

## PLANNING AND BUILDING (JERSEY) LAW 2002 (AS AMENDED)

Appeal under Article 108 (2) (a) against a decision to grant planning permission

### Report to the Minister

By Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM,  
An Inspector appointed under Article 107

**Appellant:** Brian Mansfield

**Planning Permission Reference Number:** S/2023/0989

**Decision notice date:** 11 April 2024

**Location:** La Mare Vineyards, La Rue de la Hougue Mauger, St. Mary, JE3 3BA

**Description of development:** Remove pole and antenna mounted on the chimney of La Mare Vineyards main building. Install 1No. Pole, 3No. antenna, 2No. cabinets, associated equipment, and timber fencing to north-west of Field MY291.

**Appeal procedure and date:** hearing, 29 July 2024

**Site visit procedure and date:** accompanied, 29 July 2024

**Date of report:** 16 August 2024

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### Introduction

1. This is a third-party appeal by Mr Brian Mansfield against a decision to grant planning permission for installation of telecommunications equipment at Field MY291 at La Mare Vineyards.
2. Permission was granted by the Planning Committee on 11 April 2024, following a recommendation for approval by the Infrastructure and Environment Department ('the Department').
3. A summary of the cases presented by each party are presented below. Further details are available in the statements and other documents submitted by each party, which are available through the Planning Applications Register website.

### The appeal site, planning history and proposed development

4. The proposed works would entail removal of an existing antenna, which is attached to the chimney of 'The Elms' and installation of new equipment to the south and west of the current site, within Field MY291.
5. Field MY291 lies to the south and west of the car park associated with La Mare Vineyard and is bordered on its northern edge by La Rue de la Hougue Mauger. There are mature trees along the north, west and east field boundaries. The field is cultivated as grape vines and there is an existing grass access track which leads from La Rue de la Hougue Mauger in the north-east corner of the field, which runs along the northern and western edges of the field.

6. The proposal would allow for installation of a steel pole 12 metres tall and painted brown close to the north-western corner of the field. A lightning conductor would extend for 60 cm above the antenna. There would be associated cabinets at ground level, which would be screened by a wooden fence, which would be 2.1 metres high and would exceed the height of the proposed cabinets. The proposed mast would sit approximately 12 metres to the south of an existing phone mast and cabinets, which are owned by a different operator.

#### **Case for the appellant**

7. The appellant's eight grounds of appeal can be summarised as:
  - There has been no consultation with neighbours.
  - The new mast would be exceedingly visible at 12 metres high.
  - The erection of a second mast will have a detrimental impact with no provision for landscaping or any attempt to hide the structure by planting trees. The new mast is broader and taller than the existing mast.
  - At the planning meeting the applicant's representative stated the mast was to be installed in a gap in front of the tree line, rather than in the tree line, which would make it less visible.
  - A solar farm and temporary marquee have been consented in the Coastal Protection Zone. The mast would be in the Green Zone. Do these zones mean nothing to planning?
  - It has been stated that the mast cannot be placed in the car park as it would be close to a building of historic interest, but a banqueting hall, shop, café and permanent marquee have been consented within 60 metres of the site of historic interest.
  - The Planning Committee should have considered if the mast could be moved to the northern boundary.
  - The mast should be situated in La Mare car park in the mature tree line. If that is not possible then it should be situated in the mature tree line to the north of Field MY291.

#### **Case for the Planning Committee & Infrastructure and Environment Department ('the Department')**

8. Responses to the grounds of appeal can be summarised as:
  - The planning application was advertised in the correct manner and the appellant was aware of the application. There is no legal requirement for consultation pre-application.
  - The visibility of the proposed mast was considered and it was concluded that it would not be harmful to the character of the area.
  - The proposed mast is considered acceptable in this location in the corner of the field screened by adjacent large trees.
  - The committee's decision was based on the application before it.
  - Each planning application is considered on its own merits taking into account the Island Plan designation, as well as representations and consultations received and all other material planning considerations. In this case, the impact on the Green Zone was considered acceptable.
  - The planning committee must legally consider the application before it. The committee could have refused the application. In that case, it would have been for the appellant to determine whether they wished to re-submit an alternative.

