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

Appeal under Article 109 against an Enforcement Notice

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr D. Oliveira

Site address: *Les Perritons*, La Rue du Saut Falluet, St Peter

Enforcement Notice reference number: ENF/2024/00007

Enforcement Notice issue date: 7 March 2024

Alleged development: 'Without the necessary planning permission, a material change of use of a structure into a residential dwelling'

Procedure: Hearing held on 25 June 2024

Inspector's site visit: 24 June 2024

Inspector's report date: 9 August 2024

Introduction and background

1. This appeal is made by Mr D. Oliveira against an Enforcement Notice (EN) issued on 7 March 2024 by the department for Infrastructure and the Environment (the planning authority). The EN relates to the alleged unauthorised conversion of part of a stable block into a residential dwelling.

The appeal site and its surroundings

2. The appeal building comprises a single storey 'U' shaped structure. It has pitched slated roofs and its walls are faced with green painted timber cladding. It is located a short distance to the east of Jersey Airport and on the north side of La Rue du Saut Falluet, a narrow country lane, from where there is a driveway access to the site. There are some trees and vegetation alongside the road frontage of the site, but the building is quite visible from the highway. The site is located outside the Built-up Area and within the Green Zone.

Planning history

3. In 2001, planning permission[1] was granted for the construction of the building. The approved plan[2] detailed a building comprising a tack room, 3 stable units, a hay barn and a tractor shed, with a central concrete hardstanding yard. A range of planning conditions were imposed, one of

[1] P/2001/0680

[2] P/2001/0680 – drawing no. 1-1546 dated February 2001

which limited the use of the stables to the then applicants, and precluded commercial livery usage 'to retain control over the nature and intensity of use of the site, in the interests of the character of the area'. A subsequent permission[3] relaxed this restriction in respect of the 3 stables, allowing them to be used by third parties, but maintained the originally approved uses for the hay barn, tack room, and tractor store.

4. There have been a number of applications seeking permission for residential development at the site. In 2003, an application[4] sought permission to construct staff accommodation to serve the stables/livery. In 2007, an application[5] was lodged seeking to replace the stable block with a dwelling. In 2009, a further application[6] sought permission to convert the block to a dwelling. All of these residential development proposals were refused, primarily due to policy conflicts with the then Island Plan (2002) and the 'countryside zone' location of the site.

5. I am advised that the appellant acquired the building, and adjacent land (mainly to the north of the building), in 2021. The sale documents, submitted in evidence by the planning authority, relate to the sale of 'Les Perrotins[7] Stables' and make no reference to any residential building or use on the site. The purchase price for the land and building was £380,000.

6. Following his purchase, the appellant converted part of the building to create a residential dwelling, although he maintains that bathroom and kitchen facilities already existed when he bought the property. I understand that the conversion works occurred sometime in 2022, and the planning authority's compliance team inspected the site in February 2023.

7. When I visited the site, I observed a fitted kitchen, a fitted bathroom, 2 bedrooms (one currently with no window) and a living area. The external walls appear to be the original single skin blockwork, with plywood panelling applied internally; there is no wall insulation.

8. The remainder of the building, comprising its southern leg (shown as a tack room and 2 stables on the originally approved plans), had padlocked stable doors when I visited. The appellant advised that these spaces were currently in use for domestic storage of furniture and related items.

9. The concrete stable yard, enclosed on 3 sides by the building and on its fourth side by a low fence with a gate, now appears to be in use as an amenity space to serve the converted dwelling. I observed some patio type outdoor furniture and pot plants. On the eastern side of the building there are some outshoot structures related to heating, water and electrics. The appellant also showed me the foul drainage arrangements on this side of the building, and the piped route down the bank to its connection with the sewer under the road.

[3] P/2002/1688
[4] P/20030011
[5] P/2007/2395
[6] P/2009/0913
[7] Les Perrotins with an 'o' is the spelling used in the sale document, and differs from that used elsewhere.

10. A retrospective planning application[8] seeking permission to retain the 2-bedroom dwelling was refused on 28 June 2023, and the 4 reasons are set out below:

1. The application site is located within the Green Zone. Under the provisions of the 2022 Bridging Island Plan, this zone enjoys a high level of protection from new development, including protection for agricultural land (on which the existing structure is located). This application for new residential development, within this highly-protected zone, fails to satisfy the requirements of Policies SP2, SP5, PL5, ERE1, ERE4, and H9 of the adopted 2022 Bridging Island Plan, and is therefore considered to be an inappropriate and unacceptable form of development for the site.

