

PLANNING AND BUILDING (JERSEY) LAW 2002

Appeals under Article 109 against enforcement notices 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

Notice A

Appellants:

1. Jean Augre
2. Rico Contractors Ltd.
3. Lino Batista and Flavia Camara

Enforcement notice reference number and date of issue:

ENF/2024/00005 issued on 27 June 2024

The land to which the enforcement notice relates:

Part of Field No. L545, Le Chemin des Montagnes, St. Lawrence

The alleged breaches of development controls:

- "3.1 Without the necessary planning permission, the laying of hardstanding on the land.
- 3.2 Without the necessary planning permission making a material change of use of the land for vehicular access related to, domestic, commercial and agricultural mixed uses."

The steps required by the enforcement notice:

- "5.1 Cease the use of the land for access for domestic, commercial, non-agricultural vehicles.
- 5.2 Break up the hardstanding and remove all resulting debris from the land."

Time for compliance with the notice:

Two months.

Grounds of appeal:

The appeal by Jean Augre is proceeding on grounds (a) and (e) in Article 109(2).
The appeal by Rico Contractors Ltd. is proceeding on grounds (a), (d) and (e) in Article 109(2).
The appeals by Lino Batista and Flavia Camara are proceeding on grounds (a), (d) and (e) in Article 109(2).

These grounds of appeal are as follows:

- (a) that the matters alleged in the notice are not subject to control by this Law.
- (d) that the person was not the proper person to be served with such a notice.
- (e) that the matters alleged in the notice have not in fact occurred.

Notice B

Appellants:

1. Jean Augre
2. Rico Contractors Ltd.
3. Lino Batista and Flavia Camara

Enforcement notice reference number and date of issue:

ENF/2023/00003/001 issued on 27 June 2024

The land to which the enforcement notice relates:

Part of Field No. L583, Le Chemin des Montagnes, St. Lawrence

The alleged breaches of development controls:

- “3.1 Without the necessary planning permission, the laying of hardstanding on the land.
- 3.2 Without the necessary planning permission making a material change of use of the unauthorised development using the land for vehicular parking
- 3.3 Without the necessary planning permission making a material change of use of the land for vehicular access related to domestic, commercial and agricultural mixed uses.”

The steps required by the enforcement notice:

- “5.1 Cease the use of the land for vehicle parking and removal [*sic*] of all non-agricultural vehicles.
- 5.2 Cease the use of the land for vehicular access related to domestic commercial and agricultural mixed uses.
- 5.3 Break up the hardstanding and remove all resulting debris from the land.”

Time for compliance with the notice:

Two months.

Grounds of appeal:

All three appeals are proceeding on grounds (a), (d) and (e) in Article 109(2), namely:

- (a) that the matters alleged in the notice are not subject to control by this Law.
- (d) that the person was not the proper person to be served with such a notice.
- (e) that the matters alleged in the notice have not in fact occurred.

Notices A and B

Inspector's site visit date:

25 November 2024

Hearing date:

27 November 2024

Introduction

Notices A and B – the lands affected

1. Notice A relates to an L-shaped track that leads from Le Chemin des Montagnes along the whole of the western and southern boundaries of Field L545 to the point where the field meets the north-western corner of Field L583. Notice B relates to a track that leads from this point along the whole of the northern boundary of Field L583.
2. There are no other means of vehicular access to these fields apart from a track running alongside the houses 1 and 2 Les Petites Montagnes, Le Chemin des Montagnes. This is a historical track that leads from the road to the point where the Notice A track meets the Notice B track. It is not wide enough where it passes the houses to be used by the large agricultural vehicles in operation today.

Procedural matters

Notices A and B

3. There have been no appeals under Article 109(2)(h) (that in all the circumstances planning permission should be granted in respect of the alleged development). The planning merits of the alleged developments therefore do not fall to be considered in these appeals and there are no planning applications associated with the appeals.
4. Evidence was given at the hearing by a representative of the Jersey Royal Company who grow potatoes in Fields L545 and L583 and have been using the tracks for vehicular access and parking as and when required since 2016 in connection with this use of these fields. The hearing was told that the fields are two of the finest potato growing fields on the Island. The tracks are used by large agricultural vehicles and by smaller vehicles used by the workforce or required for use by them when at work. It was agreed at the hearing that the notices should not be upheld without being varied to ensure that the continued use of the tracks for agricultural purposes was unaffected.

