

PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 109 (1) (d) an enforcement notice served under Article 40(2)

Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,
An Inspector appointed under Article 107

Appellant: Mr Marcus Richardson

Enforcement Notice Reference Number: ENF/2022/00017

Date of Enforcement Notice: 21 August 2023

Location: Field MN770, Le Clos du Fallu, St Martin

Matters which appear to constitute the Breach of Development Controls: Without Planning Permission development has occurred at Field MN770, Le Clos du Fallu, St Martin, namely: The site of Field MN770, Le Clos du Fallu, St Martin, has materially changed from its use as a storage shed and hardstandings for the purpose of horticulture and agriculture to general commercial use. Specifically for the storing and hiring to the public of plant and machinery by its tenant 4Hire Limited. The change of use amounts to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and has not been granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

Appeal Procedure and date: site inspection and hearing.

Site Visit procedure and date: accompanied, 4th December 2023.

Date of Report: 14 February 2024

Introduction

1. The appeal against the enforcement notice was made under the following grounds as provided for by section 109 (2) of the Planning and Building (Jersey) Law 2002:
 - (b) Permission has already been granted under the above Law in respect of the matters alleged in the notice.
 - (e) That the matters alleged in the notice have not in fact occurred.
2. A summary of each party's positions is set out below. Representations in the form of a statement and photographic and video evidence were accepted from a third party, in line with the requirements of Article 113 of the Planning and Building (Jersey) Law 2002. Parties have had an opportunity to see and comment on these representations.

3. The notice refers to '4Hire', but it was clarified at the hearing that the company operating from the site is '4group'.

Ground (b) Permission has already been granted under the above Law in respect of the matters alleged in the notice

Case for the appellant

4. The appellant's case can be summarised as:
 - The planning permissions which have been granted provide authorised use of the building on the site as a 'shed' or 'storage shed'. This use is not qualified or limited to use as an agricultural shed.
 - The only restrictions placed by the permissions are that there is to be no retailing from any part of the premises.
 - The approved drawings permit the parking of associated vehicles and storage of materials in the locations specified on the approved drawings.
 - The site is in use as per the authorised permitted use and no breach of development controls has occurred.
5. The appellant has provided a legal opinion based on Case Law. This was appended to the appellant's Grounds of Appeal and is not repeated here.

Case for the Department

6. The Department considers:
 - A shed is not listed as a use within Schedule 2 Use Classes of the Planning and Building (General Development) Order 2011 (the Use Class Order).
 - Permission was granted for the shed for use in association with agriculture and horticulture only and has never been granted planning permission as a warehouse or repository for dry storage.
 - The scope of the permitted use is understood by reference to supporting information for the original application (P/2008/0890) including the application form.
 - Subsequent permissions are sub-ordinate to and 'hang-off' the original P/2008/0890 permission.

Representations

7. The representation states that there has been a change in the character of the use of the site and highlights concern about the effects of the current use on neighbouring amenity (noise, disturbance, over-looking) and road safety.

Inspector's Assessment

8. First, I set out my understanding of the general principles to be applied to the interpretation of planning permission. I then apply these to establish what

development has been consented. Finally, I consider how these consents relate to the current use of the site.

9. Determining what a planning permission means (rather than what the grantor wanted it to mean) is a legal matter for the courts. Both parties have directed me to key rulings concerning interpretation including a recent ruling in the Royal Court ([2023]JRC193) which makes reference to Hillside Parks Limited v Snowdonia National Park Authority [2022] 1 WLR 5077 (“Hillside Parks”).
10. It is generally accepted that a planning permission has two elements: a description of what development or activities are allowed by the permission (i.e. what can be done); and conditions, which set out constraints to the way in which that permission can be carried out (i.e. what cannot be done).
11. There is an expectation that a permission should be complete, clear and unambiguous in its own right and “should be ascertainable from the document itself, other public documents to which it refers such as the planning application and plans and drawings submitted with the application, and physical inspection of the land to which it relates.” (Hillside Parks). This means that any restrictions on the implementation of the permission should be set out in carefully worded conditions. This is principally because planning permission goes with the land and hence may be implemented by parties who did not seek or who are unaware of the planning background to a proposal.
12. The appellant’s legal opinion references the sequential approach for establishing the scope of a planning permission as set out in R v Ashford Borough Council, Ex p Shepway District Council [1999] PLCR 12. These steps are set out in full in the legal opinion, but I have summarised what I consider the key points here.
13. Generally, regard may only be had to the planning permission itself, where this is clear, unambiguous and valid on its face. This includes consideration of any conditions and the stated reasons for these.
14. Reference to the application may be appropriate if it is incorporated as part of the permission. The wording should inform a ‘reasonable reader’ that the application forms part of the permission. For example, the development is to be undertaken “in accordance with” the application or specified plans.
15. Reference to supporting documents may be required where there is ambiguity in the wording of the permission. This particular circumstance is provided for by Article 23 (6) of the Planning and Building (Jersey) Law 2002: “If planning permission is granted for the erecting of a building, the permission may specify the purpose for which the building may be used but if no purpose is specified the permission shall be construed as including permission to use the building for the purpose for which it is designed.”
16. In determining whether wording is ambiguous, consideration should be given to what a reasonable reader would understand when reading the planning permission as a whole, having regard to any documents that are incorporated

