

REPORT TO MINISTER FOR THE ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Martin Tanguy against a grant of planning permission.

Reference Number: S/2019/0875.

Site at: Skyline Watch, Old St John's Road, St Helier JE2 3LG.

Introduction

1. I carried out a site inspection and held a hearing into this appeal on 3 December 2019.
2. The development subject to the appeal was described in the application as: "Retrospective planning permission for the erection of two WiMax aerials (diagram 1 attached) on the roof (diagram 2 attached) providing competitive telephony services eg voice calls and broadband to in excess of 100 customers".
3. In the planning authority's decision notice, the development was described as: "RETROSPECTIVE: Install 2 No. WiMax aerials to roof".
4. This is a "third party" appeal. The applicant for planning permission is Home Net Limited.
5. In this report I provide a brief description of the appeal site, followed by summaries of the cases for the appellant, the planning authority, the applicant, and other parties. I then set out my assessment, conclusions and recommendation. The submitted statements, plans and other relevant documents are in the case file for you to examine if necessary.
6. The parties in this appeal appear to have used the terms "aerials" and "antennae" interchangeably as having virtually the same meaning. This interchangeable meaning is also found in dictionaries, so I do the same in this report. For reasons explained later (paragraphs 29-30) references to "aerials" or "antennae" should also be taken to include associated attached equipment.

Appeal Site

7. Skyline Watch is a residential property on the south-west side of Old St John's Road, a little to the north-west of the point where, approaching from the south, the road bends sharply to the left. The front of the property, which includes an attached garage, abuts the road. The south-eastern part of the dwelling has a flat roof, and the two aerials or antennae are located near the south-eastern end of this roof.
8. The aerials are shown in the photographs submitted with the application. They consist of vertical metal poles to which various fittings and cables are attached. Near their bases there is a box-shaped component described in evidence as a base station. One of the aerials (the photograph labelled "Sector 1") has a square-shaped component near the top (this is evidently a backhaul radio transmitter/receiver); the other does not have this component, but both aerials have an oblong-shaped component at about mid-height (the WiMax fitting).

9. One of the aerials is about 2.55 metres in height (measured from the adjacent flat roof). The other is about 2.3 metres in height above the roof. There is a flat metal plate at the base of both aerials held in place by concrete blocks on top of the metal plate. Lengths of black-coloured wiring or cabling are attached to the aerials and lead to ducting at the side of the roof.
10. The appellant's dwelling at Number 4 Ellora is a first-floor flat with a ground floor entrance and garages, situated on the south-west side of Old St John's Road next to the point where a side access way (Ellora) leads to the south-west. The flat has a living room and bedroom with windows facing south-east towards Skyline Watch. One of these openings (in the living room) has full-length glazed French doors. The distance between Mr Tanguy's flat and the aerials at Skyline Watch is about 60 metres.
11. The view from Mr Tanguy's dwelling extends into the distance, looking down over part of St Helier towards the more distant shoreline. The view is mostly south-eastwards roughly along the line of the nearby part of Old St John's Road, as the sideways extent of the view is limited by high, partly evergreen hedging on the north-east side of the road and by residential buildings including Skyline Watch on the south-west side of the road.
12. The adjacent first-floor flat (Le Cotil, Number 5 Ellora, which I understand is occupied by Mr Lindop and Ms Bremec) also has its main windows facing south-east, but from a slightly different angle to Mr Tanguy's. The view from this dwelling towards the appeal site is rather more obstructed by intervening buildings and vegetation than the view from Mr Tanguy's flat.
13. From Old St John's Road near its junction with Ellora, the view towards Skyline Watch and the aerials is similar to the view from Mr Tanguy's flat, though from road level the horizon level changes a little. For vehicular traffic, St John's Road here is one-way northbound, so the view from the road in the vicinity of Ellora looking towards Skyline View would mostly be available to pedestrians. Approaching the appeal site from the south along Old St John's Road, the view of the disputed aerials is mostly obstructed by high vegetation or roadside structures.