Grounds of appeal

Notices A and B

Ground (d) (that the person was not the proper person to be served with such a notice)

5. An enforcement notice must be served on (a) the owner of the land, (b) the occupier of the land (if different) and (c) any other person who appears to be causing or responsible for the breach (Article 40(2)).
6. The notices were served on Jean Augre because he is the owner of the lands affected by the notices. They were served on Rico Contractors Ltd. because the company appeared to be using the tracks for vehicular access associated with the company's commercial use of land adjoining Field L583 and for parking on the Notice B track in connection with that use. They were served on Lino Batista and Flavia Camara because they appeared to be using the Notice A track and a small part of the Notice B track as a means of vehicular access to the house which they occupy at 2 Les Petites Montagnes.
7. Those served were therefore all proper persons to be served with the notices. All the appeals on ground (d) should fail.

Ground (e) (that the matters alleged in the notice have not in fact occurred)

8. Ground (e) is concerned with whether the matters alleged have *in fact* occurred, regardless of whether or not they are subject to planning controls. Ground (a) deals with the application of planning controls to the matters found under ground (e) to have occurred.
9. Notices A and B both allege that the tracks are being used for access by domestic, commercial and agricultural vehicles. This is clearly the case. The only other vehicular access to 2 Les Petites Montagnes is the historical track referred to in paragraph 2 above, which is now in regular vehicular use solely between No 2 and the point where the Notice A track meets the Notice B track. Both tracks have been used as a means of vehicular access to Rico Contractor's commercial site, which is the subject of an enforcement notice upheld on appeal (ENF/2024/00003). The notices should both be varied to ensure that they do not preclude the continued agricultural use of the tracks, but the appeals on ground (e) should otherwise fail in these respects.
10. Notice B alleges that the track in Field L583 has been used for vehicle parking. The evidence before me indicates that vehicles that appear to be associated with Rico Contractor's site have been regularly parked on this track and that, from time to time, vehicles have also been parked here that are associated with the agricultural use of the field. Notice B should be varied to make it clear that it does not relate to the latter, but the appeals on ground (e) should otherwise fail in this respect.
11. Notices A and B both allege that there has been a breach of planning controls constituted by "the laying of hardstanding on the land". The appellants

maintain by reference to dictionary definitions that this allegation means that a hard surface has been laid out on the land to facilitate vehicle parking, in other words the laying out of a parking place or parking spaces. As a matter of fact, this has not occurred; the parking referred to in Notice B takes place within the track and not on a hardstanding.

12. The Department state that the allegation "laying of hardstanding" refers to the surfacing of the whole of both tracks. They equate the term "hardstanding" with the term "hard-surfacing". This is not a persuasive argument. Every hardstanding will be hard-surfaced, but hard-surfacing is not a hardstanding unless it is for standing something on, which is not the case here. I note that when the general development order deals with the construction of an agricultural access it uses the term "hard-surfaced". The appeals should succeed on ground (e) in this respect unless the notices can be corrected or varied to give effect to the Department's intentions. For the reasons given in paragraphs 13 and 14 below I have concluded that this should not be done in this instance because it would cause injustice.
13. The tracks together are nearly 0.5km long. They have been rough-surfaced in places, sometimes, as is normal agricultural practice, with small stones taken from the adjoining fields as part of their management and in other places with scraps of construction and demolition material imported from elsewhere, and in some places with a mixture of the two. In other places, the surface of the tracks consists of consolidated earth, which appears to be original. Puddles form in some places during wet weather.
14. An enforcement notice should identify the breach of planning controls clearly and should specify with reasonable certainty what should be done to remedy it. The notices do not do this as far as the surfacing of the tracks and its breaking up and removal are concerned. The allegation is defective, for the reasons given in paragraphs 11 and 12 above. Changing "hardstanding" to "hard-surfacing" would fundamentally extend the reach of the notices. Clarifying which parts of the surfacing are required to be broken up and removed could not be done without considerably more additional evidence and should not be done without assessing the impact that removing the material would have on the fitness of the tracks for continued use by agricultural machinery and associated vehicles.
15. I turn now to assess under ground (a) whether the matters that have occurred are subject to planning controls.

