

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

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

REPORT TO THE MINISTER FOR THE ENVIRONMENT

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

Appellant:

Michael M Slous

Enforcement notice reference number and date of issue:

ENF/2020/00011 dated 21/10/2020

The land to which the notice relates:

Field No. B485 off the B83 La Rue de la Corbiere, St. Brelade shown edged in red on the plan attached to the notice.

The alleged breach of development controls:

Without Planning Permission; a material change of use from agriculture to the storage and siting of a miscellany of non-agricultural vehicles; cars, vans, lorries, plant and machinery; skips; containers/tanks; cable drums; BBQ equipment: gas canisters; table and seating: speedboat and boat trailer; unserviceable discarded agricultural machinery, a lorry trailer and a considerable mound of vegetation waste, rubble and detritus, fencing panels and pallets.

The requirements of the notice:

Within the area edged red on the attached plan: -

- 5.1. Permanently cease all non-agricultural use of the land including the siting and storage of non-agricultural vehicles; cars, vans, lorries, plant and machinery; skips; containers/tanks; cable drums; BBQ equipment: gas canisters; table and seating: speedboat and boat trailer; unserviceable discarded agricultural machinery, a lorry trailer, vegetation waste, rubble and detritus, fencing panels and pallets. And
- 5.2. Permanently remove from the Land all those items referred to at 5.1

Time for compliance with the notice:

“You are required to have complied with the requirements of this notice by the end of 2 calendar months - commencing from the day that this notice is issued.”

Grounds of appeal:

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

- (a) that the matters alleged in the notice are not subject to control by this Law;
- (e) that the matters alleged in the notice have not in fact occurred; and
- (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

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:

12 April 2021

Hearing date:

13 April 2021

Procedural matter

1. When an appeal is brought under Article 109 against an enforcement notice, the notice by virtue of Article 117(2) ceases to have effect until the appeal has been determined. On the determination of the appeal the Minister may by virtue of Article 116(2) allow the appeal in full or in part, dismiss the appeal and reverse or vary any part of the decision-maker's decision. I interpret this as including the power to vary the terms of the enforcement notice.

Grounds (a) and (e)

2. In his appeal statement, the appellant maintains that the field is still in productive agricultural use. He states that all machinery stored there is either used or will be used in future agricultural activities in association with this field or other fields in the holding. He adds that some of the “questionable” items referred to in the notice are in the process of being moved elsewhere.
3. The Infrastructure, Housing and Environment Department state that the items recorded in the notice do not appear to be either employed in or reasonably necessary for the purposes of agriculture. They have produced a number of photographs taken on 22 September 2020 to illustrate the nature and extent

of the alleged breach of development controls. They state that these photographs identify the items listed in the notice that have materially changed the use of the field from agriculture to miscellaneous storage.

4. I inspected the field on 12 April 2021 and looked at those items shown in the photographs that remained there. It is clear from the evidence that the use of the whole of the field has not changed from agriculture to the storage and siting of non-agricultural items, as alleged in the notice. The field is in a mixed use for agriculture and for the storage and siting of non-agriculture items. The allegation in the notice is therefore inaccurate, but I am satisfied from the discussions that took place at the hearing that it can be varied without causing injustice to either of the parties.
5. The hearing dealt in detail with what is disclosed by the photographs and I indicated that in this report I would go through the evidence and identify the uses I considered to be non-agricultural and in breach of development controls. I have relied on the definition of "agriculture" in Article 1 of the Protection of Agricultural Land (Jersey) Law 1964, namely that it "includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, market gardens and nursery grounds". This definition is not all-embracing and "agriculture" is therefore not limited to the activities listed. I have also considered whether any uses disclosed by the evidence are not in breach of development controls because they are incidental to agricultural use or because they are on too small a scale for the Law to regard them as being material to the use of the field as a whole.
6. The western part of the field - the part with housing on three sides - is not shown in the photographs as having anything stored or sited on it and the topsoil had been rotovated by the time of my visit. The eastern part of the site is shown in the photographs as being used for the keeping of poultry, as it was at the time of my visit. These parts of the field are in agricultural use.
7. The appellant states that what is described in the notice as "unserviceable discarded agricultural machinery" is not necessarily without an agricultural use. The amount stored in the field is not excessive and is typical of what is often to be seen at the margins of agricultural land. I do not consider that the machinery has lost the character that makes it incidental to agriculture.
8. I regard the following items as also being incidental to agriculture: the containers and tanks because they hold water or diesel used for agricultural purposes; the gas canisters; the lorry trailer shown on page 2 of the photographs; and the dumper truck shown on page 8 of the photographs.
9. It is not clear what the item "plant and machinery" in the notice refers to. I have not identified anything which could be called plant or machinery that is not specifically referred to elsewhere in the list; this item should therefore be omitted. The BBQ equipment is insignificant and should also be omitted.
10. Several items have no apparent connection with agriculture. These are: the "considerable mound of vegetation waste, rubble and detritus, fencing panels and pallets", which is shown on page 12 of the photographs and had been cleared by the time of my visit; the cars and vans; the cable drums; the table and seating; and the speedboat and boat trailer.

