

Planning Inspectorate [via email]

Room 3 O/P

Temple Quay House, 2 The Square

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Bristol, BS1 6PN

24 April 2024

Appeal ref: APP/C9499/W/23/3323272
Land at Hoggs Hill, Barbon Low Fell, Casterton, Cumbria LA6 2JP

Relevant Criterion for making a Complaint

This complaint on the basis that “staff have not properly followed Government planning policy or guidance, relevant legislation and our (i.e. Planning Inspectorate) procedural guidance”

Introduction

Friends of the Dales, a registered charity which takes an active interest in significant development proposals within or close to the Yorkshire Dales National Park, wishes to lodge a **formal complaint** concerning the appeal decision.

The Inspector rightly identifies that the **main issue** [Point 5] is the effect of the proposed development on the scenic beauty and intrinsic character of the National Park Landscape.

However, we consider the ruling fails to properly take into account legislation, national and local planning policy designed to protect national park landscapes.

1. National Policy Considerations

[Para 8]

The Inspector has had regard to the purposes of National Parks as set out in the Environment Act 1995, which states that the primary purpose of the designation is:

conserving and enhancing the natural beauty, wildlife and cultural heritage of the area.

[Para 10]

The Inspector states that the installation “would therefore introduce a **highly incongruous**, vertical structure with the landscape currently characterised by a distinct lack of built form other than very low-level farms and dwellings.”



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[Para 14]

The Inspector identifies that “the proposal **would fail to conserve** the scenic beauty and intrinsic character of the national park landscape”.

The Inspector goes on to conclude that “the proposed development would ... **conflict with the first statutory purpose**” as set out in this Act.

The Inspector also quotes paragraph 182 of the National Planning Policy Framework which explains that “**great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks**”.

Based on this assessment, it is clear that the **proposal is contrary to national policy**.

2. Local Policy Considerations

[Para 14]

The Inspector also considers the policies in the South Lakeland Local Plan 2006 and the South Lakeland Local Development Framework Core Strategy 2010.

Here again he concludes that the **proposed development would be in conflict with four policies** that seek to protect and enhance the landscape. Note here para 47 of the NPPF that declares “Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise”. In this case, material considerations back up the case for refusal. See also NPPF para 11 c) and d) and footnote 7, i.e. even if these local plan policies were considered out of date, the position would still be refusal.

3. Reaching a Balance

[Para 21]

The Inspector notes that he is fully aware that the Framework requires greater weight should be given to conserving and enhancing landscape and scenic beauty in national parks.

Yet in reaching his overall conclusion concerning the merits of the proposal, all these conflicts identified in paragraphs 10- 14 are disregarded and instead greater weight is given to paragraphs 118 and 119 of the National Planning Policy Framework (NPPF).

These paragraphs relate to communications infrastructure in general and **make no reference to the particular circumstances of protected landscapes**. These paragraphs must be considered **alongside the guidance for National Parks**, including NPPF para 11 c) and d) and footnote 7, plus para 3, i.e. they cannot be taken in isolation and in preference to other relevant paragraphs.

4. Evidence

[Para 17]

The Inspector also mentions paragraph 121 of the NPPF which states that any such communications development “should be supported by the **necessary evidence** to justify the proposed development.”

There is no such “necessary evidence”; indeed the Inspector acknowledges that there is some alternative network coverage in the area, and that he “cannot be certain” about the levels of use of the land.

Whilst clearly there are public benefits to be gained from connectivity, we understand that the Shared Rural Network programme is for the benefit of rural communities and businesses. In this instance, the communities and businesses already have adequate connection through the local B4RN project that boosts local signals, and there are no properties that would gain from this extra coverage. This has been pointed out by objectors to the original planning application, including ourselves.

It is therefore impossible to understand how the Inspector has reached the decision that “the harm identified would be outweighed by the considerable public benefits.” **There are no demonstrated “considerable benefits”;** the evidence is not there, and there is no quantification of such benefits.

Thus, it cannot be seen how there are any “material considerations” that indicate that the decision should go against legislation and both long established national policy and locally determined policies.

