



Appeal Decision

Site visit made on 7 May 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/B9506/W/23/3328777

Land adjacent to Hyde Garden Shop, Fordingbridge, Hampshire SP6 2QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by MBNL (EE and Three) against the decision of the New Forest National Park Authority.
 - The application Ref is 22/00399.
 - The proposed development was originally described as: the retention of existing temporary telecommunications base station consisting of 1No. 16.00m mast, 6No. antennas and 1No. 600mm dish mounted to headframe, 6No. equipment housing cabinets, a generator and ancillary development thereto.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The information accompanying the planning application is clear that permission is sought for a temporary period of 18 months. The Authority considered the application on this basis, and so shall I.
3. As the appeal site is within a conservation area, I have had regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
4. The National Planning Policy Framework (the Framework) was revised in December 2023. Furthermore, on 26 December 2023, section 245 of the Levelling-up and Regeneration Act 2023 (LURA) amended the duty in the National Parks and Access to the Countryside Act 1949. In broad terms, the amendment now requires that relevant authorities in exercising or performing any functions in relation to, or so as to affect, land in any National Park in England must seek to further the purposes of the National Park.
5. In the interests of natural justice, I invited further comments from the main parties on these matters, and I have taken account of comments made in my determination of the appeal. I am therefore satisfied that neither party has been prejudiced in these matters.

Main Issues

6. Having regard to all of the evidence before me, I consider that the main issues are the effect of the proposed development upon:
 - the landscape and scenic beauty of the New Forest National Park (NP);

- the character or appearance of the Western Escarpment Conservation Area (CA); and
- the tranquillity of the NP and the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

Background

7. Class A of Part 16 of the GPDO¹ permits the stationing of moveable electronic communications apparatus by or on behalf of an electronic communications code operator for a period of 18 months in an emergency situation (PD rights).
8. Following a notice to quit a site at Ashley View, a temporary base station was installed at Land Opposite Ashley View in 2019 under PD rights, in order to maintain coverage to the area. The temporary period expired in December 2020.
9. A Prior Approval application (ref: 20/00683) for a replacement base station to include an 18m mast at the appeal site was refused in November 2020. The temporary base station before me was installed at the appeal site under PD rights with the 18-month period beginning on 24 February 2021.
10. A Prior Approval application (ref: 21/00725) for a replacement base station at Harry's Field was refused in November 2021, and subsequently dismissed at appeal (Ref: APP/B9506/W/22/3299028). The appellants' submissions include a letter seeking pre-application advice pursuant to a replacement base station on a site at Highfield House.
11. The appellants do not dispute that the temporary base station has a harmful effect upon the NP and the CA. The dispute centres on whether the public benefits of the temporary base station outweigh the harm arising from the proposal.

New Forest National Park

12. The New Forest National Park Landscape Assessment 2015 (LCA) indicates that the appeal site is located within character area LCA 21: Northern Heathland and Forest, described as '*a classic New Forest Landscape*'. Key landscape characteristics of this area include '*wild and exposed landscape with a remote feel – long views to the horizon and expansive skies.*' Key positive attributes include '*long range views across open heaths and beyond*'.
13. Furthermore, key issues identified include telecommunications masts standing out prominently within the open heath landscape; and future landscape management guidelines seek to protect undeveloped views/skylines to screen landscape impacts of telecommunications masts.
14. The existing temporary base station (the installation) is located within land that formerly operated as a plant nursery, and now includes a retail shop and café. The shop and café are served by a parking area with a wide frontage to a lane, and due to their location near the settlement of Hyde and near a crossroads within the NP, the shop and café attract residents and visitors.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

15. The installation includes a galvanised steel tower of a lattice design, with antennae and a dish, together with various cabinets and a generator, sited within a compound, screened by metal sheet fencing.
16. The immediate land surrounding the installation includes polytunnels and other structures of 3-5m height, which provides a degree of screening. The boundaries of the appeal site to the north and west along the adjacent lanes includes trees and hedging, which also provide a degree of screening.
17. Consequently, the various cabinets and generator serving the installation are screened from public view.
18. However, the overall height of the tower with its antennae and dish is about 16m. Due to their function, these elements have a utilitarian appearance. Overall, they form an industrial feature at some height and with bulk and mass, in sharp contrast to surrounding built form and the wider landscape.
19. While there are some telegraph poles in the vicinity, these are generally shorter and slimmer than the tower elements of the installation. Other tall features within the surrounding area include trees about 9m high along the northern and westerly boundaries of the appeal site, but these are considerably shorter than the overall height of the tower, and therefore they do not adequately mitigate the tower elements of the installation.
20. The tower elements have a silver or grey metallic finish, in sharp contrast to the more muted tones of nearby vegetation, other nearby buildings and timber telegraph poles, which are in keeping with the rural nature of the area.
21. While the lattice style tower allows permeable views, its silvery finish and mounted elements appear prominently within views when approaching along Gorley Lynch and from the east, as well as from properties within the vicinity, appearing highly discordant to the surrounding landscape and scenic beauty of the NP.
22. I therefore conclude that the proposed development would unacceptably harm the landscape and scenic beauty of the NP, in conflict with Policies DP2, SP7, and SP17 of the New Forest National Park Local Plan 2019 (LP). Taken together, these policies seek to ensure that development conserves and enhances the landscape character and scenic beauty of the NP; and respects local character and distinctiveness including the natural environment. The proposal also conflicts with the objectives of section 15 of the Framework, which seeks to protect and enhance valued landscapes.

