

STATES OF JERSEY

REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT

APPEAL by Prof H Morris, Mr & Mrs D Wells, Mr & Mrs A Mauger, and Mr & Mrs G Crill under Article 108(2)(a) of the Planning and Building (Jersey) Law 2002, as amended, against the grant of planning permission to demolish the existing dwelling and construct one 4-bed dwelling.

Site Address: Le Rocher Rouge, Les Ruisseaux, St Brelade

Department of the Environment (DoE) ref P/2015/0632

Hearing and site inspection on 11 February 2016

Inspector Roy Foster MA MRTPI

INTRODUCTION

1 The appeal is made by the occupiers of 4 houses near to the dwelling known as Le Rocher Rouge and is against the grant of planning permission to redevelop that site to provide a replacement dwelling.

THE MAIN ISSUES

2 The main issues arising in this appeal are whether or not the scheme would (1) be harmfully at odds with the prevailing character of the area, (2) result in unreasonable harm to the living conditions of nearby houses with regard to privacy, a loss of light/sunlight or an overbearing presence and (3) be damaging to ecological interests. A fourth issue is whether or not the decision took adequate account of matters concerning the management of construction, particularly excavation, and waste.

Effect upon the character of the area

Case for the appellants

3 Mr and Mrs Wells (The Beach House) describe Les Ruisseaux Estate as having the character of traditional one and two storey pitched roof dwellings set into sloping sites and situated back from their boundaries in ways which are subtle and unobtrusive and provide a feeling of open space and distant views travelling downhill through the estate. Where houses directly address the roadside these are generally smaller scale parts such as garages or extensions. Recent additions to the area have been planned with a subtle muted selection of materials.

4 At present Le Rocher Rouge has a predominantly open frontage with the house set back within the site. Architecturally it is a modest dwelling and its relationship to existing buildings is consistent with the character of the area. The proposed building would abut the road edge for much of the width of the dwelling at ground floor and its projecting terraces would also appear close to the road edge, thus imposing the structure on the scene and creating an excessively dominating and imposing feature at odds with the character of the area. Its internal floor area would be 6455sq.ft whereas the existing house is 2045sq.ft, a further indication of overdevelopment. The projecting first floor terrace and second floor canopy would be brutal, unsympathetic and non-domestic in appearance. The proposed building is inconsistent with IP policy GD7 which states that ‘development will not be permitted where it does not adequately address and appropriately respond to (1) the scale, form, massing, orientation, siting, and density of the development and inward and outward views, and (2) the relationship to existing buildings, settlement form and character...’.

5 Mr & Mrs Mauger (Rocquebrune) consider that the proposed building would so dominate the street scene that it would have a commercial, rather than domestic, appearance. This would be the only 4-storey building on the estate and its mass would significantly increase. It would maximise the site’s view-potential at the expense of overbearing nearby properties lower down the road. This would be in complete contrast to neighbouring properties which respect the contours of the rocky escarpment upon which they are formed. The asymmetrical front elevation is out of keeping with the area, as is the disproportionately large second floor elevation with its angular projection.

6 Mr G Crill (La Solaize) considers that the existing houses are mutually sympathetic in their design and layout whereas the new house would be at odds with its setting. Because of its size and position, its proximity to the road and its high terraces/balconies it would be an overdevelopment of the site and create a canyon effect at this point in the street scene.

7 Prof Morris (Rochez) considers the proposal a vanity project on a tiny plot, more than tripling the floorspace on the site together with a pool and 6-car garage. The developers of the original estate struck the correct balance between maximising building-size in relation to plot-size and still allowing privacy and preservation of stunning views. This scheme would completely change the character of the estate.

Case for the DoE

8 Les Ruisseaux has no prevailing style of architecture and consists of a mix of styles. There is no requirement for a specific type of design here. The houses are of different sizes and heights and a number have been rebuilt or remodelled in modern styles.