5. Levelling Up and Regeneration Act (2023)

The LURA, Part 12, 245 (3) (b) (1A) 245 came into force on 26 December 2023 amends the duty on relevant authorities under S62 of the Environment Act 1995 to:

*‘In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority **must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park**’.*

Although the Secretary of State has not yet made regulations about how to comply with this new duty, it still applies in the absence of those regulations. All the bodies to which this duty applies, including Government Departments, statutory bodies, local authorities, utility providers and the regulators should now be doing more to demonstrate how they are meeting this new duty.

In the meantime, and without prejudicing that guidance, Natural England advises that:

- the duty to ‘seek to further’ is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered;

- The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose.
- The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted

Legal opinion [see link below] provided to Campaign for National Parks backed up the Natural England advice stating that "relevant authorities should ensure, with evidence, that their decisions do all they reasonably can to further the statutory purposes, including going beyond merely mitigating harm.....if there is an obvious alternative approach that better furthers the statutory purposes and the relevant authority cannot evidence (1) why it cannot reasonably adopt that approach or (2) that its chosen approach also seeks to further the statutory purposes, the decision will be open to legal challenge".

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002426-Campaign%20for%20National%20Parks.pdf>

As this installation would be provided under the Shared Rural Network, and ultimately via public funding, the bodies which have submitted this application **should be regarded as relevant authorities** and thus must demonstrate how they are meeting **this new duty**. The Inspector could then have taken into account their evidence in his ruling, and in particular how they met the need to attach greater weight to the conservation purpose of this particular national park. The Planning Inspectorate itself is also a relevant authority [see link below] and accordingly its decisions are subject to the duties set out in the Act.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20130402151656/http://archive.defra.gov.uk/rural/documents/protected/npaonb-duties-guide.pdf>

As this new duty came into force before the Inspector reached his conclusion, appropriate evidence should have been requested and assessed by the Inspector. By not doing so this new duty has not been properly taken into account.

5. The Sandford Principle

In his weighing up of the issues, the Inspector **fails to address the Sandford principle**. This is set out in the Environment Act 1995 thus:

In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

As this is a government sponsored programme, we believe that the Sandford principle clearly applies.

Given that local communities already have adequate connectivity, then the main beneficiaries of this extended coverage will almost entirely be walkers and others accessing the land for recreation.

The Inspector identifies this **lack of benefit to local residents** at Para 18, by saying that “**it has been stated** (*presumably by the applicant – our note*) that the mast will provide links so that users of the landscape can have access to mobile phone connections, leisure apps and mapping information as they pass through.” These stated benefits relate to recreational users.

However, as noted above, the Inspector identifies that the NPPF requires **necessary evidence**. Unfortunately, the Inspector makes no reference to such necessary evidence - there is no evidence of benefits for local communities or businesses either.

Coupled with the lack of any specific evidence of benefit for either group, given communities and businesses already have connectivity and the only beneficiaries are stated by the Inspector to be recreational users, it is abundantly clear there is **conflict between the protection of the landscape and the interests of recreation**. In line with the Sandford Principle greater weight **must be given** to the purpose of conserving and enhancing the landscape, as stated above.

The Inspector has completely failed to consider the significance of the Sandford Principle.

6. Access Track

It is noted that the proposed access track has been removed from the proposal. This is highly unsatisfactory as having this change made since the application was assessed by YDNPA there is no detail about the applicant having assessed the impacts of helicopter use on tranquility, livestock, and nature. It is not clear how the installation will then be accessed for maintenance without an access track. In particular, as there is a generator on site, it is unclear how fuel will be delivered, and how it will be maintained / repaired. Vehicle access over peat causes damage, and peat is of course a valuable resource in terms of its role in carbon sequestration, as well as its biodiversity interest. **We consider that this aspect of the installation should not have been left out of the Inspector’s consideration.**

Conclusion

It is our opinion that the Inspector, in attempting to reach a balance between conflicting concerns, has not given adequate weight, as required, to specific NPPF guidance, local policies and the requirement of LURA (2023).

The Inspector has reached an erroneous judgement based on inadequate evidence

Signed

Chair, Policy & Planning Committee

Friends of the Dales