



Appeal Decision

Site visit made on 3 January 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/J2210/W/24/3342845

Ross Wood Campsite, New Road, Herne Common, Kent CT6 7LF

- 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 McKay Brothers Ltd against the decision of Canterbury City Council.
 - The application Ref is CA/23/00373.
 - The development proposed is the installation of a 30m tower with 1x 1.8m and 1.2m dish antennas and 6 panel antenna and two 0.6m for mobile operators. Ground based equipment cabinets and ancillary steelwork and fencing.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Although the Government published a revised National Planning Policy Framework ("the Framework") on 12 December 2024, the policies relevant to the substance of this appeal are not materially different to those in the version that it replaced. Therefore, I have not deemed it necessary to seek the parties' views on the revised document.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on the West Blean and Thornden Woods Site of Special Scientific Interest (SSSI), and whether any adverse effects on the SSSI, which cannot be avoided, would be clearly outweighed by the benefits of the development.

Reasons

Policy context

4. Policy LB6 of the Canterbury District Local Plan, Adopted July 2017 ("the CDLP") states that planning permission will not normally be granted for development which would materially harm the scientific or nature conservation interest of a SSSI, either directly, indirectly or cumulatively.
5. Development that affects a SSSI, will only be permitted where an appraisal prepared by an appropriate specialist has demonstrated that: a.) The objectives and features of the designated area and overall integrity of the area would not be compromised, or b). Any adverse effects on the qualities for which the area has been designated which cannot be avoided (through locating on an alternative site with less harmful impacts) or adequately mitigated, are clearly outweighed by

social or economic benefits of national importance and a compensatory site of at least equal value is proposed.

Effect on the SSSI

6. The appeal site is situated within the West Blean and Thornden Woods SSSI, which is a designated ancient woodland and contains several rare woodland types. The features for which the SSSI is notified for, include assemblages of breeding birds, mixed scrub, woodland, invertebrate assemblages, lowland mixed deciduous woodland and a population of nationally rare Heath fritillary butterfly. The evidence from Natural England (NE) suggests the SSSI was last assessed as being in favourable condition.
7. There is no dispute that the appeal site is dominated by bramble, along with abundant honeysuckle and wood anemone. However, whilst the appellant contends that this is detrimental to the overall diversity of the ground flora in the SSSI, NE has advised that it is representative of the Lowland mixed deciduous woodland feature of the SSSI, and forms part of its woodland structure. Human disturbance on the appeal site and a lack of management of the SSSI do not appear to be affecting the ground flora's dominance of the appeal site.
8. The appellant considers that removing ground flora from the appeal site, which covers only a small area of the SSSI would have a negligible effect on the SSSI. The County Council Ecologist raises no objection. However, NE is the government's adviser for the natural environment. It advises that removal of the ground flora would result in the loss of part of the woodland structure of the Lowland mixed deciduous woodland feature for which the SSSI is notified for. NE's advice carries significant weight.
9. The proposed development is not intended to be permanent and a period of 10 years or fewer has been suggested by the appellant. Some of the impacts during construction could potentially be mitigated through controlling the methods and timing of the works. Nonetheless, the loss of ground flora would persist for several years and would be likely to have an adverse effect on this feature and the SSSI as a whole. Furthermore, I cannot be certain that the ground flora would regrow on the appeal site after the development is removed. No substantive details of any mechanism to secure this or the actions necessary to achieve it are before me.
10. Given the importance of the SSSI in terms of biodiversity, I do not accept that the appeal proposal's adverse effect on a notified feature can be considered negligible. Even if the harm was negligible, it would still amount to harm. In taking account of NE's advice, and in adopting a necessarily precautionary approach to this issue I conclude that the appeal proposal would be likely to have a significant adverse effect on the SSSI.
11. Given the importance placed by Framework Paragraph 187.a) on the protection of sites of biodiversity value commensurate with their statutory status, the likely harm to the SSSI is a matter of substantial weight against the appeal proposal. CDLP Policy LB6 part b) and Framework Paragraphs 193.a) and 193.b) set out the principles under which a development that is harmful to a SSSI might be granted permission. Therefore, my attention turns to whether the appeal proposal's adverse effect on the SSSI can be avoided or clearly outweighed by its benefits.

