



Appeal Decision Notice

Decision by Trudi Craggs, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2099
- Site address: land at Menzion Forest Block, Quarter Hill, Tweedsmuir, Scottish Borders, ML12 6QP
- Appeal by Hutchison 3G UK Ltd against the decision by Scottish Borders Council
- Application for planning permission (reference 23/00777/FUL) dated 18 May 2023 refused by notice dated 8 August 2023
- The development proposed: proposed telecommunications installation - proposed 35 metre high Swann CS5S lattice tower c/w headframe on new 6.5 metre x 6.5 metre concrete base and associated ancillary works
- Application drawings: listed in the schedule at the end of this decision notice
- Date of site visit by Reporter: 24 October 2023

Date of appeal decision: 22 November 2023

Decision

I allow the appeal and grant planning permission subject to the five conditions listed at the end of the decision notice. Attention is drawn to the two advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of the National Planning Framework 4 (NPF4) and the Scottish Borders Local Development Plan 2016.
2. The site is approximately 5 kilometres to the south of Tweedsmuir and is a short distance south of, and slightly lower than, the summit of Quarter Hill. It would be accessed by the Silver Jubilee Road, an existing gravel track immediately to the east. The site itself is a mix of grassland and low shrubs. It is within an area of commercial forestry in various stages of maturity. The landform slopes downwards away from the site to the Talla Reservoir before sloping upwards on the opposite side of the valley.
3. The proposal is for a 35 metre high lattice tower erected on a concrete base together with ancillary equipment. It would be installed within a 13 metre by 10 metre compound enclosed by a deer fence and surrounded to the north, west and south by a low bund created from the site cut. The mast would be part of the Shared Rural Network, hosted by the appellant and shared with Vodafone and Virgin Media O2.
4. Having regard to the provisions of the development plan the main issue in this appeal is whether the proposal would have an adverse impact on the natural environment resulting in unacceptable landscape, visual and amenity impacts.

Landscape impacts

5. The appellant carried out a landscape and visual impact assessment which I understand was submitted too late to be considered by the council when it determined the application. However, it was submitted by the appellant as part of its appeal submission and is before me for consideration. The council has had an opportunity to comment on it.

6. Although the landscape and visual impact assessment states that the site does not lie within a designated landscape, my understanding is that it is within the Tweedsmuir Uplands special landscape area designated in the local development plan. The appellant does not appear to dispute this. The site is also within Landscape Character Type 95 Southern Uplands as defined by NatureScot.

7. On my site inspection I saw the extensive large scale rolling upland landscape with dome summits and u-shaped valleys. There were significant areas of conifer plantations as well as large areas where the trees had been felled. The area is largely undeveloped except for single track roads and occasional farms. In the vicinity of the site the Talla Dam is an obvious manmade feature. Nevertheless, overall there is a high degree of remoteness and wildness, and a notable lack of infrastructure in the landscape.

8. During construction a small amount of vegetation would be permanently removed. Construction activities including site clearance, and the presence of plant and equipment, construction compounds and welfare facilities would be apparent in the landscape. There would be additional vehicle movements on the existing track which would also be noticeable. However these effects, which would be temporary and short term, would only impact a very small part of the overall landscape character type and the special landscape area. Therefore I accept that the effect would be moderate-slight adverse.

9. Once operational, although the mast would be visible in some views, given the vastness and scale of the landscape and the expansive open views across it, there would not be a significant impact on the character of the landscape nor on the feeling of remoteness and wildness. In my view the integrity of the Tweedsmuir Uplands special landscape area and its landscape quality would not be significantly adversely affected. I therefore accept that, as assessed, the impact would be slight adverse.

Visual impacts

10. Various viewpoints are assessed in the landscape and visual impact assessment. Having considered this, and from what I saw on my site inspection, I accept that, given the topography and the intervening trees, there would be no significant adverse impacts from viewpoints 6, 7, or 8.

11. Viewpoint 1 is on the Silver Jubilee Road approximately 500 metres north of the site. I accept that the ground level elements including the hard standing, equipment cabinets and fencing would be partially screened by woodland, vegetation and topography. The upper part of the mast would be clearly visible, breaking the skyline.

12. Due to the antennas which would be installed at the top, I consider that it would have a more solid and bulky appearance than as shown on the photomontage. I consider that the wireframe of viewpoint 2 in the wireframe report more accurately illustrates the effect of the mast. The mast would be a prominent vertical feature from viewpoint 1 and would look out of place and intrusive. I therefore consider that the magnitude of change is likely to be medium and the impact substantial to moderate, rather than moderate to slight adverse.

