REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Alex Burnett against an enforcement notice.

Reference Number: ENF/2015/00006.

Site at: Field 818, L'Avenue de la Reine Elizabeth II, St Peter.

Introduction

1. I held a hearing into this appeal on 12 November 2015 after carrying out a site inspection the previous day.

2. The appeal is against an enforcement notice issued on 16 June 2015. Summary details of the notice are as follows:

   - The breach of planning control alleged in the notice is:

     "Without planning permission, development has taken place within Field 818, namely:

     - the erection of a loggia-type structure,
     - the siting of a pool and surround and,
     - the changing of ground levels and associated siting of garden sleepers.

     The above mentioned works are considered to represent building and/or engineering operations and do not benefit from any exemption from requiring planning permission as may be conferred by the Planning and Building (General Development) (Jersey) Order 2011."

   - The requirements of the notice are: "Remove all un-authorised development from the field and reinstate land levels to their original contour and re-seed the field with grass or agricultural crop".
   - The period for compliance is 28 days.

3. The appeal was made on grounds (a), (b), (c), (e), (f), (g) and (i) as set out in Article 109(2) of the Planning and Building (Jersey) Law 2002 as amended.

4. This report provides a description of the appeal site, explains some legal and procedural matters, considers issues raised about the validity of the enforcement notice, and then deals with each ground of appeal in turn before setting out my overall conclusions and recommendation. The appeal statements, plans, photographs and other relevant documents are in the case file for you to examine if necessary. A list of those who took part in the hearing is appended.

Appeal Site

5. The appeal site is a roughly L-shaped area of land located between Le Vieux Beaumont to the north-north-east and La Route de Beaumont to the south-west, near the roundabout junction with L'Avenue de la Reine Elizabeth II. The eastern part of the site, which is separated from the part to the north-west by a wire

fence, is grassed and appears to be used for grazing. The north-western part is where the items described in the enforcement notice are located. Beyond this area to the north-west there is a dwelling (Villa de L'Aube), a swimming pool and pool house. Access to the dwelling and nearby buildings, and through that area to the appeal site, is off Le Vieux Beaumont. Near the pool house is part of a waist-high wall which I understand remains from a partly-demolished building, but there is open access between the appeal site and the area to the north-west occupied by the house and its immediate grounds, the swimming pool and the pool house.

6. A central pathway, which is mostly stone-flagged apart from a part where the hard surfacing has an unfinished appearance and is concreted, leads from the area near the house to a round pond. Other pathways, not stone-surfaced lead off in different directions from the pond area. The pond has a diameter of about 2 metres and is bordered by a circle of paving slabs. Along the central pathway, on both sides and above it, a timber framework structure about 2.4-2.5 metres in height has been erected. Its main components consist of timber uprights and transverse beams across the top. It has the appearance of a pergola. Flowering shrubs including wisteria, rose and juniper are planted alongside this structure and are partly trained among it.

7. The north-western part of the site is subdivided into several areas bordered by baulks of timber. The baulks of timber form retaining edges so as to subdivide the land into raised areas with pathways between them. The difference in height between the pathways and the ground surface of the raised areas varies slightly, up to around 25 centimetres. Most of the raised areas are grassed and mown, although some parts towards the south-east appear to have been seeded only fairly recently. It is difficult to determine the exact the type of grass seed used but it appears to be of a type suitable for lawn grass.

8. There are about 34 fruit trees in this part of the site, mostly young apple species with a few pear species. The apple species include Bramley, Bountiful and Golden Delicious.

9. A large oil tank of the type used to supply central heating fuel stands on a constructed base inside a fenced compound within the appeal site near its north-west corner. At the time of my inspection a heap of stone slabs and some lengths of timber were lying on the site, roughly in the centre of the L-shaped area.

Legal and Procedural Matters

10. After opening the hearing I made a statement about the content of the written material which had been submitted by both parties, about the enforcement notice, and about some other matters. I summarise the main points here.

Allegations of Corruption

11. The written statements submitted by Mr Burnett contain various allegations of corruption by a named individual. As a planning appeals inspector, I do not have powers to investigate possible corruption - for example, "illicit funding" is mentioned by Mr Burnett but I do not have powers to obtain access to people's bank accounts. Corruption is a criminal offence. If true, the allegations should be directed at the authority responsible for investigating crime. If untrue, the allegations are potentially libellous.

