

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

Appeal under Article 108 against a decision made under Article 19 to grant a planning permission

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

Appellant:

Howard Morris

Planning permission reference number and date:

RP/2020/0474 dated 6 November 2020

Applicants for planning permission:

Axis Mason

Site address:

Le Rocher Rouge, Les Ruisseaux, St Brelade JE3 8DD

Description of development:

"REVISED PLANS to P/2019/1647 (Construct 1 No. 3 bed dwelling with associated ancillary structures, parking and landscaping): Extend ground floor level to North elevation. Create roof terrace. Various external and internal alterations to include install 2 no. windows to West elevation and 2 no. windows to South elevation."

Inspector's site visit date:

12 April 2021

Hearing date:

22 April 2021

Introduction

1. This is a third-party appeal against the grant by the Growth, Housing and Environment Department on 6 November 2020 of planning permission RP/2020/0474 for the development described above. The permission authorises revisions to the approved development P/2019/1647 dated 13 February 2020. It was granted subject to a condition requiring the approved landscaping scheme to be implemented before the dwelling is occupied.

2. The site is in the Built-up Area as defined in the Island Plan.

Main issue and Island Plan Policy

3. The main issue in the appeal concerns the effect of the revisions on the amenities and living conditions of nearby residents.
4. Island Plan Policy GD1 states:

“Development proposals will not be permitted unless the following criteria are met such that the proposed development ...

3. does not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents, in particular [does]
 - a. not unreasonably affect the level of privacy to buildings and land that owners and occupiers might expect to enjoy ...
 - c. not adversely affect the ... environment of users of buildings and land by virtue of emissions ... including light, noise, ... fumes”

The development in P/2019/1647 and the revisions in RP/2020/0474

5. P/2019/1647 authorises the construction of a dwelling on the site of the house known as Le Rocher Rouge, which had already been demolished with planning permission. The new dwelling will be terraced on four levels, with the rear of the development being built into the steeply rising ground here. The dwelling is shown as having a flat green roof with a balustrade around it. At the highest part of the site, beyond the flat roof and next to the boundary with the appellant's property Rochez, the ground will be levelled out to provide a garden area accessed by external stairs.
6. Various revisions have been approved in RP/2020/0474. The revisions in contention are the increase of about 0.5m in the overall height of the dwelling and the partial replacement of the green roof by a roof terrace accessed from the external stairs. The green roof is now shown as containing a paved area in the middle at the rear, which will be bordered by planters and balustrades and contain sitting out areas, serving facilities and a sunken courtyard garden.

The case for the appellant

7. Applying the criteria set out in Policy GD1.3.a. & c. the appellant maintains that the roof terrace will result in unreasonable harm. He points out that his house is in an area where high levels of residential amenity and living conditions are enjoyed by residents.
8. The appellant maintains that the roof terrace will intrude upon the outlook from first-floor windows in his house and from the swimming pool and its adjoining terrace, that it will cause a loss of privacy and that it will result in nuisance from noise, lighting and cooking fumes. He indicates that the noise will be particularly disturbing because the roof terrace will be close to his property and will be in a 'natural amphitheatre' formed by the projecting rock promontories on each side of it.

Other representations

9. Representations have been received from two other neighbouring residents, who have raised concerns about the increase in the size of the dwelling and, in particular, about noise arising from the use of the roof terrace.

The case for the applicants

10. The applicants state that there will be no overlooking between the dwelling and Rochez and no adverse effect on the skyline and strategic views that exist from Rochez. They point out that the landscaping scheme approved under P/2019/1647 includes high evergreen hedging on the boundary between the two properties, that the planters around the roof terrace will be 1.5m high and contain plants at least 0.3m high and that the roof terrace will be several metres away from the outer edges of the green roof.
11. The applicants do not consider that the use of the roof terrace will have a detrimental impact on residential amenities or living conditions. They point out that the development approved in P/2019/1647 incorporates a rear garden that will provide an external amenity space between the roof and the boundary with Rochez. They do not consider that the addition of the roof terrace will create living conditions that are different to what is normally to be expected between adjoining amenity spaces in the Built-up Area.

The case for the Growth, Housing and Environment Department

12. The Department consider the roof terrace to be well designed. They do not consider that the increase in the overall height of the dwelling will be significant or have an unreasonable impact. They point out that the roof terrace will be well below the level of Rochez and they maintain that due to the difference in levels between the two properties the extensive outlook from Rochez will not be unreasonably diminished.
13. The Department do not consider that the use of the roof terrace will cause unreasonable harm to neighbours. They accept that it will allow this part of the roof to be used as an amenity space and that this may involve activities that give rise to some noise. However, they maintain that there will be a reasonable distance between the roof terrace and Rochez and they agree with the applicant that the situation will be no different to what normally occurs between adjoining amenity spaces in the Built-up Area.

Inspector's assessments and conclusions

14. I inspected the site of Le Rocher Rouge from the road and looked at the surrounding area. I visited Rochez and looked out from its rear windows and from its rear garden and swimming pool areas. From what I saw at my visit and from the information I was given during the appeal, my assessment of the impact of the revisions approved in RP/2020/0474 is as follows: -
 - The small increase in the overall height of the development will hardly be noticeable and will not have impact on the locality or the amenities of any neighbours.
 - There is a panoramic outlook from the rear windows of Rochez over its boundary hedging and over the site of Le Rocher Rouge. The new

dwelling will still be at a much lower level than Rochez and it will not impinge significantly on this outlook.

- At the closest point, at the southern edge of the swimming pool area, it would at present be possible to look down on the new dwelling from Rochez. This is more of an issue for the occupiers of the new dwelling than it is for those of Rochez, and it will be dealt with by landscaping. The privacy of Rochez will not be harmed.
 - The rear garden approved in P/2019/1647 will be close to Rochez's boundary and will already provide an external amenity space where residential activity audible at the rear of Rochez may occur. The roof terrace will be further away, but it will probably be used more often than the garden because it will have better facilities and be more accessible. I anticipate therefore that activity may be more noticeable and that Rochez may experience more noise and, possibly, more intrusion from cooking fumes and external lighting. I do, however, consider that the situation will be no different to what normally occurs between properties in the Built-up Area and to what could at present already occur in this particular locality because of the layout of residential development.
 - I have taken note of the appellant's concerns about the effect of the projecting rock promontories on the transmission of noise from the roof terrace towards Rochez. An expert may be able to assess the noise and predict whether the topography would funnel it towards Rochez, disperse it elsewhere or absorb it. On the information available to me, it seems to me that the situation will not be changed for the worse in this respect from what it was before Le Rocher Rouge was demolished or be significantly different to what could generally arise in the Built-up Area, where amenity spaces are often bounded by buildings rather than by natural features in the landscape.
15. For the above reasons, I have concluded that the revisions approved in RP/2020/0474 will not have an effect on the amenities and living conditions of the occupiers of Rochez or of other nearby residents that is contrary to the provisions of Policy GD1 and that the appeal should therefore not succeed.

Inspector's recommendation

16. I recommend that the appeal is dismissed.

Dated 14 May 2021

D.A.Hainsworth
Inspector