
STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS
BOARD: FINDINGS – COMPLAINT BY
MS. N. HAY AGAINST THE MINISTER
FOR THE ENVIRONMENT REGARDING
THE APPROVAL OF PLANNING
APPLICATION REFERENCE P/2023/0229
GRANTED TO LA MARE VINEYARD,
LA RUE DE LA HOUGUE MAUGER, ST.
MARY**

**Presented to the States on 10th September 2024
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#), the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for the Environment regarding the approval of planning application reference P/2023/0229 granted to La Mare Vineyard, La Rue de la Hougue Mauger, St. Mary.

Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

14 August 2024

Complaint by Ms. N. Hay against the Minister for the Environment regarding the approval of planning application reference P/2023/0229 granted to La Mare Vineyard, La Rue de la Hougue Mauger, St. Mary

**Hearing constituted under the
Administrative Decisions (Review) (Jersey) Law 1982**

Present

Board members –

J. Moulin, Deputy Chair

S. Cuming

C. Blackwood

Complainant –

N. Hay

B. Mansfield

Representatives of the Minister for the Environment –

R. Glover, Planning Officer, Infrastructure and Environment Department

A. Elliott, Planning Officer, Infrastructure and Environment Department

States Greffe –

L-M. Hart, Greffier of the States of Jersey

K.M. LARBALÉSTIER, Principal Secretariat Officer, Specialist Secretariat

L. Plumley, Senior Secretariat Officer, Specialist Secretariat (as an observer)

H. Roche, Senior Secretariat Officer, Specialist Secretariat (as an observer)

S. Nibbs, Senior Secretariat Officer, Specialist Secretariat (as an observer)

The Hearing was held in public at 10.30 a.m. on 14th August 2024 , in the Blampied Room, States Building.

1. Opening

- 1.1 The Deputy Chair opened the Hearing by introducing the Board and setting out its remit. It was recalled that the Hearing had been rescheduled due to unforeseen circumstances and the Deputy Chair apologised to all parties for any inconvenience caused. He outlined the process which would be followed and clarified that the Board would only uphold a complaint if it felt that the decision which had given rise to the complaint was contrary to law, unjust, oppressive or improperly discriminatory, was based wholly or partly on a mistake of law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts, or was contrary to the generally accepted principles of natural justice (Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982).
- 1.2 The Deputy Chair stated that the Hearing was not a trial, but an examination of the complaint. Those present would be entitled to ask questions and express their views with the aim of eliciting the facts and clarifying any doubts or misunderstandings.

2. Complainant's case

- 2.1 Mrs. Hay began by thanking the Greffier of the States for her support and assistance at a time when she had found it extremely difficult to have her voice heard.
- 2.2 The Board noted that the case related to the grant of planning permission at La Mare Vineyard (LMV), La Rue de la Hougue Mauger, St. Mary, for the relocation of an existing marquee eastwards towards Field Nos. 255 and 256, St. Mary (planning application reference P/2023/0229 refers).
- 2.3 Mrs. Hay recalled that LMV had first been granted permission in May 2015 (planning application P/2015/0209 refers) for the erection of a marquee on another part of the site to be used annually between 28th February and 31st October, as a reception area for visiting guests on pre-booked coach parties when the weather was inclement and the existing function room at LMV was unavailable. It was understood that part of the planning statement accompanying the application read, *'for clarity, it is confirmed that the marquee will not be used for evening functions with any form of music or entertainment'*. The planning application notice also referenced the *'significant distance to the closest of neighbouring properties'*. It was noted that the marquee had originally been sited well away from neighbouring residential development, being 100 metres from the nearest household.
- 2.4 On 14th June 2023, the Planning Department had approved an application submitted by LMV for the relocation of the marquee to a position within 56 metres of Mrs. Hay's home. When the planning application had been advertised, 4 representations had been received (including one from Mrs. Hay), with objections on the grounds of the impact in terms of the location of the marquee, noise nuisance, a change in use of the land, the excessive size of the marquee and the insufficient information submitted.
- 2.5 The Department had determined the application under delegated authority, as opposed to referring it to the Planning Committee, as only 4 representations had been received, whereas 6 were required to trigger escalation to the Committee (Mrs. Hay had been unaware of this). Only 3 neighbouring properties were impacted by the decision. The Board noted that in September 2022, the Planning Committee had increased the number of representations required for the referral of applications to the Committee. Following the

