

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Jason Meyer against an enforcement notice.

Purported Appeal by Mr Jason Meyer against a land condition notice (see "Scope of Appeal", paragraphs 2-13 below).

Reference Number: ENF/2021/00004

Land at Field No. MN88, Le Mont de Rozel, St Martin and woodland directly to the east of Field MN88.

Site inspection carried out on 3 November 2021.

Introduction

1. In this report I first explain some issues concerning the scope of the appeal and other procedural matters, then record the main points in the enforcement notice. The rest of the report includes a description of the appeal site and surroundings, summaries of the cases for the appeal parties, my assessment, conclusions and recommendations. An Annex covers matters relating to the land condition notice. The submitted appeal form and other relevant documents are in the case file for you to examine if necessary.

Scope of Appeal

2. The appeal was made by submission of the standard form headed "Appeal of the Serving of a Notice". The grounds pleaded, as indicated by ticking the boxes in Part 5 of the form, were grounds (a), (e), (f) and (g) as set out under Article 109(2) of the 2002 Law.¹ This appeal has evidently been accepted and processed as one appeal, but so far, it has also apparently been treated by both your Department and the Judicial Greffe as appealing against an enforcement notice and a land condition notice.
3. The terms "enforcement notice" and "land condition notice" have different, specific meanings under the 2002 Law. An enforcement notice and a land condition notice are separate legal instruments, issued under different provisions of the Law. An enforcement notice relates to alleged "development" under the 2002 Law; the powers to issue enforcement notices are under Part 5 of the Law ("Enforcement of Development Controls"). A land condition notice relates to matters outside the definition of development under the Law and is issued under Part 6 of the 2002 Law ("Additional Controls").²

¹ The question in Section 8 of the appeal form relating to ground (h) appeals ("Have you included the application for planning or building permission including the relevant fee?") was evidently answered incorrectly – the answer given on the form was "Yes" and the words "Paid electronically" were added; but no application was made, ground (h) was not pleaded, and the payment made was apparently for an appeal fee, not an application fee.

² These different types of notice are both referred to in the Interpretation Article of the 2002 Law (Article 1) which in turn refers to Articles 40 and 42 for the meaning of "enforcement notice" and Article 83(1) for the meaning of "land condition notice".

4. Even if the enforcement notice and the land condition notice had both been enforcement notices, they would still have been separate legal instruments with different allegations; and where, say, two enforcement notices are issued alleging different developments on the same site, an appellant wanting to appeal against both of the notices would have to lodge two appeals. In the present case, the situation goes beyond the issue of two enforcement notices, because one is an enforcement notice and one is a land condition notice.
5. Moreover, the appeal form - which is a key document submitting an appeal and specifying which grounds are pleaded - is clearly only directed at the enforcement notice. Part 6 of this form requires the appellant to provide a summary of the grounds of appeal and warns that an appellant will not be able to raise any issues in any later statement which are not indicated in the summary. The appellant's statement here refers three times to the enforcement notice; but no mention is made of a land condition notice.³ Nor is the land condition notice mentioned anywhere else in the submitted form.
6. The situation here can perhaps be illustrated by reference to a case on which I reported in January 2020 involving a property known as Vale View, Trinity. Two enforcement notices had been issued alleging a breach of development controls: one notice referred to planning permission, the other to building bye-laws. Appeals were made against both notices; the appeals were allocated different reference numbers, and arguments against both notices were raised in the grounds of appeal.⁴ That contrasts with the present appeal, with its one appeal form, only one notice (the enforcement notice) mentioned in the grounds of appeal, one reference number, and one appeal fee. It is also notable that both of the notices subject to the Vale View appeals were issued under the same Article and Part of the Law (Article 40 in Part 5), whereas the degree of separation is greater in the present case because enforcement notices and land condition notices fall under different Articles as well as different Parts of the Law (the latter in this case having been issued under Articles 86 and 89 in Part 6).
7. A period of 28 days is allowed for appeals to be made against enforcement notices or land condition notices. The 28 day period after the date of issue to Mr Meyer of both the enforcement notice and land condition notice ended on 24 June 2021. The appeal form referring to the enforcement notice is dated 23 June 2021 and date-stamped as received by the Judicial Greffe on that day. As part of my investigation I have asked to see correspondence between the Judicial Greffe and the appellant, from which it is evident that on 24 June 2021, Mr Meyer was asked (by email at 1102 hours) whether he was appealing against the enforcement notice and the land condition notice or just the enforcement notice. He replied, apparently on the same day at 1106 hours: "The appeal is in respect of both".
8. Article 112 of the 2002 Law, which sets out the law on notices of appeal, refers to the "proper form" and appeal fee. Article 112(1) specifies that an appeal under Part 7 of the Law (which covers appeals against land condition notices as well as those against enforcement notices) "must be made by notice of appeal duly given in accordance with this Article"; and under Article 112(2), a notice of appeal must

³ I also note that the Department's statement in response to the appeal is headed "*Appeal Against the Serving of a Notice* (my italics). Parts of the text in this statement refer to both of the notices, but do not indicate why the Department appears to have treated the appeal as covering the land condition notice.

⁴ Case references ENF/2019/00003 and ENF/2019/00012 (hearing held in December 2019). The appeals in that case were made jointly by Mr and Mrs Livesey. The Department and all other parties treated the case as two joint appeals, that is to say one appeal against each of two enforcement notices, hence the two reference numbers.

be "in such form as shall be prescribed for that purpose, shall be accompanied by the prescribed fee, and shall contain or be accompanied by such further particulars as shall be prescribed or as may reasonably be required by the Greffier". Article 112(4) allows for the possibility that a defective notice of appeal which fails to comply with the requirements of Article 112(2) may, subject to specified limitations, be corrected. No action has been taken in these respects concerning correction of the notice of appeal, and it is not legally possible to lodge an appeal of this type by means of a few words in an email, with no statement of the summary grounds of appeal as required by Part 6 of the appeal form. Nor is it legally possible to make plural appeals against different notices by submitting one appeal form only referring to one notice.