## Case for the Applicant

9. The applicant's response can be summarised:
- It is not clear at what stage of the process the appellant wished to meet. The architects were not contacted by the appellant other than viewing letters of objection submitted to the Department. The proposal is not of a scale or nature to require public consultation.
  - The existing mast is shorter but is located on top a chimney increasing its overall height. The proposed siting of the new mast in a field boundary amongst mature vegetation and trees is considered to significantly limit the visibility of the proposed mast.
  - The mast has been positioned to minimise visual intrusion. The increase in size of mast is to improve network coverage and increase capacity for JT customers.
  - The proposal is to locate the pole / antennae in an existing gap between trees in the tree line of the field boundary to ensure the perimeter access track is not obstructed. It will be located 12 metres away from the existing pole/antennae as this is the dimension to the clear space between trees. The exact position will be determined following a tree root method statement.
  - The existing equipment is in the Protected Coastal Area which is afforded a higher level of protection than the Green Zone, which is where the new telecoms equipment is proposed.
  - The Planning Committee can only approve or refuse the application before them. In this case they considered the proposal acceptable and approved it.
  - The proposed site was chosen following a site selection process. The new antenna is larger than the current mast and could not be accommodated as a replacement in the same location as the current mast owing to effects on the Listed Building. The car park is within the Protected Coastal Zone which carries the highest level of protection. The land to the south is Green Zone and has a greater capacity for development.

## Consultation responses

10. The response from **Environmental Health** (16 October 2023) stated no objection, subject to inclusion of a condition requiring monitoring and submission of a certificate to confirm that the ICNIRP Radio Frequency Public Exposure Guidelines are being met.
11. The **Natural Heritage Team** (30 October 2023) response states no objection, subject to inclusion of conditions to safeguard birds and protected species and tree health.
12. Two responses were received from the **Historic Environment Team**. The first (21 December 2023) sought further information in the form of a Heritage Impact Statement to enable assessment of the impacts of the proposal on the historic setting. A subsequent response (28 March 2024) was issued following receipt of the Heritage Impact Statement. This confirmed no objection to the proposals.

## Representations

13. Nine objections were received. Concerns can be summarised as:
- Location and design of mast.
  - Visual and aesthetic impact of the mast.
  - Health implications of the mast.
  - Insufficient consultation.

- Insufficient consideration of alternative sites.
- Harm to environment.
- Impact on house prices.
- Mast has not been co-shared with the existing pole on site.

### Key Issues

14. Article 19 (1) of the Planning and Building (Jersey) Law 2002 as amended notes that all material considerations shall be taken into account when determining an application for planning permission. Paragraph (2) of the same article states “In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan.” The current Island Plan is the Bridging Island Plan, dated March 2022 (‘Island Plan’).
15. Having regard to the provisions of the Island Plan and other material considerations, I consider that the key issues in this appeal relate to:
  - The principle of development at this location.
  - Consultation undertaken to inform/ support application.
  - Scale and prominence of proposed mast.
  - Choice of location for proposed mast.

### The principle of development at this location

16. Policy UI4 - telecoms and other masts and equipment of the Island Plan provides support for new telecommunication equipment where it is designed and sited in the least visually intrusive way, having regard to its urban, rural or coastal context, whilst also considering the technical requirements for the location of the infrastructure and the need for functionality. In some instances, this may include specific measures to disguise or shroud the equipment in a way that is appropriate to its setting. The policy also encourages network sharing, and where that is not possible, the co-location of equipment.
17. The appeal site lies within the Green Zone. Policy SP2 - Spatial strategy provides for development within the countryside, where a countryside location is justified, appropriate and necessary in its location. Further guidance is provided through Policy NE3 Landscape and seascape character. The policy states that development must protect or improve landscape and seascape character. Proposals which fail to protect or improve landscape character may be permitted if: they are demonstrably necessary either to meet an overriding public policy objective or need; there is no practicable alternative without harm to landscape and seascape character; that the harm has been mitigated as far as reasonably practicable; and it has been demonstrated that the predicted public benefit outweighs the harm.
18. The applicant has provided information to explain its modernisation programme. At the hearing, it was stated that this forms part of a commitment made by the phone companies to the Jersey Government. Details of the site selection process were also provided. I am satisfied that there is policy support for telecoms equipment and that a replacement mast is needed in this location to provide the required level of mobile signal coverage. Therefore, subject to my comments on the effects of the scale and prominence of the proposed mast on landscape character, I find that there is policy support for the principle of the proposal at this location.

19. Policy SP4 - Protecting and promoting island identity and Policy HE1 - Protecting listed buildings and places both provide for protection of the historic environment and Listed buildings. The proposal site lies to the south-west of 'The Elms', which is a Listed Building (Grade 4). The proposal would result in removal of the current antenna located on the Listed building. During my site inspection I saw that the proposed antenna would not be a prominent or significant addition in the setting of the Listed building. The appellant has provided a Heritage Impact Statement, and the Historic Environment Team has confirmed that it does not object to the proposals. I therefore conclude that the proposals would be consistent with policies designed to safeguard the historic environment.