9 There are already some places where the estate has quite a 'tight' appearance and this scheme would make little difference in that respect. The scheme is of contemporary design both respecting the built context and adding to its diversity. The development would sit comfortably in the landscape and the height of the new house would not exceed the ridge level of the existing one. The building footprint would increase from 207sq.m to 250sq.m, thus occupying 26% of the total site area.

10 The scheme includes a mix of materials (granite and zinc cladding, rendered painted walls and glass balustrading) which have both local relevance and are in keeping with the local built and natural landscape. Assimilation of the house into the landscape would be aided by the recessed design of the third floor and the dark zinc cladding at that level which would not stand out against the site's green backdrop. As seen from Ouaisne car park the new dwelling would have less impact on the landscape than the present one.

Case for the applicants

11 The estate has a varied and developing character with no consistent dominant themes. This scheme would be acceptable in its context judged by modern environmental standards. The building would not be unreasonably overbearing and is not materially more dominant or imposing than the existing house. There are about 14 properties in the estate which are built in close proximity to a shared boundary.

Impact upon the living conditions of neighbours

12 Mr and Mrs Wells (The Beach House) are concerned that whereas Le Rocher Rouge is currently 8m off their western boundary the replacement house would be about 3.6m closer at first floor level and about 4.6m closer at second floor level and with large windows facing The Beach House. There would also be a large roof terrace at that level facing their house only about 3.2m away from the boundary. At third floor level there would be a large front and side roof terrace facing the Beach House some of which would be only about 3.6m from the boundary.

13 These factors, together with the increased mass of the new building, would cause a loss of morning light and make the new house an overbearing feature. Current views from Le

Rocher Rouge would change from being angled mainly towards the sea to a 180 degree panorama, thus setting a new precedent. The first floor roof terrace and sitting room at The Beach House would be overlooked at much closer quarters and to a greater extent from the new terraces and the house windows giving onto them. The new building, plus the other changes involved in the works which would take place at and near the mutual boundary, such as excavation, and creation of the proposed planters, stairs and terraced areas would lead to the loss of mature vegetation near the boundary and thereby expose and cause additional loss of privacy at the conservatory and in the rear garden of The Beach House. Air-conditioning of the proposed indoor pool could also create noise nuisance.

14 For these reasons the permission is inconsistent with the requirement of IP policy GD1(3a) which protects against unreasonable harm to the living conditions of neighbours, including the level of privacy and light which owners and occupiers might expect to enjoy. Mr and Mrs Wells expect to enjoy the same level, or very similar levels of privacy in the above areas of their house as currently exists.

15 Mr & Mrs A Mauger have lived at Rocquebrune for about 20 years during which time they have endured 3 nearby properties being either renovated or completely demolished and replaced. However, they were completely shocked at the scale of what was proposed for Le Rocher Rouge and taken aback when it was approved.

16 The existing house has 5 bedrooms and the proposal is to replace it with a 4 bedroom house but with a floorspace nearly 3 times larger. This could become 3 apartments. At present there is no overlooking or infringement of privacy of their property. However, the present small terrace and balcony would be replaced by 3 extensive terraces placed further forwards. Rocquebrune is immediately below Le Rocher Rouge and (while the scheme would not have a major or harmful impact on the house itself) it would seriously affect the level of privacy enjoyed in the external amenity areas of Rocquebrune, including the surroundings of the swimming pool. The area of external balconies at Le Rocher Rouge facing this area would increase at both first and second floor levels as well as at the new third floor level, where currently there is none. Granting permission on this scale therefore disregarded the protection offered by policy GD1.

17 The estate currently works because the original layout ensured that houses on higher land only overlooked the roofs of their neighbours, so allowing long distance views but respecting privacy. This development would ignore that concept, providing a line of sight over probably at least 10 houses and gardens in all directions.

Case for the DoE

18 The test of IP policy GD1 is 'unreasonable harm'. The site is within the Built-up Area wherein the plan encourages development. In that context proposals for development within the Built-up Area will often result in some level of impact but the test is whether or not that impact is unreasonable.