2. By virtue of its small size, the new dwelling fails to comply with the adopted Supplementary Planning Guidance Policy Note 6: A Minimum Specification for New Housing Developments, and in turn Policy H2 of the adopted 2022 Bridging Island Plan.

3. The application fails to demonstrate how it would protect or improve the quality, character and biodiversity of this countryside location. Accordingly, the application fails to satisfy the requirements of Policies SP5, and NE1 of the adopted 2022 Bridging Island Plan.

4. The application fails to provide sufficient information with regard to the means of sewage disposal, meaning that a proper assessment of the proposal is not possible. Accordingly, the application fails to satisfy the requirements of Policy WER7 of the adopted 2022 Bridging Island Plan.

11. No appeal was lodged against this refusal decision, which was made under officers' delegated powers.

The Enforcement Notice

12. The EN was issued on 7 March 2024. The matters alleged in the EN were specified, in its section 3, as follows: *Without planning permission, the material change of use of a structure into a residential dwelling. The Breach of Development Controls has been marked on the attached Enforcement Notice Location Plan, indicated by an area edged in RED and annotated 3.1.*

The red line follows the outline of the entire building and not just the area where the living accommodation has been created.

13. Section 4 of the EN sets out the reasons for issuing the EN, which include the statements:

4.1 It appears that the Breach of Development Controls has occurred within the last 8 years and that it is expedient to take action to remedy the Breach.

4.2 The field stable is situated in the Green Zone. Under the provisions of the 2022 Bridging Island Plan, this zone enjoys a high level of

[8] P/2023/0502

protection from new development, including protection for agricultural land (on which the existing structure is located). This application for new residential development and residential paraphernalia, within this highly protected zone, fails to satisfy the requirements of Policies SP2, SP5, PL5, ERE1, ERE4, and H9 of the adopted 2022 Bridging Island Plan, and is therefore considered to be an inappropriate and unacceptable form of development for the site.

4.3 By virtue of its small size, the new dwelling fails to comply with the adopted Supplementary Planning Guidance Policy Residential Space Standards October 2023. A Minimum Specification for New Housing Developments, and in turn Policy H2 of the adopted Bridging Island Plan 2022.

4.4 The planning authority has received no information to demonstrate that the development would protect or improve the quality, character, and biodiversity of this countryside location, contrary to the requirements of Policies SP5, and NE1 of the adopted Bridging Island Plan 2022.

4.5 The planning authority has received no information that would allow the assessment of drainage and sewage disposal. In the absence of such information it is unable to determine if the development complies with the requirements of Policy WER7 of the adopted Bridging Island Plan 2022

14. Section 5 of the EN sets out 3 steps required to rectify the breach of planning control, which are stated as:

5.1 Cease the use of the building for residential purposes.

5.2 Remove all partition walls, partition doors, windows, blinds, furniture, residential fixtures, residential fittings, and associated household items from the property, as shown in Les Perritons Proposed floor plan revision 1 dated 20.04.2023, Drawing 6. Proposed Elevations (North & East) revision 1 dated 20.04.2023. These include basins, toilets, showers and shower screening, baths, bathroom cabinets, wardrobes, kitchen surfaces, kitchen cupboards, kitchen appliances and electricals, beds, sofa, televisions, heaters, wooden flooring, garden furniture and perimeter fencing.

5.3 Remove all resulting debris and materials from the land.

15. Section 6 of the EN states the period for compliance, which is 6 calendar months.

Grounds of appeal and related procedural matters

16. There is no dispute that the development alleged in the EN has taken place. The appeal is made under grounds (c) and (g) as specified in Article 109(2), namely:

    (c) that at the date of service of the notice no or no expedient action could be taken to remedy the alleged breach.

    (g) …. 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.

17. 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 the alleged breach. However, as noted above, it is a matter of record that a retrospective application was refused in June 2023. The appellant has also indicated that, if the Minister were minded to allow the development, he would be willing to make a further planning application to regularise the situation, if so invited. Whilst I note the appellant's indication in this regard, the absence of a ground (h) appeal means that it is a matter outside the scope of this current appeal, which can only be determined on the pleaded grounds, i.e., (c) and (g).

