

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

Appellant:

Graham Raymond Barette

Enforcement notice reference number and date of issue:

ENF/2020/00010 dated 22/10/2020

The land to which the notice relates:

Ferndale Farm, La Rue de la Grande Vingtaine, St. Peter JE3 7FD shown edged in red on the plan attached to the notice.

The alleged breaches of development controls:

“Without Planning Permission;

- a. a material change of use of the building (marked '1' on the attached plan) from farm shop to a mixed use as Farm shop and cafeteria with external 'Al-Fresco' seating; and,
- b. unauthorised development comprising the siting of a timber clad portacabin to the west of the car park (marked '2' on the attached plan) for use as a 'craft' workshop.”

The requirements of the notice:

- “a. Within the building marked '1' on the attached plan, permanently cease the use of the premises as a cafeteria and remove the al-fresco seating.
- b. Cease the use of the land for a craft workshop and permanently remove from the land the craft workshop/portacabin and all the materials, fixtures and fittings comprising its construction and make good the ground surface on which it is sited.”

Time for compliance with the notice:

“You are required to have complied with this notice by the end of 28 days commencing from the day that this notice is issued.”

Grounds of appeal:

The appeal has been brought in respect of allegation 'b' only (the portacabin) and

is proceeding on grounds (a), (c), (f) and (h) specified in Article 109(2), namely:

- (a) that the matters alleged in the notice are not subject to control by this Law;
- (c) that at the date of service of the notice no or no expedient action could be taken to remedy the alleged breach;
- (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
- (h) that in all the circumstances planning permission should be granted in respect of the development in question.

Inspector's site visit date:

12 April 2021

Hearing date:

14 April 2021

Procedural matters

1. The appellant was not involved in the running of the cafeteria and has appealed only in respect of the portacabin. The Infrastructure, Housing and Environment Department have stated that the cafeteria use has now ceased.
2. 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 grant planning permission on ground (h) in respect of the development in question, to uphold or to quash the notice and to vary the terms of the notice.

Grounds (a) and (c)

3. The appellant has farmed since 1970 and owns the portacabin. It was brought from L'Etacq Quarry in 2005/6 for use on the farm and it has remained on the farm since then. Until recently it was kept at the rear of the farm's range of polytunnels, where it is shown on a 2017 aerial photograph. In 2019 it was moved using a crane truck to its current location within the farm, near to the front of the polytunnels, and it was clad in timber. It has an internal floor area of about 10m² and rests on blocks by its own weight without any attachment to the ground. There are no services connected to it.
4. As a matter of fact and degree, I consider the portacabin to be a use of land on the farm and not a building. I have reached this conclusion for the following reasons: its small size; it was brought to the farm as a prefabricated unit and was not constructed in situ; it is capable of being moved easily and it has been moved; it is not fixed to the ground; it rests under its own weight; it

is not attached to services; its stationing has not resulted in any changes to the character of the land, the surface being undisturbed and the land remaining agricultural.

5. Ground (c) relates to what is known colloquially as the '8-year rule'. This derives from Article 40(1)(a) of the Law which limits enforcement action to where "there has been a breach of development controls during the previous 8 years". Since the stationing of the portacabin on the farm in 2005/6 was part and parcel of the use of the land for agricultural purposes, it was not a breach of development controls. The 8-year rule and ground (c) therefore do not come into play in the appeal.
6. The determining issue in the appeal is whether at the time when the notice was issued the farm had undergone a material change of use from its authorised agricultural use as a result of the use of the portacabin. The evidence indicates that the portacabin has been used as follows: for the storage and sorting of small farm tools; as a rest room for the appellant when he is working on the farm; for potting up plants for sale in the farm shop; and by the appellant's partner for the creation of artwork mainly from small items she collects from the beach.
7. The storage, sorting and rest room uses are agricultural. Potting up plants is an agricultural or horticultural use and is therefore within the definition of "agriculture" in Article 1 of the Protection of Agricultural Land (Jersey) Law 1964. Planning permission was granted many years ago for the construction of the farm shop and the retail sale of farm produce from it.
8. The outstanding concern therefore relates to the creation of artwork in the portacabin. This has led to the allegation that the portacabin is being used as a 'craft' workshop, a description that suggests that a significant industrial process is being carried on. However, although this use is not agricultural, it is simply a very small-scale hobby activity. There are no sales from the portacabin and the artwork is usually given away to friends or relatives.
9. For the artwork activity to be a breach of development controls it would have to amount to the making of a material change in the use of the planning unit, which is the farm as a whole. As a matter of fact and degree, I do not consider that it does. On this scale it does not make a significant difference to the agricultural character of the farm. There is no evidence that it creates undue noise or generates significant traffic movements. No external storage takes place. No-one apart from the appellant's partner is involved in the activity. All in all, it is on too small a scale for the Law to take account of it.
10. I conclude therefore that the appeal should succeed on ground (a). This would normally result in the notice being quashed, but as the notice relates to two separate and distinct development control matters the appropriate course of action is to vary its terms, so that all references to the portacabin are removed and the notice continues in force unchanged as respects the cafeteria and the external seating.

Grounds (f) and (h)

11. Grounds (f) and (h) no longer fall to be considered in view of my conclusion on ground (a).

Inspector's recommendations

12. I recommend that the appeal is allowed on ground (a) and that the enforcement notice is varied by the deletion of sub-paragraphs 3.b and 5.b, the deletion of the words "and craft workshop" in sub-paragraph 4.b and the removal of the number "2" from the plan attached to the notice.

Dated 29 May 2021

D.A.Hainsworth

Inspector