

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

Appellants:

Les Sablons Properties Ltd

Enforcement notice reference number and date of issue:

ENF/2021/00008 issued on 24 September 2021

The land to which the enforcement notice relates:

Field No. G506A, Les Sablons Nurseries, La Rue de Fauvic, Grouville

The alleged breach of development controls:

“Without Planning Permission.

3.1 Hardstanding created and used for the parking of vehicles within the approved plant hardening field edged blue on the attached plan and indicated on Approved Drawing B from P/2007/1194.

3.2 Storage of landscaping materials, including a mound of topsoil, gravel, pallets, IBC containers and bags of soil within the approved plant hardening field edged blue on the attached plan and indicated on Approved Drawing B from P/2007/1194.

3.3 Polytunnels 1 and 3, as indicated on the attached Enforcement Notice plan are being used for the parking and/or storage of vehicles.

3.4 Hardstanding laid within polytunnel 1 and 2, as indicated on the attached Enforcement Notice Plan.

3.5 Siting of a blue shipping container within the approved plant hardening field edged blue on the attached plan and indicated on Approved Drawing B from P/2007/1194.

3.6 The siting of a storage container in between polytunnel 1 and 2, as indicated on the attached Enforcement Notice Plan.”

The steps required by the enforcement notice:

5.1 Remove from the land all the material used to construct the hard surfaced area to a minimum depth of 300mm. Cover the area with top soil levelled to the same gradient as the surrounding ground surface.

5.2 Within the area edged in blue on the attached Enforcement Notice Plan, remove all of the items specified above in point 3.2 and any other waste materials or materials used in the commercial operations of any of the operators of the site, other than plants which are being hardened.

5.3 Cease the unauthorised use of polytunnels 1 and 3 for the parking and storage of both commercial and private motor vehicles.

5.4 Remove from the land any materials used to construct the hard surfaced area that has been laid within polytunnels 1 and 3. Re-surface with topsoil so that the land may once again be used for agricultural or horticultural purposes in the future.

5.5 Remove from the site the blue storage container, located within the area edged in blue and remove any materials/ hardstanding that it may be sited upon.

5.6 Remove from the site the storage container that is located in between polytunnel 1 and 2, as indicated on the attached Enforcement Notice Plan."

Time for compliance with the notice:

"You are required to have complied with this notice by the end of 3 calendar months commencing from the day that this notice is issued."

Grounds of appeal:

The appeal has been brought on grounds (f) and (h) 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"

"(h) ... that in all the circumstances planning ... permission should be granted in respect of the development in question"

This report also considers ground (g):

"(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:

8 February 2022

Procedural matters

1. The appeal has been dealt with by way of written representations with the agreement of the parties.
2. The appellants have restricted their appeal on ground (f) to the storage container referred to in paragraphs 3.6 and 5.6 of the enforcement notice. They have restricted their appeal on ground (h) to the hardstanding referred to in paragraphs 3.4 and 5.4 of the enforcement notice. In all other respects, the appellants have not appealed against the enforcement notice and are understood to be complying with its requirements. (NB - The polytunnels have been incorrectly referred to as numbers 1 and 3 in paragraph 5.4; they should have been referred to as numbers 1 and 2, as in paragraph 3.4).
3. When an appeal is brought against an enforcement notice, the notice by virtue of Article 117(2) ceases to have effect until the appeal has been determined. I have raised ground (g) so that consideration can be given to extending the time for compliance with the enforcement notice, since the period it allows has already expired.
4. 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 correct or modify the terms of the enforcement notice.

Ground (f)

5. Paragraph 3.6 of the enforcement notice relates to the siting of a storage container between polytunnels 1 and 2. Paragraph 5.6 requires the storage container to be removed from the site. The appeal on ground (f) relates only to these aspects of the enforcement notice.
6. The appellants state that the storage container is a small tool store which is portable, using a forklift truck. They indicate that it is moved around the site from time to time and is taken away from the site altogether when it is required for use elsewhere in connection with landscape contracts that may last for several months. This information is not disputed by the Infrastructure, Housing and Environment Department.
7. Planning permission P/2007/1194 authorises the use of the site "for hard and soft landscaping business". As a matter of fact and degree, the information supplied by the appellants indicates that the storage container is part and parcel of the use of the site for its authorised purpose. The siting of the storage container within the site, and its movement around the site and off the site and back again, as part of the landscaping business, would therefore normally be unrestricted by development controls. The requirement in paragraph 5.6 to remove it from the site altogether would be excessive, since it would purport to prevent the business from doing something it could do without being in breach of development controls.
8. However, Condition 2 of planning permission P/2007/1194 states "All storage relating to this use shall be contained within the areas designated on Plan B and the external area shall be used only for the hardening of plants and for no other use whatsoever." The only storage areas shown on Plan B are within polytunnels 1 and 2. The siting of the storage container on the external area

between these polytunnels, as stated in paragraph 3.6, is a contravention of Condition 2 and is therefore a breach of development controls.