Case for Appellant

14. The main points made by Mr Tanguy are, in summary:
 - Mr Tanguy had enjoyed wide views from the lounge and bedroom of his modest home for 23 years until the commercial masts appeared without warning on the flat roof of the property opposite. The views were obliterated overnight. The eye is drawn to the masts. The enjoyment of living in his home has been greatly diminished.
 - The masts only create commercial business benefit and do not benefit local people or passers-by. The installations are inconsiderate, unsympathetic and arbitrarily sited.
 - Even if the Health Department has confirmed that it has no concerns, the masts could at least be wall mounted to reduce the visual impact on residents and commuters who pass by daily.
 - It is amazing that the planning officer who granted retrospective permission could have done so without conditions, and without visiting Mr Tanguy's property to see the situation, as the masts and tangle of connecting wires are incongruous and have a disproportionate effect on the skyline.

- The planning department appear to have dismissed out of hand Mr Lindop's suggestion that in the absence of any relevant Jersey planning policies, regard should be had to English policies. Statements by the Environment Minister, for example about the need for development to respect its surroundings, should be applied.
- The disputed aerials were previously mounted on St Helier House and provided income for the Parish. It would make more sense for the aerials to be located there so that the Parish could benefit from the income.
- Mr Tanguy's vocation as a support worker involves helping people who are without influence. The decision to grant retrospective permission has left him feeling as vulnerable as some of the people he supports.
- Mr Tanguy was not the only local objector; he had spoken to many local people who objected to the presence of the aerials.

Case for Planning Authority

15. The Department's main comments in response to the appeal are, in summary:

- The Department was made aware that the aerials had been installed without planning permission and following an investigation, served an enforcement notice. The retrospective application which led to the permission now subject to appeal was then made.
- Although Class B of Part 3 of the GDO allows the installation of "television, radio or other antennae", the Department considered that the antennae at the appeal site provided a telecommunications service and therefore they should be considered under Class B of Part 6 of the GDO; such works are not permitted development where any of the work would be above ground level.
- The Department understands that the applicant is not a mobile phone service provider and that the antennae are for data only.
- It is not the role of the planning system to protect views from private property. The visual impact of the development including its impact on public views is considered to be acceptable.
- The Environmental Health section had no objection and the Department considered that there were no health issues which would justify refusing permission.
- Applying Island Plan policies GD1 and GD5, The development is not considered to involve a seriously detrimental impact on skyline views or vistas, or to cause unreasonable harm to the appearance or character of the area.

Representations by Applicant and Site Owner

16. Home Net Ltd request that the appeal be dismissed. Their arguments are set out in a letter dated 25 October 2019, summarised as follows.

- The views from Mr Tanguy's and Mr Lindop's properties are not unreasonably obscured by the minimalistic structure of the aerials.
- The aerials are generally unobtrusive, in keeping with the area, and do not significantly harm the area's character or views of the town or of the Green Zone backdrop.
- The appellant's references to the UK Code of Best Practice on mobile network development does not recognise a number of technological differences. Mobile phone masts operate on higher frequencies than radio

band broadcasts. Home Net's WiMax services are point-to-point, not roaming. Interference issues prevent co-location of WiMax aerials with masts of other frequencies.

- WiMax aerials emit their signal in a 360 degree arc, and the technology would be severely impacted by wall mounting.
 - The aerials had worked satisfactorily in their previous location at St Helier House but they had to be moved at short notice after Home Net were given notice that their contract was to be ended, as the building was vacated for reasons relating to its cladding.
 - The Environmental Health Department has not objected; this confirms the absence of any health risks. The aerials are in a residential area so that Home Net can serve residential properties.
 - Although the development has a profit motive it also provides social benefit including the availability of low-cost data services to local people. WiMax aerials provide data-only services to residential customers and Home Net Ltd cannot provide mobile phone services through its WiMax network.
17. At the hearing the applicant company (represented by Mr Ridgway) was supported by Mr Robert Weston, owner of the house at Skyline View. Mr Ridgway accepted that the erection of the aerials was an offence open to prosecution and a fine on conviction. The reason for having two aerials was to provide coverage over a wide angle, with each aerial covering a sector. The aerials could not be wall-mounted because radio waves would bounce off walls. Line of sight was "pretty much needed" for the backhaul radio. Mast sharing would not be feasible because of undue interference. Mr Ridgway confirmed that the antennae were only intended to be used for data transmission, not mobile phone voice transmission.
18. Mr Weston said that he had no wish to upset neighbours and that if the appeal succeeded he would ensure that the aerials were promptly removed. He had carried out a survey by asking 20 people walking past his house for their opinion. None of them had found the aerials noticeable and they had all said "what aerials?". A chestnut tree within Mr Weston's land had been lopped about a year ago and this had opened up local views.¹ Mr Weston's comment, mentioned by Mr Tanguy, to the effect that Mr Weston's own views from his house were not affected by the aerials was made as a joke. Several hundred people benefited from the service enabled by the aerials.

