



Appeal Decision

Site visit made on 8 May 2024

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/K0940/W/23/3332639

Pile of Stones, off B6270, Nateby Common, Nateby, CA17 4JF Easting 380868, Northing 504508

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Hutchison 3G (UK) Limited against the decision of Westmorland and Furness Council.
 - The application Ref 23/0235, dated 21 March 2023, was refused by notice dated 1 June 2023.
 - The development proposed is described as 'Proposed 25.0m Francis & Lewis ATS1300 Lattice Tower mounted on new 5.6 x 5.6 x 1.2 Dp R.C. Foundation and associated ancillary works. For full details please refer to drawings'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues for the appeal are the effects of the proposed development on:
 - the biodiversity of the area, with particular regard to the North Pennine Moors Special Area of Conservation (SAC), North Pennine Moors Special Protection Area (SPA), and the Mallerstang-Swaledale Head Site of Special Scientific Interest (SSSI); and
 - the character and appearance of the area with particular regard to the North Pennines National Landscape (Area of Outstanding Natural Beauty).

Reasons

Biodiversity

3. The proposed mast location lies within the Mallerstang and Swaledale Head SSSI and North Pennine Moors SPA and SAC. The appellant has provided a Preliminary Ecological Appraisal (PEA) report for the proposal. The report is based on a desk study of designated wildlife sites and records of protected or notable species, and an extended Phase 1 Habitat Survey carried out in January 2023.
4. The PEA summarises the interest of the North Pennine Moors SAC as being European dry heath, Juniper formations, blanket bogs, petrifying springs, siliceous rocky slopes and associated vegetation, and old and sessile oak woods with holly and hard fern. It also states that it supports a wide range of habitats

present as qualifying features, but not primary reasons for selection of the designated site. The interest of the North Pennine Moors SPA derives from the presence of Hen Harrier, Merlin, Peregrine and Golden Plover. In respect of the Mallerstang-Swaledale Head SSSI the PEA states that it is notified for its extensive block of upland habitats, many of which are of high quality, including limestone grassland, gritstone cliff, dwarf-shrub heath, acidic grassland and a wide range of mire systems.

5. The appeal proposal would involve the construction of a telecommunication tower and installation of ancillary equipment cabinets, provision of a generator and fuel tank, all set within a fenced compound. Access would be provided via a temporary trackway, with the tower being installed by helicopter. The PEA identified potential effects on qualifying features through direct impacts of the scheme. The PEA states that the key bird which has potential to be affected by the proposal is Golden Plover as there is a theoretical risk of displacement due to the creation of a new predator vantage point, or disturbance during construction.
6. The PEA sets out that to assess the possible impacts it will be important to understand the proximity and numbers of breeding Golden Plover in relation to the proposed mast. Breeding surveys targeting Golden Plover specifically, but all waders generally were recommended but no results of any such survey have been provided with the appeal. The PEA also recommended that an Ecological Impact Assessment was carried out incorporating assessment of the potential impacts on the relevant SAC, SPA and SSSI sites, and the preparation of a Construction Environment Management Plan. These have not been provided.
7. I consider that the proposal is likely to have significant effects on the conservation objectives of a European site arising during the construction and its operation. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require a Competent Authority to make an Appropriate Assessment (AA) of the implications of any plan or project potentially affecting a site with regard to that site's conservation objectives. I am the Competent Authority for the purposes of this appeal. In this case, the Statutory Nature Conservation Body (Natural England) were consulted on the proposal and I have regard to their representations.
8. I have not been provided with sufficient evidence to complete an AA and to demonstrate that beyond all reasonable scientific doubt, through a Habitats Regulations Assessment, that the appeal proposal would not result in an adverse effect on the integrity of the habitats sites. Given the evidence before me, I am unable to consider the potential impacts of the proposed project on each qualifying interest and their conservation objectives, the magnitude and duration of effects and any cumulative effects from other plans or projects.
9. I take into account the appellants view that the proposed location is the only option available that will provide the extent of coverage desired as indicated on the submitted coverage plots and fit into the existing network. However, the only option considered was to accommodate the equipment on a Francis and Lewis Tower, and from the evidence before me, I am not convinced that different locations, scales or designs of development or other different practicable approaches to providing coverage would not have a lesser impact than the scheme before me. Therefore, I have not been convinced that there are no alternative solutions to the scheme proposed. Given the requirements of

the Regulations and national policy, the effect upon the designated sites is not a matter which can be dealt with by way of planning conditions should I otherwise be minded to allow the appeal.