19 Although the new house would be closer to The Beach House this would not result in unreasonable loss of privacy given the current level of mutual overlooking which exists and the existence of mature planting along the boundary. Nor would the recessed nature of the scheme at 3rd floor level make the replacement house unduly overbearing.

20 Turning to Rocquebrune, there is already a level of overlooking from Le Rocher Rouge, but the former has a tall hedge on its roadside boundary which offers a good level of screening. Although the level of overlooking may increase this would not result in an unreasonable loss of privacy.

21 Given the ‘compelling nature’ of the seaward views from Le Rocher Rouge the natural sightlines from the proposed house and terraces are in the direction of the coast rather than into neighbouring properties.

Case for the applicants

22 The impacts need to be considered in the context that this is a tiered estate where higher properties commonly overlook lower ones, but all enjoy the sea views. The scheme will not make a significant difference to this.

23 Plant or equipment for the pool would be designed to meet Environmental Health guidelines for noise levels in residential developments.

Impact on local wildlife interest

Case for the appellants

24 Mr and Mrs Wells (The Beach House) consider that since the application did not include an ecological survey establishing an evidential base in relation to each individual species present at the site, the DoE were unable to confirm, before granting permission, that the scheme met the requirement of IP policy SP4 to give high priority to the protection of the Island’s natural and historic environment. Granting permission also conflicted with the requirements of IP policy NE1 and NE2 as well as policy GD1(2c) which prevents unreasonable effects on the character and amenity of the coastal environment.

25 The DoE consultation response stated that there are records of protected species being found ‘in close proximity’ and that the site ‘is subject to a number of features that indicate its potential use by (protected) species’. For their part, the appellants have spent the past 6 years establishing their gardens in such a way as to encourage local wild life and are concerned that the proposed works will have a detrimental impact on the bats and green lizards established here.

Case for the DoE

26 The comments of the Department’s expert consultees, the Natural Environment Team, amounted to neither an objection to the application nor support for it. They identified the possible presence of protected species but were content that this possibility could be dealt with by adding an informative to any permission to draw the developer’s attention to the need to respect any protected species that may be found on the site. This was done. Conditions 5 and 6 respond to comments by others: these conditions require an ecological assessment and the implementation of any mitigation measures found necessary by it. IP policies SP4, NE1 and NE2 are thereby satisfied.

Excavation, construction and waste

Case for the appellants

27 Prof Morris (Rochez) owns this house, situated immediately above Le Rocher Rouge on a different (higher) leg of the estate road. The rear gardens of the two houses adjoin each other on the slope. The main concern of Prof Morris is that the permission failed to take account of the potential for excavation at Le Rocher Rouge to destabilise the rock structures upon which his house is founded. In his view it was negligent of the Planning Applications Committee (PAC) to grant permission without the submission of a detailed geotechnical survey, especially as its members did not make a site visit in order to better understand this issue. The exposed rock shows fracture planes which may have stabilised over a very long time, but interference by drilling or excavating and the removal of material could have disastrous consequences a long way from the actual impact points.

28 Prof Morris also queries the position of the mutual boundary between the two properties as shown on the site plan.

29 Mr & Mrs Wells (The Beach House) share similar concerns. A full geotechnical survey should have been undertaken before granting permission so that all parties could have been aware of the work required to remove the subterranean material and how this would affect other properties. The pre-determination structural engineers report on the investigation undertaken by T&G was insufficient for the PAC to make an informed assessment. Dense granite strata are difficult to remove from the ground and may need blasting with controlled explosions. A long period of excavation and construction would create a long period of considerable vibration, noise and disturbance and (in view of the narrow road) prolonged disruption in the availability of access to nearby property.

30 Comments by Josef El-Raghy [Appendix 1 to the Statement of Case o/b Mr & Mrs Wells] support the view that the volume of rock to be excavated can be accurately estimated with the present property in place and this should be the starting point for estimating the impact of the work. Without doing so, and understanding the underlying rock and geotechnical properties, it is impossible to determine whether or not the development may put surrounding properties at greater risk.