#### Consultation undertaken to inform / support application

20. The proposal does not meet the thresholds to trigger application of Policy GD2 - Community participation in large-scale development proposals. The application was published in the Jersey Gazette and Jersey Evening Post and a notice was displayed at the site. I understand these to be the usual methods for publicising applications. I acknowledge that the appellant would have valued the opportunity to discuss siting issues with the applicant and Department prior to submission and during consideration of the proposals, however there is no statutory requirement for this.

#### Scale and prominence of proposed mast

21. As noted above, Policy NE3 seeks to ensure that development protects landscape character. In addition, Policy GD6 - design quality requires a high quality of design that conserves, protects and contributes positively to the distinctiveness of the built environment, landscape and wider setting.
22. The appellant has directed me to advice for siting telecommunications masts, which is contained in the Jersey Integrated Landscape and Seascape Character Assessment. Whilst this does not form part of the Island Plan, it provides helpful advice on these matters. It recommends that masts should be sited where they are seen in the context of trees or woodland and with a backdrop of land, rather than sky and the colour of the mast should reflect the backdrop against which it is seen. Equipment should be located as close to the field boundary as possible to reduce vehicle access. Infrastructure at the bases of masts should be screened with native hedge plants and fencing should be as unobtrusive as possible.
23. The proposed mast would be located close to the western boundary of the field, adjacent to the tree line, approximately 12 metres away from the existing mast. Whilst the appellant describes it as 'bigger', it would be similar in scale and size to the existing mast in the field, although the shroud around the antenna would be a little wider.
24. The cabinets would be sited within a fenced wooden enclosure, 2.1 metres high. This is shorter than the height of the cabinets associated with the existing mast to the north. A condition was appended to the appealed permission requiring the fence to be painted green/ brown to assist with blending in. Given the height, position and colour of the fence, I find that it would not be a prominent addition in the landscape.
25. I conclude that the proposed location is consistent with the guidance set out in the Jersey Integrated Landscape and Seascape Character Assessment. I saw that existing vegetation would act to substantially screen the mast when viewed from the north including for those travelling along La Rue de la Hougue Mauger. Whilst visibility

would be greater during the winter months, when there are no leaves on the trees, it would be viewed in the context of trees or woodland and close to the boundary of the field.

26. The proposed mast would appear above the height of the existing tree line when viewed from the residential property to the east. I saw that it would be visible from parts of the upper floor and the edge of the garden. However, this property is at some distance from the proposed mast, and the mast would be viewed in context of the existing mast and surrounding vegetation. Overall, I find that the mast would be well-positioned to reduce its visibility in the wider landscape and hence would protect the landscape character, in line with the provisions of Policy NE3.

#### Choice of location for proposed mast

27. The appellant has suggested alternative locations for the proposed mast. As concluded above, I am content that the applicant has undertaken a systematic site selection process, which has considered effects on the setting of the Listed building and wider landscape and co-location of equipment. The proposed site also avoids the Coastal National Park.
28. Whilst I understand some masts have been consented within the Coastal National Park, this has been where there are no alternatives that would provide the required coverage. The role of the planning department is to determine whether a particular proposal is acceptable and not whether other options would be 'better'. Whilst there may be alternative locations that might better suit the appellant, it is necessary to reach a decision on the proposal as submitted.

#### **Other matters**

29. Some of the representations raise concerns about possible health effects of the mast. Policy GD1 - Managing the health and wellbeing impact of new development seeks to ensure that development will not adversely affect the health, safety and environment of users of buildings and land by virtue of emissions, including electro-magnetic fields. The Environmental Health team has not objected to the proposals. Its response refers to the pre-commissioning details indicating that the estimated Electro-Magnetic Level will be below the ICNIRP Radio Frequency Public Exposure Guidelines. It has requested that Electro-Magnetic levels are monitored following commissioning of the mast to confirm that the guideline levels have not been exceeded. I accept that this could be appended as a condition to the permission. The applicant confirmed at the hearing that all measurements take account of the cumulative effect of all masts present in a location. I am therefore content that the proposals would not have adverse effects on human health.
30. The appellant has suggested that mitigation measures, such as tree planting should be applied to reduce the visibility of the mast. I understand that the antenna operates through 'line of sight' technology and hence any tree planting - unless carefully positioned - could act to block the operation of the antenna. For the reasons set out above, I do not consider that additional landscaping is required.

#### **Conditions**

31. The Decision Notice included four scheme-specific conditions in addition to the two standard conditions (relating to commencement of development and carrying out of development in accordance with the approved details).