determination of the application, Mrs. Hay had initially been advised by the Environment Department that she was able to submit a third party appeal against the grant of planning consent via the Tribunal Service administered by the Judicial Greffe. However, on contacting the Judicial Greffe she had been informed that she was unable to do so as she lived just outside the requisite 50 metres from the site of the marquee. However, in the days leading up to the Hearing, additional advice had been received from the Environment Department to the effect that it was not possible to submit a third party appeal in relation to the approval of moveable structures. It was noted that marquees were approved under the Planning and Building (Moveable Structures) Jersey Order 2006, which applied to all moveable structures other than caravans, that remained on the same land for 28 days or more in any period of 12 consecutive months. Whilst permission granted under the Order could be revoked or modified with 7 days' notice, an appeal could not be made against the grant of planning consent under Part 7 of the Planning and Building (Jersey) Law. Article 108 of the Law, which set out the right to appeal against certain decisions, did not include moveable structures and the reason for this omission was unclear. Initial advice given to Mrs. Hay by the Department suggested a lack of awareness of the inability to submit a third party appeal in such cases.

- 2.6 As a result of the aforementioned, Mrs. Hay had been left feeling completely disenfranchised by processes and legislation which prevented her from being heard at every step. She advised that she had contacted 7 States Members (including her own parish representatives) in an attempt to obtain help, and although some Members responded and sought to provide assistance, only one Member, Connétable M. O'D Troy of St. Clement visited her property. Ultimately, the Connétable had concluded that he was unable to assist. Mrs. Hay believed that existing processes and the relevant legislative framework was prejudicial to natural justice and prevented residents in rural locations, where there were often far fewer properties, from being able to generate enough genuine representations to merit a public hearing by the full Planning Committee. The situation was further exacerbated by the omission of moveable structures from Article 108 of the principal Law.
- 2.7 Mrs. Hay stated that noise from activity at LMV was 'intolerable' and that the siting and use of the marquee (which now included the hosting of children's parties) had a significant and detrimental impact on the lives of neighbours. The marquee was not sound proofed and was used every weekend, including Sundays, contrary to the conditions attached to the permit, which did not appear to be enforced by the Department. The Board listened to an audio recording provided by Mrs. Hay which had been made by her neighbour in his garden at 8.15 pm and which illustrated noise levels from the LMV site. Mrs. Hay advised that she had previously tried to address noise concerns via the Environmental Health Department and the Statutory Nuisances (Jersey) Law 1999, but stated that the process was laborious and often lacked resolution, with the burden of proof falling entirely on residents. She believed that the assessment of the application had failed to take into account the increased impact on neighbours (due to the relocation of the marquee) and the change of use, which had resulted in the marquee being used for events not envisaged when the 2015 permission had been granted.
- 2.8 Ms. Hay referenced the period of time for which permission had been granted under P/2023/0229 for the marquee to remain in situ at LMV, namely from 1st February to 1st November, which exceeded the time period set out in the 2015 permission and was neither 'seasonal [nor] temporary'. As a consequence of the