31 Mr & Mrs Mauger (Rocquebrune) are concerned at the potential for noise, vibration, dust and disturbance over a long period due to the extent of the likely excavation and ground works. More information should have been obtained about this before granting permission. Rocquebrune is less than 40ft away from the site of Le Rocher Rouge. They have concern about the works can be undertaken safely in such narrow roads and confined spaces. Conditions should be attached to the permission requiring the estate road to remain open at all times except for unavoidably brief periods and prohibiting protracted use of rock-breaking equipment.

32 Mr Crill (La Solaize) believes the PAC wrong not to have required to know how much rock would need to be excavated and removed from the site, how long this phase of the operation would take, and how its removal would be achieved without disruption to residents. Their approach seems to have been to accept 'whatever has to be done' and then facilitate it.

Case for the DoE

33 A Waste Management Plan was submitted with the application. However, condition 1 (which is an expansion of a standard condition) requires the preparation of a Demolition/Construction Waste Management Plan and standard condition 3 requires a more detailed Waste Management Plan. These conditions will ensure that IP policy WM1 is met, including minimisation of disruption to the highway and neighbouring properties. The purpose of the policy is to encourage developers to consider how to achieve responsible disposal of waste, not to stifle development which is otherwise acceptable.

Case for the applicants

34 In response to concerns raised about the potential impacts of excavation and removal of rock an initial site investigation was undertaken by T&G Structural Engineers and submitted to the DoE. That survey was based upon the information available with the existing house in place. Further detailed investigation work can be undertaken after its demolition. However, the initial work concluded that the intended works are not unusual construction activities and that the design team had carefully planned the scheme around known site constraints to minimise excavation where possible and enable safe retention and ease of construction. The planned construction activities are commonly-used systems that have been used in close proximity to much more sensitive structures than those found here without damage from vibration. The expected ground conditions have been studied and considered and the structural solution is tried and tested and appropriate to this site.

35 It is inevitable that any development here will cause some degree of disruption. However, every effort will be made to minimise this. Parts of the private estate roadway may need to be closed temporarily eg to connect to services, but this will be of short duration and alternative access is available via the estate road loop.

36 The client is happy to work with the DoE to develop a detailed method statement for the excavation and engineering works before the start of construction. The work itself will be undertaken by a competent and suitably experienced contractor and subject to a formal building contract making provision for proper programme management, health and safety management, environmental control, and insurances covering off-site properties. A condition survey of adjoining properties would be undertaken by an independent surveyor to establish an agreed schedule of conditions prior to commencement. These properties would be monitored during construction. There would be no excavation, drilling or tampering to the rock within Prof Morris's ownership and boundaries would be strictly respected.

37 An outline waste plan was submitted with the application but it is accepted that a detailed plans will need to be agreed in fulfilment of conditions 1 and 3.

INSPECTOR'S OBSERVATIONS AND CONCLUSIONS

Effect upon the character of the area

38 Les Ruisseaux Estate lies in an area of steep rocky outcrops and deep valleys falling to the coast. The detached houses within the estate are often large, sometimes comparatively tightly confined within their plot boundaries, and primarily designed/orientated to obtain best possible advantage of the available sea views. There is no one strong prevailing architectural style. Some houses have been extended over the years and it is apparent that some recent redevelopments within the estate have adopted more contemporary modes, aimed at seizing the maximum opportunity to take advantage of coastal views. Le Rocher Rouge was built perhaps some 50-60 years or so ago in a style which is now somewhat dated and is not an asset to the area. It appears to have been vacant for some time and is not in good condition.

39 The proposed new house is strikingly modern and will have a greater presence in the street scene than the existing one, although the existing house is itself a prominent feature both because of the topography of the plot (with a particularly steep rocky outcrop descending to the road at its eastern end) and the height and length of the structure sited on the developable portion. The replacement house has similar topographical constraints tending to push it towards the road but in my view would be a 'lighter', more attractive design than the current dated structure. The recessed nature of the third floor and the type of materials employed at that level, would counteract the increase in footprint and prevent it becoming an excessively prominent or overbearing structure. Overall, I consider that it complies with IP policy GD7.