12. There is a legal principle that any persons who repeat or publish a libel could themselves be sued or prosecuted for libel. Since the allegations are potentially

libellous I am not recording in this report any specific detail of the allegations or of the individual named by Mr Burnett. I merely mention the allegations here so that you may consider whether to examine what has been written, and to what extent you take them into account.

The Enforcement Notice

13. In my opening announcement I drew attention to your powers under Article 116(2)(d) of the 2002 Law as amended to "reverse or vary any part of the decision-maker's decision", thereby enabling you to vary any part of the enforcement notice.[1] I indicated that I considered the enforcement notice to be flawed in several ways and that I would be likely to recommend amendments, so the appeal parties could take these into account during the hearing. I explain the main issues below.

- The address of the site is disputed between the appellant and the planning authority. The Department's description "Field 818, L'Avenue de la Reine Elizabeth ll" is evidently based on Ordnance Survey records. Nevertheless it is inaccurate. However, all those involved have understood the site's location, which is shown on the map accompanying the enforcement notice. The description of the location in the notice could simply be amended to: "Field 818, St Peter". Mr Burnett has contended that the site should be labelled "part of Field 818", but as the site area is identified on a plan I do not consider that such an amendment is necessary.
- In the allegation, the term "loggia-type structure" is incorrect. It seems possible that whoever drafted the enforcement notice chose the wrong Italian word and meant to use the term "pergola"; be that as it may, this is not a serious or fatal flaw, especially since the appellant has clearly known what this aspect of the notice is directed at. I consider that a simpler description, along the lines "erection of a timber structure" would be more suitable.
- The word "pool" is not apt to describe the water feature on the site. Again, the appellant has understood the intention of the notice; but "pond" would be more accurate.[2]
- The description "changing of ground levels and associated siting of garden sleepers" is not a good description of what has happened at the site. As Mr Burnett has pointed out, the term "garden sleeper" does not have any normally understood meaning. However, most of the baulks of timber which I saw at the site did not appear to be "railway sleepers" either. I suggested to the hearing that a more apt description of what has happened would be along the lines: "The formation of raised areas and associated placing of timber sleepers".
- There requirements of the enforcement notice are also defective, as they are imprecise and purport to cover items not enforced against in the allegation. I return to these points later in this report under the heading ground (f).

[1] "Decision-maker" is defined under Article 106(2) as including the person entitled to serve an enforcement notice.

[2] I observe in passing that although I did not know it when I made my opening announcement, a document submitted later during the hearing in connection with arguments about the validity of the enforcement notice (mentioned in paragraph 22 below) shows that in past correspondence with the appellant, the Department used the terms "pergola" and "pond" in describing items at the appeal site. The Department's representatives did not comment on this or offer any explanation why these later became altered to "loggia" and "pool".

The Written Statements by Both Parties

14. The statements submitted by both sides before the hearing are poorly drafted - they both include material which is irrelevant, and they omit material which should have been included. Mr Burnett's statements are so unstructured that they leave me to guess which parts are directed at which grounds of appeal, and they do not say anything about several of the grounds of appeal pleaded by him.

15. The planning authority's pre-hearing written submission wrongly stated that there were three grounds of appeal, whereas seven grounds were pleaded (until the late withdrawal of some grounds during the hearing), so the submission left significant gaps. The Department also made various statements about changes of use of land and related policies, and at one point (paragraph 2.16 in the "Response to Grounds of Appeal") stated:

> "The change of use to domestic curtilage is not listed as one of the 14 possible exceptions to Policy NE7 and therefore this development is contrary to Policy NE7."

16. Three misconceptions are apparent here. First, the enforcement notice is not directed at any unauthorised change of use. Second, for the purposes of planning law the term "curtilage" is a physical concept, not a use of land.[3] Third, planning policies are only of relevance in this case to explain the reasons for issuing the notice (not as a response to the grounds of appeal), because ground (h) of Article 109(2) was not pleaded and there is no application for planning permission to consider. The planning authority have not explained why, if they considered that a material change of use had occurred, they did not issue a "use" notice (which could have included operational development in its requirements).[4]

Meaning of "Develop" and "Development" - Distinction between "Operations and "Use"

17. Having commented in the previous paragraph on the fact that this enforcement notice was not directed at an unauthorised change of use, I think it would be helpful here to explain briefly some legal points relating to the definition of "develop" (and therefore "development"). I do so bearing in mind that some people who may read published copies of this report may not be familiar with planning law.

