



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 2024

Appeal Ref: APP/K0940/W/23/3332640

Land at Green Hill off B6276, Stainmore, Cumbria CA17 4EA

Easting 382815 Northing 520442

- 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 22/0215, dated 10 March 2022, was refused by notice dated 19 June 2023.
 - The development proposed was described as 'the proposal relates to the installation of a 25m lattice tower supporting 9 no. antennas, 6 no. transmission dishes, 5 no. equipment cabinets, 1 no. meter cabinet and ancillary development thereto including a generator and fuel tank and hard standing, fenced compound and a GPS module'.
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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 Protection Area (SPA), the North Pennine Moors Special Area of Conservation (SAC) and Moor House Upper Teasdale SAC and the Appleby Fells Site of Special Scientific interest (SSSI) and Lune Forest 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 appeal proposal involves the construction of a telecommunication tower and installation of ancillary equipment cabinets, provision of a generator and fuel tank, set within a fenced compound. Access would be provided via an existing track. Limited details have been provided of the proposed method of construction. The appeal site is situated in close proximity to the North Pennines Moors SAC and SPA and Moor House Upper Teasdale SAC, and the associated Appleby Fells SSSI and Lune Forest SSSI.

4. 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.
5. Both the Council and Natural England consider that based on the information submitted there could be a likely significant effect on the notified features of the habitats sites, specifically the breeding bird features, and that a Habitats Regulations Assessment (HRA) should be undertaken to assess the impacts at both the construction and operational phases of the development and any mitigation required. I concur.
6. There has been no ecological assessment provided with the proposal, and no assessment of its potential effects on the designated sites. Consequently, 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.
7. 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, from the evidence before me, the only option considered was to accommodate the equipment on a Francis and Lewis Tower, and 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.
8. The Regulations set out 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.
9. Taking a precautionary approach, in the absence of adequate evidence, I conclude that the appeal proposal is likely to give rise to harm to the biodiversity of the area, the North Pennines Moors SAC, and SPA and Moor House Upper Teasdale SAC, and the associated nationally designated Appleby Fells SSSI and Lune Forest SSSI. The proposal therefore conflicts with Eden Local Plan (ELP) Policy DEV5 which is concerned with the design of new development and includes amongst other things that development should protect and where possible enhance the district's distinctive rural landscape, natural environment and biodiversity. The proposal also conflicts with ELP

Policy EC6 telecommunications and infrastructure, which includes that equipment should not harm sensitive areas, including the historic environment, areas designated for their nature conservation interest and areas of landscape importance, especially the North Pennines AONB. I also find conflict with ELP Policy ENV1 which is concerned with the protection and enhancement of the natural environment, biodiversity and geodiversity and Policy ENV3 the North Pennines AONB which includes amongst other things that development 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 national policy contained in the National Planning Policy Framework (NPPF). Although included in the decision notice, in respect of this main issue, I do not find conflict with ELP Policy ENV2 which is concerned with the protection and enhancement of landscapes and trees. Furthermore, 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

10. The appeal site is situated in the North Pennines National Landscape. 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.
11. A landscape and visual appraisal (LVA) has been undertaken in respect of the proposal. The LVA sets out that the site is situated on the southeastern side of Green Hill, which rises up to 570m AOD and is a prominent hill in the wider landscape, with expansive views from its summit. The site is set within an upland moorland landscape, used for sheep grazing with some sports shooting infrastructure evident. In the wider area is the Warcop military firing range.
12. In terms of landscape character, at the national level, the site falls within NCA10 North Pennines National Character Area. At a local level, the appeal site falls within 13B – Moorland, High Plateau of the Cumbria Landscape Character Toolkit, for which the key characteristics include fells, summits and moorland plateau, incised by deep valleys and ghylls, extensive areas of blanket bog, acid grassland and dwarf heath shrub. Both the susceptibility and sensitivity to change of this landscape are identified as high.
13. The appeal site is situated close to the border with County Durham. The County Durham Landscape Character Assessment amongst other things identifies Broad Landscape Types (BLT) and Broad Character Areas (BCA). The LVA finds that the susceptibility and sensitivity to change of the County Durham landscape in the Upper Dale BLT, Moorland Ridges and Summit BLT, Moorland Plateau BLT, Upper Lunedale BCA (Upper Dale BLT), Lune Forest & Mickle Fell BCA (Moorland Ridges and Summits BLT), and the Mickleton & Hunderthwaite Moors BCA (Moorland Plateau BLT) to be high.
14. I have had regard to the submitted Zone of Theoretical Visibility (ZTV) which shows that the site would primarily be visible from elevated areas with limited visibility from valleys and other low lying areas. That accords with my general

- impressions from my site visit, and I agree that visibility is inevitably affected on occasions by low cloud.
15. The LVA includes an assessment of the visual effects at 4 viewpoints. These confirm that the proposed mast would be clearly visible and be a very prominent feature on the skyline and within the landscape. From 3 of the viewpoints, the level of harm identified is minor adverse, with moderate adverse effects being identified on the other.
 16. I agree with the findings of the LVA in that there would be harm to the landscape arising from the appeal proposal. This landscape harm would occur both close to the appeal site, and across the wider landscape.
 17. The appeal site is situated in a remote upland landscape, where there are few developed features. In this context, it would appear as a long term alien feature in the landscape, widely visible from surrounding high ground. Consequently, the appeal proposal would not enhance the landscape and the scenic beauty of the National Landscape as required by national policy.
 18. Whilst the LVA refers to landscape effects being mitigated to a degree by nearby forestry planting and possibly by planting close to the site, I have not been provided with evidence to demonstrate the extent of mitigation which any such planting may have over time, whether it would be effective, or of any such landscape effects which may arise from any such planting.
 19. To conclude on this matter, the appeal scheme would have a harmful effect on the character and appearance of the area contrary to ELP Policies DEV5, EC6, ENV1, ENV2 and ENV3. Further to the development plan conflict identified, I give great weight to conserving and enhancing the landscape and scenic beauty of the National Landscape.

Other matters

20. 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. The proposed development would fill a hole in the existing coverage. 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, the document Councils & Connectivity 2 and a letter from Matt Warman MP Parliamentary Under Secretary of State for Digital and Broadband dated 2019.
21. 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.
22. I take into account the benefits of the scheme, both in economic and social terms, including consumer choice, access to online services, social connectivity

¹ PP/L1765/W/18/3197522

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

23. 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.
24. The appeal is dismissed.

Philip Lewis

INSPECTOR