Alternative sites

12. The proposed development would provide a line-of-sight connection between data centres in London and Paris, as part of the appellant's high speed, low latency network connecting financial institutions and trading markets throughout the world. To achieve a line-of-sight connection between the data centres, it must be sited on elevated ground between London and the Kent coastline to avoid interference by obstructions such as land and buildings.
13. The location of the appeal site on this area of elevated ground is shown on a topographical cross section profile of the land stretching from the Kent coastline to London. However, this cross section does not show the geographical extent of the elevated necessary for the proposal installation to function. On the evidence before me, I am not satisfied that the elevated ground necessary for the proposed development is confined to the SSSI and nowhere else. The land may 'drop-off' to the north and south, but the topographical profile does not substantiate this.
14. I have limited evidence to demonstrate that taller masts or a greater number of masts in alternative locations, such as the designated area of Historic Landscape Value, would be visually harmful or that any visual harm could not be outweighed by the proposal's benefits. Whilst such judgements could only be made on a case-by-case assessment, I have not been referred to any policy that would mandate the refusal of a development of this type on visual impact. Given the importance placed on protecting sites of biodiversity value, I am not satisfied that visual harm would necessarily be a worse impact than harm to a SSSI.
15. The owner of the appeal land is willing to accommodate the proposed development. However, I have limited substantive evidence to demonstrate that alternative sites technically suitable for the installation, particularly outside of the SSSI, were discounted due to an unwilling landowner. There is limited evidence that constructing the development outside of the SSSI would be more costly and unviable. The appeal site is not within a village or urban area and therefore does not benefit from the support given by CDLP Policy EMP6 for development in those areas.
16. For these reasons, I am not satisfied that the appellant's search for a suitable alternative site outside of the SSSI has been robust, and that the appeal site is demonstrably the only option for achieving the technical connectivity requirements of the appellant's communications network. Consequently, on the evidence before me, I am not satisfied that the likelihood of harm to the SSSI could not reasonably be avoided, contrary to this element of the criteria in CDLP Policy LB6b, and Framework Paragraph 193.a).

Benefits

17. The appeal development would support the financial services sector, which contributes £173 billion (8.3% of GDP) to the UK economy per annum. The economic contribution directly attributed to the appeal proposal is not quantified in the evidence before me. However, it is likely to be sizeable and would carry weight of a high order in favour of the development.
18. The proposed development would also be capable of accommodating the telecommunications equipment of third party Mobile Network Operators (MNO), helping to facilitate the roll out of 5G networks, consistent with Government

support. The evidence suggests that much of the area surrounding the appeal site has no mobile phone network coverage/connectivity and is therefore a 'not-spot'. CDLP Policy EMP6 supports digital infrastructure in 'not-spot' areas.

19. No substantive evidence has been advanced to suggest that an MNO has made a firm commitment to sharing the proposed tower to improve network coverage in the 'not-spot' area, which is largely rural. Nonetheless, the economic and social benefits of improving network coverage would also carry weight of a high order in favour of the development. This reflects the support for mobile digital communications infrastructure as set out in the several publications by Government departments which are before me in evidence, and in Framework Paragraphs 119 and 120.
20. Whilst the proposed development would bring important economic benefits that carry weight of a high order in its favour, those benefits do not clearly outweigh the substantial importance and weight that I attribute to the proposal's likely adverse effect on the SSSI. Furthermore, I am not satisfied that those benefits could not be delivered on an alternative site that would not cause harm to the SSSI.
21. I therefore conclude that the proposed development would conflict with CDLP Policy LB6, the requirements of which are set out above, and Framework Paragraph 193.b) which states that development on land within a SSSI, and which is likely to have an adverse effect on it should not normally be permitted, except where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the network of such sites.
22. Based on this conclusion it is unnecessary under criterion b. of CDLP Policy LB6 to look at whether a compensatory site of at least equal value is proposed. In any case, I cannot be satisfied that a scheme for compensation, for which no details are before me, would be either effective or capable of being delivered on land within the appellant's control.

Other Matters

23. Although the appeal proposal would not harm listed buildings, conservation areas, sensitive landscape areas or important trees, an absence of harm in these respects is a neutral factor that does not weigh in favour or against the development. Full details of the Chancellor's recent speech regarding the planning system, large scale infrastructure projects, and bats and newts, are not before me in this appeal. Therefore, it is of limited relevance and weight to my considerations in this appeal, which are based on current policy and guidance.

Conclusion

24. The appeal proposal would be likely to harm the SSSI, and I am not satisfied that the appeal site is demonstrably the only option for achieving the proposal's economic and social benefits. Whilst those benefits carry high order weight in favour of the proposed development, they are insufficient to outweigh the harm to the SSSI, which is an important matter that carries substantial weight against the development. This brings the proposal into conflict with CDLP Policy LB6, the requirements of which are set out above. Whilst CDLP Policy EMP6 supports digital infrastructure in 'not-spot' areas, the weight I attribute to the conflict with

CDLP Policy LB6 is sufficient to bring the proposal into conflict with the development plan as a whole.

25. I therefore conclude that the proposal conflicts with the development plan when read as a whole. The material considerations, including the benefits of the proposed development and the provisions of the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is dismissed.

G Sylvester

INSPECTOR