18. Subject to exceptions and specific inclusions which can be ignored for present purposes, the term "develop" is defined in the 2002 Law[5] as:

> (a) to undertake a building, engineering, mining or other operation in, on, over or under land;
>
> (b) to make a material change in the use of the land or a building on the land.

19. As noted in the summary details in the introduction above, the enforcement notice subject to this appeal states in its allegation that the works specified "are considered to represent building and/or engineering operations". So this is an

[3] The curtilage of a building is to do with the physical relationship between the building and its immediately surrounding land. This does not just apply to dwellings - an office building or factory can have a curtilage. Under planning law, the use of land within the curtilage of an office building where cars may be parked for purposes ancillary to the office use will normally be "offices", not "car parking" or "curtilage".

[4] An enforcement notice directed at an unauthorised change of use can require operational development to be removed where such development facilitates and is integral to the unauthorised use. The two most well-known court judgments on this point which would be applicable in Jersey are *Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630.

[5] Article 5.

"operations" notice, not a "use" notice. However, the allegation only partially adopts the definition of operational development. As I stated at the hearing, what has happened at this appeal site may not be a building or engineering operation; but that would not prevent what has happened from being operational development, because it could be an "other" operation. This is another matter to which I return below in considering possible amendments to the notice.

Hearing Procedure

20. In my opening announcement, I explained that I intended to structure the hearing by taking each ground of appeal in turn and inviting each side to clarify or expand on their case and comment on the other side's case as appropriate. I also put questions to both sides. One of the reasons for this procedure was to enable the parties to make their cases on the appeal grounds which had not been covered in their written statements. The grounds of appeal are taken in logical sequence below, as I did at the hearing, rather than the alphabetical order in the legislation.[6]

Validity of Enforcement Notice

21. Towards the end of the hearing, Mr Carney indicated that he wanted to make submissions on a matter which had not been previously raised. I deal with it here because it concerns the validity of the enforcement notice and is logical to consider the validity of the notice before the grounds of appeal. Although Mr Burnett's written statements had contained arguments about the legal status of the notice, these very generalised and appeared to be mainly related to the grounds of appeal. Mr Carney's submission at the hearing was essentially that the enforcement notice was invalid because due process had not been followed before it was issued.

22. I decided to hear the submissions, and the response I invited from the Department's representatives, although as I pointed out the appellant's full case should have been set out and made clear beforehand. The Department's representatives were able to respond and did not apply for an adjournment.

23. Both sides submitted a document during this part of the hearing. At my request Mr Carney handed in a note of his submissions; Mr Bolton handed in a document containing evidence about exchanges of correspondence, telephone calls and meetings. I am sending these documents to you with the paper copy of my report.

Submission for Appellant

24. The basis of the appellant's submission was that the Department had not followed due process before issuing the enforcement notice, which had come out of the blue to Mr Burnett. Stages of procedure had been jumped. A stop notice had not been served. The procedures set out in Supplementary Planning Guidance Practice Note 4 had not been followed, in particular paragraphs 2, 3 and 4 (dealing with matters such as openness, fairness and consistency) and paragraph 14 which mentions trivial or technical breaches. Mr Carney said that he had not received the letter from Mr Scate of 23 September 2014 referred to by the Department.

[6] The reason for this sequence is that it is logical to consider first whether, for example, the matters alleged in the notice have occurred (ground (e)) before considering whether it was too late to take enforcement action (ground (c)).

Response for Department

25. In response, Mr Bolton for the Department referred to various meetings which had taken place and to exchanges of correspondence and telephone calls. He submitted that the enforcement notice had only been served after over a year of attempts to resolve matters, and that Mr Burnett had had ample opportunity to do so. Mr Burnett had been asked several times to comply with the Department's requests, including in a letter from Mr Scate on 23 September 2014, but had not done so.

My Conclusions on Validity

26. It is abundantly clear that the Department made considerable efforts to get Mr Burnett to comply with requests to remove unauthorised development before eventually the enforcement notice was served. Some of the Department's past attempts to get Mr Burnett to comply with planning law appear to have lacked expertise and I am aware of a court judgment which is part of the case history.[7] Despite flaws in what the Department has done, there is nothing so unreasonable or wrong as to make it appropriate to quash the enforcement notice on grounds of its invalidity. The fact that a stop notice was not served is insignificant - whether it is expedient to serve a stop notice is for the planning authority to decide.

