

## **REPORT TO MINISTER FOR THE ENVIRONMENT**

**By Graham Self MA MSc FRTP I**

Appeal by Mr Nigel Vautier or Vibert Marquees Ltd (see "Identity of Appellant and Right of Appeal" below) against a refusal of planning permission.

Reference Number: P/2019/0876

Site at: Field Number 01598, Mont Mathieu, St Ouen JE3 2FT.

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### **Introduction**

1. This appeal is being determined by the written representations procedure. I inspected the site and surroundings on 4 December 2019.
2. The development was described in the application as:  
"A new electric supply to the field as shown by photos, the reason for this is to supply power to the marquees in the field for functions ie weddings or partys [*sic*] these would be powered by a generator which would make a noise and give off diesel fumes. The main aim is to not make as much noise and not pollute the environment".
3. In the planning authority's decision notice, the development was described as: "RETROSPECTIVE: Install 1 No. electricity box to South of site".
4. In this report I refer first to some procedural matters and legal points relating to the identity of the appellant and right of appeal, and then provide a brief description of the appeal site, followed by summaries of the cases for the appellant, the planning authority, and other parties. I then set out my assessment, conclusions and recommendation. The appeal statements, plans and other relevant documents are in the case file for you to examine if necessary.

### **Procedural Matters**

5. When assessing this case I decided that it was necessary to check some points arising from the written representations. For this purpose I drafted an email and arranged for it to be sent to the appellant and the planning authority asking for their written comments. In summary, the issues on which I invited responses were: the identity of the appellant and right of appeal; the use of the site and whether there was a specific planning permission as stated in a letter from solicitors acting for an interested party; information about site ownership (which was incomplete in the application); and a reference in the planning authority's statement to the Planning Law.
6. The initial replies left some points about planning permission and the use of the land which were still unclear to me, and I asked for further clarification by email. The responses I then received included a copy of an email from a planning officer to Mr Vautier dated April 2018, which helped to explain the Department's view about the planning status of the use of the land. The responses also confirmed that the Department considered that the infrequent use of the site for events has not constituted a material change of use.

7. My report has been delayed to allow for the above process. I have considered all the responses and refer to these matters where relevant in my assessment below.

### **Identity of Appellant and Right of Appeal**

8. The applicant in this case, as specified in the application, was Mr Nigel Vautier. Mr Vautier is also recorded as the applicant in the register of applications published by your Department; and this was correct on the basis of the application as submitted. The appellant - or purported appellant - as specified in the appeal form is Vibert Marquees Ltd.
9. The right of appeal in this type of case is held by the original applicant.<sup>1</sup> Vibert Marquees Ltd is apparently a corporate body and is not Mr Nigel Vautier; so Vibert Marquees Ltd did not have any right of appeal. In these circumstances it is necessary to consider whether any valid appeal was ever made.
10. In his response to my invitation to comment on this matter, Mr Vautier wrote: "Vibert Marquees Ltd and Nigel Vautier are the same thing as Nigel Vautier owns Vibert Marquees Ltd". That claim is misguided. A limited liability company is a corporate body, and is not the same legal entity as an individual person. If the company and Mr Vautier were "the same thing", there would be no point in an individual setting up and operating as a limited company.
11. The appeal has been accepted and processed so far with no concern being raised about the disparity between applicant and appellant. However, the potential for legal challenge to any appeal decision, including the validity of the appeal, has to be borne in mind, as is the possibility of setting an undesirable precedent.
12. On balance, I think it would be reasonable for you to give Mr Vautier and Vibert Marquees Ltd the benefit of a lenient interpretation of the law. I can see two alternatives. One would be to treat Mr Vautier as having acted as the agent for the application, even though he is not named as such in the part of the application form asking for details of the applicant's agent. This would mean that Vibert Marquees Ltd would be the applicant (giving the company the right of appeal, so the company could then be the appellant as specified in the appeal form). The other alternative would be to treat Mr Vautier as the appellant (and the applicant as specified in the application), even though he was not named as the appellant when the appeal was lodged.
13. The former would seem more appropriate than the latter. I suggest this bearing in mind that the appeal statement starts with the words "Vibert Marquees Ltd acknowledges..." and uses the pronoun "we" several times apparently referring to the company (rather than "I" referring to Mr Vautier). A letter dated 28 October 2019, which uses the company's letterhead, indicates that Mr Nigel Vautier is a director of Vibert Marquees Ltd, and his response to my query indicates that he is the sole shareholder; so it could be reasonable to take it that he was acting as an agent for the company when making the application, despite not saying so in the application.
14. The rest of this report assumes that you are prepared to treat both the application and appeal as having been made by either by Vibert Marquees Ltd or by Mr Vautier, so that the same entity is both the applicant and appellant with a right of appeal. If you adopt the former option for the reasons I have suggested,