Representations by Other Parties

19. At application stage five people with addresses in various parts of St Helier signed separate copies of the same short statement supporting the development, essentially on the grounds that it was not ugly, that there are numerous other aerials in the area, and that the benefits of internet access outweigh any objections. Two other residents as well as the appellant objected to the development, saying that the antennae were unsightly, should not have been erected without planning permission, and should be removed. One of these objectors was Mr Oliver Lindop, to whose representations Mr Tanguy refers in his

¹ During the hearing Mr Weston handed in a copy of a photograph he said had taken from Mr Tanguy's flat. No details were supplied (such as weather conditions, camera lens angle etc) and the photograph as printed did not look similar to the view I had seen earlier, possibly because the middle ground was not in focus. I expressed doubts about receiving the photograph as evidence, especially as it had not been submitted before the hearing for investigation if necessary by the appellant, and I have not taken it into account as evidence.

appeal statement. The other was Ms Eva Bremec, who appeared at the hearing on Mr Lindop's behalf.

20. Mr Lindop also submitted a further statement (dated 25 September 2019) at appeal stage, supporting Mr Tanguy's appeal. At the hearing Ms Bremec read out part of Mr Lindop's written submission and spoke in support of it. She also stressed that until the erection of the antennae the view from No 5 Ellora had been longstanding. The main points of Mr Lindop's objections are summarised below.
- The antennae and profusion of linking wires are an eyesore, directly in front of both Mr Tanguy's and Mr Lindop's views over the town. Unightly building materials are also stored on the flat roof.²
 - The occupiers of Skyline Watch can enjoy their views and profit from the rental for the antennae whilst the development spoils the view for others.
 - The masts change the character of the neighbourhood from residential to commercial. Residents should not have to endure a commercial communication development. The equipment could be sited on other high points around St Helier.
 - Planning Officer Chris Jones reached the opposite conclusion to Mr Gladwyn on the acceptability of the development. Mr Gladwin failed to view the masts from the front windows of Mr Tanguy's or Mr Lindop's properties.
 - The applicant has tried to lobby for support by those who have submitted identical comments.
 - The principles set out in the English code of practice for this type of project are relevant and Mr Gladwin should have taken them into account. Policy NR12 of the Island Plan aimed at encouraging mast sharing should have been applied.
 - Permission should be refused or the antennae should be mounted on the south-eastern façade of Skyline Watch out of sight from properties further up Old St John's Road.

Assessment and Conclusions

Points Relating to Enforcement Notice

21. During the hearing I drew attention to the provisions of the enforcement notice mentioned in the planning authority's written statement. The enforcement action against the antennae was clearly a significant aspect of the site's recent planning history, but none of the parties had supplied any details about it in their written submissions. While preparing for the hearing I managed - with some difficulty - to find a copy of the enforcement notice on a government website.³
22. The officer's report on the application subject to this appeal contains an "application assessment sheet". The enforcement notice is not mentioned in this assessment, or anywhere else in the officer's report. In my view that is a strange omission. The enforcement notice was issued in June 2019; the compliance period ended in July 2019; no appeal against the notice was lodged before the

² Mr Weston explained at the hearing that some materials had been temporarily placed on his roof at Skyline Watch. This appears to be a peripheral issue not relevant to the present appeal.

³ For reasons unknown to me, information on planning enforcement cases is apparently not published for online access in the same way as planning applications.

compliance period ended, so the notice was in force at the date of the officer's assessment (30 August 2019). It was still in force at the date of the appeal hearing, and unless something has changed since then it will still be in force now.⁴ The notice contained the normal warning that failure to comply rendered recipients liable to prosecution for two offences: carrying out development without planning permission, and failing to comply with the enforcement notice.