18. Central to the appellant's case are personal circumstances related to individuals that currently reside at the building. The appellant's agent sought to add some letters to his Statement of Case on a 'confidential' basis. These submissions included sensitive information about other parties, notably in terms of health matters. At the Hearing, I explained to the parties that a Planning Inspector cannot consider confidential evidence and, that, should the appellant wish to formally submit this material, the written consent of the data subjects would be needed. Following the Hearing, the consent of the data subjects was provided, and the submissions were then released to the planning authority, and I allowed it 7 days to submit any comments.

19. The appellant's agent also sought to submit further evidence after the Hearing at closed. I declined to accept this for reasons of procedural fairness.

Summary of case for the appellant

20. The appellant's Statement of Case has been prepared by his planning consultant. It is 15 pages, and includes 7 appended documents. The stated grounds of appeal are:

    The Appellant advises that he requires the accommodation because of very particular family medical and health circumstances and requirements. The Appellant is very concerned that his very particular family circumstances cannot be met in accommodation that is either affordable or able to be provided by an island social housing provider.

The Appellant advises that he is the only bread winner for his family and requires assistance from the land-use decision making process to be able to provide accommodation for his family to meet their needs.

If the decision maker decides that the appeal is unsuccessful then the Appellant advises that the timescales required for vacating the site are unreasonable to enable him to find alternative accommodation to meet his family's needs. This is because there is a shortage of affordable housing in Jersey and there is no certainty that an alternative site could be found in the timescales required by the notice.

The Appellant advises that he would like the opportunity to make a further planning application for the accommodation subject to the outcome of this appeal.

21. The Statement of Case confirms that the building has been converted into habitable accommodation that is used to house the appellant and his family, and that he pays residential rates for the property to the Parish of St Peter. It records the planning history of the site, including the refused applications for residential development proposals.

22. Section 7 of the Statement addresses 'housing in Jersey' and explains that the appellant has 'entitled' housing status and that his family's complex needs require at least 2 bedrooms and a quiet location. It explains that the appellant earns too much to qualify for social rented housing assistance and will therefore have to rely on the private market to house his family. It states that he is unable to afford to purchase an alternative comparable property and that an equivalent rental property, if one were to be available, would cost between £2,000 and £3,000 per calendar month. It further states that if he is forced to vacate *Les Perritons*, he may be forced to live in accommodation that is unsuitable for his family; consider living separately from his family, and asking the Government to provide care; or to leave Jersey entirely.

Summary of the planning authority's case

23. The planning authority's case is, in essence, set out in section 4 of the EN, along with a short Response document which includes 4 appendices. It rebuts the ground (c) case, stating that personal circumstances should not be a determinative factor in planning decision making, and it makes reference to Jersey caselaw[9] in this regard. In response to the ground (g) appeal, it submits that the EN's 6 calendar months compliance period is considered reasonable to vacate the residential occupancy of the building and return it to its lawful condition and use. It says that the appellant could rent a home and that the appellant has been advised of assistance that may be available.

24. The Response also sets out the planning authority's view that the June 2023 determination of the retrospective application P/2023/0502 demonstrates that a full policy assessment of the planning merits of the development has been undertaken. The appendices to the Response include a deeds of sale

[9] Le Maistre v. Planning and Environment Committee [2001 JLR 452]

document, and a set of photographs showing the exterior and interior of the building, including images of the converted kitchen and bedroom accommodation.

Inspector's assessment

25. There is no dispute that the development alleged in the EN has been carried out and that the residential accommodation created by converting part of the stable building is unauthorised. It is also a matter of fact that there has been a history of refused applications for residential development at the site, prior to the appellant's purchase of the property. It is further a matter of record that an application seeking retrospective approval for the unauthorised development was refused on multiple grounds, including policy conflicts arising from its Green Zone location, substandard accommodation, and other matters.

26. I now address the specific grounds of appeal in turn.

Ground (c) that at the date of service of the notice no or no expedient action could be taken to remedy the alleged breach

27. The Law on planning enforcement in Jersey has close parallels with English planning law, particularly in terms of the construction of the legal grounds of appeal against an EN. The close equivalent to Jersey's ground (c) in English planning law[10] is almost exclusively confined to claims that the alleged unauthorised development has immunity from enforcement proceedings, typically because it has persisted for longer than the specified immunity period.

