



---

# Appeal Decision

Site visit made on 4 June 2024

**by M J Francis BA (Hons) MA MSc MCIfA**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> November 2024**

---

**Appeal Ref: APP/K0940/W/24/3337167**

**Salterwath mast site, Shap, Penrith CA10 3QY**

- 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 Lowther Estate Trust against the decision of Westmorland and Furness Council.
  - The application Ref is 23/0147.
  - The development proposed is dismantling telecommunications mast and erection of bird hide.
- 

## Decision

1. The appeal is allowed and planning permission is granted for dismantling telecommunications mast and erection of bird hide at Salterwath mast site, Shap, Penrith CA10 3QY in accordance with the terms of application, Ref 23/0147, dated 24 February 2023, subject to the conditions in the attached schedule.

## Applications for costs

2. An application for costs was made by Lowther Estate Trust against Westmorland and Furness Council. This application is the subject of a separate decision.

## Preliminary Matters

3. The application was made to Eden District Council. This Council ceased to exist on 1 April 2023 when it became part of Westmorland and Furness Council who determined the application.

## Background and Main Issues

4. Although not a reason for refusal, the site has been identified as being in or adjacent to or likely to affect an internationally designated site, the Asby Complex Special Area of Conservation (SAC). As this is potentially determinative, I have elevated this matter to a main issue, which the parties have been given the opportunity to comment upon.
5. Therefore, the main issues are:
  - the effect of the proposal on the character and appearance of the area and the surrounding landscape;
  - the effect of the proposal on the integrity of a European site; and
  - whether the proposal would result in highway safety issues.

## Reasons

### *Character and appearance*

6. The site is located on an area of moorland reached by a single-track tarmac road, adjacent to the northbound carriageway of the M6 motorway. The site overlooks the Birk Back valley and the western Lakeland Fells. It is currently the location of a telecommunications mast and associated equipment in a small, wooden compound, adjacent to an area of hardstanding.
7. The site is within an area identified in the Cumbria Wide Landscape Assessment (LCA) as Sub type 11a 'Foothills' which is sensitive to unsympathetic expansion and redevelopment. However, the proposal would remove the now redundant telecommunications equipment.
8. The bird hide would be constructed on the site of the existing mast. It would have a floor area of 9.6m<sup>2</sup> and would be 2.4 metres in height to the apex. The building would, therefore, be small and on a previously developed site with an existing access track.
9. Although the visual massing of the building would differ from the narrow mast currently on the site, it would be a simple structure. Whilst the building would not be typical of the isolated buildings found in this part of the open countryside, it would have a functional style and form. Finished in vertical timber boarding and with a turf roof, it would be viewed against the backdrop of the surrounding moorland. Therefore, subject to details of the proposed treatment of the timber walls, which could be the subject of a suitably worded condition, it would blend into the landscape and would not be obtrusive in this location. Moreover, being sited next to, and visible from the adjoining motorway with its urban characteristics, the site would not appear incongruous in the otherwise open landscape in which the site would be found.
10. The removal of the mast, which represents a somewhat alien form in this location, would contribute to conserving and enhancing the landscape character of the area. Furthermore, its replacement with a bird hide on a site which has already been disturbed by the building of the adjacent motorway would not be unacceptable to the landscape character and the visual setting of this site.
11. I therefore conclude that the proposed development would not harm the character and appearance of the area and the surrounding landscape.
12. Policy LS1 of the Eden Local Plan 2014-2032, (LP) sets out that development in other rural areas, outside key hubs, smaller villages and hamlets will only be allowed if it accords with other policies in the LP. In this case it would accord with LP Policy ENV2 which permits new development where it would conserve and enhance landscape character.
13. Whilst LP Policy EC4 has been referred to by the parties, the proposal is not described as being for tourism. Therefore, LP Policy EC4 does not apply.

### *Effect on a European designated site*

14. The site is within Asby Complex SAC. I must therefore have regard to the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). These regulations require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other

plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. This responsibility falls to me as the competent authority in the context of this appeal.