27. One of the matters of dispute raised during the submissions concerned a conversation during a meeting on the site, the disputed issue being which fence had been referred to. It is not possible for me to know exactly what was said in the course of conversations held on the site and in any case this is not of decisive importance in view of the numerous written communications from the Department. I note, however, that according to the document submitted by the Department, employees of the Department met Mr Burnett on the site in July 2014 when he said that "the land up to the post and rail fence was domestic curtilage and this was part of the permit. He has flattened land for a garden and is putting a pergola and pond in". Such a comment would only make sense if the fence being referred to was the one separating the north-west part of the site from the eastern land used for grazing.

28. In summary, I judge that the appellant's claim of invalidity is artificial. It follows a long period of what appears to be deliberate prevarication and a stubborn refusal to acknowledge that unauthorised development has been carried out. I find that there is no reason to treat the enforcement notice as invalid because of events preceding its issue.

Ground (i)

29. Ground (i) relates to enforcement notices served under Article 47(2) alleging failure to comply with a condition. I pointed out that this ground of appeal appeared to have been pleaded by mistake, since the enforcement notice was not a "breach of condition" notice issued under Article 47(2). Mr Carney withdrew this ground on the appellant's behalf.

Ground (e)

30. Under ground (e) it is claimed that the matters alleged in the enforcement notice have not in fact occurred. The main thrust of the appellant's case was that the descriptions in the enforcement notice were exaggerated and intended to be deliberately misleading - for example, the use of terms such as "garden sleeper"

[7] *Burnett v Minister for Planning and Environment* [2010].

instead of the more accurate "railway sleeper" and "pool" for a small water feature which was intended to be an irrigation reservoir.

31. As will be apparent from my comments at the start of the hearing reported in paragraph 13 above, I agree with some of the appellant's arguments about the descriptions in the allegation. However, I saw from my inspection that as a matter of fact, timber sleepers have been laid and raised beds formed, edged by the sleepers; a timber framework has been constructed; a pond (rather than a "pool") has been installed. The pond and its paved surround looks much more like the sort of decorative feature which might be found in a residential garden than an irrigation reservoir.

32. I judge that the enforcement notice can be suitably amended so that the allegation is more accurate. Subject to appropriate variations being made, the operations I have described have been carried out, so I conclude that the appeal on ground (e) does not succeed.

Ground (a)

33. Ground (a) is the ground of appeal which argues that what is alleged to have happened is not subject to planning control. Part of the appellant's case appears to be that what has been carried out were such minor operations that they were not building or engineering operations within the meaning of planning law. Alternatively or in addition, Mr Burnett contends that what he has done is for agricultural stewardship of the land, on a sloping site which the Agriculture Department regard as unsuitable for agriculture.

34. A building operation is an operation which would normally be carried out by a builder. However, a "building" is defined in Article 1 of the 2002 Law as including "a structure or erection of any material" and the timber frame certainly comes into that category. An engineering operation is an operation normally carried out in accordance with a prepared design. Some of the works including the laying of the timber sleepers may not have been a building or engineering operation, but that does not matter - deciding on the precise type of operation in this case is not of crucial importance. Mr Carney accepted that the operations could be an "other operation", and whichever category applies, I judge that operational development occurred.

35. Although not expressed in such terms, an argument which could be implied from the submissions by and for Mr Burnett is that the changes made to the appeal site were *de minimis*,[8] that is to say so minimal as not amounting to development. In response to questions by me, Mr Burnett said that only hand tools were used to prepare and lay the sleepers, but other evidence suggests that mechanical equipment such as a digger might have been involved. In any event the timber sleepers were apparently held in place, at least initially, by pegs, and they cannot be regarded as mobile chattels. The sleepers act as retaining structures for the raised areas which have been filled with soil, compost or other material. The difference in height of up to about 25 centimetres between the pathways and the raised areas is not very great but it is significant, especially taking account of the extent of the sleepers, their function as part of an overall scheme and the area of land involved. The effect is more than minimal. The same applies to the timber framework, the change in land levels and the pond.

[8] This is a standard abbreviation for *de minimis non curat lex*, which roughly translates as "the law does not care about minimal things".

36. Mr Burnett has suggested that the sleepers and the timber framework are temporary. The timber used may eventually rot, but the same could be said of many timber structures and the period involved would normally be a matter of many years. What has happened is not so ephemeral or temporary as to be disregarded for planning purposes.