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<sup>1</sup> Planning and Building (Jersey) Law 2002, subsections (1) and 3(e) of Article 108. Guidance published by the States also makes known that the right of appeal against a refusal of planning permission lies with the applicant.

your Department's published records of planning applications would need to be amended. If you decide that there is no valid appeal, the published records would obviously have to be amended in a different way.

### **Appeal Site**

15. The appeal site mainly consists of a grassed field located a little to the west of Le Mont Matthieu and Chemin des Hativeaux, near the point where these roads meet at a junction.<sup>2</sup> At the time of my inspection the northern part of the site was rougher and more unkempt than the southern part. A track enters the site from the north providing access from Le Mont Matthieu. The track is of single-vehicle width and has been partly surfaced with shingle or sand.
16. The electricity cabinet subject to this appeal is positioned close to the southern boundary of the site. At about this point, there is a break of slope between the fairly level land to the west and north-west in the coastal plain and the higher land towards the south-east and east. The electricity cabinet consists of a rectangular-shaped structure standing on a concrete plinth. The cabinet has been painted green. It is about 1.85 metre wide and 1.3 metre in height. A cable leads from the bottom of the cabinet into a duct which appears to have been laid below ground level.
17. The surrounding area has a generally rural character, but there are dwellings on the sloping higher ground towards the south and east, and on the more level plain to the north-west. The nearest dwelling to the electricity cabinet is about 80 metres away but the cabinet cannot readily be seen from most viewpoints in the vicinity, partly because of its small size in wider views; also the topography and vegetation obscures most views of it from the south and east and its green colour helps it to blend with the background.
18. A set of ten steps, constructed with timber cross-members held in place by metal pegs, leads from the northern part of the appeal site to a smaller field which is at a lower level than the appeal site.

### **Case for Appellant**

19. It is acknowledged that the appeal site is in the Coastal National Park where the landscape is sensitive and valuable, and where planning policy requires the land to be protected from development. The installation of the electricity box enables access to a clean sustainable source of energy eliminating the need to use diesel or petrol powered pumps or generators. Up to four functions a year are held on the site which would require a diesel powered generator. Field maintenance requires a petrol/diesel pump for watering the field and crops. Diesel and petrol pumps use non-renewable energy and create noise and pollution of no benefit to the natural beauty or wildlife in the National Park.
20. The events held at the site are temporary and there is no intention of increasing the number of events held a year. The grass is watered in the summer, hedges are trimmed, seeds and wildflowers are sown to create a well-kept area in the National Park. The equipment for these tasks requires power, and without the electric box this would have to be diesel or petrol.
21. When events are held power is required. If diesel generators had to be used for events such as weddings, the generators would be loud and would need to be run during preparation, for example from 0800 until the end of the function at 0030,

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<sup>2</sup> The site defined in the application as the application site is not edged red on the location plan but the field number 01598 can be seen on the plan.

involving 16.5 hours of noise and fumes for wildlife to endure. The electricity box is barely visible from nearby roads and does not reduce the view line.

### **Case for Planning Authority**

22. The appeal site lies within the Coastal National Park and in the designated Green Zone where Island Plan Policies NE6 and NE7 apply. Policy NE6 sets the strongest presumption against development. Policy NE7 states that the Green Zone will be given a high level of protection from development, although exceptions are set out in the policy.
23. Policy NE6 allows for "minor development" which is small in scale, meets various other criteria and is incidental to the primary use of the land. The electricity box is small in scale but is not incidental to the use of the land for agriculture. The holding of weddings or other events is not the primary use of the land. The electricity box allows for or encourages a use which does not have planning permission and is not an appropriate exception to Policy NE6.