15. The qualifying features of Asby Complex SAC are dry heath and alkaline fen found on calcareous substrates. These are both classed as being in unfavourable recovering condition when they were last assessed. However, the application site, which has previously been developed is mainly gravel. Surrounding it are weeds such as common nettle and creeping thistle and coarse grasses such as false oat grass.
16. The site is adjacent to the M6 and the construction of this has likely altered the soil on the proposed site which has created more neutral conditions than that found in the wider area. Consequently, the grassland surrounding the application site is transitional acid-neutral grassland with a lack of dwarf shrub species within it, dominated by weeds. Therefore, the site is unsuitable for restoration to heathland.
17. As no SAC qualifying features were found close to the site, the proposed development would not result in the loss of a notified or qualifying feature or habitat that could be restored to a feature. Furthermore, the remote location and existing parking next to the site would mean that there would be very little disturbance from visitors. Ensuring that materials and vehicles during the construction phase are confined to the existing hardstanding only, and details of the species proposed for the roof are appropriate, would ensure that the proposal does not adversely affect the feature habitats.
18. Natural England has been consulted on the proposal and advises that it would not have an adverse impact on the integrity of the SAC subject to appropriate pollution prevention and biosecurity measures being secured through condition, and no encroachment of the surrounding land outside the existing hardstanding.
19. I have no evidence to disagree with this which would lead me to a different conclusion. I therefore conclude that the SAC features would not be adversely impacted by the proposal, and it would not have a significant adverse effect on the integrity of the Asby Complex SAC, subject to these conditions.

#### *Highway safety*

20. The site is reached by a single track unadopted road, which at the time I visited, had no other traffic on it. It is separated from the M6 motorway by a metal and wire fence which would prevent access onto the motorway. Whilst I observed that siting it so close to a motorway there would likely be constant background traffic noise, particularly during the day, the existing road to the site would create a safe access route. Furthermore, the Highway Authority had no objection to the proposal.
21. The site is proposed for use by local residents, schools, wildlife clubs and societies for wildlife and bird watching. Limited substantive evidence has been provided as to how the site would operate based on its size and lack of facilities, other than an existing area of hardstanding being used for the parking of vehicles. However, from the evidence before me, I conclude that the proposal would not result in any highway safety issues.

22. Therefore, it would accord with LP Policy DEV3, which amongst other things, does not support development if it would have a severe impact on road safety and lead to increased traffic congestion.

### **Other Matters**

23. The site is within Crosby Ravensworth Fell Site of Special Scientific Interest (SSSI), with the Lake District High Fells SAC and Shap Fells SSSI located c.770m southwest of the site. Based on what is proposed, the previously developed nature of the existing site and the distance of these designations from it, I consider that the proposal would not have a significant adverse impact on any of the interest features and would not have an adverse effect on the integrity of the Lake District High Fell SAC. However, as works are proposed within an SSSI, consent from Natural England would be required for the development.

### **Conditions**

24. I have considered conditions with reference to the National Planning Policy Framework and the Planning Practice Guidance. In addition to the standard time limit, a condition listing the plans is necessary in the interest of certainty.
25. To ensure that the proposed development is only used for the purpose for which it is built, a condition restricting this is necessary and reasonable. Whilst there is an existing hardstanding area for the use of those maintaining the current equipment on the site, the retention of this should be for users of the hide only. This is necessary and reasonable to prevent persons not using the bird hide from parking on the site, which could result in parking on surrounding land or the road.
26. A condition requiring details of the finish of the timber boarding is necessary and reasonable to ensure that the building blends in with the surrounding landscape. Additionally, conditions providing details of the plant species to be used for the green roof, and that construction works are contained within the existing track and hardstanding, are reasonable and necessary. This is to ensure that the imported material and the proposed development would not affect the integrity of the SAC and damage the feature habitats.

### **Conclusion**

27. For the reasons given above, I conclude that the appeal is allowed.

*M J Francis*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No: 10262-401 Rev B 'Proposed floor plan and elevations – bird hide'; and Drawing No: 10262/100, 'Location plan'.
- 3) No development above ground level shall take place until details of the finished treatment of the timber boarding have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
- 4) No development above ground level shall take place until details of the plant species to be used for the green roof have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and no other plant species shall be introduced during the lifetime of the green roof.
- 5) The parking of vehicles and the storage of materials to be used in the removal of the existing mast and structure and the construction of the hide shall only be within the existing access track and area of hardstanding.
- 6) The approved building shall not be used for any purpose other than bird watching or activities relating directly to nature observation.
- 7) The hardstanding shall only be used for the parking of vehicles by visitors to the site for the purposes of bird watching and nature observation in the approved building, and for maintenance and demolition.

### **End of conditions**