



**BATH & NORTH EAST SOMERSET**

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Dear

Sorry this has taken so long, if you have any comments please let me know. I need to look around the covenant to challenge this view. Any support would be welcome. It seems to be against the spirit of what was intended at least.

“ Dear Councillor Roberts

Sincere apologies for the delay in getting back to you on the matter of the Stirtingale Mast and whether the restrictive covenant set out in the Agreement dated 28 March 1939 ("the 1939 Agreement") affects the planning permission granted for the installation of four additional antennas and equipment cabinet ("the Mast")

The first thing I should say is that the Agreement will have been drafted according to the planning regime as it stood at that time. The 1939 Agreement provided under Clause 13 that the land upon which the Mast has been erected is:-

" Land reserved as a 'Green Belt Agricultural Area' means or includes land used for the following purposes only:-

(a) For the grazing of livestock or as arable meadow pasture orchards or woodland or for forestry; or

(b) For a sports or play or recreation ground (not being one ordinarily open or intended to be ordinarily open to the public on payment of a charge) or public or private park ornamental grounds or gardens provided that no building shall be erected without the consent of the Council. ( my emphasis).

Section 336 of the Town and Country Planning Act 1990, ("1990 Act) as amended, defines a building as,

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

The four additional antenna and equipment cabinet could therefore be considered to be a "building" under the definition of the 1990 Act as the law stands today. However, as you will see from the above Clause 13 (b) of the 1939 Agreement provides that a building can be erected with the consent of the Council which the Council has, as the local planning authority, given. There has therefore been no breach of the restriction in the 1939 Agreement so far as the erection of the Mast is concerned.

A planning application submitted today has to be assessed against the current Development Plan, Planning Policy Guidance and all other relevant planning considerations which are material to the proposal.

The reasons for the decision to grant planning permission in respect of this matter is stated as being,

"The decision to grant approval has taken account of the Development Plan, relevant emerging Local Plans and approved supplementary Planning Guidance. This is in accordance with the Policies set out below at A".

The policies set out at A quote various policies of the Bath Local Plan and BANES Local Plan Revised Deposit Draft 2003.

The report which went to the South Area Committee Meeting of 21 March 2006 set out the planning history of the site, stating that,

"There have been telecommunications masts on this site since 1959, when a mast was erected for Police Telecommunications, and the present mast on the site was installed in 1993. Permission was granted in 2000 for the erection of the blockwork cabin at the site and for the installation of 6 new aerials on the existing mast, replacing aerials then installed on the mast. "

These past permissions are also material considerations which would have to be taken into account by the Council as the Local Planning Authority when they determined the application.

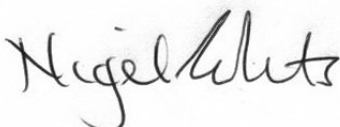
In conclusion, the application for the Mast was determined under the current planning regime. The restriction in the 1939 Agreement did not impose an absolute prohibition on the erection of the Mast, it provided that a 'building' could not be erected without the Council's consent. The Council's consent, as Local Planning Authority, was granted by the determination in favour of granting the planning permission, so there is no breach of the restrictive covenant.

I trust that the above is of assistance and apologies once again for the delay in getting back to you. Should, however, you have any queries with regard to the above please do not hesitate to contact me.

Kind regards

*Maggie Horrill*

Yours sincerely



Cllr Nigel Roberts

Odd Down Councillor

cc Cllr Steve Hedges

**P.S. We hold a weekly surgery at Odd Down Youth Club 10-11 every Saturday morning except bank holidays.**