13. At viewpoint 2 at the Talla Dam, I saw that the site and lower part of the mast would be screened by the intervening woodland. The top part of the tower, including the antennas, would be visible through and above the existing trees. From this viewpoint, I consider that the most important views would be of the Talla Reservoir and beyond, or across the valley to the north. Accordingly, I accept the conclusion of the assessment that the impact is likely to be slight adverse.

14. I was unable to access viewpoint 3 which is on a private road. The road was gated and padlocked. Nevertheless relying on my overall impressions of what I saw on my site inspection, and on the wirelines and photomontages, I consider that the impact at this viewpoint would be greater than as assessed. Although it is further away from the site than viewpoint 2, there is less intervening screening. The views are less open with only glimpses of the reservoir visible, and the mast would be located within what I consider to be the main view. For these reasons I consider that the impact is more likely to be moderate than slight adverse as assessed.

15. I was also unable to access viewpoint 4. Again relying on the photomontages, I accept that, due to the trees in the foreground and across the view, the impact from this viewpoint would be slight adverse. In relation to viewpoint 5, the assessment states that parts of the mast are likely to break the skyline however this is not reflected in the photomontage. Nevertheless, even if it were to break the skyline, given the intervening distance, the landform and the trees, and the scale of the landscape which is dominated by the reservoir from this viewpoint, I accept the conclusion in the assessment that the impact would be slight adverse.

16. I note that the conclusions of the landscape and visual impact assessment rely on the screening effect of the existing trees. For all viewpoints the residual adverse effect is expected to reduce to slight adverse to neutral by year 15, again relying on the mitigation provided by the existing woodland which would have matured and increased in height by that time. However the trees are part of commercial forestry; thus some or all could be felled at some point in the future. Accordingly I am mindful that the residual risk may be greater than assessed.

17. There is no assessment of the impact from the far end of the reservoir. Objectors have highlighted this as being a key view. The mast would theoretically be visible from this point as well as from the majority of the road which runs along the east side of the reservoir, as shown on the zone of theoretical visibility figure. Nevertheless given the lattice design of the mast, the intervening distance, the wide expansive views and the dominance of the reservoir in the landscape, I am not convinced that the mast would be so intrusive in the view as to have a significant effect. Its effect would also be diminished by the scale and vastness of the landscape.

Amenity impacts

18. Given the vast landscape, the panoramic, open views, and in some areas the screening provided by the landform and topography, I do not consider that the amenity for road users and footpath users would be significantly adversely impacted. Similarly given the overall natural beauty of the area and the attraction of the reservoir, I am not persuaded that it would deter tourists or those who visit the reservoir for recreational activities.

19. As for residents, I accept that, for those living near to the reservoir, their views would be altered and that the mast would be noticeable. However given the intervening distance

and the open views, I do not consider that the impact would be such as to have a significant adverse impact on their residential amenity.

Development Plan assessment

20. The council considers that the proposal would be contrary to policies 24e) (Digital Infrastructure) and 25 (Community Wealth Building) of NPF4 and policies ED6 (Digital Connectivity) and IS15(a) (Radio Telecommunications) of the local development plan.

21. Policy 24 is intended to encourage, promote and facilitate the roll out of digital infrastructure. The appellant has explained that the proposal is part of a national programme of improving connectivity across Scotland and I understand that the proposed mast has been future proofed and would be used by a range of providers. I therefore find that the proposal would be supported by paragraphs a) and c) of this policy.

22. On my site inspection I noted that mobile reception in the area was patchy and at times non-existent. This is reflected in the Tweedsmuir Community Action Plan 2023-2028 which records that 23% of responses from those in the community disliked the poor access to communications infrastructure, broadband and mobile connections. Priorities under theme 2 of the plan include superfast broadband, and local employment and support for businesses.

23. In relation to superfast broadband, until that is rolled out, one of the actions is exploring interim solutions. Further in recognition that there are high rates of self-employment, home-based working and businesses in the area, there is another action to assist people to work from home. Although the emphasis is on broadband, in my view improving the mobile network coverage in this area would be beneficial to the local community and economy. I therefore consider that the proposal would help to meet the intention of policy 24 and would be supported by paragraphs b) and d).

24. Paragraph e) states that proposals for digital infrastructure will only be supported where three criteria are met. From what I saw on my site inspection and from the evidence before me I am satisfied that criteria ii) and iii) would be met. Criterion i) requires that the visual and amenity impacts are minimised through careful siting, design, height, materials, and landscaping, taking into account cumulative impacts and relevant technical constraints.

25. In addition Policy IS15 of the local development plan also sets out siting and design criteria against which proposals must be assessed. Further policy 4 (Natural Place) of NPF4 and policies ED6 (Digital Connectivity) and EP5 (Special Landscape Areas) of the local development plan seek to protect the natural and built environments.