Ground (a) (that the matters alleged in the notice are not subject to control by the Planning and Building (Jersey) Law 2002)

16. Following my conclusions on ground (e), the matters to be considered under ground (a) concern allegation 3.2 (mixed uses) in Notice A and allegations 3.2 (parking) and 3.3 (mixed uses) in Notice B. It is not disputed that these matters, when found to have occurred, require planning permission but the appellants maintain that enforcement action cannot be taken because the breaches of planning control did not take place during the previous 8 years and the service of the notices is therefore precluded by Article 40(1)(a).

17. In my 5 November 2024 report to the Minister in connection with the appeal by Rico Contractors Ltd against enforcement notice ENF/2024/00003, I concluded that the evidence was not precise and unambiguous enough to show on the balance of probabilities that it was too late to take enforcement action in respect of Rico Contractor's site at the end of the Notice B track when that notice was issued on 16 February 2024. Rico Contractor's commercial use of both tracks would have commenced at the same time as their use of the site, since this was the means of access to it. The crucial date is now 27 June 2024 but the reasoning that led to my previous conclusion is applicable to the new date and the appeals by the company under ground (a) against Notices A and B should therefore fail. However, the compliance period in the notices should be extended so that it does not expire before the six months' compliance period allowed on appeal in ENF/2024/00003, which expires on 13 May 2025.
18. With respect to the domestic use of the Notice A track and the small part of the Notice B track, the appellants Jean Augre and Lino Batista and Flavia Camara maintain that the use has taken place continuously since 2010. This was the year when the house Les Petites Montagnes was divided into two dwellings and No 2 was separately let by Mr Augre. Evidence that the tenants have always used the tracks to gain vehicular access to No 2 is provided by the affidavits submitted in connection with the successful appeal against enforcement notice ENF/2023/00003, which concerned the alleged "removal of a hedgerow or banque or other physical feature" to create this means of access.
19. The Department maintain that the domestic use commenced during 2017 at the time when a "domestic drive was created" between No 2 and the tracks. I found when dealing with appeal ENF/2023/00003 that an open route between Les Petites Montagnes and the point where the tracks meet had been in agricultural and domestic use since 1795 and that there was no indication that it had ever been impeded. The route was therefore available for domestic use continuously since 2010 and the fact that works may have been carried out to it in 2017 does not detract from the evidence of its long-term domestic use.
20. The appeals by Jean Augre and Lino Batista and Flavia Camara in respect of the domestic use of the Notice A track and the small part of the Notice B track should succeed on the basis that it has been shown on the balance of probabilities that the breach of planning control did not take place during the previous 8 years and that the service of the notices is precluded by Article 40(1)(a).

Inspector's recommendations

21. As a result of the conclusions I have reached in this report, I recommend that the appeals are dealt with as set out below.

Notice A

22. I recommend that the enforcement notice is varied (i) by deleting paragraphs 3.1 and 5.2, (ii) by replacing "Two (2) calendar months" in paragraph 6 by "Four months" and (iii) by replacing paragraph 5.1 by:

"5.1 Cease the use of the land for vehicular access related to commercial use."

23. Subject to these variations, I recommend that the appeals are dismissed and that the enforcement notice is upheld as varied.

Notice B

24. I recommend that the enforcement notice is varied (i) by deleting paragraphs 3.1 and 5.3, (ii) by replacing "Two (2) calendar months" in paragraph 6 by "Four months" and (iii) by replacing paragraphs 5.1 and 5.2 by:

"5.1 Cease the use of the land for the parking of vehicles not related to agricultural use."

"5.2 Cease the use of the land for vehicular access related to commercial use."

25. Subject to these variations, I recommend that the appeals are dismissed and that the enforcement notice is upheld as varied.

Dated 19 February 2025

D.A.Hainsworth

Inspector