

Planning and Building (Jersey) Law 2002  
Article 115(5)

## **Report to the Minister for the Environment**

By

**Linda Wride** Dip TP MRTPI

an Inspector appointed by the Judicial Greffe.

### **Appeal**

by

**Mr and Mrs Leith**

**Chateau Rocquebrune, La Route de St Aubin, St Helier**

Site visit 8 July 2019

Application Reference: P/2018/1651

## **Chateau Rocquebrune, La Route de St Aubin, St Helier**

- The appeal is made under Article 108 of the Law against a decision to grant planning permission under Article 19
  - The appeal is made by Mr and Mrs Leith
  - The application Ref PP/2018/1651 is dated 19 November 2018
  - The development is described as: Erection of perimeter fence
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### **Summary of Recommendation**

1. I **recommend** that the appeal should be allowed and that permission should be granted subject to the conditions included in the Annex to this report.
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### **Appeal site and surroundings**

2. Chateau Rocquebourne is a detached dwelling with separate staff accommodation and a triple garage set in substantial grounds accessed off La Route de St Aubin close to West Park, on the outskirts of St Helier.
3. The site lies on steeply sloping land and the grounds have been terraced to provide well maintained lawns and planting beds around the house and to the south of the site. There is a disused tennis court to the north of the site with woodland beyond which, together with the gardens and woodland of Overdale Hospital to the east, provides a green backdrop to the built-up area when viewed from sea level.
4. Dwellings in Mont Pelle back on to the north east boundary of the appeal site beyond the old tennis court. To the north west beyond the wooded area, a field (Field 1534) has a common boundary to Chateau Rocquebrune. A dwelling "Ryedale" sits at the base of a quarry to the west of Chateau Rocquebrune, immediately below the perimeter of the appeal site.
5. Densely planted trees on the northern part of the site (predominantly Monterey pines) are subject to a High Hedges Notice which was issued in 2016 and renewed in 2018. The Notice requires the lower branches of the pine "hedge" at the rear of 17 Mont Pelle to be removed up to a height of 6m, and the height of a "secondary hedge" of Monterey pines, Leyland cypress and holm oaks to be reduced in height to 3.85m. In the past, material removed from trees covered by the High Hedges Order has been left as log piles along the boundary with the Mont Pelle houses. I observed these on my visit.
6. An email received from a Mont Pelle resident during the appeal process advised that vegetation was cleared from this wooded area shortly before the appeal site visit, revealing a path that had been hitherto obscured by undergrowth. I noted on my visit that material which appears to have been

removed during this recent maintenance has been added to the log piles at the rear of the Mont Pelle houses. At the time of my visit, the wooded area was readily accessible on foot. A footpath of paving slabs, water pipe upstands and benches were visible; much of the ground was cleared and carpeted with pine needles.

7. I also observed the remains of a chain link fence along part of the northern perimeter of the site. However, it does not form a continuous barrier; parts of the chain link are in a dilapidated condition with gaps and holes. As existing, it does not provide any significant degree of security. Furthermore, there is no physical barrier between the appeal site and the very steep drop to the former quarry which adjoins the site in the north west corner.

### **Description of proposal**

8. The appeal proposal is for a perimeter fence to provide security around the northern part of Chateau Rocquebrune's grounds. The proposed fence would run to the rear of houses in Mont Pelle which back on to the site and continue round the northern boundary with the field, beyond the wooded area behind the old tennis court. A small return length of fence is proposed along the eastern boundary near the Monte Pelle houses, and a longer return along the common boundary to the quarry to the west where "Ryedale" is located at a lower level.
9. As originally submitted, the proposed fence comprised substantial palisade railings with metal uprights some 2.4m high, topped with forked spikes – a design more typically found around industrial premises and open commercial storage facilities than enclosing residential properties.
10. The line of the fence was originally shown inset by some 2m from the boundary with Mont Pelle houses, but with no means of accessing the strip of land between the fence and the rear boundaries of the adjacent houses for maintenance purposes. At the height originally proposed, the new palisade fence would have been taller than the existing concrete block boundary walls enclosing the rear gardens of the Mont Pelle houses and clearly visible from the adjacent dwellings. Elsewhere, the proposed fence line would have hugged the perimeter of the site, including a very tight, acutely angled corner at the junction of the field to the north and the former quarry to the west.
11. In the course of processing the application, the proposal was amended in response to concerns about the original submission expressed in public comments. The proposed fence was lowered to 2m in height along much of its length, reducing to 1.8m high along the boundary with the former quarry. The vertical elements of the fence were changed to a traditional railing design, with a more slender profile compared to the original palisade design. The proposed railings would have a black powder coated finish and be topped by arrow-head finials rather than the forked spikes originally proposed.
12. As well as revising the design and height of the railings, the line of the proposed fence was adjusted to form a gentle curve at the north west corner