10. The Regulations require that if it cannot be determined that the proposal will not adversely affect the integrity of a European site it can only proceed if there are no alternative solutions and imperative reasons of overriding public interest. In this case I have not been convinced that there are no alternative solutions to the scheme proposed and shall not go on to consider whether there are imperative reasons of overriding public interest.
11. In the absence of adequate evidence and taking a precautionary approach, I conclude that the appeal proposal is likely to give rise to harm to the biodiversity of the area, the North Pennine Moors SAC, North Pennine Moors SPA, and the Mallerstang-Swaledale Head SSSI contrary to Eden Local Plan (ELP) Policy ENV1 which is concerned with the protection and enhancement of the natural environment, biodiversity and geodiversity, and national policy contained in the National Planning Policy Framework (NPPF). I do not have adequate evidence before me to ascertain that the project will not adversely affect the integrity of a European site, which weighs heavily against the proposal.

Character and appearance

12. The appeal site is situated in the North Pennines National Landscape and near to the Yorkshire Dales National Park. Paragraph 182 of the NPPF sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The NPPF also states that the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
13. I saw at my site visit that the appeal site is situated in an elevated and exposed area of upland moor, with extensive views of the surrounding Pennine summits. I concur with the Council that the area has significant scenic quality. The appeal proposal is not supported by an assessment of potential landscape effects. Nevertheless, I find that it would be clearly visible both in close proximity and in the wider landscape to a range of receptors, including walkers on nearby footpaths, cyclists and motorists. Given the height and appearance of the proposed tower and associated equipment within an open moorland setting, it would appear as an incongruous feature, discordant within the landscape. Whilst the proposed lattice tower would have some visual permeability, I disagree with the appellant that the effects would be localised to the immediate area or that it would assimilate well into the local environment over time.
14. Consequently, the appeal scheme would have a harmful effect on the character and appearance of the area. The proposal is contrary to ELP Policies DEV5 which is concerned with the design of new development, EC6 which is concerned with telecommunications infrastructure, ENV2 which is concerned with protection and enhancement of landscape and trees, and ENV3, which includes amongst other things that development within or affecting the North Pennines AONB will only be permitted where individually or cumulatively it will

not have a significant or adverse impact upon the special qualities or statutory purpose of the AONB and it does not lessen or cause harm to the distinctive character of the area. Further to the development plan conflict identified, I give great weight to conserving and enhancing the landscape and scenic beauty of the National Landscape as required by national policy.

Other matters

15. The proposed mast would be provided as part of the Shared Rural Network (SRN) to improve 4G coverage for people living, working and travelling in poorly served rural areas, which is an aim of the government. The SRN aims to ensure geographic coverage from at least one operator to 95% of the UK by the end of 2025, to broaden consumer choice for mobile services in rural areas. In my assessment of this matter, I have taken into account the Collaborating for Digital Connectivity document jointly issued by the Department for Digital, Culture & Media and Sport (DCMS) and the then Ministry of Housing, Communities & Local Government, the DCMS document Connected Growth Manual and the document Councils & Connectivity 2.
16. The appellant has referred to an appeal decision¹ where the Inspector concluded that no alternative design was appropriate. Whilst I have regard to that decision, I note that it related to a site with very different characteristics than the scheme before me, which was not subject to the same designations, and I consider this appeal on its own merits.
17. I take into account the benefits of the scheme, both in economic and social terms, including consumer choice, access to online services, social connectivity and inclusion, working and learning remotely and entertainment, along with benefits to the rural economy and that use of technology can reduce carbon footprints. The extent of these benefits in relation to the specific scheme before me have not been quantified and given the scale of the proposal, I afford limited weight to these benefits. I have been referred to a number of parts of the NPPF, but those do not lead me to a different conclusion.

Planning balance and conclusion

18. It has not been possible to demonstrate that beyond all reasonable scientific doubt, through a HRA, that the appeal proposal would not result in an adverse effect on the integrity of the habitats sites. Furthermore, the appeal proposal would also give rise to harm to the landscape and scenic beauty of the North Pennines National Landscape and in line with national policy I give great weight to conserving and enhancing the landscape and scenic beauty of the National Landscape. The appeal proposal therefore conflicts with the development plan and national policy in respect of each of the main issues. Whilst the proposal would bring forward a number of benefits, and having regard to the potential and availability of alternative sites, and national policy as set out in the NPPF, these do not justify a decision which would not be in accordance with the development plan, or outweigh the clear conflict with the Regulations. The appeal is dismissed.

Philip Lewis

INSPECTOR

¹ PP/L1765/W/18/3197522