into the permission. The UK courts have generally taken the approach that where there is any ambiguity then the approach is to find the “natural and ordinary meaning” of the words included in the description (Trump International Golf Club v Scottish Ministers [2015] UKSC 74).

17. A cautious approach should be taken when referring to documents not included as part of the permission (‘extrinsic’ material) to resolve an ambiguity, particularly if these documents are not in the public domain.
18. Four permissions have been granted for the appeal site:
 - P/2008/0890 “Construct shed and 2 No. polytunnels. AMEDED [stet] PLANS: Amended layout” Granted 31 October 2008.
 - P/2012/0215 “Change of use from a polytunnel to a hardstanding area. Material alteration to storage shed” Granted 17 May 2012.
 - P/2016/1008 “Construct extension to North elevation of storage shed” Granted 21 September 2016.
 - RP/2017/1598 “REVISED PLANS to P/2016/1008 (Construct extension to North elevation of storage shed): Install cladding to West and North elevations of the extension.” Granted 2 January 2018.
19. For ease, I refer to each permission by the year of application.
20. There is no dispute between parties that these permissions (except the 2016 permission) were implemented. The appellant was unable to confirm whether the 2016 permission was implemented. However, the later, 2017 permission is labelled a ‘revised permission’, the supporting plans refer to “existing lean-to shed”, and it is this shed that the cladding sought by the 2017 permission is to be applied to. This suggests that the 2016 permission was implemented.
21. None of these permissions refers to any of the Use Classes established in The Planning and Building (General Development) Order 2011.
22. Taking each permission in turn, the 2008 permission is titled “Planning Permit”. It includes a description of the works (see above) and states that permission is “Subject to compliance with the following conditions and approved plan(s):”. In addition to two standard conditions, five specific conditions are listed together with the reasons for these:
 - “1. In the event that the polytunnels hereby approved falls into long-term disuse or disrepair they shall be removed from the site and the land restored to agricultural use.
 2. No outside storage or display of materials, waste, machinery or vehicles shall take place on the site, unless otherwise agreed in writing with the Minister for Planning and Environment.
 3. There shall be no retailing from any part of the premises and site to which this permit relates.

4. Except where they are required to be removed in order to provide the appropriate visibility lines, all existing trees and shrubs shall be retained.
5. A landscaping scheme for the western and southern boundaries shall be submitted within two months of the permission hereby granted for the agreement of the Minister for Planning & Environment. The landscaping shall be undertaken at the first available planting season following the completion of the works.”

Reasons:

- “1. These structures have been permitted because of a proven agricultural need. In the event of long-term disuse or disrepair the Minister for Planning and Environment will seek to ensure that the rural character of the area is protected by requiring these structures to be removed.
 2. To control the use of open land within the site in order to protect the amenities of the surrounding area.
 3. The Minister for Planning and Environment considers that the introduction of such a use in this location will be damaging to the character of the area through the increase in vehicular activity generated, and would not comply with the minister’s retailing policies.
 4. These features are considered to make an important contribution to the character of the area and for that reason the Minister for Planning and Environment wants to retain control over their removal or replacement.
 5. In order to maintain the rural character of the area.”
23. Five plans are listed under a heading “For Your Information”. These comprise a location plan, proposed sections, proposed site plan, proposed barn and proposal statement. As the permission states that permission is subject to compliance with these plans, I conclude they form part of the permission.
 24. The 2008 permission describes a ‘shed’ and ‘polytunnels’ but there is no reference (either in the description or conditions) to any limitation on the use of the shed for agricultural or horticultural use. Agriculture is referenced only in Condition 1, which requires for removal of the polytunnels and reversion to agriculture, should they fall into disrepair or disuse. The reason for this condition acknowledges that the polytunnels have been permitted because of a proven agricultural need. The condition does not place any limitation on the use of the polytunnel for agricultural or horticultural use. However, I consider that agriculture/horticulture is implicit from the term ‘polytunnel’. The proposed use of these polytunnels for growing plants would be obvious from the appellant’s supporting (see below).
 25. The accompanying plans refer to a ‘shed’ or ‘barn’ and ‘polytunnels’. These make no reference to the shed being for agricultural or horticultural purposes.
 26. The applicant’s supporting statement refers to the applicant’s business, “which includes landscaping, paving, driveways, hedgecutting and regular

garden contracts.” It refers to it being beneficial if the business were able to grow and supply plants. In relation to the proposal, it states “We have a current location sited to the west of our premises which could be transformed to allow polytunnels and a small housing for equipment etc to be built.”