of the site, rather than the awkward acute angle originally proposed. In addition, where it adjoins the former quarry, the line of the fence would be set back some 2m from the boundary, behind trees on the rim of the quarry which are shown to be retained. A gate is proposed on the north eastern boundary where a dilapidated shed is currently located. This would allow access to maintain the strip of land between the proposed fence and the rear of the Mont Pelle dwellings. All existing trees will be retained according to a note on the revised drawings.

13. From the appeal documentation, it appears that public comments relate to the application as originally submitted. There is nothing to indicate that the amended plans were subject to further consultation.

### **The Island Development Plan 2011 (Revised 2014)**

14. The Island Plan has primacy in the determination of planning applications. There is a general legal presumption that development which accords with the Plan will be permitted, whilst development that is inconsistent with the Plan will normally be refused unless there is "sufficient justification"<sup>1</sup> for overriding its provisions.
15. The Plan identifies the protection of the environment as one of the key components of the strategic policy framework. The Plan's spatial strategy is therefore to concentrate new development in the built up area of the Island, as defined on the Proposals Map (Policy SP 1) and to resist development elsewhere.
16. While the main part of Chateau Rocquebrune is within the built-up area as defined on the Proposals Map, the northern part of the site beyond the old tennis court (where the proposed perimeter fence is proposed) is in the "Green Zone". Within this zone Policy NE 7 embodies a presumption against all forms of development, unless the proposal falls into one of the exceptions which the policy states may be permissible, but only where it does not cause serious harm to landscape character.
17. One of these exceptions is an structure ancillary to residential structure (including a means of enclosure) provided it is modest and proportionate to other buildings on the site; well sited and designed relative to other buildings, context, size, material, colour and form, and does not cause harm to landscape character.
18. Policy GD 1 specifies the criteria all proposals are expected to meet for development to be permitted. Amongst other things, new development is expected to be of a high standard of design which maintains and enhances the character and appearance of the area (Policy SP 7) and contributes positively to the diversity distinctiveness of the built context (Policy GD 7).

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<sup>1</sup> Article 19 of Planning and Building (Jersey) Law 2002 (as amended)

19. Policy GD 7 requires a high standard of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and built context.

### **The refusal reason**

20. The application in its revised form was refused planning permission on the grounds that the proposal would have a significant detrimental impact on, and be out of context with, the character of the surrounding area having regard to the location, design and height of the proposed fence. In these respects, the proposal would conflict with Island Plan Policies GD 1, GD 7 and NE 7.

### **The grounds of appeal**

21. In summary, the grounds of appeal are:

- (a) The land on which the railings are proposed to be erected is domestic curtilage and the means of enclosure can therefore be erected under permitted development rights
- (b) The height, arrangement and location of proposed railings have been chosen to reduce the impact of the proposed development on the visual and landscape character of the area
- (c) The design of the railings has been selected to be robust and to provide security whilst being appropriate to the context, character and setting of the area
- (d) Too much weight has been given to public comment and the public may not have had an opportunity to comment on the revised scheme

### **The case for the planning authority**

22. The Department disagrees with the appellants' opinion that the proposal is permitted development by virtue of being within a residential curtilage. In its view, whilst in the appellants' ownership, the area beyond the former tennis court to the north and north west of the site where the proposed railings would be sited is not part of Chateau Rocquebrune's residential curtilage. Consequently, the exemption relied on by the appellants does not come into play, in the Department's view.

