

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 & Mrs Sullivan

Enforcement Notice reference number: ENF/2024/00010

Date of enforcement notice: 19 July 2024

Location: 10 Le Pont Marquet Close, La Rue du Pont Marquet, St Brelade, JE3 8DU

Matters which appear to constitute the breach of development controls: Without planning permission, the construction of a wall within two (2) metres of a road with a height of more than 90 centimetres above the level of the road (“the Development”).

Appeal procedure and date: site inspection and hearing.

Site visit procedure and date: unaccompanied, 30 October 2024.

Date of report: 13 November 2024

Introduction

1. This appeal against the enforcement notice was made under the following grounds as provided for by section 109 (2) of the Planning and Building (Jersey) Law 2002:
 - (a) the matters alleged in the notice are not subject to control by the Planning and Building (Jersey) Law 2002.
 - (g) that any time period imposed for the notice for compliance with its requirements falls short of the time which should reasonably be allowed for such compliance.
2. During the appeal process, the appellant queried whether a mirror might provide an acceptable alternative to removal of the wall. I have interpreted this as an appeal under ground (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. Parties had an opportunity to provide their positions on this ground during the hearing.

Ground (a) the matters alleged in the notice are not subject to control by the Planning and Building (Jersey) Law 2002.

3. The appellant maintains that they contacted the planning department to clarify whether permission would be required to construct the wall. Following discussions and a site visit, they believed that no permission was necessary. They have been unable to identify or recontact the person they spoke to.
4. The Department considers that the wall falls outwith the dimensions and location for a structure that would be permitted by Schedule 1 Part 1 Class B of the Planning and Building (General Development) (Jersey) Order 2011 (GDO). It has no written record of any advice given to the appellant on this matter.
5. Schedule 1 Part 1 Class B of the GDO permits the “erection, construction, maintenance, improvement or other alteration within the curtilage of a dwelling-house of a gate, fence, wall or other means of enclosure.” Work is not permitted by Class B, if, “the gate, fence, wall or other means of enclosure abuts onto or is within 2 metres of a road and its highest point will be more than 90 centimetres above the level of the road, or in any other case, its highest point will be more than 2 metres above the ground level on either side of it.”
6. During my site inspection I saw a breeze-block wall, which extends southwards from the public road to the north along the boundary of the appellant’s property. I measured this to be 1.7 metres high. The northern end of the wall abuts the main carriageway of the road and is perpendicular to another, lower wall, which forms the roadside boundary of the appellant’s property. There is no footpath. As the wall abuts onto and is within 2 metres of a road and is greater than 90 centimetres above the level of the road, I conclude it does not meet the criteria to qualify as permitted development and planning permission is required. Thus, the appeal under ground (a) fails.

Ground (f) 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

7. The appellant states the track is a path and rarely used by vehicles. It is in separate private ownership and there had previously been a bollard at the road end, to prevent vehicle access. In correspondence, it has been suggested that a mirror could be introduced on the opposite side of the road to improve visibility for any vehicles exiting the track. The appellant has offered to pay for this.
8. I saw that the track was well-vegetated, but that there were bare areas, suggestive of vehicle movements. Visibility to exit the track to the road is severely restricted by the wall to the east. I observed that the road was busy and that vehicles were travelling at speed. This made it difficult, as a pedestrian to see and safely exit the track and I anticipate that it would be extremely hazardous for vehicles to exit safely.

9. The Department has indicated that the Roads Department does not consider a mirror to be a good solution, as these can become damaged or obscured.
10. The track may not provide a main vehicle access, but it is capable of being used by vehicles. Exiting the track would be hazardous, due to poor visibility. A mirror would provide some assistance, but I am not persuaded that it would provide the same level of visibility as removal of the section of wall. In any case, installation of a mirror would not be on the appellant's land and there is no certainty either that the land owner would consent to its or how it would be maintained in the long term. I therefore conclude that the appeal under ground (f) fails.

Ground (g) any time period imposed for the notice for compliance with its requirements falls short of the time which should reasonably be allowed for such compliance.

11. Although the appellants raised this as a ground of appeal, they did not provide further written comment. At the hearing, I clarified that the appellants are concerned that they may not be able to commission tradespeople to implement the works within the required timescale. I accept that the appellants are unable to implement the works themselves. Nevertheless, the required works are minor and should not take long to implement. I therefore consider that a period of two months, as stated on the notice, should allow sufficient time for compliance.

Other matters

12. The appellants have suggested that removal of the wall would impact on their privacy. The notice only requires a reduction of the 2 metres of the wall closest to the road. Removal would expose an external stairway and the edge of the property which are already visible above the roadside boundary. Therefore, I do not consider that compliance in the notice would alter privacy for the occupants.
13. I note the owners' statements about the advice that they sought and received. It is regrettable that the owners appear to have received incorrect advice about the need to obtain planning permission for the wall. In the absence of any records, it is not possible to determine who gave this advice. In any case, this would not alter the position as set out in the GDO.

Recommendations

14. For the reasons set out above, I recommend that the appeal be dismissed and the notice should stand.

Sue Bell
Inspector 13 November 2024