27. Moving to the 2012 permit, this grants permission for “Change of use from a polytunnel to a hardstanding area. Material alteration to storage shed.” Permission is granted subject to compliance with a single standard condition and the approved plans. Four plans are listed: location plan, proposed site plan, elevation and roof plan and site photographs. The main structure is described variously as a ‘shed’, ‘storage shed’ or barn in the description and on the approved plans. Neither the permit or the approved plans suggest that these structures are for agricultural/ horticultural use only.
28. The 2016 permission is contained on a Decision Notice. This grants permission for “Construct extension to North elevation of storage shed”. This use was limited by a single condition: “No outside storage or display of materials, waste, machinery or vehicles shall take place on the site other than under the proposed open lean-to-shed, unless otherwise agreed in writing with the Minister for Planning and Environment.” Four approved plans are incorporated into the permission: location plan, proposed site plan 03-P1, Proposed Elevations 04-P1, proposed roof plan and section 05-P1. Again, there is no qualification on the use of the structures either within the description, conditions or the approved plans. The proposed extension is described as a “lean-to storage area” on approved plans 03-P1, 04-P1 and 05-P1.
29. The most recent permission (2017) involved revisions to the 2016 permission. The approved plans refer to an “existing lean-to shed” and no additional conditions were applied
30. I find that these permissions can be understood ‘on their face’ by reference to the description, conditions, and the approved plans, which are incorporated into the permission. This is based on a normal understanding of the meaning of ‘shed’ and ‘storage shed’.
31. The Department suggests that the permission should be interpreted by reference to the original application. However, I am not persuaded that would be consistent with the approach outlined by the courts, as set out above. Nor would it be necessary in line with Article 23 (6) of the Planning and Building (Jersey) Law 2002. The permission does not make any explicit reference to or incorporate the application form or the Officer’s Report. There is no ambiguity in the description of the proposed development - it can readily be identified as permission for a shed and polytunnels - hence there would be no need for a reasonable reader to look further beyond the permission to understand its meaning. ‘Shed’ is a generic term, whose meaning is widely understood. There is nothing to suggest that it should be interpreted by a reasonable reader other than in the usual way, as a structure designed for the storage of items, for use as a workshop or shelter of animals. A ‘shed’ can be used for a broad range of uses, including, but not exclusively for agriculture or horticulture.

32. In summary, I conclude that the permissions allow for storage use within a shed and lean-to. I can see no restriction that the shed and lean-to should be used only for agriculture and/or horticulture. Storage use outside the shed is prohibited by Condition 2 of the 2008 permission. In addition, the supporting statement (incorporated as part of the permission) indicates that the normal activities on the site are related to the applicant's business "which includes landscaping, paving, driveways, hedgecutting and regular garden contracts."
33. The site is currently occupied by 4group a vehicle, tool, plant and equipment hire business. The appellant has provided a statement of the activities carried out at the site. In summary, the site is used "entirely for storage to support our main depot..." The statement notes:
- "Outside on the hardstanding and in the lean-to, we mostly store welfare units, portaloos, compressors, generators, water bowsers, tower lights, traffic lights and scissor lifts. This outside storage takes place in the approved locations.
- Inside in the main shed we mainly store electric scissor lifts, forklifts, handwash stations and welfare consumables."
34. The range of items listed above accords with my observations. I saw various items including vehicles, portaloos and generators located outside the shed and lean-to on areas of grass and in areas shown on plans as car parking.
35. As noted above, Condition 2 of the 2008 permission prohibits external storage of items, unless otherwise agreed in writing with the Minister for Planning and Environment." I have not been made aware that any agreements have been made with the Minister.
36. A similar condition was also appended to the 2016 permission although no such condition was appended to the 2017 revised permission. Even if the 2016 permission was not implemented, I am not persuaded by the appellant's view that granting the 2017 permission removed this restriction on external storage. External storage is not allowed under the 2008 permission. I can see nothing in the subsequent permissions that would alter or negate this requirement. There is nothing in the 2017 permission that would 'over-ride' or replace the 2008 permission or prevent compliance with the condition relating to external storage. Nor does the 2017 permission provide consent for external storage of items.
37. The 2008 permission identifies areas for car parking - but there is no indication that items other than cars/vans would be permitted there. I have not been provided with any details of written agreements with the Minister allowing external storage. I therefore conclude that storage of items outside the shed is not consented by any of the permissions that have been issued for the site. That is, there are no approved locations for these items. Therefore,

placing of portaloos, generators etc. on the grass and car parking areas represents a breach of the approved permissions.

