

## **REPORT TO MINISTER FOR THE ENVIRONMENT**

**By Graham Self MA MSc FRTPI**

Appeal by Mr Martyn Stratford.

Reference Number: ENF/2021/00017.

Site at: Les Chevaux Blancs, 2 Zeelandia, Le Mont a la Brune, St Peter, JE3 7FL.

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### **Introduction**

1. This appeal is against an enforcement notice issued on 30 December 2021. The appeal is being decided by the written representations procedure. I inspected the site on 6 April 2022.
2. This report contains a brief description of the site and surroundings, followed by summaries of the cases for the appellant and the planning authority. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

### **The Notice**

3. The matters alleged in the enforcement notice were specified in Section 3 of the notice as follows:

“Without planning permission development has occurred at Les Chevaux Blancs, 2 Zeelandia, Le Mont a la Brune, St Peter, JE3 7FL namely;

  - 3.1 At the southern boundary of Les Chevaux Blancs, 2 Zeelandia, Le Mont a la Brune, St Peter, JE3 7FL that borders *[sic]* Le Mont a la Brune, a wooden panel fence has been erected without prior planning consent. The fence amounts to development, as defined in Article 5 of the Planning and Building (Jersey) Law 2002 and is not granted planning permission by way of the provisions of the Planning and Building (General Development) (Jersey) Order 2011.”
4. The requirements of the notice were specified as:

“Remove the unauthorised development and restore the land to a condition comparable to that prior to undertaking the unauthorised works by;

Step 1

Remove the wooden fencing and any associated footings or posts located at the southern boundary of Les Chevaux Blancs, 2 Zeelandia, Le Mont de la Brune, St Peter, JE3 7FL that borders *[sic]* Le Mont de la Brune”.
5. The period for compliance was specified as 45 days.

### **Grounds of Appeal**

6. The appeal has been made on grounds (f) and (h) as set in Article 109(2) of the 2002 Law, ie:

- (f) that the requirements of or conditions in the notice exceed what is reasonably necessary to remedy any alleged breach of planning control or make good any injury to amenity;
- (h) that in all the circumstances planning permission should be granted in respect of the development in question.

### **Site and Surroundings**

*While reading this description it may be helpful to refer to the photographs attached to the enforcement notice.*

7. The appeal site is situated on the north side of the B43 road (Le Mont a la Brune) and contains a building of modern design. This apparently comprises several dwellings, following a planning permission (and later reserved matters permission) granted in 2015 for the demolition of an existing dwelling and construction of two apartments and two dwellings. One of the dwellings is Zeelandia. The area around the site on the north side of Le Mont a la Brune is mostly open and rural, although the airport is a short distance away to the north-east. There are pockets of more urban development beyond patches of woodland a little to the south or south-west, including Les Ormes resort. The road past the site appears to be a fairly well used traffic route.
8. The disputed fence stands above and just inside a rendered wall which borders the appeal site and directly abuts the road carriageway. The ground level inside the site is higher than the road level and the land also rises towards the east. The heights of the fence and wall vary because they are "stepped" to allow for the slope of the land.
9. As can be seen in the photographs attached to the enforcement notice, there is an established evergreen hedge within the appeal site inside the wall and fence. The hedge is much higher than the wall and fence. Between the top of the wall and the fence there is a gap surfaced with stone chippings.

### **Case for Appellant**

10. The main points made in support of the appellant's case are, in summary:
  - The fence has been erected to provide safety for people in the garden area, including preventing children from falling through the hedge. The fall could be life-threatening as there is a drop of over six feet onto the busy main road.
  - At weekends and during the summer debris such as empty cans is thrown over the fence into Mr Stratford's garden. One episode last summer was reported to police.
  - Without the fence access into the land would also be likely. The fence helps to give security and peace of mind.
  - A row of bay plants could be planted outside the fence (as shown by photographs and an email from a landscape gardener) and the fence could be painted to match the bay hedge.
  - Various other properties within less than half a mile of the appeal site have similar fences, mostly on the roadside, so the argument that the fence is not in keeping is incorrect.

### **Case for Planning Authority**

11. The planning authority's main comments (in an officer's report and a statement of case) are:

- The fence is incongruous and out of character with the area. The site is within the designated Green Zone, away from the airport buildings and distinct from the built-up area of Les Quennevais.
- The plans subject to planning permission granted in 2014 for development at the site showed a low wall with hedge behind it, and Condition 2 of the related reserved matters approval covering landscaping provided that no fence should be erected along the south boundary.
- A retrospective application seeking planning permission for the fence was refused in September 2020. The fence was considered to be dominant and intrusive in the rural landscape, contrary to Island Plan policies.
- The appellant's offer to plant a hedge between the fence and the wall would not achieve a satisfactory remedy, as the space available for such planting is inadequate.
- The requirements of the notice (the subject of ground (f) of the appeal) are not considered to be excessive.