- extension of the time period for the use of the marquee and by virtue of connection to utilities, Mrs. Hay stated that the marquee was akin to a 'permanent building'. The marquee was not screened and the colour was considered unsympathetic to the surrounding countryside, contrary to the conditions of the permit and the high levels of protection afforded by the Bridging Island Plan in the Coastal National Park.
- 2.9 Mrs. Hay was concerned with the nature of the 2023 application, particularly as she believed that it constituted not only the relocation of the marquee (closer to neighbouring residential property) but also the change of use of the same and she asked whether the application had been assessed by the Department on this basis. The location of the application site in the Coastal National Park, together with the relevant Bridging Island Plan Policy context was also highlighted. Policy GD1 of the Bridging Island Plan stated that development should not unreasonably affect neighbouring amenities by virtue of noise, nuisance, general disturbance and light. Mrs. Hay believed that the application failed to pass this particular policy test and was not convinced that all material planning considerations had been taken into account when it had been assessed. She was also upset that there had been no opportunity for residents to voice concerns either to the Planning Committee or an independent Planning Inspector via the appeals process.
- 2.10 Ms. Hay concluded by stating that she had owned her property for over 27 years and that there had originally been no more than 6 functions each year at LMV. When LMV had been granted permission for a purpose built structure this had been justified on the basis that it would negate the need for a marquee for functions. She thanked the Board for taking the time to listen to her concerns.
- 2.11 The Board heard from Mr. Mansfield, a resident of the area who lived in the immediate vicinity of the LMV site. He expressed the view that more care should have been taken in assessing the impact of the application given the revised location of the marquee closer to residential development and the various new uses, to include the sale and consumption of alcohol at events. Mr. Mansfield understood that LMV was also liable for parish rates in respect of the marquee and he contended that its presence for 9 months out of 12 and the connection to utilities meant that permission had effectively been granted for a permanent structure without any of the necessary checks and balances. Permission had been granted in perpetuity for the marquee, as opposed to a temporary period which might have allowed for an assessment of the impact on neighbouring amenities given the relocation and the increased usage. Mr. Mansfield alleged that the current owners did not operate the business with the same level of care and consideration as the previous owners and this had a significant detrimental impact on neighbours' enjoyment of their properties, contrary to Policy GD1. It was noted that only the canvas was removed from the marquee and not the structure itself during the 3 months when it was not permitted to remain, contrary to the conditions of the permit. It was suggested that, in the absence of the enforcement of the conditions, the approval in perpetuity and the length of time the structure was permitted to remain in each calendar year could add weight to a future application for a permanent structure. This could set an undesirable precedent and lead to permanent development in protected areas. Mr. Mansfield expressed considerable frustration at the processes and legislative frameworks which had prevented residents from having their voices heard by the Planning Committee or via the appeals process. He asked what recourse residents had in these circumstances when the process

had been designed in a manner which suppressed and disempowered neighbours.

Mr. Mansfield thanked the Board for giving him the opportunity to express his views on the matter.

3. Minister's case

- 3.1 It was noted that the application site was located within the Coastal National Park and that Policies GD1, GD6, NE3, ERE1 and ERE2 of the 2022 Bridging Island Plan were relevant. The application had been assessed against these Policies.
- 3.2 The Board was apprised of the planning history of the site, which included a previously approved application (reference P/2015/0209) for the erection of a marquee to the north of the site. 4 conditions had been attached to the permit and these related to the times at which music could be played; the hours of operation; the months during which use of the marquee was permitted (and its removal from November – February) and the required submission of details regarding the appearance of the marquee.
- 3.3 It was noted that permission had been granted on 14th June 2023, under delegated powers with similar conditions being attached to the permit. The applicant had displayed the site notice provided by the Department and the application had been advertised in the Jersey Evening Post and on the Government website. A weekly list of all applications was also sent to Parishes and States Departments for comment. No comments had been received from the Parish of St. Mary or the Environmental Health Department. 4 representations had been received from neighbouring properties.
- 3.4 Permission had been granted in good faith and the application properly assessed against the relevant Bridging Island Plan Policy context. The decision was considered reasonable having taken into account all material considerations and representations.
- 3.5 Mr. Glover advised that the aim of the Bridging Island Plan and the Planning and Building (Jersey) Law 2002, was to balance the needs of applicants and neighbours. He went on to reference a supplementary document dated 2nd August 2024, which had been forwarded to the Greffier of the States and shared with the Panel and the Complainant. This related to the fact that there was no right of appeal in respect of moveable structures. Mr. Glover also touched on the processes adopted by the Planning Committee and noted that applicants (and not objectors) could appeal to the Committee against planning decisions made under delegated powers, in accordance with Article 22A of the Law. Whilst the Committee determined its own procedures and had increased the number of representations received to trigger referral of an application to the Committee, States Members could also request that applications be referred to the Committee for determination via the Chair. Mr. Glover added that the reason behind the decision to increase the number of representations to trigger a referral to the Committee was unclear. Irrespective of the number of representations, major and contentious applications would also be referred to the Committee for determination. In this particular case, the proposals had been deemed to constitute minor and uncontentious development. It was noted that when a case officer assessed an application a report was produced with a recommendation for conditional/unconditional approval or refusal. The officer report was reviewed by one or more senior officers. Whilst it was accepted that it might have been beneficial to seek the views of the Environmental Health Department in relation to the approved application, it was noted that