26. I understand that the location of the mast is dictated by the need to provide coverage to a specific area. The appellant undertook a site selection process. Eight alternative sites were discounted for a range of reasons, including failure to meet the necessary coverage requirements, constructability concerns, and visual impact. Two options were discounted due to the significant adverse impact on the landowner.

27. This has been criticised by objectors who do not consider this to be a valid reason for discounting a site. In my view the impact on the landowner is a relevant consideration, one which needs to be considered with the range of other factors referred to above. The installation of a mast is likely to have an impact wherever it is sited given the technical requirements. However through the site selection process I accept that the appellant has

sought to minimise the likely impacts of the proposal, including visual impacts, and has demonstrated that there is no suitable alternative location.

28. Given my conclusions above, I find that the proposal would not have an unacceptable effect on the special landscape area or on the landscape setting, its character or quality. It would not affect an area of ecological interest. A small area of vegetation would require to be removed but again that would not result in an unacceptable impact. There is an existing access track which would be used for both construction and operation.

29. The lattice tower design has been chosen rather than a solid tower to minimise visual intrusion. Its height is dictated by the need to provide connection between other cells and the need for the mast to be higher than the surrounding trees. It is proposed that the mast and antennas would be painted matt dark green to minimise any impact on the landscape setting or visual character of the surrounding area.

30. The equipment at ground level would also be painted green to minimise any visual impact when close to the site. I have considered whether this would make the mast more intrusive particularly where it breaks the skyline. However I conclude that on balance, having regard to the views and the screening from the woodland, painting it green would help to minimise the impact. This would be secured by condition.

31. Although I find that the visual impacts are likely to be greater than assessed by the appellant, these would be relatively localised as shown on the zone of theoretical visibility which assumes a worst-case scenario of no tree cover. Accordingly I do not consider that overall the impacts would be unacceptable. Further as set out above, there would be no significant amenity impacts.

32. There would be no cumulative impacts given the lack of other infrastructure in the area. Bringing all this together, I find that the proposal would comply with the requirements of paragraph e) of policy 24 and policy 4 of NPF4 and would be supported. I consider that it would also satisfy policies IS15, ED6 and EP5 of the local development plan.

33. Policy 25 of NPF4 gives support to proposals which contribute to local or regional community wealth building strategies and are consistent with local economic priorities. Both the Tweedsmuir Community Council and another interested party drew my attention to the Tweedsmuir Action Plan which I refer to above. This sets out a range of priorities and associated actions across several themes.

34. These include promoting the local environment and encouraging visitors to the area, as well as supporting local employment and businesses. I accept that the natural environment and beauty of the area, and its remoteness and peacefulness are valued by the community and visitors alike. As I have already mentioned I consider that the proposal would bring benefits to those working from home and to local businesses. I do not consider that it would change the peaceful nature of the area or have a significant impact on its beauty or the dark skies.

35. While, as asserted by the appellant, improved mobile coverage would allow visitors to access maps, weather forecasts and the like, I am not persuaded that the absence of mobile connection would necessarily deter tourists to the area. That said, given that overall, the mast would not have a significant impact on the landscape, that the visual impacts are localised and that there would be no significant adverse effect on amenity as explained above, I am not convinced that the proposal would deter visitors either.

36. I have no doubt that the Talla Reservoir is an important community asset. That would remain the case even with the proposal. Although the mast would be visible from the road running along the side of the reservoir, given the vastness of the landscape, the proposal would not erode the sense of wilderness or remoteness. The natural environment would for the most part remain unchanged. Taking all this together I find that the proposal would not be inconsistent with local economic priorities and therefore it would be supported by policy 25.

37. As regards policy 1 (Tackling the climate and nature crises) of NPF4, the proposal would support the global climate crisis. Better mobile connectivity would allow people to work from home reducing travel and would support local businesses and facilities too, again reducing the need for travel.

38. Post construction ecological enhancements would be secured by condition. Given the nature and location of the proposal, I consider that such a condition is necessary to enhance biodiversity in accordance with policy 3 (Biodiversity) of NPF4. Given that there is no intention to enhance, expand or improve woodland, nor would the proposal result in the loss of, or have any impact on, ancient woodlands or other woodland, I consider that policy 6 (Forestry, woodland and trees) of NPF4 is largely irrelevant.

39. The site is not within a conservation area. Although there are scheduled ancient monuments and one listed building within the study area none would be directly impacted. From what I saw on my site inspection I am satisfied that there would be no indirect effects either. The proposal would therefore be supported by policy 7 (Historic Assets and Places) of NPF4.