### **Assessment and Conclusions**

12. When deciding an appeal against an enforcement notice on grounds (f) and (h), it is logical to consider whether planning permission should be granted before considering the requirements of the notice. Therefore I assess ground (h) first below.

#### **Ground (h)**

13. The main issue raised by this part of the appeal is whether the disputed fence has an acceptable visual impact, having regard to its benefits in terms of security or safety. This issue has to be considered in the light of relevant planning policies.
14. Despite the site's location near the airport and the presence not far way of other urban types of development, the area in the immediate vicinity of the site has a predominantly rural or semi-rural character. In some settings the fence would be unobjectionable; but here, it is out of place. When the fence was erected, the site was in the designated Green Zone, where the general thrust of planning policy was to resist most forms of urban development and to promote the use of natural boundary features such as hedgerows. The large, modern building on the site (which was evidently built as part of a redevelopment scheme permitted in 2015) takes away some of the area's rural quality and the fence increases that effect by adding an essentially urban or suburban-looking feature, in a prominent position next to the road.
15. I note Mr Stratford's contention that the fence is needed for personal safety reasons, particularly to prevent children falling through the hedge. The hedge is quite robust and the safety argument seems artificial. Moreover there is no evidence to suggest that Mr Stratford and his children are forced to live at this property if he feels it is unsuitable for them.
16. I can understand why litter thrown over the boundary into the appellant's garden would cause annoyance; but since the fence is much lower than the hedge it seems unlikely that the fence does anything much to prevent this problem, or that the absence of the fence would increase the incidence of littering.
17. The feasibility of planting in the gap between the wall and the fence is disputed. The practical gap available for planting is less than the 30 centimetres quoted by the appellant and far less than the 1 metre specified by the planning authority's adviser as the minimum required. The latter figure may be an over-estimate but

even so, I find that the suggestion that the fence could be suitably screened by planting is unconvincing. Nor would painting the fence make it acceptable – indeed, that would probably make it look more out of character with what remains of the area's rural quality, rather than less.

18. The planning history of the appeal property does not help the appellant. As part of the 2015 planning permission for the site's redevelopment, a condition was imposed specifying that no fences shall be erected on the site unless agreed by the (then) Department of Environment). No such agreement has been issued. The approved plans for the redevelopment evidently showed a hedge above a wall (which acts as a retaining wall because of the higher ground level within the site); but no fence was shown on the plans, so the condition served to ensure that the development was carried out in line with what was then proposed.<sup>1</sup> Retrospective planning permission for the erection of the fence was evidently refused in September 2020, so the appeal on ground (h) against the enforcement notice is in effect a belated attempt to appeal against that refusal.
19. The photographs submitted by the appellant showing fences elsewhere are not accompanied by any location details or planning history. Assuming that when they were erected some or all of them were subject to the same planning policies as the appeal site, some inconsistency of planning control may have occurred; but several of them may have been permitted by the General Development Order; others may be immune from enforcement for various reasons. The fact that some fences which may be visually obtrusive have not been enforced against does not justify permitting this development.
20. When considering whether planning permission should be granted, one of the considerations is whether the development is in accordance with policies of the Island Plan. When the enforcement notice was issued, and when the appeal against it was made, the relevant policies were those in the Island Plan 2011 (Revised 2014). As you know, the new "Bridging Island Plan" was adopted by the Government of Jersey on March 25 2022. Many policies of the previous plan have changed or have been deleted. Of the policies mentioned in the enforcement notice, Policy NE7 on development in the Green Zone no longer exists and considerable changes have been made to the wording and scope of Policies GD1 and GD7.
21. The appellant has not referred to planning policy or to the Island Plan in his submissions. Nevertheless in the interests of fairness I have considered whether the changes in policy because of the adoption of the Bridging Island Plan might have a material effect on the appeal decision. I do not see any such effect. Policies NE7, GD1 and GD7 of the 2014 Plan are not now relevant to this development. Probably the most relevant policy of the new plan is Policy SP2 which (among other things) provides that outside the built-up area, development will only be supported where a countryside location is appropriate, necessary and justified in its location. This policy does not set out the general presumption against development in the Green Zone which was part of the previous Island Plan, but the appeal proposal conflicts with it – as explained above, the basically urban or suburban appearance of the fence is not appropriate in this rural or semi-rural area, the fence is not necessary for personal safety or other reasons, and there is no other public interest justification for it.