9. Guidance published by the Judicial Greffe on appeal procedures does not specifically cover the situation where more than one type of notice is issued with different allegations under different legal provisions. This may be because the need for separate appeals against separate notices is considered to be obvious. One obvious source is the appeal form itself, with its heading as noted in paragraph 2 above referring to *an appeal* (singular) against *a notice* (singular). The published Guidance is another source. This does not, of course, have legal force; but it refers to the legal position and states (on page 2) that an appeal starts with the submission of the relevant appeal form, and (on page 3) that the form must identify all the relevant issues. In this instance there is no appeal form relating to the land condition notice, no relevant issues were identified in any such form, so there was no start to any appeal against this notice within the 28 day period allowed by the law.
10. There may be room for debate about whether Mr Meyer could have been warned about the situation, despite the very limited time of only a few hours before the 28 day period expired. Be that as it may, it is not for the Judicial Greffe to construct an appellant's case for him, or to provide appellants with professional advice. For all planning appeals, it is the responsibility of appellants to make their appeals with all the documents properly submitted in time and to ensure that the appropriate fees are paid.
11. In summary, the situation is as follows. Although on 24 June the Judicial Greffe received the message mentioned above, indicating in effect that Mr Meyer intended to appeal against the land condition notice, no such appeal was made in the prescribed form by the deadline date and no fee has ever been paid for an appeal against this notice.
12. Having regard to all the above points, I find that as a matter of law there is one appeal before you: it is an appeal against the enforcement notice.
13. I have to allow for the possibility that you might disagree with my finding, and you might interpret the law differently. Therefore I attach an annex to this report in case you might choose to treat the appeal as two appeals, one against the enforcement notice and one against the land condition notice. If you do so, you will no doubt wish to bear in mind considerations of precedent, and whether such considerations could enable future appellants to claim multiple appeals against enforcement or other types of notice with one appeal form mentioning only one notice and only one appeal fee payment.

Other Procedural Matters

14. The administrator for planning appeals in the Judicial Greffe (Mrs Tracey Buesnel) sent emails to Mr Meyer, using the email address specified in the appeal form, on

various dates from June 2021. Some of the later ones, with a brief indication of the topics they covered, were:

- 16 August – telling Mr Meyer that the Greffe had not received his statement of case within the 28 day time limit, attaching the Department's statement, and inviting him to make any comments on this within 14 days.
 - 28 September – advising that the inspector considered the case could be suitably assessed by means of the written representations procedure and inviting submissions about this proposal.
 - 6 October – sending Mr Meyer a copy of an email to the Department referring to Mr Meyer's two-page document "notes to his lawyer" (see paragraph 15 below).
 - 7 October – informing Mr Meyer of details of the appointed inspector and site inspection timing; also repeating information about the proposed use of the written procedure and inviting any comments the appellant wished to make.
 - 12 October – email with copies of the previous emails attached (followed by telephone call).
15. Mr Meyer replied to Mrs Buesnel's 16 August email on 26 August, saying that he was working with his lawyer to produce a response to the Department's statement, that in view of time constraints he was sharing the notes which he had sent to his lawyer and that this document may well be superseded by a further document. No such further document has been received by the Judicial Greffe. Mr Meyer did not submit any comments on the Department's statement.
16. As noted above, Mrs Buesnel telephoned Mr Meyer on 12 October. Later that day (22.38 hours) he sent an email stating that he had "not seen this correspondence previously" [ie the correspondence attached to Mrs Buesnel's email of 12 October] and "if it did end in my spam folder it will have been auto-deleted". Mr Meyer also stated in his 12 October email:
- "A site visit on 3rd November is entirely unrealistic....may I suggest that multiple dates are suggested as it may not be possible for logistics to be arranged.
- On the matter of a hearing being required, not only do we have multiple witnesses, I also wish to cross-examine various persons from within the planning department."
17. One of the attachments to Mrs Buesnel's 12 October email included her email of 16 August and Mr Meyer's reply on 26 August. So Mr Meyer's statement in his 12 October email that he had not previously seen the correspondence attached to Mrs Buesnel's email cannot be true, since he could not have replied to an email he had not seen. Mr Meyer had also previously replied to a number of emails from Mrs Buesnel sent to the same email address. For example, he replied on 23 July to an email about obtaining documents, and on 23 and 24 June he replied to other emails.⁵
18. Mr Meyer has not offered any reasons why, on 12 October, he considered that a site inspection on 3 November was "entirely unrealistic", especially bearing in mind that he could have been represented at an inspection by a person such as a

⁵ If Mr Meyer received Mrs Buesnel's earlier emails and the email of 16 August in the normal way (ie in his inbox), there should also be no technical reason why later emails from the same source would end up in Mr Meyer's spam folder; alternatively even if Mrs Buesnel's email of 16 August ended up in Mr Meyer's spam folder, he obviously still received it and read it, and should then have ensured that Mrs Buesnel's future emails would be directed into his inbox.

relative, colleague, tenant or professional adviser and that (as he has been told in an email known to have been received) a site inspection is not an opportunity to enter into discussion about the merits of the case. Nor has any information been provided about the "multiple witnesses" or "various persons" he refers to. Moreover, although hearings into planning appeals may include questions to witnesses, cross-examination does not take place at such hearings. For that, a formal public inquiry would be necessary, and from the grounds of appeal pleaded⁶ I do not see any justification for such a procedure in this case.