### **Representations by Other Parties**

24. Written representations on the application were submitted by about four local residents (some submitted more than one representation), and by or on behalf of two local residents at appeal stage. The main points made by these parties are summarised below.
  - Wedding functions at the site have caused intensive light and noise pollution, which can be for five hours or more at a time. The disturbance and loss of sleep have caused residents to complain to the Environmental Health Department.
  - The electricity box installation permits intensified use of the venue. The effect causes disturbance and loss of amenity for residents and is harmful to wildlife such as bats and barn owls. Noise and fumes from traffic generated by events far outweighs any benefit from the use of electricity instead of diesel power.
  - A document submitted with the application shows the field with a picket fence and designated parking area. This is misleading as the site is an agricultural field.
  - The primary use of the electricity box is to provide power for commercial weddings. The days allowed for temporary use have been exceeded. The electricity supply from the installation is not needed for watering the fields.

### **Assessment and Conclusions**

#### **Preliminary Points - Issues arising from Representations**

25. I comment first on a matter mentioned in paragraph 5 above. Written representations were submitted by Benest & Syvret, solicitors, on behalf Mr Arthur Querée, owner of a property east of the appeal site. Among other things these representations state that:

"There is a specific consent relating to this site permitting use for events on strictly limited occasions. Reference should be made back to those strict limitations...."
26. A later submission from Benest & Syvret dated 30 October 2019 referred to the earlier letter "the contents of which we confirm and restate". The later submission also stated that weddings and other events are held at the site "under

an exception provided for under Article 2 of the Planning and Building (Moveable Structures) (Jersey) Order 2006".

27. Those comments caused me to think that there were gaps in the information supplied by the main parties. The existence of a previous "specific consent relating to this site" was not mentioned in the planning authority's statement, which also stated that "no planning permission is in place for a change of use of the field to hold such events". Moreover - contrary to the statement by Benest & Syvret as "confirmed and re-stated" by them - the Moveable Structures Order does not contain any provision allowing the use of this site for holding events. In these circumstances it seemed that there must be some other permission or permissions not mentioned in evidence.
28. From the information supplied in response to my written questions, it is clear that Messrs Benest & Syvret are wrong. There is no previous specific planning permission or consent permitting use for events at this site. It follows that the comment about a specific consent for such use being restricted to "strictly limited occasions" is equally wrong. The assertion that Article 2 of the Moveable Structures Order contains some sort of exception allowing the use of the site for holding weddings and other events is also incorrect.<sup>3</sup> Thus the representations by Benest & Syvret appear to be based on several misunderstandings, which weaken Mr Querée's objections.
29. Mr Vautier has confirmed in response to my emailed query that "there has been no application for change of use". He also commented: "We can put up marquees under the Moveable Structures Order per our correspondence with Chris Jones". The planning officer's email mentioned in paragraph 6 above was not from Mr Jones (it was from another planning officer, Richard Greig) and I do not know the full details of past correspondence between Mr Vautier and planning officers.
30. The April 2018 email from Mr Greig stated that if functions were to take place on the land for 28 days or more in any period of 12 consecutive months "this may...trigger a change in the use of the land, for which planning permission will be required". Since the 28-day period relates to the erection of movable structures, not the use of land for holding events or functions, it is not clear to me why 28 days per year was mentioned as a "trigger point" for deciding whether or not a material change of use to use for holding functions would occur. However, I refrain from commenting here on whether a material change of use amounting to development has occurred, since that is outside the scope of this appeal.

#### **Main Planning Issues**

31. The direct visual impact of the electricity cabinet is very limited, given its small size and other factors mentioned in my site description. The main issue raised by this appeal is whether the presence of the electricity cabinet would be objectionable in other ways, in particular because of links with and support of other development, having regard to relevant planning policies.

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<sup>3</sup> Article 2 of the Moveable Structures Order provides that the Order applies to a moveable structure that is to remain on the same land for 28 days or more in any period of 12 consecutive months. It does not grant permission for the material change of use of this site (or any other site) for holding events for any specified number of days, whether or not less than 28 days in any 12 month period. Even if the Order were to be interpreted as permitting the *use* of a moveable structure (ie not just its stationing on the land) it would not permit a material change of use of the site as a whole including areas such as the access track.

