

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

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

Report to the Minister

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

Appellant: Mr James Hibble

Enforcement Notice reference number: ENF/2024/00018

Date of enforcement notice: 10 October 2024

Location: The area of land forming part of the land known as 24-7 Self-Store Unit 2, Peacock Farm, La Rue de la Piece Mauger, Trinity, JE3 5HW

Matters which appear to constitute the breach of development controls: Without planning permission, the siting of eight (8) intermodal shipping containers (Breach of Development Controls). The Breach of Development Controls has been marked on the attached Enforcement Notice Location Plan, indicated by an area edged in BLUE and annotated 3.1.

Appeal procedure and date: accompanied site inspection (14 January 2025) and hearing (17 January 2025).

Date of report: 17 February 2025

Preliminary matter

1. The appeal was made under a single ground as provided for by section 109 (2) of the Planning and Building (Jersey) Law 2002:
 - (h) that planning permission should be granted in respect of the development in question.
2. Article 109 of the same Act requires that appeals under ground (h) must be accompanied by any fee prescribed under Article 112(2)(b) and by the fee prescribed under Article 9(3)(a) in relation to an application for planning permission. The Act does not expressly state that a retrospective planning application should be submitted, but I understand that there is a tradition and custom in Jersey that this is the case, as this enables the correct fee to be calculated.
3. The appellant submitted application P/2024/0907 for “re-grading of earth bund, construct 6 no. blockwork garages to existing hardstand area and soft landscaping”. However, the description does not tally with the alleged breach of planning controls. I sought views of parties on this point. The Department

confirmed that the application referenced in its statement did not relate to the enforcement notice. I understand the appellant submitted this as an alternative solution for his business, should the appeal against the enforcement notice fail. In the absence of a retrospective application corresponding to the alleged breach of planning controls, I conclude that there is no valid appeal under ground (h).

4. In his grounds of appeal, the appellant referred to the length of time that the activities covered by the enforcement notice have been in place. I interpreted this as raising an appeal under ground (c) - that at the date of service of the notice no or no expedient action could be taken to remedy the alleged breach. I allowed parties an opportunity to comment on this matter including submission of further information. Thus, the appeal has been considered under ground (c) only.

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

5. Article 40 of the Planning and Building (Jersey) Law 2002 provides for the serving of an enforcement notice where it appears that there has been a breach of development controls during the previous 8 years. Article 39 defines a breach of development controls as a breach of planning controls or a breach of building controls. A breach of planning controls is defined as where land has been developed without planning permission; or land has been developed with planning permission but there has been a contravention of a condition of that permission.
6. It is therefore necessary to determine whether there has been a breach of development controls and if so, whether this has occurred within the previous 8 years.
7. There is an extensive planning history for the site, which is documented in the Department's Officer Assessment Report for application P/2023/0474, which was provided with the Department's appeal statement. At the time of the hearing, the most recent permissions were P/2022/0397 and P/2022/0513 granted in July and November 2022, respectively.
8. Permission P/2022/0397 was granted in respect of "change of use of part of Unit 1 and all of Unit 2 from Class D - Agricultural to Commercial storage units." Three conditions specific to the development were appended to the permission. Condition 2 required that: "There shall be no outside storage or display of materials, waste, machinery, or vehicles on the site in connection with the uses hereby approved, unless otherwise agreed in writing with the Development Control section of Regulation. The external areas within the application site shall be made available in their entirety for the parking of vehicles by the staff and customers of Units 1 and 2."
9. Permission P/2022/0513 was granted in respect of "change of use of existing ground floor retail unit to commercial. AMENDED PLANS RECEIVED: Proposed use clarified as storage with ancillary office." No conditions, beyond the

standard conditions were applied. Based on the approved plans this permission appears to relate to a small section of Unit 1, which was previously used as a retail outlet and does not include any external areas.

10. At the hearing, the Department confirmed that it considers that the breach of development controls relates to development without permission rather than a contravention of a condition to permission. Based on the above, I conclude that the extant permissions allow storage of items within the building but does not extend to storage of items in the external areas, which are identified for car parking. That is, the authorised use of the external areas is as car parking, not storage. The appellant has identified that containers are stored within these areas on a regular basis, although the numbers and position of these may vary depending on the needs of the business. I consider this activity is sufficient to indicate a material change in use from car parking to storage and hence represents development.
11. The appeal documents refer to previous applications (MS/2022/0743 and P/2023/0474) which sought permission to install containers at the site. Therefore, there appears little doubt that the appellant is aware that installation of containers would represent development for which permission is required.
12. The appellant maintains that there is a long-established history of external storage of items at the site. He has supplied photographs from 1997, from before he took ownership of the site, which show external storage of materials. He states there have been shipping containers on the site since 2015, although the numbers and specific location of these may change according to need. In evidence, he provided aerial photographs dated 2003, 2006, 2014, 2015, 2016 and 2017. The Department disputed the dates of the images from 2016 and 2017. It provided its own version from these dates, which the appellant had an opportunity to comment on. The Department also provided aerial photographs dated between 2018 - 2024 inclusive.
13. Parties differ as to whether the items shown on the 2017 photo include any shipping containers. The appellant considers that five containers are present (with items stored on top), whilst the Department does not identify any containers (although some items are 'unspecified').
14. The supplied photographs are aerial snapshots. The quality and resolution of these diminishes when the viewer 'zooms in' on the external areas outside the storage units. Parts of the area are also obscured by over-hanging vegetation. These factors make it difficult to identify, with certainty, all the items present in the external areas of each photograph and may account for some of the differences in opinion between parties as to what the features represent.
15. Irrespective of the site's history, the current authorised uses of the site commenced in 2022 through the granting of permissions P/2022/0397 and P/2022/0513. These permissions effectively re-set the date from which the eight-year period is assessed. As noted above, neither of the extant

permissions provide for outside storage of items and permission P/2022/0397 identifies the external areas as car parking. I have already concluded that the placement of shipping containers is sufficient to represent a material change of use from a car park and that permission has not been granted for this. As this activity has occurred during the previous 8 years it is not exempt from enforcement action. The Department has judged it expedient to issue the notice for the reasons set out on the Enforcement Notice.

Other matters

16. The appellant's statement of case identifies reasons why he considers that his previous application, MS/2022/0743 for the placement of container storage units should have been allowed. However, the period for appealing that decision has ended. This appeal cannot re-visit that decision.
17. I note that the appellant considers the containers and outside storage essential to his business. However, that does not negate the need to obtain the necessary permissions to provide this storage. As the appellant has submitted previous applications for installation of containers, I consider he must be aware of this.
18. The Enforcement Notice identifies the matters which constitute the breach of development controls as being the siting of eight (8) intermodal shipping containers. There were fewer than eight containers on site when I visited and the appellant states that the numbers of containers vary between years. As the breach results from the introduction of shipping containers *per se* (irrespective of the number of them), I suggest that the notice could be modified to remove the numbers of containers, without any injustice to either party. Such a modification can be made by the Minister using the powers available under Article 116(2) (d) of the Planning and Building (Jersey) Law 2002.

Recommendations

19. For the reasons set out above, I recommend that the Enforcement Notice should first be amended and then upheld as amended.
20. I recommend that the notice be varied as follows:

In the first sentence of paragraph 3.1 remove the words "eight (8)" so that the sentence reads "Without planning permission, the siting of intermodal shipping containers (Breach of Development Controls).

Sue Bell
Inspector 17 February 2024