23. The Department acknowledges that assessing visual impact is a subjective judgement. However, in its judgement, the combination of style, location and height of the railings would harm landscape character in conflict with the thrust of relevant Development Plan policies due to its height and urban style, and would be visually obtrusive when viewed by the residents of nearby houses.

24. Whilst the Department has taken in account the views of neighbours, it refutes the suggestion that it has given too much weight to these comments. There is no requirement to re-advertise all amended drawings. Furthermore,

a number of neighbours have repeated their concerns in response to the appeal notification.

25. The Department reiterates its view that a lower means of enclosure of a different design may be acceptable in this location, but even its amended form the proposed means of enclosure is not acceptable due to its visual impact and harm to the character of the area.

**Main issue: The effect of the character and appearance of the area**

26. The main issue in this case is the effect of the proposed fence on the character and appearance of the area. As part of my site visit, I looked around the area in the vicinity of the appeal site. Based on my observations, I found the character and appearance of the area to be diverse.

27. Within the grounds of Chateau Rocquebrune, the open, well-tended lawns and planting beds close to the main house which step down to the entrance to the site off Route de St Aubin, contrast with the disused tennis court and shaded wooded area to the north of the buildings where the new fence is proposed. In the wider context, the relatively dense residential development on Mont Pelle contrasts markedly with the open space of field 1534 adjoining the appeal site and the fields beyond, and with the lower density residential development on Tower Road and the spacious terraced grounds around the substantial buildings of Chateau Rocquebrune itself.

28. The diversity in the character and appearance of the of the area is reflected in the wide range of enclosures to be found within the appeal site and its environs, from chain link and timber fencing to walls constructed in granite and concrete block (both decorative and rendered/painted) as well as railings and hedges a little further away, along the main St Aubin road.

29. Whilst noting the Department's view that the appeal proposal is out of context with the character of the area, I do not find this argument compelling bearing in mind the diverse character and appearance of the appeal site and its environs, and the different styles, heights and materials of the means of enclosure to be found in the area.

30. The industrial design and height of the proposed fencing as originally proposed would have been out of keeping and inappropriate in an area where the predominant form of built development is residential in nature. However, as amended, reduced in height and with a traditional railing design, I consider that the appeal proposal would contribute positively to the diversity and distinctiveness of the local built context in accordance with Policy GD 7.

31. Swathes of trees thread through and around West Park, the grounds of Overdale Hospital, the northern end of the appeal site, and the boundary between the fields and the houses fronting Tower Road. This vegetation forms an important green backdrop to the built development when looking up at the escarpment towards the north west from sea level, and a green middle

ground when looking down across fields 1539 and 1540 towards the sea from Tower Road, as it winds up the hill beyond the appeal site.

32. In my opinion, this significant band of vegetation contributes positively to undeveloped nature of the Green Zone. Its retention is therefore important when considering development proposals. As amended, the appeal scheme would not require the removal of any trees on the line of the proposed fence. In this respect therefore, one of the key features of the area's character and appearance would be maintained.
33. The tall, largely evergreen trees around the perimeter of the appeal site would camouflage and screen the proposed railings in distant views from the public domain such that they would not have a significant visual impact on the wider area. Having regard to the design change, reduction in height and inset from the perimeter of the site adjoining the Mont Pelle houses and "Ryedale" in the former quarry, I do not consider that as revised, the railings would be unduly conspicuous or overbearing in closer views from neighbouring dwellings.
34. Given the imposing nature of the main house at Chateau Rocquebrune and its substantial grounds, in my view, the proposed railings with their traditional design would be appropriate in such a setting. Railings of the style and height proposed would be modest and proportionate to the buildings on the site, having regard to size, material, colour and form. Located as proposed, the railings would be well sited relative to buildings around the site and the woodland context within the site. Whilst the change from chain link fencing to railings would be apparent at close quarters, for the reason stated, I can find no serious harm to landscape character arising from the appeal scheme. In my view, the proposal would therefore accord with the exception to the usual presumption against development in the Green Zone Policy set out under Policy NE 7 Residential: Section 2 (ancillary buildings or structures).