Western Escarpment CA

23. The Western Escarpment Conservation Area Character Appraisal 2009 indicates that the significance of the CA stems partly from its landscape and historic dispersed settlement pattern. The landscape character of the NP is therefore echoed in the significance of the CA, which is described as a living working remnant of medieval England, surrounded by commons, heathlands and Forest to the east.
24. The area is served by a series of narrow roads and lanes, which originally linked pasture lands in the valley bottom with the heathlands and commons at the top of the escarpment. The CA retains its character as a series of dispersed

linear rural settlements, and has a unique cultural identity, topography and landscape, developed over more than a thousand years.

25. The appeal site is within character area H, which includes the dispersed common edge settlement around Hyde and Gorley commons. Within this area, views are generally restricted by the predominantly hedge and tree boundaries to the narrow roads. The main route through this area is a lane linking North Gorley with Hungerford and Frogham Cross, running north-east up the escarpment edge and over Hyde Common. The appeal site is at a crossroads along this route.
26. It seems to me that the significance of the appeal site lies in its proximity to a junction of historic narrow roads and lanes, reflecting the key characteristic linear settlement pattern of the wider CA. The appeal site therefore makes a positive contribution to the CA as part of the wider landscape and settlement pattern.
27. As set out in my first main issue, the tower elements of the proposal result in an industrial appearance, and these elements appear prominently within views when approaching along Gorley Lynch and from the east, as well as from properties within the vicinity, appearing highly discordant to the surrounding landscape.
28. For these reasons, the proposed development would harm the character and appearance of the CA. This would conflict with the objectives of Policies DP2 and SP16 of the LP and the Framework, which when taken together seek to ensure that development respects and does not harm the significance, special interest, character or appearance of a designated heritage asset.
29. The harm that I have identified is less than substantial, given the temporary nature of the proposal. Nevertheless, the Framework requires that great weight should be given to the conservation of a designated heritage asset, and any harm requires a clear and convincing justification. In accordance with the requirements of Policy SP16 and paragraph 208 of the Framework, this harm should be weighed against the public benefits of the proposal. I shall return to these matters later in my reasoning.

Tranquillity of the NP and living conditions of neighbouring occupiers

30. One of the special qualities of the NP is its tranquillity, described as the relative peace and naturalness, combined with the open and unfenced landscape of much of the area that gives a sense of space, remoteness and freedom.
31. Paragraph 191 of the Framework makes clear that planning decisions should protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason. It also sets out that decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.
32. The installation includes a generator, near to residential properties beyond the northern boundary of the appeal site. A generator has the potential to result in intrusive sounds, undermining the tranquil character of the NP, and harming the living conditions of neighbouring occupiers, particularly during the night when occupiers are sleeping, and other ambient noise levels may be low.

33. The site has been in operation since February 2021. Interested parties raise concerns about the continuing use of a generator since that time, including the use of replacement generators running continuously, and the effect of the development upon their quality of life and the tranquillity of the NP.
34. The appellants accept that a noise impact assessment was not submitted with the application and state that a hybrid generator was deployed to ensure minimal noise in comparison to a diesel generator. The appellants advise that acoustic panels were installed on the fencing which faces the nearest residential housing.
35. Although my visit in daylight hours is only a snapshot in time, I found noise levels to be significantly noticeable, particularly in the vicinity of neighbouring properties towards the north.
36. My observations were confined to narrow gaps between the metal fence panels surrounding the compound, through which I saw padded material attached to the rear of the fencing panels on its northern boundary. The arrangement was such that it did not form a solid or continuous barrier.
37. The appellants suggest that due to the limited space within the enclosure, it is not possible to accommodate further panelling. However, there is no substantive evidence before me to demonstrate that other acoustic measures could be deployed, including any outside of the enclosure.
38. In the absence of substantive evidence to demonstrate levels of noise and whether any mitigation measures are necessary or adequate, I cannot be certain that the temporary installation does not or would not result in unacceptable levels of noise.
39. I therefore conclude that the proposal fails to demonstrate that it would not have a harmful effect upon the tranquillity of the NP; and would not unacceptably harm the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. It conflicts with Policies DP2 and SP15 of the LP, which seek to ensure that development would not result in unacceptable adverse impacts including noise pollution; and where new development leads to noise, it should be avoided or mitigated. It also conflicts with the objectives of the Framework, which I have referenced above. I attach significant weight to these conflicts.

