

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

**Appeal under Article 108 against a decision made under Article 19 to grant  
a planning permission**

**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

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**Appellant:**

Mrs O.S.V. English

**Planning permission reference number and date:**

P/2018/1112 dated 15 January 2019

**Applicants for planning permission:**

Mr & Mrs Bisson

**Site address:**

La Maison du Sud, Le Mont du Jubilé, St. Peter JE3 7FA

**Description of development:**

"Alter ground levels and remove rockery to north of site (retrospective). Construct hardstanding and wall to surround oil tank (proposed)."

**Inspector's site visit date:**

5 April 2019

**Hearing date:**

5 April 2019

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**Introduction**

1. This is a third-party appeal against the grant by the Department of the Environment on 15 January 2019 of planning permission P/2018/1112 for the development described above. The permission was granted subject to conditions (1) requiring details to be submitted for approval of any additional concrete groundworks and new setts or cobbles to be laid and (2) limiting the height of the new granite wall surrounding the oil tank to not more than 2m.

## **The applicants' and the appellant's properties**

2. The applicants and the appellant occupy adjoining properties. The applicants' property, La Maison du Sud, is included in the List of Sites of Special Interest maintained under Article 51 of the Planning and Building (Jersey) Law 2002. The listing particulars state: "Its significance is enhanced by its relationship with the other two neighbouring cottages". One of these is the appellant's property, Clos Luce, which is also included in the List. The listing particulars for Clos Luce state: "This C18 cottage and its C19 outbuildings creates a cohesive group. Each building retains its proportions and historic character. The significance of the group is enhanced by its relationship with the other two neighbouring cottages".

## **The development**

3. Garden land in the north-east part of La Maison du Sud has been excavated and removed. These works are adjacent to the side wall of one of the listed outbuildings of Clos Luce. The front yard of La Maison du Sud has had a concrete skim layer applied. The proposed works include the laying of further hardstanding within the yard of La Maison du Sud and the construction of a granite wall to screen an oil tank, which is adjacent to the house, from view from the road. A flower border would be provided along the northern and eastern boundaries of the site.

## **Procedural matters**

4. The appellant raised several procedural matters in her appeal submissions and at the hearing. The Growth, Housing and Environment Department responded to these matters in writing and at the hearing. Further representations were exchanged after the hearing at my behest. The appellant's principal submissions may be summarised as follows: -
  - (i) The appellant has an area of *relief* adjacent to the side wall of the listed outbuilding and this area belongs to her as the owner of the wall. Since the development involves works affecting this area, the application required her approval, which was not sought or obtained. The application and the permission are therefore invalid.
  - (ii) The permission authorises the carrying out of works on the area of the appellant's *relief* that are unlawful without her consent and have caused damage. This is incompatible with the appellant's human rights.
  - (iii) The application contained insufficient information to enable its impact on Clos Luce as a listed building to be adequately assessed. The appellant's engineer has since carried out a survey. He indicates that the impact of the lowering of the ground level next to the side wall of the listed outbuilding is a threat to the stability of the wall, and hence to the continued preservation of the listed outbuilding as a whole. This is a matter that cannot properly be dealt with at the present stage by imposing further planning conditions following consideration of the appeal.

## **Inspector's assessment of the appellant's procedural submissions**

### Submission (i)

5. If an applicant for planning permission is not the owner of all the land to be developed, Article 9 of the Planning and Building (Jersey) Law 2002 requires the application to be accompanied by a certificate by the other owners certifying that they approve the application being made. Unless the context otherwise requires, Article 1 of the Law defines the term "owner" to include five types of owner. The definition is not exclusive but it does not include a person who has an area of *relief*.
6. I have considered whether in the context of Article 9, the term "owner" might be taken to include such persons. As far as I am aware, there is no case law on this particular point. It is my understanding that a *relief* arises by operation of law, not by any agreement between adjoining landowners, and that its existence is ultimately a matter for determination by the Court. It would in my view be wholly impracticable for applicants for planning permission to be required before submitting their applications to ascertain whether any of the land to be developed was affected by any *reliefs* and, if so, to obtain a certificate from the persons having the areas of *relief* approving the application.
7. The interpretation of the Law is a matter for the Court, but in my opinion Article 9 does not impose such a requirement. It is my view that the applicants in this appeal were not required to obtain the approval of the appellant before submitting the application and that the application and the permission are therefore not invalidated by their failure to do so.