23. According to evidence given during the hearing by Mr Weston, an original application for planning permission for the aerials was returned because it needed correction or was incomplete. The corrected application was re-submitted about two weeks later and the enforcement notice was issued during this intervening period.⁵ Mr Weston has evidently been told by a planning officer that he would not be prosecuted.
24. As was pointed out by the Department's representatives during the hearing, the current appeal concerns the application for planning permission, not the enforcement notice. It was also argued that the application provided a means of assessing the proposal more fully than was possible when the enforcement notice was issued. Be that as it may, a significant feature of the case history is the comparison between the stated reason for serving the enforcement notice and the planning officer's assessment of the same development. The former states that the aerials and associated apparatus are considered to be "visually intrusive in the street scene contrary to Policy GD1 of the Island Plan". The latter states that the development "is not considered to cause unreasonable harm to the character or amenity of the surrounding area as set by Policy GD1 of the Island Plan".
25. In my view those assessments, both made by your Department, conflict with each other. The visual impact of the aerials and the resulting policy conflict must have been judged to be sufficiently serious to make enforcement action expedient,⁶ and neither the visual impact of the development nor relevant planning policy has changed.

Legal Issues

26. One of the issues which has arisen in this case concerns the Planning and Building (General Development) (Jersey) Order 2011 (the "GDO"). Under Class B of Part 3 of Schedule 1 of the GDO, planning permission is granted for "the erection, construction or placing....of television, radio or other antennae". This provision is subject to several provisos, which do not apply here. (Among other things, they refer to listed buildings, satellite dishes and mobile telephone network equipment - this proposal does not involve any of those items).
27. The applicant company evidently erected the aerials believing that the development was permitted by the GDO, and only applied for planning permission after being told by your Department that an application was necessary. The

⁴ In general, if a planning permission is granted for the same development as is subject to an extant enforcement notice, the permission overrides the notice. In this case, at the time of writing there is no planning permission for the development subject to the enforcement notice, so the notice is in force and has been in force for about five months.

⁵ The enforcement notice is dated 27 June 2019; the application was signed in May 2019 but the (presumably amended) version is date-stamped as received on 4 July 2019.

⁶ The aerials have only been erected quite recently, so this was clearly not a situation where the eight-year time period which can result in immunity from enforcement was about to expire, making urgent "holding action" necessary.

Department take the view that the development should be considered under Class B of Part 6 of Schedule 1 of the GDO. This grants planning permission for:

"The carrying out by a provider of drains, gas, water, electricity or telecommunications services to the public of work necessary to lay, place, inspect, repair or renew a drain, sewer, main, pipe, line or cable or other apparatus for the provision of a service to the public or any portion of the public".

28. This permission is subject to three provisos, the key one of which (in subparagraph B.2(b)) is that; "In the case of the placing of new work, any of the work would, on its completion, be above ground level". The disputed aerials are clearly above ground level.
29. The Department's interpretation of the legislation was apparently reached after taking legal advice. No details of that advice have been put forward in evidence, presumably because it is regarded as privileged information. However, from what was said at the hearing it appears that the Department considered that the development involved more than antennae, because it included up to three separate components including the backhaul radio and base station equipment. The applicant company has not put forward any evidentially-supported case against the Department's interpretation of the law, and I do not see reason to disagree with it. The base stations in particular apparently perform functions which are more than just "antennae" and I note that the technical information supplied as part of the application mentions a power supply. One of the submitted illustrations, titled "Aerial Diagramme", also refers to two antenna (presumably intended to mean antennae) "and associated equipment". The reference to associated equipment implies something additional to antennae.
30. Thus it should be noted that although I use the terms "aerials and "antennae" throughout this report, and the description in the application refers to "WiMax aerials", the development involves more than just aerials or antennae or WiMax aerials. These references should be taken to mean "aerials and associated equipment" including all the items attached to the upright poles as well as associated wiring or cables.

Policy, Visual Impact and Other Issues

31. The most relevant policy of the Island Plan is probably Policy GD1, which sets out criteria for considering the acceptability of development. The extent to which the development meets or conflicts with Policy GD1 is a matter of judgment, especially as this policy is fairly generalised. One of its criteria is that development should not unreasonably affect the character and amenity of the area. The appeal site is not in an area with any special designation, such as a conservation area.
32. Part of the Department's case in support of granting permission is that the appeal site is in the built-up area of St Helier and Policy SP1 of the Island Plan directs development to the built-up area. Under Policy GD5, the Minister will seek to protect or enhance the skyline (among other things), but this policy also states that development which has a "seriously detrimental impact" on the skyline will not be permitted. There is a tension between safeguarding amenity and enabling the provision of a service, and the Department considered that the visual impact of the development was relatively modest.
33. There is considerable force in the Department's assessment. Moreover, there is a long-established planning principle that occupiers of residential properties have

no right to a view over someone else's private land.⁷ This weakens the objections to the development. Some of the arguments by objectors - for example Mr Tanguy's claim that the view from his dwelling has been "obliterated" - are also overstated. Nevertheless, his opposition to the development is understandable, particularly because the south-easterly view from his flat is "blinkered" by vegetation and buildings as noted in my site description; so the disputed aerials are a fairly dominant feature in that view, and they catch the eye despite the intervening distance of about 60 metres. The aerials are rather less prominent in the view from Mr Lindop's property.

34. As regards public views from Old St John's Road, some passers-by might not notice the aerials or consider them obtrusive; but others would do so, especially since the aerials project vertically into views of the horizon seen from Old St John's Road in the vicinity of its junction with Ellora. The aerials and associated attachments including cables have a more "industrial-looking" appearance than most types of television or other aerials typically found in residential areas, and this appearance is out of keeping with the residential character of the area.
35. The health concerns raised by objectors are not supported by any clear evidence, and the fact that the Environmental Health Department do not see any reason to oppose the development carries weight. UK policy and practice on siting mobile phone masts is not directly applicable here, taking into account that these aerials are not designed or intended for high-frequency mobile phone communication (a matter which could conceivably be controlled by condition if necessary). Neither of Mr Tanguy's and Mr Lindop's suggestions about mast sharing or mounting the aerials on the side wall of Skyline Watch appears to be a feasible option, for technical reasons relating to "line of sight" operation and interference with radio signals.
36. Mr Tanguy's personal circumstances, including the nature of his employment and the length of time he has lived in his flat without obstruction to its south-easterly views, help to explain why he finds the aerials objectionable; but planning applications have to be assessed from a public interest viewpoint. The same applies to the objections by Mr Lindop and Ms Bremec.
37. On the other hand, several aspects of the case for the applicant, as supported by Mr Weston, are far from strong. The development evidently helps Home Net Ltd to provide a service which is useful and no doubt valued by customers. The availability of modern means of communication for residents and businesses has a public interest value which is a factor in support of the application but is not a good reason in itself to grant planning permission.
38. I give little weight to claims by both sides about the opinions of local people. St John's Road in this vicinity is evidently well used by pedestrians, but there is no evidence about the precise wording of the questions which Mr Weston said he asked passers-by. Surveys of this type have to be carefully conducted to avoid leading questions, and no proper written record has been supplied of the replies, the number of people surveyed or the sample proportion. Equally, no evidence has been submitted to support Mr Tanguy's assertions about the opinions of residents or pedestrians.
39. The written representations of support for the development signed by several people appear to have been organised or orchestrated by Mr Weston. None of the signatories state that they are familiar with the site and they do not have

⁷ This principle relates to a view, not an immediate outlook which may be affected by loss of light or privacy. The latter circumstances do not apply here.

closely neighbouring addresses. Such representations, all using the same wording, have limited value compared with individually-composed submissions from people with clear knowledge of a site.