Other Considerations

40. The Framework recognises that high quality and reliable communications infrastructure is essential for economic growth and well-being, and states that the need for an electronic communications system should not be questioned.
41. The proposal is for a temporary period, and as such, any harm arising would also be temporary. A suitable condition could control the removal of the apparatus and the restoration of the land to its former condition.
42. Although the evidence before me indicates that a search for a replacement site is ongoing, there is no compelling evidence to demonstrate that a replacement base station will be operational within the 18-month period sought.
43. The appellants state that the proposed development is to prevent loss of service on two networks rather than facilitate rollout. The temporary base

station would maintain coverage and help prevent disruption to the wider network until a permanent replacement base station is operational. As a matter of principle, a temporary installation is justified in order to allow continuing provision of 2G, 3G and 4G services.

44. In this context, the public benefit is to communities, businesses and services within the NP; and for visitors to the NP. However, part of the attractiveness and character of the NP is its remote feel and tranquil character, and in this regard, the benefits to visitors would be limited.
45. The appellant suggests that the appeal site would provide a platform for the forthcoming 4G Emergency Services Network, but there is no substantive evidence to demonstrate when this would come into effect. Nevertheless, I consider that the presence of continuing and reliable coverage for emergency services would be important, in an area which can be challenging for such services, due to a variety of factors including its narrow roads and lanes, grazing animals and the New Forest ponies.
46. Overall, the public benefit is therefore largely confined to reliability and continuity of existing coverage, until such time as a replacement base station is operational. I therefore attach moderate weight to the public benefits of the proposal.
47. In support of the appeal, and in the information supporting the planning application, the appellant refers to a number of successful appeal decisions relating to telecommunications developments. As each site has its own unique context, and each heritage asset has its own significance, such decisions will not be fully comparable to the appeal before me. None consider harm to a NP and many relate to permanent installations. Therefore, they are not directly comparable. Nevertheless, these decisions demonstrate that the public benefits of the proposal should be balanced against less than substantial harm to a designated heritage asset and other relevant factors taken into account.
48. Appeal decision Refs: APP/A1910/C20/3256772 and APP/A1910/C20/3256773 concern linked section 174 appeals concerning the removal of a temporary base station. Notwithstanding that such appeals are not directly comparable to a section 78 appeal; I note that the Inspector found that the public benefits of continuing coverage outweighed harm arising to the character and appearance of an area and to the setting of a heritage asset. However, the town centre location and COVID-19 pandemic situation at that time were key factors that weighed in favour of maintaining continuous coverage. Such circumstances are therefore not directly comparable to those before me.

Other Matters

49. I acknowledge the concerns of the Authority and interested parties that the installation has been in place since February 2021, and if I were to allow the appeal, it could be in place for an overall period of almost five years, with continued adverse impacts. Concerns are also raised as to whether the location is genuinely temporary in this context. However, subject to the imposition of a suitable condition, it would be open to the Authority to take enforcement action at the end of the 18-month period to seek the removal of the installation.

Planning Balance and Conclusion

50. While the appellant has provided a justification for the proposal, and it would result in public benefits, I must balance this against the harm to the CA, and the effects of the proposal upon the NP, and any other harm I have identified, taking account of the statutory duties regarding the purposes of the NP.
51. My findings indicate that the proposal would fail to further the first statutory purpose of the NP - to conserve and enhance the natural beauty, wildlife and cultural heritage of the area. There is little evidence before me to demonstrate that the proposal would further the second purpose - to promote opportunities for the understanding and enjoyment of the special qualities of NPs by the public. Even if that were the case, I am required to attach greater weight to its conservation purpose.
52. Paragraph 182 of the Framework sets out that great weight should be given to conserving and enhancing the scenic beauty in National Parks, which have the highest status of protection. Paragraph 205 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
53. I have also found that the proposal fails to demonstrate that it would not have a harmful effect upon the tranquillity of the NP; and would not unacceptably harm the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. This factor attracts significant weight against the proposal.
54. Drawing all of the above together, it is clear that the public benefits of the proposal, to which I have attached moderate weight, would not outweigh the totality of the harm that I have found. Furthermore, in the particular circumstances of this case, the temporary nature of the proposal does not sufficiently outweigh the harms that I have found.

Conclusion

55. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

J Moore

INSPECTOR