11. Up to five flatbed lorries appear in the photographs and three skips are shown on page 19. The appellant has not explained how any of these items have an agricultural use and it appears to me that they are used for other purposes.
12. My conclusion on grounds (a) and (e) is that the appeal should succeed on these grounds to the extent that (i) the field is in a mixed use for agriculture and for the storage and siting of non-agricultural items and (ii) the items listed in the notice should be restricted to those that I have found to be non-agricultural. I have therefore recommended in paragraph 17 below that the notice should be varied to give effect to this conclusion.

Ground (f)

13. The requirements of an enforcement notice will be excessive if they do not match up with the matters stated to be the breach of development control, or if they extend beyond what is necessary to remedy those matters, or if they purport to prevent persons from doing something they can do without being in breach of development control.
14. The requirements as set out in the notice do not fully comply with these principles and now require further changes to bring them into line with the variations I have recommended in paragraph 17. I have recommended a varied set of requirements in paragraph 18 below. The appeal should therefore succeed on ground (f) to this extent.

Ground (g)

15. The notice is 'on hold' because of Article 117(2), but the two months' compliance period specified in the notice expired on 21 December 2020 and will therefore have to be extended.
16. 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 19 below that a further two months should be allowed in which to comply with the requirements of the notice, starting on the date of the Minister's determination of the appeal. The appeal should succeed on ground (g) to this extent.

Inspector's recommendations

17. I recommend that the Minister should vary the enforcement notice by replacing paragraph 3 ('The Matters which appear to constitute the Breach of Development Controls') by the following paragraph:

"3. The Matters which appear to constitute the Breach of Development Controls:

Without planning permission, the material change of use of the land from agriculture to a mixed use for agriculture and for the storage and siting of non-agricultural items, namely cars, vans, lorries, skips, cable drums, a table,

seating, a speedboat, a boat trailer and a mound containing vegetable waste, rubble, detritus, fencing panels and pallets.”

18. I recommend that the Minister should vary the enforcement notice by replacing paragraph 5 ('Steps Required to Rectify the Breach'), by the following paragraph:

“5. **Steps Required to Rectify the Breach:** (what you are required to do):

Within the area edged red on the attached plan: -

- 5.1 Permanently cease the use of the Land for the storage and siting of non-agricultural items, namely cars, vans, lorries, skips, cable drums, a table, seating, a speedboat, a boat trailer and a mound containing vegetable waste, rubble, detritus, fencing panels and pallets.
- 5.2 Permanently remove from the Land all the non-agricultural items named in paragraph 5.1.”

19. I recommend that the Minister should vary the enforcement notice by replacing paragraph 6 ('Time for Compliance') by the following paragraph:

“6. **Time for Compliance:** You are required to have complied with the requirements of this notice by the end of 2 calendar months commencing from the date of the determination of the appeal against this notice.”

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

Dated 27 May 2021

D.A.Hainsworth

Inspector