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<sup>1</sup> The erection of the fence appears to have constituted both development without planning permission and a breach of condition, but the planning authority has evidently opted not to issue a "condition notice" under Articles 39(2)(b) and 47 of the 2002 Law.

22. The development enforced against also conflicts with the underlying aim of Policy NE3 in the Bridging Island Plan, under which development which does not protect or improve the Island's landscape character will not be supported unless certain criteria are met. The stated criteria, which refer to matters such as the absence of alternatives and to public need or benefit, are not met by this development.
23. Taking all the above points into account I conclude that planning permission should not be granted and that ground (h) of the appeal should therefore fail.

### **Ground (f)**

24. The requirements of this enforcement notice are fairly standard. No substantive case has been made out to justify any lesser steps, apart from the planting and painting on which I have commented above. As I explain below, the wording of this part of the notice (and other parts) is flawed and I recommend amendments, but these do not arise from points raised by the appellant. I conclude that ground (f) does not succeed.

### **Flaws in the Enforcement Notice**

25. The enforcement notice as issued is flawed in several ways.
26. The requirement stating "Remove the unauthorised development and restore the land....[etc]....by; Step1 Remove the wooden fencing ....[etc]" is ungrammatical (it purports to require "remove by remove"). It is unnecessary to specify restoration of the land "to a condition comparable to that prior to undertaking the unauthorised works", since that would in effect be achieved by removal of the fence and any footings. The term "comparable to" is also imprecise and is better not used, as it can be open to different interpretations. (Something which is "able to be compared with" is not necessarily the same or similar).
27. The apparent sub-heading "Step 1" in the requirements is superfluous and potentially confusing, as only one step is specified. The planning authority's statement of case tries, bravely but unsuccessfully, to interpret the notice as having a Step 1 and "any other step". As a matter of common-sense and plain language, if an enforcement notice has a numbered "Step 1" it should also have at least one other numbered step; this notice does not have any such step.
28. The word "boarders" which appears in both the allegation and the requirements should have been "borders".
29. I also consider that the word "or" in the phrase "associated footings or posts" should be replaced by "and". The word "or" can be interpreted with inclusive or exclusive meanings. Taking the enforcement notice as a whole, it is reasonable to interpret "or" here as inclusive, but for the sake of clarity the replacement wording I am recommending includes the phrase "associated footings and posts".
30. Normally it would not be appropriate to amend the reasons for issuing the notice at appeal stage, since those reasons are primarily for information. In this instance, however, there are two clear errors of wording in the reasons for issue as stated in paragraphs 4.1 and 4.2 of the notice. The first is the reference to "breaches of development controls" – the plural "breaches" here is wrong and potentially confusing as the notice is directed at only one breach – the erection of the fence. Paragraph 1 of the notice refers to "a breach" (singular), and the notice ought to be consistent within itself.
31. The second error in the reasons for issue is the statement that "the fence.....would be dominant and intrusive in the landscape". It is wrong to use

the future conditional "would be" when referring to the effect of a development which has already occurred and is being enforced against. I suspect this error arose because the reason for refusal of an earlier application for planning permission was copied (although as that application was itself retrospective the "would be" wording was equally inappropriate then).

32. The main aim of the amendments I am recommending is to give the notice a reasonable standard of English, which a government-issued legal document should have. Suitable corrections or variations can be made without causing any injustice to the appellant.
33. Although the policies mentioned in the stated Reasons for Issue of the notice have been superseded by the policies of the Bridging Island Plan, I do not consider it necessary or appropriate to delete from the notice the references to the former policies, since they were in force when the notice was issued, and an enforcement notice which is upheld following an appeal retains its original issue date (although the compliance period then runs from the appeal decision date). Even though the quoted policies have been superseded, there are still policy-based reasons for the enforcement action as explained in paragraphs 22-23 above.

### **Recommendation**

34. I recommend that the enforcement notice be corrected and varied in the following ways:
  - i) by deleting the word "boarders" from the allegation and substituting "borders";
  - ii) by deleting "Breaches" from paragraph 4.1 and substituting "Breach".
  - iii) by deleting "would be" from paragraph 4.2 and substituting "is".
  - iv) by deleting the text setting out the requirements and substituting:

"Remove the wooden fencing and any associated footings and posts located at the southern boundary of Les Chevaux Blancs, 2 Zeelandia, Le Mont de la Brune, St Peter, JE3 7FL bordering Le Mont de la Brune".
35. Subject to those amendments, I recommend that the appeal be dismissed and the enforcement notice as corrected and varied be upheld.

*G F Self*

Inspector

19 April 2022