40. The arguments in support of the development are also undermined by two factors. The first is that in response to some of my questions, the applicant company's witness at the hearing (Mr Ridgway) could not explain the meaning of supporting technical evidence he had submitted. He did not even know what the abbreviation "WiMax" stood for until I told him.⁸ This leads me to doubt the reliability and weight of other evidence given on behalf of the applicant company, for example about whether two aerials are really needed for adequate coverage or whether one aerial would suffice (bearing in mind the evidence that WiMax aerials emit their signals over a 360 degree "arc"⁹). The available evidence indicates that two aerials would be technically advantageous, but is unconvincing as to their necessity for adequate coverage.
41. Secondly, it seems to me that possible alternative locations, perhaps on a high building in a more commercial setting with less environmental impact, were not fully explored before the aerials were installed at Skyline Watch. The aerials were evidently installed in some haste, when Home Net Ltd's contract for the use of St Helier House was ended at short notice; and even accepting that mast sharing using Jersey Water's gantry on Westmount Hill is not feasible, there is scant evidence that other alternative sites not involving sharing were investigated.
42. This history gives me the impression that the company took a "quick easy option", and that a planning application made in the normal (prospective) way, perhaps after discussion with the planning authority, might have resulted in a proposal with less impact on skyline views from within a residential area. The Island Plan states that the size and location of telecommunications masts will be strictly controlled to reduce their visual impact,¹⁰ and although the development subject to this appeal is not what most people would describe as a telecommunications "mast", I think the general principle behind Policy NR10 has some relevance.¹¹

Overall Conclusions and Recommendations

43. Taking all the above points into consideration, I find that the harm to public amenity caused by the aerials is limited; nevertheless the aerials are unattractive, rather jarring features in the local scene and they detract from its residential quality. The aerials spoil the view from objectors' dwellings but that is not a compelling factor, for the reasons I have explained.

⁸ "WiMax" is "Worldwide Interoperability for Microwave Access". I questioned Mr Ridgway about a number of the technical terms and abbreviations in application documents, particularly the document headed "Integrated WiMAX and LTE multi-platform base station". This document contains numerous unexplained jargon terms such as (taking examples from only the first two pages): "MIMO"; "Frequency Domain Scheduling"; "LTE"; and "FDD". The aim of my questions was to test the applicant's case, not to find out the meaning of terms, which I had previously researched.

⁹ I use quotation marks here because an arc is not normally a full circle, but the applicant's evidence refers to a 360 degree "arc".

¹⁰ This refers to the supporting text for Policy NR10 on telecommunications masts. The policy itself provides that, among other things, telecommunications development will only be permitted where development is in accord with Policy GD1.

¹¹ The central part of the two structures is labelled as a "pole" in one of the submitted drawings. Whether or not a pole is a mast for planning policy purposes may be debatable.

44. I judge that the issues in this case are finely balanced - partly because there are more weaknesses than strengths in the arguments both for and against the development. Taking account of the policy background, it is necessary to consider not just whether the development detracts from the area's character or amenity, but whether the effect is "unreasonable", in a built-up part of St Helier which has no special designation but nevertheless has a pleasantly attractive residential character.
45. On balance, I consider that the case against the development is stronger than the case in support. Therefore I recommend that planning permission be refused, on the grounds that the aerials and associated apparatus are visually intrusive in the street scene, and the development is contrary to the aims of Policy GD1 of the Island Plan. (If adopted, these grounds would be essentially the same as the Department's stated reasons for serving the enforcement notice.) On this basis the appeal by Mr Tanguy should be allowed.

Possible Conditions

46. If you decide to grant permission, I suggest that conditions should be imposed along the lines set out below. The first is aimed at improving the appearance of the aerials and associated wiring to make the development look less cluttered, although any improvement would only be slight. Because a permission would be retrospective, the wording of this condition would have to be rather complicated to allow for enforcement in the event of any failure to comply.
47. The second suggested condition would be intended to ensure that the antennae would only be used for receiving or sending data, as is the applicant's evident intention, since any use for transmitting or receiving high-frequency mobile phone voice communication might have health or other implications. Although the description in the application mentions "voice calls", this was evidently not intended to refer to mobile phone voice communication and the applicant has stated that the aerials are for data only.
1. Within 1 month of the date of this permission, details shall be submitted to the planning authority for its approval showing how the cabling associated with the aerials is to be re-arranged. The cabling shall be re-arranged in accordance with the approved details within 1 month of approval and shall not subsequently be altered. If no details are submitted within that time, or if submitted details are not sufficiently satisfactory to be approved by the planning authority within 3 months from first submission, or if the submitted details are approved and not implemented within 1 month of approval, this permission shall lapse and the aerials shall be removed from the site within a further period of 1 month.
 2. The development hereby permitted shall only be used for data transmission or reception and shall not be used for mobile phone communication by voice signal.

G F Self

Inspector

18 December 2019