19. Despite his statement in writing that a site visit on 3 November was entirely unrealistic, Mr Meyer, and his father, appeared at the time arranged for the inspection and were present throughout, as were planning department representatives. A Mr Fernandez was also present although he did not take an active part in the inspection (he was engaged in feeding pigs).
20. In my judgment Mr Meyer has deliberately tried to cause delay by frustrating the appeal process. His claim that he has not received documents and communications does not ring true. If he had been "working with [his] lawyer to produce a response statement" on and before 26 August it is strange that his lawyer did not advise him of the need to submit such a statement or other material in good time to support his case, or to contact the Judicial Greffe to ask whether more time could be granted if more time was needed. Mr Meyer's reference to multiple dates and his comment that it "may not be possible for logistics to be arranged" also suggests to me an attempt to sow the seeds for further delay.
21. In any event, Mr Meyer has been consulted on the proposal to deal with the appeal by way of written representations; and having considered his response, I decided to exercise the powers available under Article 114(5)(b) of the 2002 Law to use this procedure. In making this decision there were three main considerations. First, the key questions arising from the appeal on grounds (e) and (a) are: Has what is alleged happened? And if so, was it subject to planning control? These are the sort of questions which can be suitably assessed by written and photographic evidence and a site inspection. Mr Meyer's main purported reason for wanting a hearing related to the past history of the site – but he did not plead ground (c), which is the appeal ground under which it can be contended that unauthorised development has become "immune" through the passage of time. Nor is there any possibility that the site history might support an argument for granting planning permission – in the absence ground (h) or any application no question of planning permission arises.
22. Second, for a fair and effective hearing to be held into a planning appeal it is necessary for the opposing parties to adhere to procedural requirements unless there are good reasons for making some special arrangements. Where, without good reason, an appeal party does not submit any proper statement of case on time, fails to take the opportunity to submit a response statement or comments on the other party's statement, and fails to give any indication about the number or identity of witnesses allegedly to be called and the scope of their evidence, unfairness is very likely to be caused to one or more other parties. Except in rare circumstances which do not apply here, a planning appeal hearing is not a forum

⁶ A formal public inquiry, with the possibility of evidence being given by witnesses under oath and opportunity for cross-examination, would normally only be considered appropriate where the case involves disputed evidence about a site's past history and there is an appeal under ground (c) of Article 109. There is no ground (c) appeal in this case.

for trying to "spring surprises".⁷ The planning authority has not specifically objected to Mr Meyer's behaviour, but if the authority had behaved as he has, no doubt he would have objected and claimed unfairness.

23. Third, it was clear to me from all the available information, including the lack of credibility in Mr Meyer's claims about needing time to consult his lawyer and to arrange to be available for a site inspection, that his aim in seeking a hearing was to delay the appeal process for as long as possible. Mr Meyer was told in emails on 28 September and 7 October that I considered the case could be suitably assessed by means of written representations and site inspection. Copies of those emails were sent to him again on 12 October. Even setting aside his false claim not to have received the earlier emails, he certainly received them by 12 October, and I am satisfied that he has been consulted and has had the opportunity to make representations on the matter.

The Enforcement Notice

24. The "matters which appear to constitute the breach of development controls" as set out in Part 3 of the enforcement notice are:

"Without planning permission development has occurred at Field MN88, Le Mont de Rozel, St Martin and the Woodland to the east of Field MN88, namely;

- 3.1 Field MN88 presently contains up to three (3) timber and metal frame shed structures that have been erected without prior planning consent. These sheds and structures contain non-agricultural contents and are situated upon hardstanding. These structures amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and are not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.
- 3.2 Field MN88 presently contains up to six (6) timber and metal frame structures that are being used as livestock shelters/chicken coops and have been erected without prior planning consent. These structures amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and are not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.
- 3.3 Woodland directly to the east of Field MN88 contains one (1) timber feeding platform structure that is presently being used for the storage of waste items and has been erected without prior planning consent. This structure amounts to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.
- 3.4 Field MN88 and the Woodland directly to the east of Field MN88 have an outer boundary fence structure enclosing the parcels of land that is comprised of wooden pallet boards, sheets of timber metal posts and panels. These structures amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and are not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

⁷ That is why published government guidance on planning appeal procedure requires all parties to submit a statement of case within 28 days from the start of the appeal process and requires such statements to include "all supporting evidence and documentation".

- 3.5 Field MN88 has internal fenced livestock pens comprised of wooden pallet boards, sheets of timber, metal posts and panels. These structures amount to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and are not granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011."
25. The steps required to rectify the breach as set out in Part 5 of the enforcement notice are:
- "Remove the unauthorised development and restore the land to a condition comparable to that prior to undertaking the unauthorised works by;
- 5.1 Removing the three (3) timber and metal framed structures and any associated platforms/hardstanding located within field MN88, approximately marked 5.1 on the attached plan
- 5.2 Removing the six (6) timber and metal frame structures that are being used as livestock shelters within field MN88 and any hardstanding used upon which they stand. The approximate location of the structures in question are marked 5.2 on attached plan.
- 5.3 Removing the single timber feeding platform that is located in the Woodland directly to the east of Field MN88 and any hardstanding or footings that may have been used to support the structure. The approximate location of the structure in question is marked 5.3 on attached plan.
- 5.4 Removing the fence structure that is comprised of pallet boards, wooden sheets and metal sheet that encloses Field MN88 and the Woodland directly to the east of Field MN88 and any footings that may have been used to support the structure. The approximate location of the fencing to be removed is marked with a blue line within the woodland to the East and borders the entirety of field no. MN88.
- 5.5 Removing the internal fenced livestock pens that are comprised of pallet boards and wooden sheets within Field MN88 and any footings that may have been used to support the structures. The approximate location of the fencing is edged in black towards the Northern end of field MN88 on the attached plan."
26. The period for compliance specified in the notice is: "The end of 90 days commencing from the day that this notice is issued".