retrospective comments indicated no objection to the proposals. As for the omission of moveable structures under Article 108 of the Law, Mr. Glover suggested that this might have arisen as a result of an oversight when the third party appeal process had been introduced in 2005. He advised that the Minister could seek to rectify this by way of an amendment to the Law and he conceded that the omission appeared to be contrary to the principles of natural justice. He understood that whilst other development was permitted under the primary legislation, only moveable structures were permitted by Ministerial Order. Mr. Glover did not believe that the Minister for the Environment could consider appeals against decisions made by Order.

3.6 Mr. Glover stated that the issues raised by the Complainant were understood and he concluded that a time limited permit might have presented an opportunity to assess the impact on neighbours of the revised location. He acknowledged that it did not appear that the conditions of the permit had been properly enforced in relation to the removal of the marquee during the months when its use was not permitted and the days on which it could be used by LMV. He compared the original 2015 decision notice with the 2023 notice and noted the brevity of the reasons for approval in the 2023 version when compared with the 2015 document. He added that only the conditions attached to the 2023 permit could be enforced and there was no reference to patrons gathering and talking inside or outside the marquee. In terms of the relocation of the marquee in the Coastal National Park and the impact of the same, the case officer assessment concluded that its relocation from one part of the site to another made very little difference in terms of landscape harm. However, Mr. Glover accepted that the impact on neighbours was a different matter entirely.

3.7 The Panel discussed the definition of a moveable structure, as set out in the Order, with the Departmental officers, with particular regard to the length of time the marquee at LMV could be used during a calendar year and the connection to utilities, both of which the Board concluded appeared to give an air of permanence to the structure.

4. **Closing remarks**

The Deputy Chair thanked those present for attending and for their frankness and openness in discussing the issues raised. He highlighted the limited scope of the Board's considerations, but also advised that it was within the gift of the Board to make recommendations where appropriate. The Deputy Chair indicated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their input on the factual content. Ultimately, the report and findings would be presented to the States by the Privileges and Procedures Committee and the Minister for the Environment would have 12 weeks from the publication of the findings to respond in the States Assembly, in accordance with Standing Order 68AA of the Standing Orders of the States of Jersey.

5. **Findings**

5.1 The Board considered whether Mrs. Hay's complaint could be upheld on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –

- (a) contrary to law;
- (b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;

- (c) based wholly or partly on a mistake of law or fact;
 - (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or
 - (e) contrary to the generally accepted principles of natural justice
- The Board decided to uphold Mrs. Hay's complaint on the grounds of (b) (c) (d) and (e) above. In terms of (a), the Board was of the view that there had been an omission in Law.