37. Mr Burnett's claim that he is carrying out agricultural stewardship on the land does not help his case. A timber structure is a timber structure, whether it is for agriculture or for any other purpose, and the same applies to the other items enforced against. Mr Burnett has stated that the flowering shrubs were planted for the purpose of cross-pollination. I have doubts about this claim - flowering shrubs can help to attract insects, but most apple species require pollination by other apple species (hence presumably the mixture of species which I saw).

38. Moreover, the overall effect of what has happened has been to give the north-western part of the appeal site a domestic character akin to the garden of a residential property. The pond with its circular paved surround looks like a typical garden pond and the domestic or residential character of the land is emphasised by the "pergola-type" structure, the flowering shrubs and raised beds, as well as the lawn-like mown grass. Fruit trees in an orchard can be part of an agricultural unit, but an orchard can also involve a residential use for the purposes of planning law, depending on concepts such as the definition of the "planning unit" and ancillary uses which I do not think it appropriate to explain in detail here.

39. In summary, the works subject to this enforcement notice constituted development as defined by the term "develop" in the 2002 Law. The development was and is subject to control under the 2002 Law as amended. I conclude that the appeal on ground (a) fails.

Ground (b)

40. The appellant's case on ground (b) as set out in his written statements was that the operations were "permitted development" under Schedule 1 of the Planning and Building (General Development) (Jersey) Order. Part 1 of this schedule covers work carried out within the curtilage of a dwelling-house. However, at the hearing Mr Carney said that his client was confused. He withdrew ground (b).

41. In my judgment the fact that Mr Burnett originally pleaded ground (b) on the basis that the operations were permitted development shows not that he was confused, but that he was trying to ride two horses at the same time whilst having his cake and eating it. He has argued that the appeal site is in agricultural use whilst claiming permitted development rights which apply to land within the curtilage of a dwellinghouse. Because of the way "curtilage" is defined for the purposes of planning law, it is not possible for land within the curtilage of a dwellinghouse to be in "agricultural" use. However, land which is outside the curtilage of a dwellinghouse can be in residential use.[9]

[9] The term "curtilage" is not defined in primary legislation; its definition is derived from court judgments. Because of similarities of planning law between the UK and Jersey, UK court judgments have relevance in Jersey. The standard leading cases are *Sinclair-Lockhart's Trustees v Central Land Board* [1950], *Dyer v Dorset County Council* [1988] and *McAlpine v Secretary of State for Environment* [1995]. In Jersey, the court in *Burnett v Minister for Planning and Environment* [2010] adopted a definition similar to these judgments. A curtilage is normally a small area immediately around a building, enclosed in the same enclosure with the building and used for purposes which serve the purpose of the building in some necessary or useful way. The curtilage of a typical house will be in residential or dwellinghouse use. Where a planning unit such as a house and adjacent land in residential use is larger than the curtilage, the residential use of the planning unit will extend outside the curtilage, a situation which may or may not be authorised.

Ground (c)

42. To succeed on ground (c), an appellant has to show that a development has become "immune" and lawful through the passage of time, so that it is too late to take enforcement action. The operations enforced against by this notice were evidently carried out in 2014 and later. For the appellant, Mr Carney withdrew ground (c).

Ground (f)

43. This ground of appeal concerns the requirements of the enforcement notice and contends in essence that the requirements are excessive. After I had explained the scope of grounds (f) and (g),[10] Mr Carney withdrew ground (f) on the appellant's behalf. However, I raised some questions about the requirements of the enforcement notice and invited the Department's representatives to comment.

44. One of the points I raised is that although one of the requirements is to "remove all unauthorised development", not all of the unauthorised development at the appeal site was included in the notice's allegation. Setting aside any issue relating to the use of the land and considering only operational development, one obvious item is the construction of the hard-surfaced path. Another is the oil tank, its supporting structure and the surrounding fencing. From what was said during the hearing I do not know the reason for the exclusions. Be that as it may, a requirement to "remove all unauthorised development" is unsatisfactory because it is imprecise, and because it purports to cover things which have not been enforced against in the allegation.

45. Assuming that your decision gets as far as ground (f), it seems to me that there are two possible ways of dealing with this matter. One would be to vary the requirements so that they match what is referred to in the allegation, without extending the allegation. This could be achieved by an amendment adding a few words so that the requirements specify removal of the unauthorised development *described in the allegation*. The other possibility would be to add the construction of the pathway and the oil tank compound to the allegation and include their removal in the requirements. Mr Carney's only comment in response when I mentioned adding to the allegation was that any such step would be challenged.