Site and Surroundings⁸

27. The appeal site lies on the east side of the B38 road (Le Mont de Rozel), which runs from the vicinity of the Rozel camp site towards Rozel Bay. A rough track leads eastwards from this road and passes next to the southern boundary of the site in the general direction of the coast. A nearby sign indicates that this track is a public right of way.
28. The site has two main parts, labelled as "MN88" and "Woodland" on the Location Plan attached to the enforcement notice. Field MN88 is roughly level or has a

⁸ This is a general description of the site and surroundings and is not intended to mention every item on or near the site. The plans and aerial photographs attached to the enforcement notice help to show the location of the site; other photographs attached to the planning authority's statement show various features of the site, although some details may have changed since the photographs were taken.

slight slope down from west to east. The woodland area drops away with a steep, irregular slope down from the west towards the sea, where (beyond the site) there is a rocky shoreline.

29. At the time of my inspection the southern part of Field MN88 was partly covered by rough grass. The surface of other parts was bare earth or mud. Towards the centre and north were animal pens with ramshackle fencing and other structures housing poultry and pigs. Towards the east were various timber shed-type structures, vehicle trailers or parts of vehicles, horse-boxes and a car (a "GTO" vehicle which appeared to be unroadworthy). Two large plastic containers were standing near the south-east corner of this area and another timber shed-type structure stood next to the south boundary close to the track.
30. Parts of Field MN88, mainly to the north and to the west alongside the road, were bordered by hedging. Other parts, particularly to the east, were bordered by crudely-constructed fencing partly consisting of wooden pallets.
31. As its name implies, much of the "woodland" area (the eastern part of the site) is well wooded, mostly with mixed deciduous trees. When I saw it there was very little vegetation on the ground surface, which was mostly covered by compacted muddy earth, with tree roots exposed. The area is bordered by fencing around 1 metre in height. Some pigs were clustered in a group on the higher ground in the southern part of this area. Next to the south boundary stood an open-sided box-shaped structure which was mostly made from plywood and apparently serves as a feeding platform.
32. The area around the site is predominantly rural, but there are several dwellings and other buildings nearby. A two-storey house (the name of which was not readily discernible from public viewpoints) stands in a plot immediately west of the southern part of Field MN88, east and south-east of the B38 Le Mont de Rozel road and north of the track mentioned above. This house has large first-floor windows in its north-east elevation, the outlook from which is directly over the appeal site. To the north of the appeal site a residential property, Harleyford, stands on the east side of Le Mont de Rozel. Another residential property, Le Saie, occupies what appear to be fairly substantial grounds on the west side of this road opposite the northern part of the appeal site.

Case for Appellant

33. The basis of the appellant's case as set out in the summary grounds of appeal in the appeal form is as follows. The planning department has not offered a realistic opportunity for a site visit prior to issuing an enforcement notice. The initial offer was during a major pandemic and before the appellant, a single parent, was eligible for vaccination, so was no offer at all. The planning department has also cancelled a site meeting at the eleventh hour and declined to withdraw the enforcement notice. This notice contained numerous errors, omissions and inaccuracies. The appellant requested information about previous planning applications months ago but the planning department has not supplied it. The Judicial Greffe should recuse himself from any role in this case as he would not be impartial because of previous litigation involving the appellant.
34. The document referred to in paragraph 15 above containing bullet-pointed notes is in two parts. Under the heading "Field", the notes refer to: the existing buildings and their history; the means of access; the possibility that vehicles and trailers could be kept in reinstated buildings or on the driveway; the lack of research by the planning department and its inappropriate statement of opinion to the press; allegations of sabotage by third parties; and the need for fencing

and related electrical supply to secure livestock and reduce tampering by third parties.

35. Under the heading "Woodland", the notes refer to: the past use of the area from World War 2 to the 1960s, 1970s and 1980s, through to the 1990s up to 2010 and the present use involving livestock; the fencing issue being the same as the field.

Case for Planning Authority⁹

36. Field MN88 lies in the Green Zone where planning policies are based on a presumption against development. The woodland to the east is in the Coastal National Park and both areas are in the countryside. The aim of Island Plan policies SP4 and NE6 is that such areas should retain their unspoilt rural character. Other policies provide that key natural environment objectives are to protect and promote biodiversity, and to enhance the quality of the island's landscape.
37. The Department considers that the amenities of part of Jersey are being affected by the condition and use of the land including the presence of disused vehicles. The structures on the land constitute development which require planning permission; no such permission has been sought, and the development was not permitted under the General Development Order, so the structures are unauthorised. Photographs submitted by the Department show that all the matters highlighted in the notices have occurred, so it was appropriate to serve both notices.
38. As for grounds (f) and (g), the vehicles and structures should be removed to resolve the loss of amenity and serious impact on landscape character. The 90 day period given is considered entirely adequate for the work to be undertaken.
39. Although a site visit was originally resisted because of covid-related concerns, the Department has visited the site on a number of occasions and has been available to discuss a resolution. The files believed by the Department to be relevant to the appellant's requests had been made available to him. The alleged lack of impartiality by the Judicial Greffe is not an issue as the decision on the appeal will be made by the Minister for the Environment.

Assessment

40. I set out below my assessment commenting first on some general matters, then considering errors and flaws in the enforcement notice, then taking each ground of appeal in turn (with ground (e) first in logical, not alphabetic, sequence¹⁰).