32. The appellant's argument about the benefits of using electricity supplied through the cabinet to carry out tasks such as watering the field, trimming hedges or sowing seeds is in my view overstated, if not far-fetched. The available evidence suggests to me that the primary purpose of the installation of the electricity cabinet is to provide convenient "plug-in" power for holding functions at the appeal site, possibly (bearing in mind the existence of the steps mentioned in my description) together with land adjacent to the appeal site. No evidence has been submitted about how often diesel power has been normally used to carry out land maintenance, watering, seeding, or any other agricultural tasks, and I have no good reason to think such activities need to be frequent at this site.
33. Having a wired electricity supply available for functions will cause less noise than diesel generators and might well be more "sustainable" (depending on the source of the electricity and means of its generation). But these points have little weight in my judgment, for two reasons. First, when events are held the use of diesel or other mobile-powered generators - affecting local residents and wildlife or the general character of the area - is likely to be only one component of the wider impact of the events themselves. Even with a quiet source of power, the intermittent use of the land for holding events would still cause those adverse effects, and some of the evidence indicates that events at the site have become what one resident describes as "bigger, brighter and noisier" since the electricity supply was installed.<sup>4</sup>
34. Secondly, the impact of the events on the local environment apparently extends over a longer period than is required for electricity supply - the available evidence indicates that marquees are typically on the site for up to six days for each event<sup>5</sup>; whereas according to the appeal statement the electricity supply for an event such as a wedding is only needed for around 16-17 hours per event, even including preparation time.
35. The planning authority has apparently not considered it expedient to take enforcement action, on the grounds that a material change of use has not occurred. Nevertheless I consider that it would not make sense to permit development aimed at supporting, and possibly helping to intensify, an activity which has evidently caused noise and disturbance to local residents.
36. The policy background is mostly against allowing the development. The appeal site is in the Coastal National Park where under Island Plan Policy NE6 there is "the highest level of protection from development" and the "strongest presumption" against all forms of development. The site is also in the Green Zone, where under Policy NE7 there is a general presumption against all forms of development. These policies provide that what is termed "minor development" which is small in scale and incidental to the primary use of land may be permissible, subject to various criteria.
37. The exact nature of the primary use of the land is not clear from the evidence - the appeal statement's reference to "a well-kept area amongst the Coastal National Park", implies that the site may not have an active use when events are not being held. It may be used at times for some agricultural purpose, although none was apparent from inspection in December. Either way, its primary use is

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<sup>4</sup> One objector mentions "Prince of Fields", which appears to be a name used for marketing purposes to describe a performance and event venue, but no information has been supplied about it or its relationship with the appeal site.

<sup>5</sup> Source: Email from planning officer Richard Greig dated 4 April 2018. This records information previously supplied to the Department by Mr Vautier.

not use for holding events - indeed, that is a point stressed by the appellant - and such use is not authorised by any planning permission. The electricity box is small in scale and not visually prominent but its presence is not ancillary to the primary use of the land and so does not meet the policy test.

38. I conclude that there were sound reasons for the refusal of planning permission as stated in the decision notice, and that the refusal decision should be confirmed.
39. I suggest that two amendments to the Department's stated "reasons for refusal" (actually one composite reason) would be useful, though not essential. The first is that the word "proposed", which appears twice, should be deleted since the electricity box is in place. The second is that for completeness, an additional sentence could be inserted before the final sentence, stating: "In particular, the development is not ancillary to the primary use of the land". The purpose of this insertion would be to help explain the conflict with policy.

### **Conditions and Other Matters if Appeal Allowed**

40. Neither of the main parties in this case has put forward any suggestions or comments about conditions which might be imposed if planning permission were to be granted. A planning permission would be retrospective, so normal conditions specifying a time period for implementation would not be relevant. A condition requiring the painted colour of the box to remain green could be appropriate, as any future change to a different colour could make the box more visually intrusive.
41. Among the drawings which appear to have been submitted in connection with this case is a plan showing features labelled "Wills Tent 9Mx30M" and "Catering Area 6Mx9M", also "Toilets", "Generator", "Parking", "Path to Road" and other items including "Electric Box" and "Underground Cable". The approximate shape of Field Number 1599 is also shown as if it were part of the site. This drawing has apparently been labelled by your Department for online publishing purposes as "Proposed Site Plan", although I cannot find that title on the drawing itself.<sup>6</sup> If you were minded to allow the appeal, it should be noted that the application now subject to this appeal did not include any proposal for development involving items such as a catering area, toilets, generator, or path to road, or Field 1599.

### **Recommendation**

42. In making this recommendation I am assuming that you are prepared to accept that there is a valid appeal.
43. I recommend that the appeal be dismissed.

*G F Self*

Inspector

18 December 2019

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<sup>6</sup> The drawing has the title "Plan C". It is not listed in the "Checklist" attached to the planning application (there is no tick in the column opposite the heading "Proposed Site Plan", but a "Proposed Site Plan" is listed in the refusal notice as an application plan.