6. Recommendations

- 6.1 The Board was of the view that this case identified a significant weakness within the Planning and Building (Jersey) Law 2002, and, in particular, Part 7, Article 108 of the Law, which set out the right to appeal against certain decisions and did not include moveable structures. The Board recommended that the Minister review the legislative position to address this omission. The Board considered the omission contrary to the accepted principles of natural justice. The omission was also viewed as oppressive and improperly discriminatory and appeared to have arisen as a result of an administrative oversight.
- 6.2 The Board noted that the Moveable Structures (Jersey) Order 2006 defined a moveable structure merely as something other than a caravan which remained on the same land for 28 days or more in a period of 12 consecutive months. Having noted that the permission for the marquee at LMV had been granted in perpetuity without any end date, the Board recognised that this could result in a moveable structure remaining for an indefinite period of time and becoming a permanent fixture. Whilst the Board acknowledged that a marquee was physically capable of being moved, if it remained indefinitely and was connected to utilities it could reasonably be perceived a quasi-permanent structure. The Board recommended that the Minister consider re-defining movable structures.
- 6.3 The Board noted that when considering an application under the aforementioned Order, decision makers were required to take into account all representations made to the Chief Officer; all material considerations including the effect the proposed moveable structure would have on the environment generally and, in particular, on the environment of any protected site; and would not grant permission to erect or station a moveable structure in a way that was inconsistent with the Island Plan unless he or she had been satisfied by the applicant that there was sufficient justification for doing so. The Board recognised that the highest level of protection was afforded to the Coastal National Park and that the conditions attached to the permit, some of which were designed to protect against landscape harm and others to safeguard the amenities of neighbours, had not been adhered to and were not being enforced by the Minister in accordance with his/her statutory duties. This was viewed as contrary to the principles of natural justice and the Board recommended that the Minister review the monitoring of compliance with conditions to ensure that enforcement action was taken where appropriate.
- 6.4 The Board noted that the marquee had been relocated closer to residential properties and accepted that diversification of the business had resulted in changed and intensified uses. However, there appeared to have been little consideration of the impact of the same on neighbouring amenities. The granting of permission in perpetuity meant that the opportunity to monitor the impact of the use in the revised location had been lost. The Board was of the view that such a decision could not have been made by a reasonable body of

- persons after proper consideration of all the facts and having regard to the representations which had been received.
- 6.5 The Board expressed concerns regarding the procedural change which had been made by the Planning Committee in respect of the number of applications which triggered a referral to the Committee as there appeared to be no particular rationale for this. The Board recognised that situations could arise where it would be impossible to submit 6 genuine representations from affected residents against an application, particularly where development in rural areas was proposed. This could be perceived as weighting the balance in favour of applicants, which was contrary to the aims of the Bridging Island Plan and the Law. The Board was also concerned to note that this revised procedural position had not been widely publicised and was not on the Government website. This was contrary to the principles of natural justice and was unjust, oppressive and improperly discriminatory.
- 6.6 There appeared to be confusion and inconsistency of approach within the Department with regard to processes and statute, with the Complainant having received incorrect procedural advice regarding the appeals process and, ultimately, the fact that appeals against decisions relating to moveable structures were not actually permitted. The Board recommended that the Minister produce and publicise updated guidance in respect of all aspects of the planning process to improve accessibility and transparency. When members of the public received incorrect procedural advice this had a detrimental impact on the level of service expected and often resulted in a loss of confidence in Government administration.
- 6.7 It was unclear to the Board why the approval of moveable structures was determined in accordance with the Moveable Structures (Jersey) Order 2006 and not the Planning and Building (Jersey) Law 2002. The Board suggested that this approach made it even more difficult for members of the public to navigate complex planning legislation and processes.
- 6.8 The Board noted that Ministerial Orders offered a certain amount of flexibility and could be more easily amended or revoked compared to primary legislation, allowing the Government to adapt quickly to new information or changing conditions. Such Orders could be enacted relatively quickly without the need for debate in the States Assembly allowing for a more rapid response to urgent issues, such as those evidenced during the Covid 19 pandemic. Laws adopted by the States Assembly involved a more rigorous process, including multiple readings, debates, and votes in the States Assembly. This ensured thorough scrutiny and democratic participation. Consequently, Ministerial Orders were subject to less direct oversight by the States Assembly. In this particular case, the Board considered that had the definition of moveable structures being included in the primary legislation it might have elicited further inquiry from States Members. Furthermore, there appeared to have been an administrative oversight in that Article 108 of the primary legislation had not been updated to take account of the Order, leading to an inability to appeal against decisions relating to movable structures. This had resulted in an unjust, oppressive and discriminatory approach and was prejudicial to natural justice.

Signed and dated by –

J. Moulin,
Deputy Chair

Dated:

S.Cuming

Dated:

C.Blackwood

Dated: