

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

Appeal under Article 108 against a decision to refuse planning permission

REPORT TO THE MINISTER FOR THE ENVIRONMENT

By Mr Philip Staddon BSc, Dip, MBA, MRTPI

Appellant: Mr Paul Ostroumoff

Site address: *L'Abri*, La Route de la Trinite, Trinity, JE3 5JP

Application reference number: P/2024/0604

Proposal: *'RETROSPECTIVE: Repair / rebuild retaining wall to Western boundary of site & re-surface driveway. REQUEST FOR REVIEW of refusal of planning permission.'*

Decision Notice date: 5 December 2024

Procedure: Written representations

Inspector's site visit: 1 April 2025

Inspector's report date: 30 April 2025

Introduction

1. This report contains my assessment of the appeal made by Mr Paul Ostroumoff against the planning authority's decision to refuse to grant retrospective planning permission for some works relating to a retaining wall and driveway resurfacing, within the grounds of a residential property known as *L'Abri* in Trinity parish.

The appeal property and background

2. *L'Abri* is a Grade 3 Listed Building. The Statement of Significance contained in the Listing Schedule¹ records a '*Single storey cottage of C18 origins, retaining historic character and features.*' The Schedule records its context amongst larger village buildings, including Trinity School, on the side of the valley. It also provides detailed descriptions of its external and internal architectural and historic features.
3. It is a simple but attractive historic property, somewhat tucked away on the east side of the road, being behind (east of) a modern dwelling, which is built on higher ground. It is accessed by a driveway from La Route de la Trinite which enters the plot and then turns northwards towards the dwelling. As you approach in this direction, there is a recently constructed, although not fully completed, retaining wall on the left side which forms the

¹ HER Reference TR0187

boundary with its neighbour to the west. I observed on my site inspection that there is a significant amount of stone product stored within the garden grounds, and parts of the site have an appearance more akin to a commercial stonemason's yard than a domestic garden.

4. In March 2024, an Enforcement Notice (EN)² was served on the appellant alleging 3 breaches of planning control, these being i) change of use of the land to the storage of granite and associated materials, ii) the laying of a hardstanding, and iii) the unauthorised demolition and rebuilding of 15 metres of a wall forming the western boundary of the garden.
5. The application which is now the subject of this appeal relates, in part, to matters alleged in the EN. It seeks retrospective planning permission for the rebuilt wall and hard surfacing of the drive with a shale dressing. Officers assessed the application to be unacceptable and refused to grant planning permission under delegated powers for the following reason:

"Given the design and irregularity of the rebuilt wall and its subsequent failure to replicate the detailing of the surviving historic granite wall adjoining, the proposed development is considered to be visually harmful to the character and appearance of the area and consequently to the setting of the Grade 3 Listed Building, L'Abri; contrary to Policies SP4 and HE1 of the adopted Bridging Island Plan 2022."

6. The Planning Committee considered a Review request at its 5 December 2024 meeting, but decided to maintain the refusal decision. Mr Ostroumoff's appeal is made against that planning decision.

Preliminary matters

7. It is important to note that, in my assessment, the application is something of a muddle. The application is clearly made in retrospect; this is reflected in the description used by the appellant on the application form, and the wording used on the submitted drawings. However, when I visited the site, it appeared that the wall, whilst almost complete, was not fully finished, i.e., there is work that is still proposed.
8. A more significant matter is that the 'proposed' elevation drawing³ does not reflect the built wall that I observed on my site inspection. There are some fundamental differences between what is shown on the drawing and what has actually been built and this is particularly so with regard to the southern section of the wall. I will discuss these matters in more detail later in this report.
9. Through the appeal process, it has become clear that the minor works to the driveway are uncontested. I do not therefore consider it necessary to explore that element further and I have omitted it from the summaries of cases set out below.

² ENF/2024/00001

³ Drawing No 540 - PL 05

Summary of the appellant's grounds of appeal

10. The appellant's case is set out in the appeal form which includes a 2-page document setting out the grounds of appeal; this states that the existing granite walls were in a state of disrepair and partially collapsed, and were covered in ivy which was destabilising the wall. It says that the walls have been repointed and rebuilt where necessary using reclaimed/salvaged stone and that the walls have been 'painstakingly rebuilt to a high standard'.
11. The appellant also quotes the Historic Environment Team (HET) consultation response which he says confirms that the rebuilt walls were considered acceptable and did not harm the setting of the Listed Building.
12. The appellant also draws attention to the comments of respected heritage specialist, Mr McCormack, who states that the works were in no way harmful to the historic character of *L'Abri*. The appellant also submits that the rebuilt walls include features designed to improve biodiversity to allow nesting birds, bees and insects to benefit from the walls.

Summary of the planning authority's case

13. The planning authority's case is set out in a Response document, with 7 appendices comprising: the officer report; the December 2024 Planning Committee minutes (following the Review request); the Decision Notice; the Listed Building Schedule for *L'Abri*; the EN; photographs of the site; and aerial photographs of the site from 2021, 2022, 2023 and 2024.
14. The Response explains that the proposal was considered against the relevant BIP policies. With regard to the wall, it states that: *'the main northern part of the wall has been significantly altered to a different height and the southern section of the wall has been demolished entirely and rebuilt to an unacceptable design and irregularity with granite protruding horizontally from the wall. The Department considered that this fails to replicate the detailing and character of the surviving original historic granite wall. In summary, the Department considered that the wall would be visually harmful to the character and appearance of the area and to the setting of the Grade 3 Listed Building.'*
15. The Response also questions whether the appellant intends to build the southern section of the wall as shown on the submitted application drawing, or seeks to retain the 'as built' wall. It further points out that there were 2 HET consultation responses and both were badged 'objection', and that it is not suggesting that all of the wall needs to be demolished, but just the southern section, and any ecological benefits can still be achieved.

Interested party's views

16. I have noted and taken into account the submissions from Mr Holley who supports the appellant's works, and believes that they are commendable and sensitive.

Inspector's assessment

17. Based on the refusal reason and the submitted appeal documents, the main issue is the effect of the wall on the character and appearance of the area, with particular regard to the setting of the Listed Building.
18. There are 2 elements to the wall to consider.
19. The first is the longer and higher section which runs from a point near to the south-west corner of the Listed cottage in a southerly direction for about 12 metres. It has been built to a good standard using quality traditional granite blocks of an appropriate size, mix and coursing. It is moreover built as per the submitted drawing⁴ but there are some differences; the drawing shows a uniform coping, but the as built structure has somewhat irregular copings, a few lower coping stones, and the main wall itself contains some gaps and features. These variations are relatively minor and I share the HET officer's assessment that '*this part of the wall has been built to an acceptable standard*'. Indeed, I regard the traditional style and appearance of this part of the wall to have a positive effect on the setting of the Listed Building. I therefore find no conflict with policies HE1 and SP4 which, respectively, seek to protect Listed Buildings and their settings, and to protect and promote island identity, including through protecting and improving the settings of Listed Buildings.
20. The second section of wall comprises a short dog-leg from the first section and then runs for about 7.5 metres at a slightly splayed angle to a point where it meets the drive. It is lower than the first part and set into the bank with the neighbouring property beyond. Other than its alignment and height, its appearance is nothing like that shown on the submitted drawing, although I am unclear if it has been built subsequent to the drawing production (which is dated May 2024). The application plan shows a traditionally coursed granite wall with a uniform capping. What has actually been constructed is a wall comprised of granite blocks of different shapes and sizes, most of the blocks being very large, and some having stone projections. Although the wall seems to be largely built, it currently has an uneven height, appears to have some missing elements and there are unlaied stones on the ground nearby, all suggesting more work may be intended.
21. The divergence between the as built wall and the submitted drawing presents the decision maker with a difficulty. It seems clear to me that the application sought to retain the as built wall. It is equally clear that the planning authority's refusal relates to the as built structure. It is also clear from the appellant's submissions that he wishes to retain it, and does not wish to demolish and rebuild it (to that shown on the submitted plan). It would have been preferable if this major discrepancy had been addressed at the application stage because, should the Minister be minded to allow this appeal, there is no reliable drawing that captures 'the development'. However, I will now assess the merits of the as built structure (rather than that shown on the drawing), as it is important that I assess the same

⁴ Drawing No 540- PL 05

retrospective 'proposal' that was considered and determined by the planning authority.

22. In terms of the design and heritage merits of the southern section, whilst constructed in stone materials, the wall contrasts markedly with the more traditional appearance of the northern section to which it is attached. The appearance is rather eccentric and odd. Although householders can rightly expect a degree of freedom to enjoy and adapt their gardens and boundary treatments to suit their individual tastes and needs, the sensitivity in this case arises from the Listed status of *L'Abri*.
23. The appellant is correct in quoting the HET consultation response⁵ which stated that this section of wall was 'outside the extent of listing'. However, based on the information before me, that statement is not factually correct. The Listing Schedule includes a plan that shows the extent of the Listing; this appears to show that, whilst the southern part of this section would fall outside the Listing area, several metres are within it, or are abutting it (it is hard to establish with certainty given the scale of the plan, and the blacked out shading of the Listed area).
24. There can therefore be no doubt that an unusually designed length of wall is within the immediate setting⁶ of the Listed Building. Policy HE1 requires proposals that could affect a Listed Building's setting to protect its special interest, and seek to improve its significance. The appeal proposal fails to achieve these requirements, as it introduces an uncharacteristic and quirky boundary wall structure which jars with, and distracts from, the historic cottage character of the Listed Building.
25. In terms of calibrating that harm, it is quite limited and localised, but the framing of policy HE1 does not permit any harm to a Listed Building or its setting unless one or more of the exceptions (a – d) under the policy are applicable. As none of those exceptions appear to apply in this case, there is a conflict with policy HE1 and consequential conflict with policy SP4 (Protecting and Promoting Island Identity) which, amongst other matters, require that proposals should protect or improve the historic environment.

Conclusion and recommendation

26. The works to the drive are uncontentious. I have found the appearance of the northern section of walling to be acceptable and to have a positive effect on the setting of the Listed Building. However, I have assessed the southern section of walling, due to its uncharacteristic and quirky design and appearance, to be unacceptable as it would fail to protect the special interest and significance of the Listed Building *L'Abri*. As a result, the retrospective proposal conflicts with BIP policies HE1 and SP4 which require

⁵ HET response dated 9 July 2024

⁶ The BIP includes in its glossary a definition of the 'setting' of a Listed building. This states that it is "the surroundings that it is experienced in. It often extends beyond the property boundary, or 'curtilage', of an individual building or place into the broader landscape or townscape context. The extent may have and will change over time following changes to the landscape or townscape, new or removed buildings or with our increased understanding of a building, site or its wider context. The importance of setting is not dependent upon there being public access to, or public views of, the building or place..."

proposals to protect or improve the historic environment. There are no other material considerations that would indicate that a decision should be made other than in accordance with these most relevant BIP policies.

27. I therefore recommend that the Minister DISMISSES this appeal and confirms the refusal of planning permission for the retrospective proposal under planning application reference P/2024/0604.
28. In the event that the Minister did not agree with my recommendation, and was minded to allow this appeal, I would suggest that it would be prudent to invite the appellant to produce and submit a definitive and accurate 'as built' drawing, which could be referenced in any planning approval.

P. Staddon

Mr Philip Staddon BSc, Dip, MBA, MRTPI