

## **PLANNING AND BUILDING (JERSEY) LAW 2002**

### **Appeal under Article 109 against an enforcement notice 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

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#### **Appellant:**

Jean Augre

#### **Enforcement notice reference number and date of issue:**

ENF/2023/00003 dated 23 October 2023.

#### **The land to which the enforcement notice relates:**

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

#### **The alleged breach of development controls:**

"Removal of a hedgerow or banque or other physical feature defining part of the northwest boundary of Field No. L583, Le Chemin des Montagnes, St. Lawrence, was removed [*sic*] to create a second, and non-agricultural, access to Field No. L583 from the domestic property '*Les Petites Montagnes Le Chemin des Montagnes, St. Lawrence*'."

#### **The steps required by the enforcement notice:**

1. "Reinstate the historic field boundary between Field No. L583, Le Chemin des Montagnes, St. Lawrence and '*Les Petites Montagnes Le Chemin des Montagnes, St. Lawrence*'".
2. "Cease the use of any part of the land known as Field No. L583, Le Chemin des Montagnes, St. Lawrence as a second, non-agricultural access."

#### **Time for compliance with the requirements of the notice:**

21 days

#### **Grounds of appeal:**

The appeal has been brought on grounds (a), (b), (c), (e) and (f) specified in Article 109(2), namely:-

- (a) that the matters alleged in the notice are not subject to control by this Law;
- (b) that permission has already been granted under this Law in respect of the matters alleged in the notice;

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

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

(f) that the requirements of or conditions in the notice exceed what is reasonably necessary to remedy any alleged breach of control or make good any injury to amenity.

**Inspector's site visit date:**

1 February 2024

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**Procedural matters**

1. With the agreement of the parties, the appeal has been dealt with by way of written representations and an accompanied site visit.
2. 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 the alleged breach.
3. On the determination of the appeal the Minister may by virtue of Article 116(2) allow the appeal in full or in part, dismiss the appeal and reverse or vary any part of the decision-maker's decision. I interpret this as including the power to quash the enforcement notice or to vary its terms if this can be done without causing injustice.
4. In their response to the appellant's statement of case, the Infrastructure and Environment Department have asked for additions to be made to the steps required by the notice so as "to include the removal of the entire hardcore domestic track and reinstate the domestic curtilage to its previous grassed state". The steps required by an enforcement notice should match up with the description of the breach alleged, but the additional steps sought by the Department in this instance would not do so. They would exceed what is needed to remedy the breach that has been alleged and their inclusion would cause injustice by widening the scope of the notice in respect of which the appeal has been brought and evidence has been submitted.

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

5. The notice is directed solely at the alleged removal of a hedgerow or banque or other physical feature defining part of the northwest boundary of Field No. L583 in order to create an access to this field from the domestic property known as Les Petites Montagnes. It is not directed at the track that connects this field to Field No. L545 at this location or at any of the other matters the Department have referred to in their representations.
6. The appellant maintains that no hedgerow, banque or other physical feature has been removed to create an access to Field No. L583 from Les Petites Montagnes and that this access has existed since at least 1795 for both agricultural and domestic purposes. His case is supported by statements from third parties, maps and photographs.

7. The Department's evidence, however, does not demonstrate that any hedgerow, banque or other physical feature has been removed to create an access to the field from Les Petites Montagnes. It is telling that the notice does not indicate what would have to be done to comply with its vague requirement to "Reinstate the historic field boundary" between the field and the property.
8. The 'Richmond Map' of 1795 shows an open route between the road now known as Le Chemin des Montagnes and the field now known as Field No. L583, which passes along the north side of the building now called Les Petites Montagnes. This open route is shown in the same position on the 1935 Ordnance Survey map, and on the location plan attached to the official listing particulars of the building issued in 2016, and on Government Digimap data of 2021. The open route is again shown in the same position on the location plan attached to the enforcement notice and on all the aerial photographs that have been submitted by the parties. When I inspected the route on 1 February 2024, it had not deviated and was open throughout between the road, the property and the field as it had always been shown to be. There was no indication on the ground that it had ever been impeded anywhere along its route by a hedgerow, banque or other physical feature.
9. I have concluded on the information available to me that the matter the notice alleges to have taken place has not in fact occurred. The appeal should therefore succeed on ground (e) and the notice should be quashed. In these circumstances, grounds (a), (b), (c) and (f) no longer fall to be considered.

**Inspector's recommendation**

10. I recommend that the appeal is allowed on ground (e) and that the enforcement notice ENF/2023/00003 issued on 23 October 2023 is quashed.

Dated 9 February 2024

*D.A.Hainsworth*  
Inspector