9. Nevertheless, the requirement in paragraph 5.6 to remove the storage container from the site altogether is excessive since it goes beyond what is necessary to remedy the breach, because the breach could be remedied by complying with Condition 2. I have concluded that the appeal should succeed on ground (f) to this extent and I have recommended in paragraph 18 below that paragraph 5.6 is varied accordingly.

Ground (h)

10. Under ground (h), the appellants only seek planning permission for the part of the development enforced against that consists of the hardstanding laid within polytunnels 1 and 2, as described in paragraph 3.4 of the enforcement notice.
11. Permission P/2007/1194 authorises the use of the site "for hard and soft landscaping business". The approved plans show that polytunnel 1 is to be used for "Hard Landscaping Materials Storage" and polytunnel 2 for "Machinery Store and Maintenance [*sic*]". The details of the surfacing works to be carried out in these polytunnels were not considered at the time the permission was granted. Condition 4 of the permission required these details to be submitted for approval by mid-October 2007, in the interests of the visual amenity of the area. They were not submitted within this period but no action was taken until now against the hardstanding that was laid later.
12. The enforcement notice states that the hardstanding has been enforced against for the following reason:

"4.4 Polytunnel 1 on 'Approved Drawing B' of planning consent P/2007/1194 is approved for the storage of hard landscaping materials. Polytunnel 2 is approved for the storage and maintenance of machinery. Whilst it may be reasonable to expect that these approved uses may require some hardstanding, the laying of this concrete floor is not approved neither do the provisions of the Planning and Building (Jersey) General Development (Jersey) Order 2011 allow for this work to be carried out without express planning consent. Since the Department has neither received nor approved any such application, its removal is sought within this Enforcement Notice."
13. The appellants have now submitted a planning application (P/2021/1890) to authorise the retention of the concrete flooring in polytunnels 1 and 2. I agree with the appellants that it is inherent in the terms of permission P/2007/1194 that hard surfacing would be installed in these polytunnels, since the authorised uses of the polytunnels as stated on the approved Plan B could not be expected to take place on bare earth. Paragraph 4.4 of the enforcement notice recognises that this is the case and the Department have raised no objections or planning policy concerns about the planning application. The concrete flooring has no impact on the visual amenity of the area.
14. The objections received from interested persons relate in the main to the other matters dealt with by the enforcement notice, which the appellants are understood to be complying with. The concerns that the concrete flooring could facilitate unauthorised uses of these polytunnels that could affect neighbourhood amenities can be dealt with by imposing a planning condition restricting its use to what is already authorised by permission P/2007/1194.

Condition 7 of this permission requires the land to be restored to agricultural use should the polytunnels fall into disuse or disrepair.

15. I consider that it is reasonable to treat the approval of the concrete flooring as the regularisation of a matter that should have been dealt with in accordance with Condition 4 in 2007, but which was deferred at that time and then overlooked by the business and the Department. The concrete flooring is necessary to enable the authorised business use to be carried on and it causes no harm. I have therefore concluded that the appeal should succeed on ground (h) to the extent described and that a conditional planning permission should be granted.

Ground (g)

16. The notice is 'on hold' because of Article 117(2), but the three months' compliance period specified in the notice expired on 24 December 2021 and should therefore be extended.
17. 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 have therefore recommended in paragraph 20 below that a further three months should be allowed in which to comply with the remaining requirements of the notice, starting on the date of the Minister's determination of the appeal. I conclude that the appeal should succeed on ground (g) to this extent.

Inspector's recommendations

18. I recommend that the appeal is allowed on ground (f) insofar as it relates to the siting of a storage container between polytunnels 1 and 2 and that the enforcement notice ENF/2021/00008 issued on 24 September 2021 is varied by replacing paragraph 5.6 by: -

"5.6 Either remove the storage container that is located between polytunnels 1 and 2 from the site altogether or relocate the storage container within an area designated for storage on the Plan B approved by planning permission P/2007/1194."
19. I recommend that the appeal is allowed on ground (h) insofar as it relates to the hardstanding laid within polytunnels 1 and 2, that the enforcement notice ENF/2021/00008 issued on 24 September 2021 is varied by the deletion of paragraph 5.4 and that planning permission is granted in accordance with the application P/2021/1890 dated 17 November 2021 and the plans submitted therewith for the installation of concrete flooring in polytunnels 1 and 2 at Field No. G506A, Les Sablons Nurseries, La Rue de Fauvic, Grouville, subject to the following condition: -
 1. The concrete flooring shall be used only in connection with a hard and soft landscaping business, in accordance with planning permission P/2007/1194 and the conditions imposed thereon, and only for the purposes designated on Plan B of that permission, and for no other purpose.

Reason: To protect neighbours' amenities.

20. I recommend that the appeal is allowed on ground (g) to the extent that the enforcement notice ENF/2021/00008 issued on 24 September 2021 is varied by replacing paragraph 6 (Time for Compliance) by: -

"6. **Time for Compliance:** You are required to have complied with the requirements of this notice by the end of 3 calendar months commencing from the date of the determination of the appeal against this notice."

21. In all other respects, I recommend that the appeal is dismissed and that the enforcement notice ENF/2021/00008 issued on 24 September 2021 is upheld as varied.

Dated 12 May 2022

D.A.Hainsworth

Inspector