38. Article 5 of the Planning and Building (Jersey) Law 2002 defines development as:
- to undertake a building, engineering, mining or other operation in, on, over or under the land;
 - to make a material change in the use of the land or a building on the land.
39. This definition provides for both operational development and for a change in use. Planning permission often provides for both. For example, permission for construction of a building may bring with it permission to occupy that building as a residential dwelling. However, that use is not without limitations. Should there be a change in the way in which that dwelling is occupied e.g. through letting out rooms, it may be necessary to seek permission for a change in use. Defining a change in use is a matter of fact and degree, unique to each circumstance. A key question is whether the character of the site has changed.
40. I have concluded that the shed and lean-to are authorised for storage, but that use does not extend to the external areas. Guidance on the permitted use of the external areas can be gained by reference to the supporting statement incorporated as part of the 2008 permission, which described the nature of the business conducted from the site (see paragraph 25).
41. The number, nature and range of equipment stored on site are not items that would commonly be associated with a landscape and gardening business. The items identified by the appellant as being stored onsite are not intended for personal use by the occupier but form part of a commercial hire business. Even if customers do not visit the site directly, I consider that these activities introduce a retail element through responding to customer demand, necessitating movement of items, some of which are sizeable, on and off the site and hence generating an increase in vehicle activity. Condition 3 of the 2008 permission prohibited retailing from the site because it would result in an increase in vehicle activity.
42. Other activities associated with a commercial hire business, such as testing of machinery, also contribute to a change in character of use of the site. The appellant states that no cleaning of vehicles or equipment or pumping out of waste takes place on the site, but this is disputed by a neighbour.
43. In summary, the activities carried out at the site have changed. Activities associated with a landscape and gardening business including storage shed have been replaced by a commercial hire business. This has resulted in a change in the character of the use of the site, sufficient to be considered a material change in use, which has occurred without the benefit of planning consent.

44. I conclude that the appeal under ground (b) should fail on the basis that (i) the placement/ storage of items outside the shed and lean-to is not permitted by the existing planning permissions; and (ii) there has been a material change in use of the site from landscape and gardening including storage shed to commercial hire, without the benefit of planning consent.

Ground (e) The site is in use as per the authorised permitted use and no breach of development controls has occurred

45. For the reasons set out above, I have concluded that the site is not being used as per the authorised permitted use. Hence the appeal fails on ground (e).

Recommendations

46. 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 determination of the appeal. On 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.

47. I have concluded above that the use of the shed is not restricted to agriculture/ horticulture, but that the site is not being used in accordance with the permitted uses. In addition, the notice does not reference the correct company name for the commercial hire company. Accordingly, I recommend that the Minister should dismiss the appeal and vary the enforcement notice as follows:

48. Replace paragraph 3 ('The Matters which appear to constitute the Breach of Development Controls') with:

"Without Planning Permission development has occurred at Field MN770, La Rue du Clos Fallu, St Martin, namely:

3.1 The site of Field MN770, Le Clos du Fallu, St Martin, has materially changed from its use as a landscape and gardening business including storage shed to general commercial use. Specifically for the storing and hiring to the public of plant and machinery by its tenant 4group. The change of use amounts to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and has not been granted permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.

49. Replace paragraph 4 ('Reasons for Issuing this Notice:') with:

"4.1 It appears that the breaches of Development Controls have occurred within the last 8 years.

- 4.2 The grant of planning permission under Permit P/2008/0890 was to 'Construct shed and 2 No. polytunnels. AMEDED [sic] PLANS: Amended layout'. Condition 2 requires 'No outside storage or display of materials, waste, machinery or vehicles shall take place on the site, unless otherwise agreed in writing with the Minister for Planning and Environment.'

Items connected with a commercial hire business have been introduced at various locations outside the shed and lean-to in areas although no agreement with the Minister has been made for external storage.

- 4.3 The use of the land as a depot for a plant and equipment hire business introduces a commercial retail element and represents a change in use from the landscape, gardening and storage shed use."

Sue Bell
Inspector 14/02/2024