46. In other jurisdictions including England, Wales and Scotland, enforcement notices may be corrected or varied at appeal stage if the decision-maker (usually an inspector) is satisfied that the correction or variation will not cause injustice to the appellant or local planning authority.[11] However, the proviso about not causing injustice is not contained in the 2002 Jersey Law as amended. Therefore on the face of it your powers to amend the enforcement notice are wider than in other jurisdictions.

47. My advice on this matter is as follows. If you are minded to vary the enforcement notice so as to add to the allegation and correspondingly to the requirements, the appellant should be given an opportunity to make a further written submission on the legal aspects of this matter, or to withdraw the appeal[12] before it is decided. If you decide not to add to the allegation, there would be no need to offer any such opportunity.

[10] These grounds are limited only to the requirements and compliance period specified in the notice.

[11] This wording is paraphrased from Section 176 of the UK 1990 Town and Country Planning Act.

[12] That is to say, the appeal in its entirety, not just one ground of appeal.

48. I make the suggestion about giving an opportunity for further comment or withdrawal because although I mentioned Article 116(2)(d) at the hearing, so the appellant has had an opportunity to comment, he was not represented there by a professionally qualified lawyer and I am not sure that Mr Burnett or Mr Carney fully understand the possible implications of this part of the 2002 Law. Moreover the planning authority, having not referred to the pathway or the tank compound in the enforcement notice, did not ask at the hearing for these items to be included. In these circumstances a perception of unfairness could arise if the allegation were to be extended without warning.

49. On balance, I have decided to recommend the more minor variation. This would leave the situation open for another enforcement notice to be issued if necessary.[13] Whilst making this recommendation, I draw your attention to the alternative discussed above as something you may wish to consider. Ultimately of course only the courts could confirm the scope of your powers of variation under Article 116.

50. For completeness, I add here that despite your apparent wide power under Article 116(2)(d), in this case I do not consider that this could include re-writing the enforcement notice to such an extent as to include an allegation of making an unauthorised material change of use of the land. The planning authority could have chosen to issue a "use" notice, but have not done so (at least as yet).

Ground (g)

51. Ground (g) concerns the period for compliance. No real case was put forward by the appellant on this ground. For example, there is no evidence that it would be difficult to obtain the services of a suitable contractor to carry out the work specified in the notice. However, it is necessary to consider seasonal factors, bearing in mind that the compliance period will now run from the date of the decision. I do not know when the decision will be issued, but it seems likely that this may be in winter, when requirements such as seeding may be impracticable. It would be possible to specify a shorter period for some steps than for others, but I judge that a three month compliance period would be reasonable and sufficient for all the steps required.

Conclusion and Recommendations

52. Having regard to all the issues discussed above, I conclude that the enforcement notice should be varied in seven ways as set out below. Subject to these variations, the appeals should be dismissed and the notice upheld as varied.

53. I recommend that the enforcement notice be varied as follows:

    i) by deleting "L'Avenue de la Reine Elizabeth II" from the address specified in paragraph 2 of the notice, so that it reads "Field 818, St Peter".

    ii) by deleting from the allegation the words "loggia-type structure" and substituting: "timber framework structure".

    iii) by deleting from the allegation the words "siting of a pool and surround" and substituting: "constructing a pond and paved surround".

[13] I say "if necessary" here because Mr Burnett could choose to remove the hard-surfaced pathway and oil tank compound to avoid the need for further dispute; also, the requirement to reinstate levels and re-seed the land will probably have to involve either covering the pathway with soil or removing it and the tank compound in order to carry out re-seeding.

iv) by deleting from the allegation the words "the changing of ground levels and associated siting of garden sleepers" and substituting: "the formation of raised areas edged by timber sleepers".

v) by deleting from the allegation the words "building and/or engineering operations" and substituting: "building, engineering or other operations".

vi) by deleting from the requirements the words "all un-authorised development" and substituting: "the unauthorised development described in the allegation above".

vii) by deleting "28 days" from the text specifying the period for compliance and substituting" three months".

54. I further recommend that subject to the variations set out above, the appeal be dismissed and the enforcement notice as varied be upheld.

G F Self

Inspector

22 November 2015

Appearances at the Hearing

For the Appellant

Mr J Carney
Mr A Burnett

For the Department of the Environment

Mr J Gladwin
Mr J Bolton