### **Conclusion on this issue**

35. Taking all these matters into account I conclude that in its revised form, the appeal proposal would not harm the character and appearance of the area and would accord with Policies GD 1, GD 7 and NE 7 of the Revised 2011 Jersey Island Plan.

### **Other matters**

36. I acknowledge the disagreement between the parties as to whether the proposed means of enclosure is permitted development within the residential curtilage of Chateau Rocquebrune, and could therefore be erected without planning permission.
37. There is no legal definition of curtilage for planning purposes. Each case must be considered on its merits and it is a matter of judgement for the decision maker, having regard to a wide range of matters including (but not

necessarily limited to) physical layout, past and present ownership, past and present use and function of the land.

38. Documents submitted in support of the appeal provide information about some of these matters. However, there is little information before me about other considerations which would need to be taken into account before reaching a decision on the curtilage issue. As the appeal was dealt with by written representations, there was no opportunity to explore these matters further at a Hearing.

39. In any event, the applicants applied for planning permission for the proposed development and their application was refused. I have assessed the appeal proposal against the relevant development plan policies, having regard to the cases put forward by the parties, third party comments and my observations on site. In reaching my recommendation, I have also noted concerns about the weight given to public comments. However, although I have reached a different conclusion to the Planning Authority, there is nothing in the material before me to suggest that objections from neighbours have outweighed the outcome of a proper assessment of the proposal against relevant policies.

40. Legal boundary issues and the effect of the development on the resale value of nearby properties (mentioned in some of the public comments) are not material considerations for planning purposes. Whilst noting concerns about the stability of the quarry rockface, I do not think this would be compromised given the set back of the proposed fence from the rim of the quarry, behind the line of existing trees, in the revised proposal. I do not consider that the proposed railings would materially affect light reaching the rear gardens of Mont Pelle houses given the reduced height and slender profile of individual railings compared to the scheme as originally submitted, and bearing in mind that these gardens are at a higher level than the appeal site.

### **Planning conditions**

41. The Department has not suggested any planning conditions in the event that the Minister is minded to allow the appeal. In addition to the "standard" conditions, it is important to tie the permission to the revised drawings and I have included a condition to this effect in the Annex. As the site has been identified as having the possible presence of protected species, I have also included the informative and condition suggested by the Natural Environment Team with regard to protected species, trees and hedgerows.

### **Overall conclusion and recommendation**

42. For the reasons stated, I recommend that the appeal should be allowed, and planning permission granted subject to conditions set out in the Annex.

Linda Wride  
Linda Wride Dip TP MRTPI

30 July 2019



## **ANNEX: Planning Conditions**

1. The development hereby approved shall be carried out entirely in accordance with the revised plans, drawings, written details and documents which form part of this permission. No variations shall be made without the prior written approval of the Department of the Environment.  
Reason: To ensure that the development is carried out and completed in accordance with the details approved by the Department of the Environment.
2. This permission solely relates to the Location Plan and revised drawings 3910-2B and 3910-2(1) D New Fence Details  
Reason: To avoid doubt.
3. The development shall commence within five years of the decision date.  
Reason: The Department of the Environment will need to reconsider this proposal in the light of any future change in circumstances.
4. (a) Any tree felling, hedge removal or any clearance works shall only be undertaken between the months of 1st October to 1st March in any calendar year, unless a written statement has been submitted from a qualified and competent person confirming that there are no nesting birds or other protected wildlife in any of the trees or hedgerows to be felled or removed based on an inspection to be carried out 10 days or less before the commencement of the proposed works.  
(b) The written statement shall set out the results of the inspection and shall include a method for working to avoid harm to any protected wildlife species identified, or to their nests, dens or roosts.  
(c) The report shall be submitted to and approved by the Department of the Environment at least 5 working days in advance of any felling or clearance works. No works shall commence until and unless the report and working method has been approved in writing, and the development shall be carried out in accordance with the approved details

### **Informative**

Possible presence of protected species

The site has been identified as having the possible presence of protected wildlife species. It is the responsibility of the applicant to inform all site workers of the possibility of protected species on the site and the implications under the Conservation of Wildlife Law (2000) and you are advised of your duty under the Law to stop work and notify Natural Environment on + 44 (0) 1534 441600 immediately should any protected species be found.