40. The appellant refers to policies 14 (Design, quality and place), 18 (Infrastructure First), and 20 (Blue and green infrastructure) of NPF4 and the council refers to policies 23 (Health and Safety) and 29 (Rural development). Other than paragraph b) of policy 23, I consider that these policies are largely irrelevant given the nature of the development. As regards paragraph b) of policy 23, the appellant has provided an ICNIRP certificate confirming that the proposal would fully comply with radio frequency public exposure guidelines. Accordingly, I understand that the proposal would not have a significant adverse effect on health and would be supported by this policy.

41. The main parties also referred to policies PMD1 (Sustainability) and PMD2 (Quality Standards) of the local development plan. I consider that these policies have limited relevance to this type of development. Nevertheless insofar as applicable I consider that the proposal would not be contrary to either. Bringing all of the above together I consider that the key policies against which this proposal should be assessed are policies 1, 3, 4, 24 and 25 of NPF4 and policies IS15, ED6 and EP5 of the local development plan. As set out in my assessment above the proposal would be aligned with these policies and would be supported. It would also accord with other policies as set out above albeit these are of less relevance.

Material considerations

42. I have considered the objections made to the council as well as the letters of support. Two representations were also submitted to me, including one from the Tweedsmuir Community Council. I have dealt with their concerns above. I have also had regard to the Tweedsmuir Community Action Plan in reaching my conclusions.

43. Planning Advice Note 62 Radio Telecommunications, although dated, provides helpful guidance. It suggests that dark green antennas on wooden poles are most likely to fit rural landscapes. However as the proposed mast would be shared, and it and the antennas painted dark green (as set out in condition 3 below), I consider that the use of a lattice structure is appropriate.

44. Although paragraph 69 states that masts that break the skyline are not desirable, I accept that the height of the mast is dictated by the need to provide coverage. Paragraph 70 states that if plantations will ultimately be felled, new planting around the site should be provided to ensure long-term screening. Additional planting can be agreed with the council as part of the proposed ecological enhancements to be implemented in accordance with condition 4 below.

Conditions

45. Objectors raised concerns that the height of the mast could be increased without the need for planning permission. In its email of 7 July 2023 the appellant advised that, as all required providers would be already situated on the mast, it would be extremely unlikely that it would need to be increased in height. Nevertheless, it suggested that a condition be imposed to remove permitted development rights. I consider that such a condition is necessary to ensure the council retains control over the height of the mast to avoid any unacceptable impacts in the future. I have therefore imposed the condition, largely as proposed by the council, to this effect.

46. The council proposed four other conditions. Condition 1 has been amended to reflect our standard condition which I have used for consistency. This does not change its substance or intent. I have made minor amendments to condition 2. Conditions 3 and 4 are imposed without amendment.

Overall conclusion

47. I conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Trudi Craggs

Reporter

Schedule of application drawings

004A Application Site Boundary Plan drawing no SRN1123_M003 Issue C

004B Planning Application Boundary drawing no SRN1123_M003 Issue C

100 Existing Site Plan drawing no SRN1123_M003 Issue C

210 Proposed Site Plan 1 drawing no SRN1123_M003 Issue C

260 Site Elevation 1 drawing no SRN1123_M003 Issue C

261 Site Elevation 2 drawing no SRN1123_M003 Issue C

Conditions

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of grant of this permission.

Reason: Section 58 of the Town and Country Planning (Scotland) Act 1997 requires a condition to be attached to permission limiting its duration. Three years is the default period set by law and there is no material reason indicating that a different period should be set.

2. The development hereby permitted shall not be carried out otherwise than in accordance with the approved plans and specifications.

Reason: To ensure that the development is carried out in accordance with the approved details.

3. The mast and all antennae, dishes and other fixtures on the mast hereby approved, shall all be coloured dark green (RAL 6009) and all ground-based equipment shall be coloured dark green (RAL 6009). All external finishes shall be non-reflective/matt, unless an alternative scheme of colours has first been agreed in writing with the planning authority.

Reason: To better integrate the development into the landscape setting.

4. No development shall commence until details of a scheme of post-construction ecological enhancements, including timescale for implementation, have been submitted to and approved in writing by the planning authority. The approved details shall be implemented within the approved timescale.

Reason: To provide a reasonable level of ecological enhancement relative to the environmental impact of the development in accordance with the statutory development plan.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any subsequent provisions amending or reenacting that Order), the overall height of the telecommunication mast hereby approved shall not be increased unless an application for planning permission is first submitted to and approved in writing by the planning authority.

Reason: To retain control over the height of the development, in the interest of landscape and visual amenity.

Advisory notes

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).