32. The first makes the permission temporary subject to submission of satisfactory post-commissioning tests of electromagnetic levels. This addresses the requirements of the Environmental Health Team and is necessary to safeguard human health.
33. The second condition relates to the need to obtain prior approval of paint colours for the fencing around the cabinets. I agree that this condition would help to ensure that the fencing is integrated into the surroundings as far as possible.
34. The third was requested by the Natural Environment Team and places time constraints on works. I agree that this condition is necessary to protect biodiversity and is consistent with Policy SP5 - Protecting and improving the natural environment and Policy NE1 - Protection and improvement of biodiversity and geodiversity of the Island Plan.
35. The fourth condition requires implementation of tree protection measures. These have been proposed to safeguard the existing trees, which contribute to screening the proposed mast. Whilst I accept that protection of the trees is an important requirement, there is no guarantee that these measures would be successful in avoiding death of a tree. I therefore recommend that the condition be modified to allow for replacement of any trees that die within 12 months of installation of the mast.
36. The standard conditions require proposals to be built in accordance with the approved plans. Condition 4 also requires the submission of tree protection methods for approval. Whilst a "Tree Root Protection Method Statement" has been appended to the Initial Ecological Assessment, this is not identified as an approved document and hence the detail of the required tree protection measures has not been finalised. There could be some tension if the proposed tree protection measures would require any modification of the precise siting of the mast. To alleviate any such tensions, an additional condition is proposed, which would allow some flexibility to allow for 'micro-siting' of the pole in light of ground conditions be built into the condition. It is proposed that a maximum deviation of up to 0.5 metres in either direction would not result in any appreciable difference to the landscape effects of the proposals but would allow sufficient flexibility to accommodate roots of mature trees. I have proposed a modification to condition 4 to accommodate this.

## Conclusions

37. In general, proposals that are in accordance with the Island Plan shall be granted planning permission, unless there are material considerations otherwise. For the reasons set out above, I conclude that the proposals accord overall with the relevant provisions of the Island Plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all other matters raised, but there are none which would lead me to alter my conclusions.

## Recommendations

38. I recommend that the appeal should be dismissed and that Planning Permission be granted subject to the five conditions listed at the end of this report.

*Sue Bell*

Inspector 16 August 2024

## Conditions

1. The development hereby approved is temporary and shall be removed on or before 3 months following substantial completion of the development and the land restored to its former condition, unless a post commissioning test indicating actual electromagnetic levels (ICNIRP) is completed, submitted to and approved in writing by the Chief Officer.
2. The approved fencing shall be painted in a brown/green finish submitted to and approved in writing by the Chief Officer. Once agreed the approved finish shall be implemented in full in conjunction with the installation of the development works, hereby approved, and thereafter retained and maintained as such.
3. The works should not be permitted to take place between 1<sup>st</sup> March and 30<sup>th</sup> September inclusive in any calendar year, unless an inspection of the adjacent trees for active birds' nests or dens or roosts of other protective wildlife has been undertaken by a competent person and written confirmation has been submitted to the Department confirming that no protected wildlife, nests, dens or roosts will be disturbed through the works. The inspection shall be undertaken no later than 5 days before the commencement of the works and the works shall not commence unless the written confirmation has been approved in writing by the Department.
4. Prior to commencement of the approved works, details of suitable tree protection measures for the adjacent trees shall be submitted to and approved by the Department. The tree protection measures shall be designed in accordance with BS 5837:2012 Trees in relation to design, demolition and construction. The approved tree protection measures shall be retained in situ until the approved works have been completed. Should any tree identified within the tree protection measures die within twelve months of completion of the works, it should be replaced with a tree of the same species.
5. The mast, cabinets and fence shall be as set out in Drawing 5619-WA-010-XX-DR-A-003 Rev c. The mast may be adjusted by micro-siting within the site to facilitate the tree protection measures. However, unless otherwise approved in advance in writing by the Department micro-siting should not result in the mast being moved by more than 0.5 metres from the position shown on the original approved plans.

## Reasons

1. To protect the interests of the general public in accordance with Policies GD1 and ME3 of the Adopted Bridging Island Plan 2022.
2. To promote good design and to protect the character and identity of the existing area in accordance with Policy GD6 of the Adopted Bridging Island Plan 2022.
3. To ensure the protection of all protected species in accordance with the requirements of Policies SP5 and NE1 of the Adopted Bridging Island Plan 2022.
4. To ensure the protection of green infrastructure in accordance with the requirements of Policies SP5 and NE2 of the Adopted Bridging Island Plan 2022.
5. To ensure the protection of green infrastructure in accordance with the requirements of Policies SP5 and NE2 of the Adopted Bridging Island Plan 2022.