### Submission (ii)

8. The permission was granted under the provisions of the Planning and Building (Jersey) Law 2002. The Law exists solely for the planning and building purposes set out in Article 2 of the Law, none of which relate to the proprietary interests of individual landowners. By virtue of Article 20 of the Law, applications can be made in respect of development that has already been undertaken.
9. The Decision Notice issued by the Department makes it clear that the permission granted "does not absolve the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve the need to obtain the permission of the owner of the land to which this permission relates".
10. I conclude on this submission that the granting of the permission does not interfere with the appellant's rights or with the peaceful enjoyment of her possessions.

### Submission (iii)

11. The planning application form "Apply for changes to your home (P2)" was submitted by the applicants in relation to the development. Attached to the form is a checklist identifying the relevant information that needed to be submitted with the application. The checklist has five items at Section A,

described as “Minimum Information Required”; at Section B there is a list of “Additional Information that may be required”, one of which is “Listed Building Assessment [Policy HE1]”.

12. Policy HE 1 of the Island Plan states: “There will be a presumption in favour of the preservation of the architectural and historic character and integrity of Listed buildings .... Proposals which do not preserve or enhance the special or particular interest of a Listed building ... will not be approved. ... Permission will not be granted for ... alterations and changes which would adversely affect the architectural or historic interest or character of a Listed building ... Applications for proposals affecting Listed buildings ... which do not provide sufficient information and detail to enable the likely impact of proposals to be considered, understood and evaluated, will be refused.”
13. The planning application form used and the information required by the checklist are more relevant to changes to buildings than to the permission applied for in this instance (see, for example, the Section A requirement for floor plans). In addition, the application was dealt with by the Department as being for minor works, for which less detail may be needed: that was not in practice an unreasonable approach to take to an application for development of the kind that appeared initially to be involved here.
14. The information submitted by the applicants consisted of the application form, a covering letter, a location plan, an existing site plan, a proposed site plan and existing and proposed sections AA, BB and CC. The site plans and the sections are all hand drawn. The impact of the development on the side wall of the listed outbuilding of Clos Luce cannot be ascertained from the information supplied by the applicants. The Department did not call for a Listed Building Assessment pursuant to Section B of the checklist, even though as a result of consultations on the application (a) the effect on Clos Luce as a listed building had been drawn to the Department’s attention by the appellant and her advisers in written representations and (b) the Department’s Historic Environment Team had noted in writing that limited information had been provided and a listed boundary wall appeared to have been undermined in part by the works that had already been carried out.
15. The Officer Assessment Sheet recommending the grant of planning permission refers to the applicants’ property as being a listed building; Clos Luce is mentioned as a neighbouring property, but it is not identified as a listed building. Parts of Policy HE 1 are quoted, but there is no informed assessment pursuant to the terms of the policy. The appellant’s representations are merely itemised and noted. The report concludes without adequate explanation that the development will not harm “the character and setting of any listed building”.
16. In my view, the Department should either have called for an appropriate Listed Building Assessment before preparing the report or should have refused the application as being contrary to Policy HE 1 because it did not provide sufficient information and detail to enable the likely impact of the development on Clos Luce as a listed building to be considered, understood and evaluated. The shortcomings in the report cannot be rectified at this stage by imposing planning conditions requiring further details to be submitted for approval, because if those details had been available before the decision was taken, the decision might have been to refuse planning permission outright.

**Inspector's recommendation**

17. I recommend that, in exercise of the powers contained in Article 116(2)(a) and (d) of the Planning and Building (Jersey) Law 2002 (as amended), the appeal should be allowed in full and the decision of the Department of the Environment on 15 January 2019 to grant planning permission P/2018/1112 should be reversed.

Dated 8 August 2019

*D.A.Hainsworth*

Inspector