

PLANNING AND BUILDING (JERSEY) LAW 2002

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:

Martin Le Viellez

Enforcement notice reference number and date of issue:

ENF/2022/00013 issued on 22 June 2023.

The land to which the enforcement notice relates:

Land to the East of Eastern Joinery Works, (UPRN 69142999) Cleveland, La Rue de Samares, St. Clement JE2 6LZ shown edged red on the Location Map attached to the notice.

The alleged breaches of development controls:

- 1 The construction of a marquee measuring 261m².
- 2 The construction of a wooden store measuring 27m².

The steps required by the enforcement notice:

- 1 The removal of the marquee from the land.
- 2 The removal of the wooden store from the land.

Time for compliance with the requirements of the notice:

Steps 1 and 2: "6 months from the date of service of this notice."

Ground of appeal:

The appeal has been brought only on ground (g) specified in Article 109(2), namely "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".

Procedural matters

1. The appeal has been dealt with by way of written representations with the agreement of the parties.

2. 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.
3. When an appeal is brought against an enforcement notice, the notice by virtue of Article 117(3) ceases to have effect until the appeal has been determined. 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(3). 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. In this instance, the compliance period allowed by the notice has already expired and a compliance period of not less than 6 months starting on the date of the Minister's determination of the appeal should be allowed.
4. There has been no appeal on ground (h) ("that in all the circumstances planning ... permission should be granted in respect of the development in question") and there is no planning application before the Minister in respect of this development.
5. On 17 April 2023, planning permission P/2022/0722 was granted for development on land adjoining Cleveland as follows: "Construct single storey extension to West elevation. Demolish existing joinery workshops and ancillary structures. Construct two 3no. bedroom dwellings to East of site". This development includes the removal of the marquee and the wooden store to which the notice relates. A third-party appeal against this permission was dismissed by the Minister on 2 October 2023. The permission is subject to the standard condition that the development shall commence within three years of the Minister's decision. That period is not relevant to the compliance period that should be allowed by the enforcement notice, since there is no obligation to implement the permission and it is possible that the development authorised by the permission may never be commenced at all.

The appellant's representations

6. The appellant states that the marquee and the wooden store are integral to the joinery business. He accepts that they need to be removed, but since Storm Ciaran the business has been very active in making properties secure. He maintains that the six-month compliance period is a very short time in which to relocate; he has requested an extension of the period to eighteen months to allow sufficient time to find suitable alternative premises for the business.

Representations from the Infrastructure and Environment Department

7. The Department maintain that the marquee and the wooden store are detrimental to the character and appearance of this rural area and the Green Zone. They consider that the compliance period should remain at six months.

Inspector's assessments and conclusion

8. It is not disputed that the marquee and the wooden store have an adverse effect on the character and appearance of their surroundings. The appellant

has not submitted any evidence at all of any efforts being made to relocate the business or about the availability of alternative premises for the business. In the circumstances, I consider that the compliance period of six months imposed by the notice does not fall short of the time which should reasonably be allowed.

Inspector's recommendations

9. I recommend that the appeal is allowed on ground (g) to the extent that the enforcement notice ENF/2022/00013 issued on 22 June 2023 is varied by replacing paragraph 6 (Periods for Compliance) by:

"6 Periods for Compliance

Steps 1 and 2 6 months from the date of the determination of the appeal against this notice."

10. In all other respects, I recommend that the appeal is dismissed and that the enforcement notice ENF/2022/00013 issued on 22 June 2023 is upheld as varied.

Dated 26 January 2024

D.A.Hainsworth

Inspector