General Matters

41. In September 2021 I received from the Judicial Greffe a copy of the document mentioned in paragraphs 15 and 34-35 above. It is untitled and undated, but apparently contains Mr Meyer's notes for his lawyer. The "notes" comprise 37 short bullet-pointed statements, 24 of them headed "Field" and 13 headed "Woodland".

⁹ In this report, references to the "planning authority" or to the "Department" refer to the Infrastructure, Housing and Environment Department.

¹⁰ To explain this point: if, for example, the matters alleged in an enforcement notice have not occurred (ground (e)), the notice would be quashed and a decision-maker would not need to go on to consider any other appeal ground; so it is logical to consider the grounds with that in mind.

42. Most of the points in this document were not mentioned, even briefly, in the summary grounds of appeal as stated in the appeal form, which largely comprise complaints about procedure or the difficulty of obtaining documents. The very generalised statement that the enforcement notice "contains numerous errors, omissions and inaccuracies" cannot reasonably be regarded as a summary of the historical and other points raised in the bullet-pointed notes. Therefore I judge that the issues raised in these notes are inadmissible as arguments against either the enforcement notice or the land condition notice.
43. However, I have to allow for the possibility that you may take a different view, so I have referred to the notes in the case summaries and arranged for the document to be available for you to see. I have not recorded their content in detail, since if the notes were intended for Mr Meyer's lawyer the content would be privileged information which should not be published. However, by sending them to the Judicial Greffe Mr Meyer has submitted them as evidence. In these unusual circumstances I advised the Judicial Greffe that a copy of the notes should be sent to the planning department so that it could have an opportunity to comment in the interests of fairness.¹¹ I have asked that a copy of these notes be available to you on the case file so that you can read them and take them into account to the extent you consider appropriate, and in the case summary earlier in my report I have indicated the main topics they cover.
44. If you do decide to take these notes into account, you may wish to bear in mind that many of the points covered appear to relate to aspects of the site history which would only have been relevant if ground (c) of Article 109(2) had been pleaded, and as recorded above, in this case there is no appeal on ground (c). Some other points in Mr Meyer's notes appear to be contending that retrospective planning permission should be granted for some of the development enforced against – but again that is not a matter before you since ground (h) of Article 109(2) has not been pleaded. References are also made to a previous location of an access point, but again this is not a matter mentioned in the enforcement or land condition notices.
45. One of the points made in these notes is: "The various buildings that have been erected in the field by the tenant need to either be changed, removed or permission sought retrospectively". This appears to be an admission that buildings have been erected without planning permission. Another point in the notes states: "The fencing that the tenant has put up has been in response to sabotage undertaken by third parties". This also appears to be an admission that fencing has been erected. These statements are contrary to the appellant's own claims under ground (e) of Article 109(2) that the matters alleged in the enforcement notice have not occurred.
46. The appellant's argument that "the Judicial Greffe¹² [should] recuse himself from any role" in this case has no force. The Judicial Greffe deals with the administration of planning appeals but the Greffier does not have any part in making the appeal decisions.
47. I do not know the full details of the exchanges of communication between Mr Meyer and planning officers about arrangements for a site inspection before the

¹¹ This was done on 6 October 2021 after it became apparent that Mr Meyer's Notes were not being superseded by a further submission. The Department confirmed in response that it had nothing to add to its previous statement.

¹² It appears that the appellant's reference to the "Judicial Greffe" is intended to refer to the Judicial Greffier.

notices were issued or about documents relating to earlier applications for planning permission. These complaints do not provide any reason to allow the appeal on any of the pleaded grounds.

Errors and Flaws in the Enforcement Notice

48. The enforcement notice contains errors and flaws, mostly relating to the way it describes the breaches of planning control and the way it refers to attached plans. Some of the flaws are minor textual points which in my judgment can be ignored (for example, there are two places where the text refers to "on attached plan" instead of what is obviously meant to read "on the attached plan"). But others require correction.
49. Paragraphs 3.1, 3.2, 3.3 and 3.4 refer to various structures. All these paragraphs state that "these structures amount to development". That is an incorrect statement of planning law. It is the *operation of constructing the structures* which constitutes development requiring planning permission under Article 5 of the 2002 Law.¹³ This point can be suitably corrected by amended wording.
50. Other necessary amendments relate to references to the "attached plan" in paragraphs 5.1, 5.2, 5.3 and 5.5 of the notice. Since more than one plan was attached to the notice, this reference is imprecise. Paragraph 5.4 refers to "the approximate location of the fencing to be removed" but then omits reference to the relevant plan. These flaws could be adequately corrected by specifying the relevant plan more accurately, but there is a simpler option since the references to the plan are not necessary. The requirements to remove the various structures and fencing, and the locations of these items (which in any case are only stated to be approximate and may have changed since the notice was issued), are clear enough from the text of the notice without attempting to refer to the plan.
51. Deleting the references to the boxed numbers and arrows on the plan would make these labels on the plan redundant. Furthermore it is nearly always unsatisfactory to have plans (plural) with identical titles attached to an enforcement notice. That is what has happened in this case – there two plans both titled (at the top) "Enforcement Notice Location Plan for Field MN88 and Woodland to the East" and (at the bottom) "Location Plan". Bearing in mind that I have found the numbered labels on one of the plans to be unnecessary, and that the text of the enforcement notice can adequately identify its requirements, the most straightforward way of eliminating the duplication of plan titles and avoiding any potential confusion of references is to delete the plan depicting the positions of various structures. That is one of my recommendations below.
52. The notice refers to the woodland east of Field MN88 as "shaded in BLUE on the attached plan". This is obviously intended to refer to the area labelled "Woodland" on the Location Plan – but the colouring of this area is partly blue and partly a mixture of colours which because of apparent overlaying appears more pale green than blue. This point can satisfactorily be amended by referring instead to the blue edging and the label "Woodland". (As an incidental matter, there does not appear to be any good reason for using capital letters when referring to the colour, when capital letters are not used for references to other features on the plans.)

