6. Requirement c. requires the removal from the land of various items associated with the tarmacadam resurfacing operations, but it then goes further than is necessary to remedy the breach, by requiring in addition the removal of “any other vehicles, trailers, plant, machinery or container that is not in use for the purpose of agriculture within the unit”. It also excludes the non-agricultural use of the land for the specified items when this may not require planning permission or be already authorised.
7. I am satisfied that the Minister can vary both Requirements b. and c. so as to exclude the extraneous words without causing injustice, since the variations remove defects in the notice that add to its scope. I have included the variations in my recommendations at paragraphs 13 and 14.
8. The appellant maintains that the agricultural building may have started its life in use for agriculture, but from around 1930 it has been in use for commercial purposes, including use as a joinery workshop, for non-agricultural storage and as a builders’ merchant’s. There was evidence of these past uses when I inspected the contents of the building. The Infrastructure, Housing and Environment Department maintain that there is no clear evidence that any of the non-agricultural uses were authorised.
9. It is unnecessary for the Minister to reach a conclusion on this issue, since the appellant has accepted that a breach of development control has occurred because of the tarmacadam and resurfacing business use, and the effect of the variations I have recommended in paragraphs 13 and 14 will be to limit the requirements of the notice to this unauthorised business use. Authorised uses, including other authorised commercial uses if there are any still subsisting, will then be unaffected by the notice. Any other unauthorised uses taking place could be the subject of further enforcement action if that was considered to be expedient.

## Ground (g)

10. The notice is 'on hold' because of Article 117(2), but the three months' compliance period specified in the notice expired on 31 October 2020 and will therefore have to be extended. At the time of my visit the appellant had taken some steps to comply with the notice, but was experiencing difficulty in finding alternative premises from which to operate the tarmacadam and resurfacing business because of a scarcity of commercial sites. He has requested an extension of the compliance period by a further three months. The Department consider that the breach should be remedied as soon as possible because of its effect on the landscape character of the Green Zone, on the lawful use of the land for agriculture and on neighbourhood amenity. They point out that the breach was first brought to the appellant's attention in March 2019.
11. It is a general principle that appellants are entitled to assume that their appeals will be successful and that a reasonable period for compliance will be allowed when the notice takes effect following the operation of Article 117(2). The period allowed should normally be not less than the period allowed when the notice was issued, to avoid a situation arising where appellants are disadvantaged by exercising their right of appeal. I consider that it is appropriate and reasonable in this instance to agree to the appellant's request for a further three months in which to comply with the requirements of the notice, starting on the date of the Minister's determination of the appeal. My recommendation in paragraph 15 deals with this matter.

## Inspector's recommendations

12. I recommend that the Minister should vary the enforcement notice by replacing paragraph 3 ('The Breach of Development Controls') by the following paragraph:

**"3. The Breach of Development Controls:** Without planning permission, firstly, the carrying out of operational development by the construction of 2no areas of hardstanding (as indicated hatched black on the attached plan) and, secondly, a material change of use of land from agricultural use to a mixed use of agriculture and as:

  - a. The operations base, vehicle depot and yard, including the parking and storage of vehicles, trailers, plant and machinery, containers and goods associated with a commercial tarmacadam and resurfacing business;
  - b. A material change of use of an agricultural building (marked 'x' on the attached plan) to a use as a vehicle workshop associated with the tarmacadam resurfacing business; and
  - c. The use of the 2no. areas of hardstanding (as indicated hatched black on the attached plan) for the parking and storage of commercial and non-commercial vehicles, boats, containers, plant and machinery."
13. I recommend that the Minister should vary the enforcement notice by replacing subparagraph b. of paragraph 5 ('You are required to'), by the following subparagraph:

“b. Cease the use of the agricultural building as a vehicle repair/maintenance workshop associated with the tarmacadam resurfacing business and remove all vehicles, spare parts, equipment and machinery facilitating that use.”

14. I recommend that the Minister should vary the enforcement notice by replacing subparagraph c. of paragraph 5 ('You are required to'), by the following subparagraph:

“c. Remove from the land all vehicles, trailers, plant, machinery and containers associated with the tarmacadam resurfacing operations.”

15. I recommend that the Minister should vary the enforcement notice by replacing paragraph 6 ('Period of compliance') by the following paragraph:

“6. **Period of compliance:** 3 months from the date of the determination of the appeal against this notice.”

16. I recommend that the appeal is allowed on grounds (f) and (g) to the extent of the variations. In all other respects, I recommend that the appeal is dismissed and that the enforcement notice is upheld as varied.

Dated 19 November 2020

*D.A.Hainsworth*

Inspector