28. In Jersey, the immunity period is 8 years. It is quite apparent that the development specified in the EN has occurred within the last 8 years and, indeed, there is no dispute that the conversion occurred around 2022. There is therefore no credible case to claim 'no' action could be taken by the planning authority.

29. However, the framing of article 109(c) differs somewhat from its English counterpart, by including the test of 'expediency' (rather than just whether action could technically be taken). It is on this basis that the appellant contends that, due to his very specific family circumstances and needs, including matters relating to health, and the difficulty of securing alternative suitable accommodation, 'no expedient action' could be taken. In essence, he considers that the EN is asking him to do something that he believes cannot be achieved.

30. I have reviewed carefully the appellant's submissions in this regard and I do not doubt that there will be challenges and difficulties arising from a home move, as would be the case for any family. With regard to the specific personal circumstances concerning his dependents, there is also no doubt that these matters are significant to the individuals and the family, and will require appropriate responses, advice, care, and assistance from support agencies and professionals. However, these are not strictly planning

[10] Ground (d) under Section 174(2) of the Town and Country Planning Act 1990

matters, although I trust that such support will be available, if and as required.

31. There is no convincing evidence before me to demonstrate that the particular personal requirements and circumstances are of such a rarity, and so exceptional, that they could only be met by allowing the unauthorised development to remain, which the planning authority considers to be in breach of numerous planning policies concerning the location of, and standards and requirements for, new housing development. Notwithstanding the significant planning policy conflicts, I am also mindful that the converted accommodation is of a makeshift construction, which does not meet Building byelaw standards and, in my view, this is less than ideal for those living with health conditions.

32. The main requirements for the family appear to be a single storey dwelling, with at least 2 bedrooms, and in a quiet location. None of these factors appear to be particularly novel or unique requirements, that would be unattainable in another location in Jersey. I have taken account of the evidence on the high cost of housing in Jersey, both to purchase and through the rental market, but these are Island wide issues affecting many families and individuals, and that will include Islanders with their own personal circumstances and challenges, whether that be in relation to health and medical matters, or related to employment, income and affordability issues.

33. I have also taken into account the fact that the appellant is in full time employment and earns a salary which is above the threshold to qualify for social housing in Jersey. I have further noted that he has acquired the appeal site at a cost of £380,000, which remains a saleable asset that could be used to support his family's accommodation requirements. At the Hearing, it was confirmed that the asset was owned outright by the appellant, with no outstanding mortgage or loan.

34. The planning authority has drawn attention to case law concerning the relevance of personal circumstances in planning decision making. A 2001 Royal Court judgment[11] ruled that '*The personal circumstances of an applicant for development permission should not be ignored but they should rarely carry much weight and never be determinative of an application.'*

35. Whilst planning policies have moved on and changed in the intervening period, there is nothing to suggest a departure from the Royal Court view on this matter, which is not dissimilar to UK caselaw in this regard. In my assessment, I have followed the Royal Court's approach. Whilst I have considered the personal circumstances, and indeed the human rights implications arising from the EN, and not ignored them, I find that they do not cross the rarity threshold that would carry 'much weight'. They do not therefore outweigh, or cancel out, the expediency of taking enforcement action for the clearly stated planning policy conflicts set out in the EN.

36. I therefore assess that the ground (c) appeal should fail.

[11] Paragraph 13 of the judgement in Le Maistre v. Planning and Environment Committee [2001 JLR 452]

Ground (g) 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.

37. The appellant has not appealed under ground (f) and, by implication, does not challenge the 3 steps set out in section 5 of the EN required to remedy the breach as being excessive. The 3 steps are in summary terms: i) to cease the residential use, ii) undo the conversion works, and iii) remove all resulting debris and materials from the land. The EN sets the time for compliance as six calendar months for all 3 steps. Had this appeal not been lodged, compliance would have been required by 7 September 2024.

38. The planning authority considers that 6 months is a reasonable period to fulfil the 3 compliance steps, but the appellant, citing the family's circumstances and the difficulties in securing alternative accommodation, contends that a longer period is required.