¹³ Article 5 sets out the meaning of "develop" which includes "to undertake a building....or other operation in, on, over or under the land".

53. Paragraph 3.4 of the notice contains English which is so grammatically poor as to warrant correction. It refers to "...an outer boundary fence structure enclosing the parcels of land that is comprised of wooden pallet boards..." etc. It is the fence structure which is comprised of wooden pallet boards, not the parcels of land. A suitable correction can be made by amending this text.
54. Paragraph 5.5 refers to fenced livestock pens and any footings, the approximate location of which is "edged in black toward the Northern end of field MN88 on the attached plan". This appears to be a reference to a rectangular shaped area labelled "5.5" on the plan headed "Location of Breaches", but its intention is not clear from the notice and plan. Like the other numbered references, this reference is not necessary.
55. The compliance period is specified in the enforcement notice by referring to the start date as the date of issue of the notice ("90 days commencing from the day that this notice is issued"). That is not a good way of specifying a compliance period in an enforcement notice, since an appeal against any such notice has the effect of suspending it. Therefore the compliance period would need to be varied - in effect re-specified without referring to any issue day or date - if you were to uphold the notice.¹⁴
56. Three "Enclosures" are listed on the enforcement notice. To allow for the deletion of the plan referred to in this part of the notice as "Enforcement Notice Location Plan - 'Location of Breaches' " the second line of the list of enclosures should be deleted. The third line also needs correcting because the titles of the relevant attachments are not the same as those listed in this part of the notice - they are partly titled "Aerial Images" (not "Aerial Mapping"). The notice should be corrected accordingly.
57. On a more minor point, the "Informative" on page 4 of the notice refers to the possibility of a separate enforcement notice. This wording could be a source of confusion because although a separate notice was issued, it is not an enforcement notice (it is a land condition notice), so for the sake of clarity I consider that the informative should simply refer to the possibility of another notice without specifying the type of notice.
58. As is evident from my criticisms, the enforcement notice was poorly drafted in a number of respects. Nevertheless all these points are capable of correction or variation at appeal decision stage. The amendments are aimed at making the notice clearer, more accurate or legally correct and they would not cause any injustice. They can therefore be made using the powers available to you as Minister under Article 116(2)(d) of the 2002 Law. I return to the detail of these points in my recommendations below.

Appeal Grounds

Ground (e)

59. Under this ground it is contended that the matters alleged in the notice have not occurred. It is abundantly clear, from what I saw during my inspection and from the photographs submitted in evidence (particularly the photographs attached to the planning authority's statement), that the sheds, the structures forming livestock shelters or chicken coops, the feeding platform, and the various fencing structures have all been erected or constructed on the site. There may have

¹⁴ After an appeal against an enforcement notice, the compliance period runs from the date of the appeal decision (or from the date of withdrawal if an appeal is withdrawn). The new start date is brought into effect by Article 117(3) of the 2002 Law and does not need to be stated in a notice.

been some minor changes during the time since the notice was issued, but any such events do not affect the general thrust or accuracy of the enforcement notice as at the date of issue.

60. I conclude that the matters alleged in the notice (as corrected) have occurred, and there is no reason to allow the appeal on ground (e) against the enforcement notice.

Ground (a)

61. This ground is a claim that the matters alleged in the notice are not subject to control by the 2002 Law. The erection of the various structures mentioned in the notice constituted operational development as defined in Article 5 of the 2002 Law, was subject to control under the Law, was not permitted under the provisions of the Planning and Building (General Development) (Jersey) Order, and has not been the subject of any application for planning permission. The matters alleged in the notice (as corrected for the reasons explained in paragraph 49 above concerning the definition of development) are subject to control under the Law and I conclude that ground (a) of the appeal should fail.

Ground (f)

62. Under ground (f) it is argued that the requirements of the notice exceed what is reasonably necessary to remedy any alleged breach of control or make good any injury to amenity.
63. No substantive argument has been raised to support this ground of appeal. As is pointed out in the planning authority's statement, Field MN88 is within the designated "Green Zone" and the "Woodland" part of the site is in the Coastal National Park where restrictive policies apply to development. The landscape quality and character of this predominantly rural area has been significantly harmed by the unauthorised development. The requirements of the notice (as amended) are not unreasonable or excessive; they are appropriate means of remedying the breach of planning control. I conclude that ground (f) should fail.

Ground (g)

64. This ground claims that the period for compliance specified in the notice falls short of what should reasonably be allowed. No case has been put forward to justify this ground – indeed, the compliance period is not mentioned at all in the statement in Part 6 of the appeal form. I cannot see any reason why the requirements of the notice could not be carried out within the 90 day period specified. Therefore I judge that this period should not be extended in response to ground (g) of the appeal, though the wording needs to be varied for the reasons explained in paragraph 55 above.

Conclusions and Recommendations on Appeal Against Enforcement Notice

65. Taking account of all the considerations discussed above, I conclude that the enforcement notice should first be amended, and then upheld as amended. The details are set out below.
66. I recommend that the notice be corrected and varied in the following ways:
- (1) In paragraph 2, in the line beginning: "Woodland..." delete the words "shaded in BLUE" and substitute "edged in blue".
 - (2) In sub-paragraphs 3.1, 3.2, 3.3 and 3.5, insert the words "The erection of" at the start of the second sentence of each paragraph.

- (3) In sub-paragraph 3.4, delete the first three lines and the first word on the fourth line (ie from the words "Field MN88" to "These structures amount" inclusive), and substitute: "Field MN88 and the woodland directly to the east of Field MN88 have outer boundary fence structures. The erection of these structures amounts...".
 - (4) In sub-paragraph 5.1, delete the words "approximately marked 5.1 on the attached plan".
 - (5) In sub-paragraphs 5.2 to 5.5 inclusive, delete the last sentence starting "The approximate location....".
 - (6) In paragraph 6 specifying the time for compliance, delete the text after the words "Time for Compliance" and substitute "90 days".
 - (7) In the list of "Enclosures", delete items numbered 2 and 3, and substitute as item number 2: "Aerial Images for Field MN88 and Woodland to the East (various dates from 2014-2020)".
 - (8) In the "Informative", delete the word "enforcement" in the second line, so that the text of the Informative reads: "Any other item or issue not specified in this enforcement notice may be the subject of a separate notice."
 - (9) Delete the plan which shows various numbered rectangles and arrows. (This is one of the plans attached to the notice and is titled (at the top) "Enforcement Notice Location Plan for Field MN88 and Woodland to the East" and (at the bottom) "Location Plan").
67. Subject to those corrections and variations, I recommend that the appeal be dismissed and that the notice as corrected and varied be upheld.

Conclusions and Recommendation on Land Condition Notice

68. I conclude that there is no action for you to take regarding the land condition notice, as there is no appeal to be decided. Therefore I recommend only that this finding be confirmed and that no further action be taken. This would in turn confirm that the notice was never suspended, so its period for compliance (after which any persons or bodies responsible for failure to comply would normally have been open to prosecution) expired in late August 2021.

G F Self

Inspector
14 November 2021

Note: The Annex to this report starts on the next page.

Annex to Report: Matters Relating to Land Condition Notice

As explained in the main part of my report, this Annex is provided to allow for the possibility that you may not accept my finding that there is no appeal against the land condition notice.

The Notice

1. Land condition notices do not have to specify the alleged breach or breaches of control in the way required by the law on enforcement notices. Article 91 merely requires that (subject to the "if it appears to the Chief Officer" criterion in Articles 84-90) a land condition notice shall specify in sufficient detail the work to be undertaken and the compliance period. This notice states that it appeared to the Chief Officer that the amenities of Field MN 88 and the woodland to the east were being adversely affected by their condition or use. The loss of amenity is described in more detail in Part 4 of the notice, which refers to keeping pigs, storage of a white GTO vehicle and a white Izuzu refrigeration trailer, and the presence of the flat bed section of an Izuzu light goods vehicle.
2. The "work to be undertaken" is specified in Part 5 of the notice as:
 - "5.1 The permanent removal of the pig livestock within the woodland directly to the east of Field MN88 (shaded in BLUE on the attached plan). The returning of the land to a condition prior to the introduction of the pig livestock, by way of allowing the land to return to nature, in perpetuity.
 - 5.2 The permanent removal of the GTO motor vehicle, the location of which is approximately marked 5.2 on the attached plan.
 - 5.3 The permanent removal of the Izuzu refrigerated trailer from Woodland directly to the east of field MN88. The location of the trailer is approximately marked 5.3 on the attached plan.
 - 5.4 The Permanent removal of the rear flat bed section of an Izuzu light goods vehicle. The location of which is approximately marked 5.4 on the attached plan."
3. The period for compliance with this notice is specified as: "Within 90 days from the issue of this Notice".

Errors and Flaws

4. The opening sentence of the land condition notice states that the notice is issued pursuant to the powers conferred under Article 93 of the Law and the conditions of Articles 86 and 89. This statement is inaccurate. Article 93 of the Law specifies the penalty for failure to comply, not the powers to issue the notice, which are conferred by Articles 86 and 89. (The reference to Article 93 in this part of the land condition notice is also inconsistent with the enforcement notice - the equivalent for the latter would be a reference to Article 44, which covers the offence when an enforcement notice is not complied with, but that Article is not mentioned in the opening part of the enforcement notice.)
5. The notice makes two references (in paragraph 2 and in sub-paragraph 5.1) to an area "shaded in BLUE on the attached plan". The comments I have made about this aspect of the enforcement notice apply again here. It would be more accurate to refer to the area edged blue and labelled "Woodland".
6. Paragraph 5.1 of the land condition notice purports to impose a requirement to allow the land to return to nature "in perpetuity". The reference to "perpetuity" is not a proper compliance period and is inconsistent with the 90 day period

specified in Part 6 of the notice. In these circumstances a simple requirement to remove the pigs should have the effect of allowing the land to return to nature, since a requirement for removal within the compliance period would remain extant in the future so that any attempt at bringing pigs back would be in breach of the notice and could result in prosecution.¹⁵

7. The comments I have made about the references to the numbered locations on "the attached plan" with regard to the enforcement notice apply to the land condition notice, for the reasons I have already explained. Some of these items (such as the car) appear to have been moved around the site since the photographs submitted by the planning authority were taken, but that is a secondary issue because there is an additional fault in this part of the land condition notice. It refers to items marked 5.2, 5.3 and 5.4 on "the attached plan". As far as I can establish (having searched the government's online register containing details of the notice) no plan showing those numbers was attached to this notice. Also, the list of enclosures does not mention any such plan. However, the requirements to remove these items would be clear if simply stated, without any need to refer to a plan. My recommendations below take account of these points.
8. In the list of enclosures on Page 3 of the notice, the title of the first listed plan is incorrect - although there is a "Land Condition Notice Location Plan" which identifies areas, it does not have the title "Identifying Areas" as specified in the notice. The titles or headings of the second and third listed enclosures referring to "Aerial Mapping" are also incorrect. The relevant aerial photographs are titled (in part) "Aerial Images", not "Aerial Mapping".
9. Another fault in the land condition notice is in the "Informative" which incorrectly refers to the notice as "this enforcement notice". As explained in paragraphs 3-4 of my report, the land condition notice is not an enforcement notice as defined in the 2002 Law.
10. The notice states the compliance period by referring to the start date as the date of issue of the notice ("within 90 days from the issue of this notice"). That is not a good way of specifying a compliance period in a land condition notice, since an appeal against any such notice has the effect of suspending it. Therefore the compliance period would need to be varied (in effect re-specified without referring to any issue day or date) if you were to uphold this notice.
11. Having regard to all the above matters, the land condition notice was not well drafted. Nevertheless it would be capable of correction if there were an appeal against it.

Appeal Grounds

As explained in paragraphs 2-12 of my report, no grounds of appeal have been specified against this notice and the following assessment only becomes relevant if you consider (i) that there is an appeal, and (ii) that the grounds of appeal specified for the appeal against the enforcement notice are assumed to apply also to the land condition notice.

Ground (e) (Matters alleged have not occurred).

12. As explained in paragraph 1 above, land condition notices are not required to specify "matters alleged to have occurred" in the same way as enforcement notices alleging a breach or breaches of planning control, and the notice at issue in this case does not contain any specific allegation - it meets the requirements

¹⁵ Compliance with an enforcement or land condition notice does not mean that the notice ceases to exist - it remains in effect unless or until it is withdrawn.

of Article 91 of the Law by specifying the work to be undertaken and the compliance period.

13. If somehow you were minded to take the view that ground (e) had been pleaded against this notice, it would be an irrelevant and inapplicable ground, for the reasons stated in the previous paragraph. For completeness, I add that the notice as a whole, including its requirements (as corrected), tells its recipients clearly enough what is alleged to have been done wrong; and these matters have occurred, so there would be no good reason to quash the notice on this ground.

Ground (a) (Matters alleged are not subject to control by the Law)

14. The matters covered by the land condition notice relate to the maintenance of the land and the presence on the land of disused vehicles, including trailers. The sort of undergrowth which would normally be present in woodland has been stripped or worn away, almost certainly as a result of over-grazing by pigs, and largely replaced by bare ground and mud. The effect has been to spoil the appearance and character of the site. Articles 86 and 89 of the Law are directed at controlling these matters, and it has evidently appeared to those acting on behalf of the Chief Officer that the amenities of this part of Jersey have been adversely affected by the condition or use of the land. The same applies to the harm caused by the presence of disused vehicles or parts of vehicles. I conclude that if there were a ground (a) appeal against this notice it should fail since the matters alleged are subject to control by the Law.

Ground (f) (Requirements)

15. As regards the requirements of this notice (described in the notice as "works to be undertaken"), the appellant has not suggested any substitute or lesser steps which would satisfactorily overcome the reasons for issuing the notice. Subject to the correcting amendments discussed above, the requirements of this notice are reasonable and necessary. If there were an appeal on ground (f) I consider that it should fail.

Ground (g) (Period for compliance)

16. The period for compliance with this notice is the same as specified in the enforcement notice and for reasons similar to those I have explained in relation to that notice, I judge that the 90 day period was reasonable and appropriate (subject to the 90 days being re-specified as explained in paragraph 55 of my report). Again, no contrary case has been made out by the appellant.

Alternative Recommendations on Land Condition Notice

17. The following recommendations are provided as alternatives if you do not accept the recommendations in my main report. The general principle of correcting or varying notices at appeal stage applies to land condition notices in the same way as it does to enforcement notices. In this instance, however, whether the faults in the land condition notice are capable of correction as part of an appeal decision depends on whether you find that there is an appeal against this notice. Taking the situation as I have found it with no appeal, the land condition notice was never suspended and stands as issued, well beyond the end of its compliance period and the period within which it could have been appealed against.
18. If you were to find that there was an appeal against this notice, I would recommend that the notice be corrected and varied in the following ways:
 - (1) Delete the text of paragraph 1 and substitute: "This Notice is issued pursuant to the powers conferred under Articles 86 and 89 of the Planning and Building (Jersey) Law 2002."

- (2) In paragraph 2, delete the words "shaded in BLUE on the attached plan" and substitute: "edged in blue and labelled "Woodland" on the attached Location Plan".
- (3) Delete the text of sub-paragraphs 5.1, 5.2, 5.3 and 5.4 and substitute the following:
 - 5.1 Remove the pig livestock from the land and allow the land to return to nature.
 - 5.2 Remove from the land the GTO motor vehicle.
 - 5.3 Remove from the land the Izuzu refrigerated trailer.
 - 5.4 Remove from the land the rear flat bed section of an Izuzu light goods vehicle."
- (4) In paragraph 6 specifying the time for compliance, delete the words "Within 90 days from the issue of this Notice" and substitute: "90 days".
- (5) In the list headed "Enclosures" delete the titles of the plans as listed in the first three lines and substitute the following:

Line 1:
"Land Condition Notice Location Plan for Field MN88 and Woodland to the East of Field MN88 - Location Plan".

Line 2:
"Land Condition Notice Aerial Images 2014".

Line 3:
"Land Condition Notice Aerial Images 2020".
- (6) Delete the text of the "Informative", and substitute: "Any other item or issue not specified in this notice may be the subject of a separate notice".

GF Self

Inspector

14 November 2021