Impact upon the living conditions of neighbours

40 The test within IP policy GD1(3) is that '*development should not unreasonably harm the '.....living conditions of nearby residents', and 'in particular, not unreasonably affect the level of privacy... that owners and occupiers might expect to enjoy'*'. Individual perceptions about the level of privacy which someone, as a nearby resident 'might expect to enjoy' in any given context are likely to differ substantially and therefore, as the DoE accepts, application of the policy test necessarily involves a degree of judgement and subjectivity.

41 I consider that the greatest impact upon the privacy of nearby residents would be that perceived by occupiers of The Beach House arising from use of the new external terraces at Le Rocher Rouge. As can be seen from the photographs in the representations by Mr & Mrs Wells, some mutual views exist between the balconies/terraces of Le Rocher Rouge and The Beach House, but these are partly screened by intervening boundary vegetation. The second floor terrace at the new house (in front of its main living accommodation) would be somewhat lower than the present balcony at Le Rocher Rouge but closer to the mutual boundary with The Beach House and sited further forward towards the road. The new third floor terrace would be higher than the current balcony at Le Rocher Rouge but (at least at the front of the house) only slightly closer to The Beach House.

42 Turning to the effect upon the conservatory at the rear of The Beach House, near the boundary with Le Rocher Rouge, this is currently screened from view from the curtilage and side balcony of that house by trees and vegetation in the intervening spaces. This screening effect would be reduced by construction of the new third floor side terrace closer to the

boundary, although the extent of this may be partly dependent upon any measures taken to reinstate or augment planting here.

43 From my visit to the two properties the concern felt by the residents of The Beach House is appreciable. I consider that the reduction they are likely to perceive in their present level of privacy on their terrace and in their sitting room is such that it is quite a fine decision whether or not this would infringe IP policy GD1(3). However, those enjoying the fine views from the terraces of both houses will no doubt primarily focus on the coastal panorama rather than any available sideways views towards the terraces and windows of their neighbours' houses.

44 Turning to impact upon Rocquebrune, the tall evergreen hedge within that property screens the swimming pool and its surroundings (ie, the most sensitive part of the gardens of that house) almost entirely from view from the present balcony/terrace of the existing house at Le Rocher Rouge. In my judgement that situation would largely continue and not be materially different with the new house as proposed.

45 I conclude that the PAC reached a supportable conclusion that the level of harm caused by the impact is not 'unreasonable' in the context of adjacent properties in a built-up area and the local circumstances of this case.

46 Condition 2 provides an opportunity for detailed, careful consideration to be given to the future of the vegetation near the boundary of Le Rocher Rouge and The Beach House, ie what is to be retained and what is to be required in terms of necessary and appropriate screening or softening by way of new planting. To some extent the owners of the two houses also have the power, either separately or together, to manage future planting in this area and/or upon their balconies to augment such screening if they wish to achieve further mitigation.

Impact on local wildlife interest

47 In my view the ecological interest of the site is adequately safeguarded by conditions 5 and 6 attached to the permission. Subject to these IP policies SP4, NE1, NE2, and GD1(2c) would not be undermined.

Excavation, construction and waste

48 It is understandable that appellants have concerns about the proposed redevelopment, especially issues of safety, noise and other disturbance factors to do with excavation and whether or not this would prolong the normal construction process. However, the applicants have provided a reasonable amount of information at this stage and indicate their willingness to adopt safe and considerate methods of working. To the extent that it is the function of the planning process to engage with such matters the content of conditions 1 and 3 provide a framework for their resolution.

CONCLUSION

49 I recommend that the appeal be dismissed.

Roy Foster, Inspector

3 March 2016

PERSONS SPEAKING AT THE HEARING

For the appellants

Mr A Farman (o/b Mr and Mrs Wells)

Mr Crill (o/b himself and Prof Morris)

Mr A Mauger

For the DoE

Mr A Townsend

Ms G Duffell

For the applicants

Mr I McDonald, Architect

Mr Haywood, Advocate