39. At the Hearing, I asked the appellant and his agent what extended time period they would seek, to run from the date of the Minister's decision, in the event that the ground (c) appeal was dismissed. They did not wish to suggest a specific period and his agent suggested that the compliance period ought to be determined by the expert medical advice in respect of one of the occupants. However, it is a specific requirement under Article 40(3)(c) that the EN specifies the 'period' within which compliance is required, and I do not see how that could be left open ended, or effectively delegated to a health professional outside the operation of the planning legislative system. The Law requires a specified time period and calendar date for compliance.

40. There are no hard and fast rules, or published guidance, concerning EN compliance periods. It is a matter of judgement for the decision maker and the central question is what is 'reasonable' in balancing the public interest in the EN being complied with expeditiously, against the private interests bound up in the development subject to the EN.

41. I am mindful here that some may have little sympathy for the appellant and consider that his predicament is entirely of his own making, having undertaken a quite blatant breach of planning control, at odds with policies designed to control development in the public interest of all Islanders. Others might also consider the appeal to be a delaying tactic, and that the period since the service of the EN should be taken into account. However, the circumstances that led up to the appeal are not a direct consideration under a ground (g) appeal, and the exercise of an appeal is a legal right. The appellant is also entitled to assume potential success on the ground (c) appeal. These matters should be factored in to any consideration of the EN compliance period.

42. Having considered these matters carefully, I have reached the view that 6 months is too short a timescale to be reasonable to fulfil all 3 steps stated in the EN. I have been mindful here that, whilst the physical building works to 'undo' the conversion and dispose of arisings do not amount to a major

building works exercise, and could be completed in a matter of weeks, that step could only be completed once the family has relocated.

43. Whilst I am unconvinced that suitable alternative accommodation could not be found, I do recognise that the process of searching, securing and contracting new accommodation (whether by sale or entering a tenancy), can take some months to complete, and it is complicated to a degree by the appellant's family personal circumstances. Should the appellant elect to sell the appeal property and land, to generate funds to assist in providing new accommodation for the family, that will also take time in terms of marketing and the completion of any transaction.

44. However, it is important that the compliance period is not unduly long, and anything beyond 12 months I would regard as quite exceptional, as this could serve to undermine the expediency of issuing the EN in the first place, for the reasons it has clearly stated.

45. In my overall assessment, a 9 calendar month period for compliance with the cessation of the residential use (EN step 5.1), with a further 2 months for the removal of the conversion works and arisings (EN steps 5.2 and 5.3), from the date of the Minister's decision (should he dismiss the appeal), strikes the right balance of all of the relevant considerations, and would be reasonable. I therefore consider that the ground (g) appeal should succeed in part, but not to the open-ended extent sought by the appellant.

Other matters

46. The issue of foul drainage is a matter of dispute between the parties. The appellant claims that the foul drainage connection has been in place for some years and my observations on the ground appears to confirm this. However, the planning authority and drainage officers maintain that a connection has not been approved and it was 'illegal'. However, at the Hearing Mr Davies for the planning authority did accept that foul drainage was 'likely' to be a technically resolvable issue.

47. The appellant also advised that the previous occupancy of the site had resulted in frequent parties associated with motorcycle enthusiasts and that his use would not create the same issues. Whilst I have noted this submission, it would not in my view outweigh the expediency of serving the EN for the policy conflicts stated, most notably concerning the location of the building in the Green Zone.

48. It was noted at the Hearing that the outshoot structures on the east of the building, some of which are recent and related to the residential use, stray outside the red line shown on the EN. The planning authority accepted that the removal of these could not be required by the current EN.

Recommendations

49. For the reasons stated above, my formal recommendations are:

A. That the Minister dismisses the ground (c) appeal.

B. That the Minister allows the ground (g) appeal in part and varies the compliance period stated in section 6 of the Enforcement Notice reference ENF/2024/00007 to allow:

Nine (9) months from [the date of the Minister's decision] to cease the use of the building for residential purposes (step 5.1).

Eleven (11) months from [the date of the Minister's decision] to remove the conversion building works and arisings (steps 5.2 and 5.3).

C. That the Enforcement Notice reference ENF/2024/00007, as varied by recommendation B, be upheld.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI