

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2021/1004/EIA

Development description: erection of 306m guyed lattice steel replacement mast, communications apparatus, anchor blocks, removal of redundant equipment cabinets, heat exchanger compound and ancillary development thereto, laying of temporary access tracks, removal of access tracks and temporary change of use of agricultural field to provide construction staging area during construction phase

Site address: Bilsdale Transmitting Station, Bilsdale Moor,

Parish: Bilsdale Midcable

Parish: Hawnby

Case officer: Mr Mark Hill

Applicant: Arqiva Limited
Crawley Court , Winchester, SO21 2QA

Agent: Pegasus Planning Group Ltd
fao: Richard Morrison, First Floor, South Wing, Equinox North, Great Park Road,
Almondsbury, Bristol, BS32 4QL,

Director of Planning's Recommendation

Approval subject to the following:

Condition(s)

Condition number	Condition code	Condition text									
1	TIME00	<p>The permission hereby granted authorises the use of the site for the approved development only for 30 years from the date of this permission and the development shall be removed and the site restored (in accordance with the approved restoration scheme) within a further two year period unless a further permission for retention of the development and its use has been granted, or approval for the restoration scheme is still awaited when such a period shall be extended by a one year period beyond such approval or the date any appeal against refusal of the restoration scheme is incapable of further appeal. At least one year before the expiry of a 30 year period from the date of this permission, a detailed restoration scheme for the site, to return the site back to moorland to match the moorland surrounding the site, shall be submitted for approval and restoration works shall thereafter take place in accordance with the approved restoration scheme. However, in the event that the site is no longer required for electronic communications before the expiry of the 30 year period, the plant, equipment mast and buildings shall be removed from the site and the site restored to moorland to match the surrounding moorland within a further two year period commencing from the date when it is confirmed that the site is no longer required, in accordance with a restoration plan to be submitted to and approved by the Local Planning Authority.</p>									
2	PLAN01	<p>The development hereby permitted shall not be carried out other than in strict accordance with the following documents:</p> <table border="1"> <thead> <tr> <th>Document Description</th> <th>Document No.</th> <th>Date Received</th> </tr> </thead> <tbody> <tr> <td>Environmental Statement and embedded mitigation and compensation; including NYM Habitats Regulation Assessment</td> <td></td> <td>25/1/2022</td> </tr> <tr> <td>Written Scheme of Investigation - Archaeology, Construction Ecology Management Plan, Construction Traffic Management Plan, Construction Phase Plan, : together with revised design</td> <td></td> <td></td> </tr> </tbody> </table>	Document Description	Document No.	Date Received	Environmental Statement and embedded mitigation and compensation; including NYM Habitats Regulation Assessment		25/1/2022	Written Scheme of Investigation - Archaeology, Construction Ecology Management Plan, Construction Traffic Management Plan, Construction Phase Plan, : together with revised design		
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		<p>plans omitting 3 new anchor pads 21/1/2022 and revised 19 month 'Hours Lit' construction lighting schedule 14/2/2022</p> <p>or in accordance with any minor variation thereof that may be approved in writing by the Local Planning Authority.</p> <p>For the avoidance of doubt ; i) construction activity taking place indoors shall not be considered to be a breach of the hours of construction time restrictions set out in the Environmental Statement and Construction Phase Plan provided there is no external lighting of the site in breach of the 'Hours Lit' lighting schedule, and ii) construction phase works may on occasion take place beyond 6.30 pm whilst natural lighting condition allow provided that no artificial lighting is used that is not specifically set down within the 'Hours Lit by month' schedule.</p>
3	RSU000	<p>The southern access track is only to be used in an emergency for any construction or delivery route such as adverse weather conditions in accordance with the information provided in the agent's email dated 14/1/21. In the event of the southern access being used for any construction activity, the applicants shall initiate a condition survey before and after use and keep a log of the usage in case of enquiry by the Local Planning Authority, and undertake restoration works to its former condition at least monthly.</p>
4	RSU000	<p>Notwithstanding the submitted plans, in the event that the Civil Aviation Authority approve a 5 tier aviation lighting safety system rather than the submitted 6 tier aviation lighting safety system, this permission shall also authorise the installation of the reduced impact 5 tier system.</p>
5	MATS00	<p>The 2.4m perimeter security fence and gates of the compound hereby approved shall be of a dark moss green (RAL 6005 or similar) and thereafter so maintained.</p>
6	MATS00	<p>The external finish of the equipment buildings and external plant and machinery hereby permitted shall be of a 'stone effect finish' of a sandstone colour (RAL 7032 or similar) and, with the</p>

7	RSU00	<p>exception of the 'ice protection frame', the external finish of all the roofs, doors, windows, shutters, grilles of the buildings shall be coloured dark grey (7016 or similar) and thereafter so maintained, unless otherwise agreed in writing with the Local Planning Authority.</p> <p>Except for aviation safety lighting on the mast, all previous mast demolition removal safety lighting, external construction, station tower lighting and operational lighting shall accord with the submitted Arqiva Bilsdale Lighting Plan Final received on the 16 February 2022 . The lighting and lighting shut down system(s) for when the site is unmanned shall be installed in accordance with the above and shall be maintained in that condition in perpetuity, unless otherwise agreed in writing with the LPA.</p>
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Reason(s) for condition(s)

Reason number	Reason code	Reason text
1	RSNTIME00	<p>In the event that there is not a continuing overriding need for the mast in 30 years' time, the Local Planning Authority consider the mast should be removed and the site restored to moorland to enhance the character and appearance of this part of the National Park landscape .</p>
2	RSN PLAN01	<p>For the avoidance of doubt and to ensure that the details of the development comply with the provisions of NYM Core Policy A and NYM Development Policy 3, which seek to conserve and enhance the special qualities of the NYM National Park.</p>
3 & 4	RSN RSU05 RSN	<p>In order to enable the Local Planning Authority to retain control over the scale of activity at the site and ensure compliance with NYM Core Policy A which seek to conserve and enhance the special qualities of the NYM National Park.</p> <p>For the avoidance of doubt and in order to comply with the</p>

5 & 6	MATS01	provisions of NYM Core Policy A and NYM Development Policy 3 which seek to ensure that building materials are of a high quality and compatible with the character of the locality and that the special qualities of the National Park are safeguarded.
7	RSNRSU00	In order to comply with the provisions of NYM Strategic Policy A which seeks to ensure that new development does not detract from the sense of remoteness and in accordance with Local Plan Policy ENV4 which seeks to protect dark night skies.

Informative(s)

Informative number	Informative code	Informative text
1	INFO0	The Public Rights of Way in the vicinity of the site should be maintained open at all times wherever possible.
2	INFO0	The applicants are advised to contact This Authority's Area Ranger to resolve the temporary closure of Open Access Land within the construction permitted.
3	MISC INF10	This consent is issued subject to the terms of the Agreement (under Section 106 of the 1990 Town and Country Planning Act) dated 17 February 2022 between Arqiva Limited and the North York Moors National Park Authority for compensation for Special Qualities impacts and ecological impact.
4	INFO0	With reference to condition no. 7 above, further advice and guidance in relation to suitable external lighting fixtures is available on the Authority's website: https://www.northyorkmoors.org.uk/discover/dark-skies/dark-skies-friendly-lighting or by contacting the Authority at planning@northyorkmoors.org.uk < mailto:planning@northyorkmoors.org.uk >

Consultation responses

Hambleton DC
Has no comment.

Ryedale DC

No comments.

NATS safeguarding

No objections.

Parish

No objections.

Historic England

Has no objection and comment that quantities of World War 1 and World War 2 ordnance and associated features, are extremely common and benefit from thorough recording alongside any prehistoric remains.

Natural England

Original scheme – Note the associated NYM HRA assessment concludes that Likely Significant effects cannot be ruled out. The proposal, as a result of the three new anchor stays, would result in the permanent loss of SAC designated habitat and that Planning Permission should not be granted unless the applicants can demonstrate an acceptable IROPI derogation.

Revised scheme omitting 3 new stays – Raises no objection and comments that having considered the Authority's HRA assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that it concurs with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given and is satisfied that the additional information provided by the applicant addresses the issues raised in NE's previous response.

Environment Agency.

Offer advisory comments. Draw attention to the Government aspiration for Biodiversity Net Gain for all significant development. Also provide general advice in respect of land contamination, flooding, pollution, drainage and waste

Highways

No objections if the submitted Construction Traffic Management plan is conditioned and followed.

Police DOCO

No comments

Fire Officer

Will make comments at the Building Regulation stage.

Northumbrian Water

No comments.

Ramblers Association

Only comment is that PROWs should be maintained open at all times.

Defence Estates: request an extension until 11 February.

CPRE NY

Has no objection subject to a minimum of 10% Biodiversity Net Gain being delivered across the site, CPRE NY are of the opinion that in this instance the proposal constitutes an exceptional circumstance which would allow major development to be approved - providing the development can be delivered with the minimal amount of deletion and disturbance to the protected species as required alongside the delivery of BNG across the site. Further it will be essential that the stopping up areas are fully restored to their previous use as soon as practicable.

Third party responses

Tom Storrar, Mexborough Estate, Hawnby – Object to any use of the southern access track, its fragile moorland nature is not suitable and there is a far better eastern route to the site that could and should be used.

Publicity expiry

Advertisement – 26 January 2022

Site notice expiry date – 16 January 2022

Previous mast & setting before it was demolished in readiness for the replacement.



Background

Site history

Prior to August 2021 a 314m high guyed tubular steel transmission mast had been located within a compound area on Bilsdale Moor at a height of approximately 390m AOD, referred to as Bilsdale Transmitting Station. That mast had been in place since the 1960s, approved under permission reference 3-3-4189, and was designed and installed to be operational in perpetuity. The permission was not time-limited.

The mast was seriously damaged by fire in August 2021 and subsequently demolished for safety reasons in October 2021. The site is currently characterised by the damaged remains of the broadcasting mast and associated buildings at the base. Since the time of the August 2021 fire the operator, Arqiva, has been establishing a means to provide replacement television and DAB radio coverage, leading to a number of temporary developments and activities at or in the vicinity of the site, comprising:

September 2021 - Deployment of a temporary 80m guyed steel lattice mast within a disused quarry approximately 400m to the southwest of the Bilsdale Transmitting Station site. This temporary mast was deployed under emergency permitted development powers conferred on Arqiva through the Town and Country Planning (General Permitted Development Order) (England) 2015 (as amended). In February 2022 a request for an EIA scoping opinion was submitted, along with additional HRA information, relating to the proposed retention of the 'Quarry Mast) for a further 14 month period to provide extended temporary emergency cover;

September-October 2021 - Demolition of components of the damaged mast and various buildings at ground level within the transmitting station compound. The demolition phase did not realise the full demolition of the Bilsdale Transmitting Station. Significant elements of the original installation were retained including foundations, stay anchor blocks and equipment housing with a view to the design of a permanent replacement mast;

October 2021 - Planning permission NYM/2021/0754/FL was granted for a temporary 'Station Tower' 80m lattice mast to be located adjacent to the transmitting station compound area, to ensure as much coverage as possible until a main replacement mast is built;

October/November 2021 - Planning permission was granted for improvement works to the eastern access approach road required to facilitate various aspects of the build under application reference NYM/2021/0802/FL. This permission allows for heavy tonnage construction vehicles to access Bilsdale Transmitting Station via a new temporary bridge across the River Seph and use of the existing eastern access track for both the temporary Station Tower and permanent replacement mast build and, in the case of the temporary Station Tower, the decommissioning phase.

The proposed 306m guyed lattice steel replacement mast now proposed represents the final stage in providing full replacement coverage from Bilsdale Moor.

An Environmental Impact Assessment (EIA) screening opinion was provided by the Authority in November 2021, confirming that in the opinion of the NPA the development is EIA development. The submitted application in accompanied by an EIA

under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. In pre-application discussions with the applicant, officers accepted that the baseline for assessment should reflect the existing position whereby the now demolished mast had the benefit of a permanent permission and that its removal was only required as a result of specific and unforeseen circumstances and that, in the absence of those circumstances, the original mast and related infrastructure would have remained on the site. See elsewhere in report for brief summary of the Environmental Statement.

As the site is located within the North York Moors SAC/SPA the proposal is also required to be considered in relation to the requirements under the Conservation of Habitats and Species Regulations 2017. These require plans or projects to be screened for likely significant effects and subject to an 'appropriate assessment' if necessary, with consent only given if there will be no adverse effect on site integrity unless there are imperative reasons of overriding public interest. The NPA is the competent authority for the purposes of the 2017 Regulations.

Proposal

Permission is sought for the construction, operation and maintenance of a 306.2m high guyed lattice steel replacement transmission mast to be situated at the existing Arqiva Bilsdale Transmitting station on Bilsdale Moor. Officers consider, and the applicant accepts, that the proposal is for 'major development' within the context of relevant planning policy applicable within the National Park (NPPF paragraph 177, Local Plan Policy SP D).

The total application area extends to approximately 8.5ha and can be split into three main parts:

- i) the existing Bilsdale Transmitting Station compound area inclusive of remaining foundations, equipment cabinets and hardstanding;
- ii) areas required on the moor for the location of anchor blocks and temporary access trackway needed to position and fix steel guys;
- iii) the eastern and southern access tracks required to access the site during the construction and operational phases, including a field to the east of Bilsdale Moor required for helicopter set down and refuelling, storage of soil and where required, transfer of material between different vehicle types.

The replacement mast would provide terrestrial television coverage to over 671,000 households (approximately 1 million people) across a large geographic area both inside and outside of North York Moors National Park including the substantial urban settlements of Middlesbrough, York, Harrogate, Northallerton, Darlington, Stockton-on-Tees, Hartlepool and parts of Sunderland and would also provide the following:

- DAB and FM Radio coverage;
- Space to host telecommunications equipment for mobile network operators; and

- Space to host communication equipment used by emergency services.

The replacement mast would comprise a guyed steel lattice structure and measuring 306m high, located within a compound area demarcated by fencing. The design parameters adopted to develop the proposal were to propose a functional piece of infrastructure. The column of the mast would comprise a series of interlocking steel beams arranged in a 'lattice' formation. The mast would be 2.9m across from the base up to 265m where it would reduce to a width of 2m (the original tubular steel mast measured 2.3m in diameter). The top of the steel lattice section of the mast would be 294.8m. The steel will be a galvanised unpainted grey finish. Above the steel lattice part of the mast (>294.8m) a series of broadcast antennas would be fixed in order to propagate terrestrial television coverage to the surrounding area. The proposed compound fence would be of wire mesh 2m tall and coloured green in order to provide a degree of visual camouflage to the equipment housing situated within the compound.

A total of 8 steel 'stay' lines would be fixed to the mast at varying 'stay level' heights. These stay lines are required to provide structural integrity, ensuring that the mast does not collapse under its own weight and is resistant to damage during extreme weather events. Stays levels would be at 49m, 97m, 145m, 241m and 285.5m. The stays themselves would stretch from their fixing to the main mast, out onto the moor and attached to anchor blocks dug into the moorland. The stays would protrude from the main mast by up to 120m. The re-use of existing stay blocks situated outside of the mast compound is proposed, although these would be enlarged and two additional winch and pivot stays would also be provided.

Construction of temporary access tracks on Bilsdale Moor to facilitate the building of stay lines would be provided prior to the relevant phase of construction and be removed at the end of the construction phase. Originally, these access tracks were proposed to be permanent features though following officer objections the company confirmed they would be temporary, thereby reducing loss of protected habitat. The temporary trackway provided during the construction phase would be developed using Whinstone. Any soil removed during construction works will be stored on site for reuse at reinstatement stage. Works to remove the temporary trackway would reinstate the moorland to its current condition.

Ancillary development would be of a relatively small scale, generally comprising single storey structures designed to serve a specific technical function supporting the main purpose of the mast. Removal of redundant equipment cabinets located within the existing compound is also proposed. The site would not be accessible to members of the public.

During the operational phase of development no lighting is proposed that would operate on a regular basis beyond the lighting required for civil aviation purposes. Lighting would be installed within the compound area at ground level for use by engineers during maintenance trips. This lighting would be controlled via switches on site and would be turned off at the end of any given maintenance trip or by way of motion sensors.

Safety lighting to meet current Civil Aviation Authority requirement would comprise six pairs of lights at no more than 52m vertical centres (by comparison the former mast was installed with 5 pairs of lights at 58m centres, albeit negotiations are ongoing to ascertain whether 5 pairs may be possible). The applicant has agreed with the Civil

Aviation Authority that the top level of lights would be fixed to the top of the mast (for the original mast it was at 290.5m above ground level, for the proposed mast it would be at 294m) as opposed to the top of the cantilever TV antenna (approx. 310m above ground level) to avoid TV service interruptions when carrying out maintenance. The proposed lights are medium intensity steady red lights, with an effective luminous intensity of 2000 Candela and would be similar to the lights on the former mast in this respect, although the applicant indicates that more energy efficient units would be specified.

The construction phase is anticipated to last for up to 19 months, with the majority of works taking place within the existing site compound. As part of the s106 negotiations a construction lighting timing schedule was submitted to clarify that night-time construction safety lighting would not be operational 24/7 for the 19 months and be undertaken by physical switching or motion sensors. However, works outside of the compound will be required in the early stages for provision of fixing mast stay lines to anchor points in addition to installation of two pilot and winch anchor blocks. Following works to stay lines, anchor points and the base of the mast, the mast will be raised in sections. The lowest 50m will be raised from the ground via crane positioned within the compound, with the remaining sections installed in approximately 20 lifts utilising a tower derrick, rigging and winches. Installation of various components (e.g. antenna, gantries, feeders and aircraft warning lights) will then follow utilising the same rigging and winches.

Helitest of antenna systems would take place towards the end of the installation phase, followed by removal of rigging and temporary access tracks.

Access to the site would be achieved mainly by way of the existing eastern access road, which joins the B1257 approximately 16.8 km north of Helmsley to the junction with an existing unnamed track. Vehicles would then travel along the track for approximately 2.6 kilometres to access the mast construction site. When departing the site, vehicles will use this route in reverse. The application includes an alternative southern access route via existing moorland tracks, which may also be required for isolated vehicle movements. The applicant has clarified that the southern route is only required as a precautionary measure, for example adverse weather conditions preventing from use of the eastern access track to complete a particular time critical activity or an event occurs that Arqiva has not been able to plan for that requires a vehicle which cannot make use of the eastern access track.

Key Findings from Environmental Statement.

The ES is based solely on the construction period of 19 months, with a workforce of 6-10 people working 7.30 to 18.00 daily including for the receipt of deliveries of the mast sections and its erection, with related helicopter flights. The main potential for impact is on ecology, with qualifying features of the North York Moors SAC (European dry heath) and SPA (Golden Plover and Merlin) potentially affected in addition to notified features of the SSSI. The key impacts are associated with the replacement of the existing 6 anchor stays with larger stays and the temporary tracks to facilitate the block rebuilds affecting the extent, and supporting features of, the dry heath habitat together with the potential to disrupt the nesting of up to 3 -5 pairs of Golden Plover and a pair of Merlin. The proposed mitigation involves full reinstatement of areas of qualifying SAC habitat

effected, in addition to a strategic compensation strategy for residual impacts on habitat and appropriate working methodology and monitoring for the disturbance.

There would also be some impact to Highways, public rights of way and open access land to ensure appropriate health and safety protection for site, workers and recreational visitors. These would be managed by means of a construction access management plan. The applicants have been asked to consider offering s106 PROW compensation for these impacts.

The Proposed Development has the potential to impact on local air quality, primarily as a result of emission of dust and particulate matter during construction. The applicant has undertaken an assessment of baseline air quality conditions and provided an assessment of the likely effects of the development upon air quality both during the construction and operational phase of development. The assessment concluded that there would be a negligible risk of dust impacts on amenity and human health, but a low to medium risk of impacts on ecological receptors within the North York Moors SPA. However, with the implementation of mitigation measures via the Construction Environmental Management Plan, potential impacts would reduce to largely insignificant and would be temporary and reversible post-construction. No significant effects were identified during the operation phase of the Proposed Development. The ES concludes that the development would not have an unacceptable adverse impact on air quality, as required by the North York Moors National Park Local Plan Policy EN7.

The construction phase would generate noise within a sensitive environment both in terms of ecological and ornithological designations but also the sense of tranquillity that forms one of the defined special qualities of the National Park, in a location where there are a number of PROWs within the vicinity of the site that could potentially be affected by the development.

A noise assessment considering the potential for construction noise impacts on ecological receptors, PROWs and residential receptors has been provided, utilising a baseline noise survey undertaken at the site between 30th November and 3rd December 2021. The highest construction activity is predicted to remain below the adopted threshold of 65 dB LAeq,T for residential receptors. The highest construction noise levels at the closest identified ecological receptors are predicted to fall below both the 'low' 50dB and 'moderate' 50 to 70 dB noise thresholds for regular construction noise. The results of the noise modelling indicate the operation of a helicopter at mast height would fall below the 'moderate' 50 to 70 dB noise threshold for ecological receptors. Absolute levels from construction traffic are predicted to fall below 35 dB which for human receptors, achieve the desirable noise level of 50 dB LAeq,T and for ecological receptors, is considered a low effect for regular construction noise as per the thresholds provided by IECS. Due to the large distance between receptors and construction activity, vibration is likely to result in a negligible impact and has therefore not been considered further. Finally, proposed steps to minimise construction noise and vibration have been considered and presented.

With regard to heritage assets, the development has the potential impact upon archaeology as a result of works for modification/installation of anchor blocks and the creation of dirt tracks to run parallel to the mast's guy ropes. Some potential for archaeological remains dating to the prehistoric have been identified within the Site, with other potential in the vicinity of the Site. The applicant concludes that there is moderate potential for further prehistoric archaeological remains to be found within

the Site, although these are not anticipated to be of a significance commensurate with a designated heritage asset or otherwise form a major constraint to the proposed development. There is no evidence of Romano-British activity in the archaeological record within the vicinity of the proposed development site and the potential for significant archaeological remains to be encountered during these works is therefore low. The site is also likely to have been used for the seasonal grazing of livestock throughout early medieval, medieval, post-medieval and early modern periods but it is not expected that such activities would result in any remains of archaeological significance to be present within the Site.

The applicant's Heritage Statement recommends that an archaeological watching brief would be an appropriate form of mitigation and a WSI is provided with the application documents.

With regard to the setting of heritage assets, and when considered against the baseline that the demolished 314m transmitter mast is still standing, the assessment indicates that the proposed development is unlikely to appear any differently in long-distance views from designated heritage assets towards the site. It is therefore considered that there will be no impact upon the heritage significance of most designated heritage assets within a 5km radius of the Site or beyond. The assessment notes that a greater amount of change would be visible from the Scheduled Round barrow on Bilsdale West Moor known as Flat Howe, including the creation of an access track in the proximity an existing anchor point. The material proposed for construction, Whinstone gravel topped with sandstone, matches that of trackways in the surrounds and is the assessment considers this appropriate for the asset's landscape setting, therefore not resulting in any impact to the heritage significance of this asset through a change to setting.

The Proposed Development will require the management of construction material wastage and waste associated with welfare facilities provided on site. Waste storage and management will be required on site for the duration of the construction phase.

The amount of new buildings is under 200 square metres and so does not trigger a requirement for 10% provision of on-site renewable energy generation under the requirements of Local Plan Policy ENV8.

Agent comments in Favour of the application.

The applicant explains that:

‘..broadcasters are compelled by a licence granted by Ofcom to transmit services within specified technical characteristics to provide the required coverage. In turn, Arqiva as the sole provider of broadcast structures in the UK are compelled and contracted to provide transmission facilities that meet these licenced technical characteristics. This is driving the need to construct and maintain a structure or structures to home the antennas required to restore the full coverage. It is the final piece of the wider recovery plan to provide long term public benefits through the provision of terrestrial broadcasting coverage.’

Part of the applicant's justification contains the following statement: ‘..a large single structure is the only technical solution that can be utilised to provide the

equivalent services.’. The applicant considers that its assessment has examined the impact of using an alternative site (or sites) outside of the National Park and shows why they are not a technically viable alternative and concludes that there are no technical solutions which fully meet the requirement, except a single mast of c300m at the existing location.

The applicant goes on to explain that: ‘The location and height of the original Bilsdale mast was specifically chosen to dovetail with the other stations in the network. Optimisation over the last 20 year has enabled additional services to be made available using less spectrum. The spectrum is now fully utilised; no additional sites will be possible. As such, movement of the mast within the National Park would cause significant additional detrimental impact to the Park; movement of the mast location outside of the National Park would not provide the coverage required; the use of multiple locations would not be technically viable; the use of alternate technology would not meet the Government’s requirement for near ubiquitous level of free to air television access and, the use of a mast less than 300m at the original location would have a large impact on coverage and fall below an acceptable standard.’

The applicant also explains the wider context to the proposal as follows:

‘The need for a robust network for free to air television has been Government policy since the network was designed, most recently updated in the Communications Act 2003. This has been recently re-confirmed by Government statements on the future of Digital Terrestrial Television licences, as previously referenced. Television distribution is available to viewers using a wide range of providers and platforms, in addition to Digital Terrestrial Television, such as cable, satellite and over broadband connections. Of these services, only Freesat currently provides a similar level of coverage and reception that is free at the point of use. However, like DTT, satellite reception is not universal. Ofcom estimates that satellite availability is 98%, and this only relates to the ability to achieve a necessary line of sight path to a satellite. Compared to DTT, there is no ability for satellite to penetrate within buildings, which can further limit coverage such as to multi-dwelling units where it is not feasible to install a dedicated satellite dish, or where there is need for planning permission to install a satellite dish. As a result, it is only by having a variety of distribution platforms is it possible to provide the near ubiquitous level of free to air television access expected by consumers and required by Government’s need to be able to mass broadcast to the general public in the event of an emergency or pandemic.’

The applicant goes on to state that:

‘The design of the TV network has evolved continuously, however the basic principles have remained. Whilst technology has developed to enable alternate methods of providing television to viewers the efficiency of the high-power sites in covering large numbers of households with relatively few structures remains. For the foreseeable future this method of mass coverage will remain. The need for a robust network for free to air television has been Government policy since the network was designed, most recently updated in the Communications Act 2003. The specific coverage requirements for each site are incorporated in the licences issued by Ofcom to the Broadcasters; the meeting of these is mandatory, otherwise broadcasters risk have the licence being withdrawn.’

'The future of terrestrial television Broadcast services is under continuous review by Government (DCMS). Recent consultation documentation from the Department for Culture, Media and Sport confirm terrestrial television will remain in service at least until 2034. This does not mean support will drop off in 2034 but rather represents the long-term horizon window for future consultation on how the broadcast service network is provided in the UK. The consultation document clearly demonstrates the Government's continued support for the terrestrial television platform and establishes the long term need for the proposed development.'

A supporting letter from Ofcom has been provided by the applicant which states: 'I can confirm that Ofcom spectrum planners support the view that the current Bilsdale mast location and proposed height is best for maximising TV and Radio coverage in the area, and that any other site location would result in an unacceptable degradation to the reception reliability to viewers and listeners in the area.'

Following on from negotiations undertaken during the processing of the application, the agent has confirmed that:

Whilst the proposal has been designed to last for a period far in excess of 30 years, if the Authority is mindful that there could well be a justification for the mast being retained in 30 years' time in light of the pertaining technology situation at that time, a temporary permission would not be unacceptable.

The lead in times for letting contracts to construct and commissioning the new mast are very tight timewise and would appreciate a timely decision and issue of the planning permission so there is certainty to let contracts/commission work.

NYM Internal Consultation comments.

The Area Ranger draws attention to the potential for the large amount of traffic to harm the surface of the road which is also a public right of way and potential need for a Traffic Regulation Order if PROW access is to be curtailed. Notes that some use of the southern access is mentioned, this track is already showing signs of failure from its occasional use and would ask that restrictions be imposed so that minimal use of made of it for emergency type use only. Recommend the applicants approach the Authority to resolve the curtailing of open access rights within the construction perimeter.

The Authority's archaeologist has assessed the written WSI and considers it an acceptable approach and requests the watching brief be conditioned particularly during clearance and notification of commencement to NYM archaeologist.

The Authority's Senior Ecologist has undertaken a HRA, including via extensive dialogue with Natural England. This has enabled the conclusion to be drawn that, subject to implementation of mitigation, a finding of no adverse effect on integrity can be reached.

Main issues

Local Plan

The National Park Authority is the sole local planning authority for the National Park under section 4A of the Town and Country Planning Act 1990. This confers on it all the responsibilities of a local planning authority, including minerals and waste planning and development management functions. This is because the town and country planning system is a key instrument in the achievement of National Park purposes and ensures that there is a strong link between the statutory purpose of Planning (Planning and Compulsory Purchase Act 2004 and The Town and Country Planning Act 1990), which is the delivery of sustainable development, and the statutory purposes of National Parks which are to:

- a. Conserve and enhance the natural beauty, wildlife and cultural heritage of the area;
- b. Promote opportunities for the understanding and enjoyment of the special qualities of the area by the public (Environment Act 1995).

Section 11A of the National Parks and Access to Countryside Act 1949 states that if it appears that there is a conflict between these purposes which cannot be resolved, greater weight shall be attached to the purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Park. In pursuing these purposes a National Park Authority has a duty to seek to foster the economic and social well-being of local communities within the National Park.

These purposes and, in their pursuance, the duty, are an important material planning consideration in determining planning applications but they are also fundamentally interwoven into the development plan for the National Park. In assessing the proposal, the Authority therefore has an additional responsibility to consider whether it contributes to the statutory purposes and duty. It is this particular dual statutory role of the National Park Authority which sets it apart from other local planning authorities, as planning decisions should ideally contribute to the achievement of National Park Purposes.

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This is set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004 which states that *“If regard is to be had to the development plan for the purpose of any determination under the planning acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”*. This effectively establishes the primacy of the ‘development plan’ in the planning system and the Government has confirmed this in the National Planning Policy Framework, which sets out that the planning system should be ‘genuinely plan-led’ (Paragraph 15).

The adopted development plan for the National Park consists of the North York Moors National Park Authority Local Plan (2020), the Whitby Business Park Area Action Plan (adopted 2014) and the Helmsley Local Plan (prepared jointly with Ryedale District Council and adopted in 2015). There are no policies in the latter two Plans relevant to the determination of this application.

The main Local Plan policies relevant to this application are:

Strategic Policy A – Achieving National Park Purposes and Sustainable Development

This Policy sets out a local approach to delivery of sustainable development, linking a positive approach to new development with a need to ensure compatibility with National Park purposes. It indicates that sustainable development for the National Park is development which:

- Is of a high quality design and scale which respects and reinforces the character of the local landscape and the built and historic environment;
- Supports the function and vitality of communities by providing appropriate and accessible development to meet local need for housing or services, facilities, energy or employment opportunities;
- Protects or enhances natural capital and the ecosystem services they provide;
- Maintains and enhances geodiversity and biodiversity through the conservation and enhancement of habitats and species;
- Builds resilience to climate change through adaptation to and mitigation of its effects;
- Makes sustainable use of resources, including using previously developed land wherever possible;
- Does not reduce the quality of soil, air and water in and around the National Park.

Strategic Policy C – Quality and Design of Development

This Policy seeks to maintain and enhance the distinctive character of the National Park, by supporting development where (amongst other criteria):

- The proposal is of a high quality design that will make a positive contribution to the local environment in accordance with the principles set out in the North York Moors National Park Authority Design Guide;
- The scale, height, massing and form of the proposal are compatible with surrounding buildings and will not have an adverse impact upon the amenities of adjoining occupiers;
- Sustainable design and construction techniques are incorporated in the proposal including measures to minimise waste and energy use and where appropriate use energy from renewable sources;
- A good quality landscaping and planting scheme which reinforces local landscape character, increases habitat connectivity and makes use of appropriate native species forms an integral part of the proposal;
- Proposals enhance local wildlife and biodiversity, for example through the inclusion of nesting boxes and bat roosts.

Strategic Policy D – Major Development

This Policy states that proposals for major development shall be refused except in exceptional circumstances and where it can be demonstrated they are in the public interest. Demonstration of exceptional circumstances and public interest will require justification of:

- The need for the development which can include a national need and the contribution of the development to the national economy;
- The impact of permitting it, or refusing it, upon the local economy which includes that of the National Park;
- Whether in terms of cost and scope, the proposal can viably and technically be located elsewhere outside the National Park in a place that would avoid conflict with the National Park's statutory purposes; or that the need for it can be met in some other way;
- The extent to which any detrimental effect on the environment, the landscape and recreational opportunities can be moderated.

Where there are exceptional circumstances and the proposal is considered to be in the public interest, every effort to avoid adverse effects will be required. Particular consideration will be given to the extent to which the proposal may affect the qualities which contributed to the designation of the landscape. Where adverse impacts (including in combination with other developments) cannot be avoided harm should be minimised through appropriate mitigation measures. Appropriate and practicable compensation will be required for any unavoidable adverse effects which cannot be mitigated.

The supporting justification for Strategic Policy D explains that, in the case of demonstrating national need, 'this may be the need for the product of the development, for example the mineral in the case of a mining proposal which cannot be met elsewhere, the need for the wider national economic benefits which would flow from the development, or the need for a nationally significant piece of infrastructure or facility that cannot be accommodated elsewhere and which provides a long term benefit to the nation. Need generally will be considered by the Authority in assessing proposals but greater weight will be given to a national need for a particular product or function that requires a location in the National Park as the need cannot be met elsewhere.'

The justification also indicates that 'the Authority will require evidence that the circumstances of the application are genuinely exceptional and will consider whether the public benefits outweigh the nation's long term interest in conserving and enhancing its National Parks. Applicants should look to demonstrate that their proposals share a commitment to helping pursue National Park statutory purposes over time.'

'Proposals should be designed to avoid adverse impacts (including cumulative impacts) on aspects of the National Park relating to its statutory purposes, its natural assets and on its local communities. In the event that this cannot be guaranteed on and off site mitigation measures will be put in place to ensure that the planning obligations from the development help to contribute to meeting wider National Park purposes.'

Strategic Policy E – The Natural Environment

This requires that: ‘The quality and diversity of the natural environment of the North York Moors National Park will be conserved and enhanced.

Development which has an unacceptable impact on the natural environment, the wildlife it supports and the environmental benefits it provides will not be permitted.

All development will be expected to:

- Ensure that natural capital is used in efficient and sustainable ways;
- Demonstrate, where appropriate, how it makes a positive contribution to natural capital and its ability to provide ecosystems services.’

Strategic Policy G – Landscape

This states that ‘the high quality, diverse and distinctive landscapes of the North York Moors will be conserved and enhanced.

Great weight will be given to landscape considerations in planning decisions and development will be supported where the location, scale and detailed design of the scheme respects and enhances local landscape character type as defined in the North York Moors Landscape Assessment.

Development which would have an unacceptable impact on the natural beauty, character and special qualities of the areas of moorland, woodland, coast and foreshore as defined by the Section 3 Conservation Map or on the setting of the Howardian Hills AONB or local seascape will not be permitted.’

The supporting justification for this Policy clarifies that, as well as being important for its own sake, the high quality landscape of the North York Moors and surrounding areas is an important draw for visitors and makes a valuable contribution to the local economy.

Strategic Policy H – Habitats, Wildlife, Biodiversity and Geodiversity

This states that the conservation, restoration and enhancement of habitats, wildlife, biodiversity and geodiversity within the National Park will be given great weight in decision making.

All development and activities will be expected to:

- Maintain and where appropriate enhance features of ecological value and recognised geodiversity assets;
- Maximise opportunities to strengthen the integrity and resilience of habitats and species within the National Park and provide a net gain in biodiversity; including those species for which the National Park supports a significant proportion of the regional or national populations and those found at the edge of their range. Examples would include nightjar, honey buzzard, goshawk and turtle dove; and
- Maintain and where appropriate enhance existing wildlife connections and landscape features such as water courses, disused railway lines, hedgerows and hedgerow tree lines for biodiversity as well as for other green infrastructure and recreational uses.

With regard to International sites and protected species, the policy requires that Appropriate Assessment takes place in accordance with the Habitats Regulations.

Strategic Policy I – The Historic Environment

This Policy requires that all developments affecting the historic environment make a positive contribution to the cultural heritage and local distinctiveness of the National Park through the conservation and, where appropriate, enhancement of the historic environment. Development should conserve heritage assets and their setting in a manner appropriate to their significance, especially those assets which contribute most to the distinctive character of the area, including:

- Features that contribute to the wider historic landscape character of the National Park such as the legacy of features associated with the area's industrial, farming, fishing and monastic past;
- The vernacular building styles, materials and the form and layout of the historic built environment including Conservation Areas, Listed Buildings and regionally or locally important non-designated structures and buildings
- Harm to an element which contributes to the significance of a designated heritage asset ...will require clear and convincing justification and will only be permitted where this is outweighed by the public benefits of the proposal. Substantial harm will only be permitted where it can be demonstrated that the proposal would bring substantial public benefits which outweigh the harm or there are other exceptional circumstances.

Where non-designated assets are affected, a balanced judgement will be taken having regard to the scale of any harm or loss and the significance of the asset and other material considerations.

Strategic Policy K – The Rural Economy

This states that Development which fosters the economic and social well-being of local communities within the National Park will be supported where one or more of the following criteria are met:

- It promotes and protects existing businesses by providing flexibility for established rural businesses to diversify and expand;
- It helps maintain or increase job opportunities in the agricultural, forestry and tourism sectors which help maintain the land based economy and cultural heritage of the National Park or contribute to National Park purposes;
- It provides support for and supports small and micro businesses through the provision of flexible start-up businesses;
- It provides additional opportunities to diversify and better equip the National Park's workforce, including through the development of new communications technologies (including superfast broadband) and home working;
- It provides additional facilities, or better use of existing facilities for educational and training uses, including those which provide further opportunities to understand and enjoy the special qualities of the National Park.

Policy ENV2 – Tranquillity

Tranquillity in the National Park will be maintained and enhanced. Development proposals will only be permitted where there is no unacceptable impact on the tranquillity of the surrounding area.

All proposals will be considered in relation to:

- Visual intrusion;
- Noise;
- Activity levels; and
- Traffic generation.

The supporting justification clarifies that ‘Tranquillity is a state of peace and calm which is influenced by what people see, hear and experience around them. It adds that:

‘Tranquil places are increasingly rare in the modern world and as such are highly valued. The nature and geography of the North York Moors landscape means that tranquillity is a very strong special quality of the National Park – the North York Moors Visitor Survey 2016 showed that peace and tranquillity were very important to 72% of visitors to the National Park, only beautiful, unspoilt scenery was mentioned more often.’

‘It is also important to recognise that the whole of the National Park is tranquil in comparison with towns and cities outside the National Park and the Authority aims to conserve and enhance tranquillity throughout the whole of its area. Particular pressures which threaten tranquillity include demands for further minerals development and improved transport links across the National Park, but small as well as large development proposals have the potential to affect tranquillity depending on the location.’

‘..In assessing impact on tranquillity the Authority will consider the nature of the surrounding area and how vulnerable it is to loss of tranquillity as a result of the proposed development. This will include considering the impact of the development on natural habitats and historic assets in the locality in relation to how they contribute to tranquillity as well as the experience of users of any public rights of way or access land.’

Policy ENV3 - Remote Areas

This states that ‘Development will only be permitted in Remote Areas where it can be demonstrated that it is essential for environmental conservation, agriculture or forestry management purposes and no alternative locations outside Remote Areas are suitable.’

Policy ENV4 - Dark Night Skies

This states that ‘The darkness of the night skies above the National Park will be maintained and where possible enhanced. All development will be expected to minimise light spillage through good design and lighting management and the following lighting principles will be applied:

‘No external lighting will be permitted in remote areas’

‘In Open Countryside proposals that involve external lighting will only be permitted where it can be demonstrated that the lighting is essential for safety or security reasons and the lighting details meet or exceed those set out in any lighting guidelines adopted by the Authority;’

The supporting justification clarifies that the ability to experience dark night skies is another of the National Park’s special qualities, and that the ‘..natural characteristics of the National Park combine so that it is possible to experience especially dark and starry skies from many locations within the National Park. Dark night skies are an intrinsic part of the quality of the National Park landscape and are important for wildlife including species such as bats, moths and nightjar and therefore contribute to biodiversity. Dark skies are also important for recreation – there is growing interest in star gazing which in turn has benefits for the local tourism economy.’

‘..where the development involves works to an existing building applicants will be encouraged to bring all existing external lighting up to the standards set out in any lighting guidelines adopted by the Authority.’

Since adoption of the Local Plan, the National Park has been awarded International Dark Skies Reserve status.

Policy ENV7 – Environmental Protection

This Policy seeks to protect the natural environment by ensuring that development is only permitted where:

- It does not risk harm to water quality, including groundwater, rivers, streams and coastal and bathing waters;
- It is not located on sizeable areas of the best and most versatile agricultural land;
- It does not compromise surface and groundwater and its abstraction;
- It does not have an unacceptable adverse impact on soil quality;
- It does not have an unacceptable impact on air quality;
- It does not generate unacceptable levels of noise, vibration or odour; and
- There will be no unacceptable adverse effects arising from sources of pollution which would impact on the health, safety and amenity of the public and users of the development.

The supporting text clarifies that applicants will be expected to submit sufficient details of their proposals to ensure that impacts can be fully assessed (with use of EIA in appropriate cases). The text also states that, where appropriate the Authority will use conditions or seek Section 106 Agreements to reinstate features or implement other habitat creation/enhancement measures.

Policy ENV10 – Archaeological Heritage

States that development which would harm the significance of a Scheduled Ancient Monument or other nationally important archaeological site will not be permitted unless there are wholly exceptional circumstances and the public benefits outweigh the harm.

It also states that the preservation of other archaeological sites will be an important consideration having regard to their significance and that, where development affects such sites, preservation of remains in situ will be the preferred solution. Where this is not justified adequate provision for prior excavation and recording will be required via a Written Scheme of Archaeological Investigation.

Policy BL6 – Tracks

This states that proposals to install, alter or extend tracks will only be permitted where the scale, alignment and proposed materials will not have an adverse impact on the landscape and special qualities of the National Park; there is compelling evidence of need for the track to support an established agricultural or forestry use and the scale and nature of the development is consistent with that need; it can be demonstrated that no existing roads or tracks are suitable and that alternative arrangements cannot be made to meet the need for the track; it can be demonstrated there will not be an unacceptable impact on historic or archaeological features; works will not adversely affect ecological assets, including impacts arising from habitat loss, drainage or disturbance and where appropriate EIA and HRA will be required; appropriate design, construction methods and materials are used to reduce the visual impact of the track on the wider landscape.

Policy BL10 - Communications Infrastructure

States that the provision of infrastructure for radio, broadband other communications and information technology will only be permitted where it is of a scale and design appropriate to the National Park and helps meet the needs of local communities. Such development will only be permitted where:

- There are no suitable alternative means of provision;
- There is no unacceptable adverse visual impact upon the character of the locality and the wider landscape;
- The siting of the installation makes use of the least environmentally intrusive option available, subject to technical issues;
- The proposals is part of a coordinated, long term strategy for the provision of telecommunications technology; and
- Provision is made for the removal of the equipment when it is redundant.

Where there would be unacceptable harmful impact which cannot be mitigated by alternative siting or design, permission will be refused.

Policy CO1 – Developer Contributions and Infrastructure

This states:

Development will only be permitted where adequate infrastructure is in place or can be provided to support that development.

Developer contributions will be required where they are considered necessary to:

(Criterion 3) – Ensure that the development can be made acceptable in the context of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park and ensuring the continued understanding and enjoyment to fits special qualities.

The supporting text indicates that contributions from developers may be sought to eliminate or mitigate the impact of any new development. Examples could include highways improvements, the provision of affordable housing, community facilities, new areas of community space or new green infrastructure.

The Authority's approach to negotiating developer contributions will take into account the proposed development's impact on National Park special qualities. Contributions will be sought where they are necessary and directly, fairly and reasonably related in scale and kind to the development. Applicants are encouraged to contact the Authority at an early stage in such cases so that negotiations can take place in a timely manner. The Authority will consider financial viability provided the agreed contribution remains sufficient to make the development acceptable.

Policy C04 – Public Rights of Way and Linear Routes

This requires that development should protect and where appropriate enhance existing networks of Public Rights of Way, linear routes and other access routes used by pedestrians, cyclists and horse riders.

Development which would have an unacceptable harmful impact on a Public Right of Way or which would prejudice the future recreational use of linear routes such as disused railway lines indicated on the Policies Map will not be permitted.

The supporting text clarifies that:

The PROW network and other areas of public access in the National park provide one of the most important recreational resources throughout the whole of the National Park area. They form a resource which offers considerable opportunities for visitors and residents to enjoy the countryside and special qualities of the North York Moors, and which directly supports the National Park second purpose.

Material considerations - National Planning Policy Framework

The NPPF (July 2021) states that the purpose of the planning system is to contribute to the achievement of sustainable development and that the planning system has three overarching objectives, which are independent and need to be pursued in mutually supportive ways. These are:

Economic Objective – To help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

Social Objective – To support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment,

with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being' and

Environmental Objective – to contribute to protecting and enhancing the natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

Paragraph 114 states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social wellbeing.

Paragraph 176 states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest states of protection.

Paragraph 177 states that when considering applications for development with the National Park, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; c) Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Paragraph 199 states 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 202 indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Material considerations - North York Moors National Park Management Plan (December 2016)

The Management Plan is currently under review but a revised Management Plan has not yet been finalised.

It sets the strategic framework for the future of the National Park; identifies the key features that combine to make up the high-quality environment of the National Park and describes some of the main pressures facing the National Park. It is a material consideration in determining the application, particularly as there is potential for the development to affect National Park special qualities.

Relevant special qualities in this instance are considered to be:

- Wide sweeps of open heather moorland;
- Distinctive dales, valleys and inland headlands;

- Special landforms from the Ice Age;
- A wide variety of wildlife dependent on the upland habitat;
- A rich and diverse countryside for recreation;
- An extensive network of public paths and tracks;
- Strong feeling of remoteness;
- A place for spiritual refreshment;
- Tranquillity;
- Dark skies and clear unpolluted air

In addition to special qualities a number of ‘themes’ are identified under Section 1.4 including improvement to communications infrastructure. With regard to landscape, Policy E1 states the landscape character of the National Park will be maintained and enhanced. Policy E3 states that new development should not have a detrimental impact on the landscape of the National Park. Relating to cultural heritage, Policy E5 states that archaeological and built heritage will be conserved or restored where appropriate and new development should seek to conserve or enhance heritage assets and their settings (Policy E7). In relation to habitats and wildlife, Policy E10 states there will be no net loss of priority habitats and Policy E11 states that existing habitats will be conserved, restored and expanded where appropriate. Policy E15 states that new development will protect biodiversity and provide enhancements where appropriate.

The Management Plan states that tranquillity is one of the National Park’s most appreciated special qualities where a sense of remoteness is engendered by extensive open and undeveloped spaces. National Tranquillity Mapping Data is provided (Campaign to Protect Rural England, 2006) which shows the application site to be amongst the most tranquil areas in the National Park, and by extension, England. Challenges to tranquillity are noted to be potential for increases in levels of light pollution, noise and disturbance and increased levels of traffic. Policy E19 states that existing tranquil areas will be protected and expanded where possible. Policy E20 states that Dark Skies will be protected and improved and that new development in the National Park should not cause unacceptable light or noise pollution. Policy E32 states that the moorland will be managed in a way which maintains the open landscape, supports biodiversity and protects cultural heritage.

Policies relating to infrastructure within the National Park include Policy C8 which states that improvements to mobile phone coverage in the park will be investigated and Policy B22 which states that improvements to broadband services will be supported.

In December 2020, the National Park was designated an International Dark Sky Reserve by the International Dark-Sky Association. This designation reflects the identified relevant special quality as set down in the National Park Management Plan.

Material considerations - North York Moors Landscape Assessment (revised December 2004) but currently under review

The application site sits within the Moorland Landscape Character Type area and ‘Western Moors’ sub area. Key features of Western Moors are noted to include:

- Elevated open expansive upland, part of the Cleveland and Hambleton Hills, forming a gently undulating plateau sloping gradually towards Ryedale and the western edge of the moors and more steeply towards the north and into Bilsdale to the east;
- Panoramic long distance views are available across the strong horizons of the moors, across the lower lying areas to the west and into the central dales. The open skies create a dramatic and ever changing backdrop to the landscape. At night, the darkness of the skies is a key feature;
- Detractors include the mast on Bilsdale West Moor and the scars created by the shooting tracks and quarries of the moorland edges.

Material considerations - English National Parks and the Broads: UK Government Vision and Circular 2010

This is the Government's most recent policy guidance specifically on the English National Parks. It is cross-referenced in the NPPF at paragraph 176 and footnote 59. Section 4.4 relates to fostering and maintaining vibrant, healthy and productive living and working communities and provides guidance relating specifically to encouraging communications infrastructure. Paragraph 80 states that for the National Park to be a viable place for business and for communities to thrive, the communications infrastructure needs to be fit for purpose.

Material considerations - National Parks England and Mobile UK – Joint Accord/Memorandum of Understanding (June 2018)

This was jointly developed to complement the Code of Best Practice on Communications Development. The accord recognises the special nature of the National Parks as sensitive environments that seek to support thriving communities as well as the public benefit of the current and future mobile telecommunications to national park areas in providing connectivity to residents, visitors and local businesses. The accord requires national parks and the telecommunications industry to work together in recognition that a modern telecommunications infrastructure is vital for a modern economy and society and that the installation and maintenance needs to respect the natural beauty, wildlife and cultural heritage of the area.

Key Issues and associated mitigation

The key issues are considered to be: 1, whether there are considered to be exceptional circumstances why there is a continued need for a transmission mast to be located within the National Park and whether it would be in the public interest (major development test); 2, if so, for how long permission should be granted; 3, the impacts on ecology from a 19 month intensive construction period in a remote and prominent location; 4, impacts on other National Park special qualities.

Major development Test

Strategic Policy D states that proposals for major development shall be refused except in exceptional circumstances and where it can be demonstrated they are in the public interest. Demonstration of exceptional circumstances and public interest will require justification in relation to a number of criteria, as discussed further below.

Criterion 1 requires justification of ‘The need for the development which can include a national need and the contribution of the development to the national economy;’

The application documents set out a substantial amount of detail on the technical justification for siting a mast of the size and in the location proposed. This is summarised in more detail in the section on ‘Agent comments in favour of the application’ earlier in this report. A review of potential alternative technologies and possible mast locations and sizes has been provided. Collectively, this information provides robust evidence that the alternatives considered would lead to a reduction in the level of service provided and compromise the effectiveness and resilience of the transmission network as a whole. The role of the development in providing an essential service at a range of spatial levels from local to national suggests that there is a need for the development and that this is significant at a national level.

Criterion 2 of Strategic Policy D requires consideration of: ‘The impact of permitting it, or refusing it, upon the local economy which includes that of the National Park;’. In overall terms any positive economic impacts of the development are likely to arise through the role of the mast in facilitating service provision and communication within the National Park and the wider area served by the mast, although any such benefit is difficult to quantify. Any negative economic impacts would be most likely to arise through the impact of construction works on the National Park landscape and related special qualities and any related impact this might have on the local visitor economy in the vicinity. Although this is not quantifiable any such impact would be expected to be small and localised. In overall therefore it is not considered that there is sufficient evidence on economic impacts for this to be determinative in establishing conformity of the proposals with the Major Development Test policy.

Criterion 3 requires consideration of ‘Whether in terms of cost and scope, the proposal can viably and technically be located elsewhere outside the National Park in a place that would avoid conflict with the National Park’s statutory purposes; or that the need for it can be met in some other way;’

For the reasons explained earlier in this report and in relation to Strategic Policy D Criterion 1 above, it is considered that an appropriate evaluation of potential alternative options for meeting the need for the development has been carried out and that it is not practicable at this point in time to utilise a location outside the National Park, or carry out the development in a less harmful way within the National Park and the NPA is not in a position to challenge these assertions. It is therefore considered that the proposal meets this criterion

Criterion 4 requires consideration of ‘The extent to which any detrimental effect on the environment, the landscape and recreational opportunities can be moderated’.

Through the EIA scoping process it was accepted that the baseline for assessment of impacts should include the situation with the original mast in place, as its demolition

was only required as a result of unforeseen circumstances. On this basis, the main additional or reduced impacts are likely to arise as a result of the construction works for the replacement mast, and through the changed design of the mast compared with the original. With regard to the latter, the overall mast height would remain broadly unchanged and the principal differences relate to the changed design (the replacement being a lattice steel structure rather than tubular) and the addition of a fifth pair of aviation safety lights. The applicant notes that the more 'permeable' appearance of the lattice construction is likely to be beneficial in terms of landscape/visual impact. However, the increased width of the new mast (2.9m up to a height of 265m) compared with 2.3m diameter for the original mast might offset such benefit to some extent. The presence of additional lighting, and the slight increase in height above ground level of the lights compared with the original mast, would be expected to increase the overall degree of impact on the night time landscape of the National Park and on the related special quality of 'dark night skies'. Overall therefore, it is judged that the operational stage effects of the replacement mast are likely to be broadly neutral when compared with the original.

With regard to construction impacts, the applicant proposes a range of measures and controls to mitigate these, and construction works would take place over a relatively limited period of 19 months. Subject to appropriate controls and to necessary offsite mitigation and compensation measures to offset impacts on the landscape, dark skies, ecology and access it is considered that construction-stage harm can be moderated to an acceptable extent.

With regard to overall consistency with Local Plan Strategic Policy D and equivalent national planning policy in the NPPF, it is concluded that the development would represent an element of essential infrastructure which is significant at a range of levels from local to national. It is also accepted that, at the current time, the need for this cannot be met elsewhere or in some other way without reducing acceptable coverage and, taking into account the proposed mitigation, that the need for the development represents exceptional circumstances, notwithstanding the important national interest that lies in conserving and enhancing the National Park landscape. It is therefore considered that exceptional circumstances have been demonstrated and that the proposal is in the public interest.

This balanced judgement that the 'exceptional circumstances' and 'public interest' thresholds have been met reflects understanding of the current technical justification requiring a mast of the size and in the location proposed. It is considered that there is potential for the this balance to change in the longer term future with advances in technology and this matter is discussed in more detail in the following section.

For how long should permission be granted?

Permission is sought for a permanent replacement mast. During assessment of the application legal advice was sought from senior counsel on whether, in the circumstances of the case, it may be appropriate to grant permission on a temporary basis, providing an opportunity to review whether the principle of hosting the development in such a sensitive location remains acceptable in the longer term. This reflects the potential for future evolution in digital technologies, which might in due course enable an alternative and less harmful solution to meeting the identified need to be delivered. It also reflects a statement provided by the applicant in the submission that 'The future of terrestrial television Broadcast services is under continuous review

by Government (DCMS). Recent consultation documentation from the Department for Culture, Media and Sport confirm terrestrial television will remain in service at least until 2034. This does not mean support will drop off in 2034 but rather represents the long-term horizon window for future consultation on how the broadcast service network is provided in the UK. The consultation document clearly demonstrates the Government's continued support for the terrestrial television platform and establishes the long term need for the proposed development.'

The legal advice received confirms that the Authority has the legal power under Section 72 (1) (b) of the Town and Country Planning Act 1990 to impose conditions requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.

The advice also refers to national Planning Practice Guidance on when it is appropriate to grant planning permission for a limited period (Ref ID: 21a-014-20140306) which states:

“Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only.

Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. “

In response to the view put forward by officers that a temporary permission for 20 years may be appropriate in this instance, as further advances in technology may take place which mean that the proposed replacement mast is no longer required or justified, the applicant considers that it has demonstrated an entirely plausible case that the replacement mast forms a major strategic part of the surrounding broadcast network which is designed to be installed and function on a continuous and permanent basis. It considers that there is no expectation that circumstances will change (as required by the Guidance) and therefore the grant of a temporary permission would not be reasonable.

Although the applicant acknowledges that advances in digital technologies allow for more media content to be carried within the same electromagnetic spectrum, it states that it is the spectrum frequency used that determines the height of the structure, the design of the antenna systems and the power of the transmitter systems and that higher frequencies are more heavily attenuated over distance than the lower frequencies. It states that Ofcom allocate the highest frequencies for digital television broadcasting and to these require the highest antennas and most powerful transmitters to serve the agreed geographical area; that DAB and FM radio services are allocated lower frequencies and so the antennas may be positioned lower down on the structure whilst serving the same geographical area and that, whilst Ofcom continue to allocate these internationally agreed frequencies for broadcasting, the proposed structure will be required to deliver services using these frequencies. The applicant also expresses the view that there is every likelihood that there will be a continuing need for broadcasting masts in 20 years' time and for the foreseeable future and the mast has a permanent lifespan in terms of its design, not a temporary 20 year lifespan (as might be the case with some wind turbines for example).

The applicant further argues that the original mast (now demolished) was granted planning permission on a permanent basis with no time limitation and the application is clearly for a 'replacement' mast which is intended to provide services on the same ongoing basis, and that the permanent replacement being sought (with an enhanced visual appearance) would effectively return the site to the baseline position in terms of service provision prior to the August 2021 fire. It adds that there is considered to be no justification for the temporary planning permission suggestion in this context when a replacement mast could be built under the terms of the existing planning permission (which would result in a less attractive visual design).

Finally, the applicant considers that the process of whether there is any ongoing need for the mast is effectively already undertaken between Ofcom and Arqiva through the granting of broadcast licences which are periodically reviewed. If Ofcom assessed there was no need for the site to continue to provide broadcast coverage, Arqiva would not be granted a licence and there would be no need for broadcasting equipment at the site. Thus, the mast would be non-operational and there would be no need for it.

The applicant indicates that it would however be willing to accept a condition based on the wording of a model condition relating to Part 16 of the General Permitted Development Order 2016, requiring removal of the mast and restoration of the site when the development is no longer required for the purposes of broadcasting or provision of electronic communications services.

In considering whether there is justification for imposition of a time-limit condition it is necessary to have regard to relevant legislation, policy and guidance, as well as the justification for a permanent permission as put forward by the applicant. As the legal advice received confirms that the Authority has the power to impose a time limit condition, the main consideration is whether it would be appropriate to do so in this instance having regard to relevant policy and guidance. In this respect it is noted that the development plan has legal force and applications should be determined in accordance with the Plan unless material considerations indicate otherwise, whereas Planning Practice Guidance constitutes a material consideration, albeit an important one.

Adopted Local Plan Strategic Policies D and G seek to protect the National Park landscape, establishing a very high threshold of acceptability for major development proposals and, via Strategic Policy D, that exceptional circumstances and the public interest are demonstrated, with a presumption that permission should otherwise be refused. Protection of the landscape is central to delivery of National Park statutory purpose and the landscape provides the direct and indirect context for many of the National Park's special qualities. Although it is concluded elsewhere in this report that the 'public interest' and 'exceptional circumstances' thresholds for a replacement mast under the major development test policy are met given the information provided at the current time, and can be expected to continue to apply for some time to come, the position has to be viewed within this wider legislative and policy context, which obliges the Authority to give the highest level of protection to the landscape and related special qualities.

As a matter of principle it is considered that imposition of a time limit on the development would be a reasonable response to balancing the public interest and exceptional circumstances considerations which justify the need for a replacement mast in a prominent location within the National Park, with the Authority's statutory

duty to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park over the longer term. Such an approach is also consistent with the Government's recently reaffirmed commitment to protection of National Park landscapes in the longer term, as expressed in the introduction to the Government's January 2022 response to the national landscapes review. This states that its vision for protected landscapes "... will involve changes to the way that we work together to manage and protect these places to ensure future generations inherit our protected landscapes in a better state than we found them." This reference to future generations is particularly pertinent to this case and a time limited approval enables the future guardians of the National Park the opportunity to reassess the need for such a harmful development in what is a particularly sensitive part of the National Park.

Whilst it is difficult to determine with any certainty the duration of a period at the end of which it may, as expressed in the PPG, be '..expected that the planning circumstances will change in a particular way....' it is nevertheless considered a valid assumption that digital and other technologies will continue to evolve over time and that this could impact in future on the strength of the justification for a 300 meter high mast in the location proposed. Based on available information it is considered reasonable to assume that any significant change in circumstances would not arise until sometime after 2034 at the earliest. Any justifiable time limit would therefore lie beyond that date and it is considered that a period of 30 years would be an appropriate timeframe. Officer have contacted the host Secretary of State's department (DCMS) in respect of this issue and the feedback given was essentially that there is no absolute problem with a temporary permission provided that it is of a reasonable and proportionate length.

Such a period would expire well after the 2034 review date flagged by DCMS and would enable the proposed mast to be in place for a timespan equivalent to a generation. It is acknowledged that, in due course, there may well be compelling argument to retain the mast beyond that date and the Authority would need to take a balanced view on the evidence available at the time. The purpose of imposing a time limit condition therefore would not be to seek to ensure the mast is removed in 30 years' time regardless of prevailing circumstances but to provide an opportunity for a full re-evaluation of the justification in the light of prevailing technologies, the regulatory and delivery context for communications and broadcasting and the prevailing policy framework in place for the National Park. This could help avoid a future scenario where the mast were retained simply because it is already there and represents the 'default' option without adequate justification, and would allow the operator to make an updated case for its retention at that time.

It is therefore considered that permission for construction and use of the mast should be time limited to a period of 30 years, with a further two year period allowed for reinstatement of the site in the event that a further permission for retention of the mast is not sought and granted.

Impact on National Park Landscape and key Special Qualities

The development is likely to impact on a number of National Park special qualities as a result of the proposed construction works and, at operational stage and when considered against a baseline of the original mast, as a result of additional lighting which would impact adversely on the special quality of 'dark night skies'.

Construction stage impacts would arise mainly as a result of the temporary presence and operation of construction stage plant and equipment, additional vehicle movements and the related impacts from factors including visual intrusion, noise and lighting. Such activity would take place over an estimated 19 month period and would affect the transmitter mast site on the moorland, the temporary lay down area to be located on a separate area of agricultural land to the east of the mast site, and the access route itself between the mast location and the B1257. There would also be additional traffic movements on the local road network within the National Park, and a two week period of helicopter flights for 'helitesting' the new installations on the mast around the end of the construction period.

In combination it is considered that this activity will have the potential to impact adversely on a number of National Park special qualities relevant to landscape and the appreciation of the landscape, including in particular: 'wide sweeps of open heather moorland', 'tranquillity', 'sense of remoteness' and 'dark night skies'.

The quality of the National Park landscape is given strong protection through Local Plan Strategic Policy G. The main transmitter mast site (but not the lay down area or eastern part of the access road) lies within an area designated as moorland on the Section 3 Conservation Map. Strategic Policy G states that great weight will be given to landscape considerations in planning decisions and development will be supported where the location, scale and detailed design of the scheme respects and enhances local landscape character type as defined in the North York Moors Landscape Assessment, and that development which would have an unacceptable impact on the natural beauty, character and special qualities of the areas of moorland, as defined by the Section 3 Conservation Map ... will not be permitted.'

The supporting justification for this Policy clarifies that, as well as being important for its own sake, the high quality landscape of the North York Moors and surrounding areas is an important draw for visitors and makes a valuable contribution to the local economy.

The Landscape Character Assessment for the Western Moors area identifies that 'Panoramic long distance views are available across the strong horizons of the moors, across the lower lying areas to the west and into the central dales. The open skies create a dramatic and ever changing backdrop to the landscape. At night, the darkness of the skies is a key feature'; and that 'Detractors include the mast on Bilsdale West Moor and the scars created by the shooting tracks and quarries of the moorland edges'.

The applicant's EIA acknowledges that the sensitivity of the landscape affected is 'very high'. It identifies a range of minor to moderate adverse effects on landscape features and landscape character, particularly within 500m of the site and relating to construction stage impacts. It also identifies adverse effects on visual amenity during the construction stage. These are assessed as 'major adverse' on recreational receptors up to 500m from the site, moderate adverse on residential receptors up to 2km from the site and moderate to minor on recreational receptors and residential properties and settlements up to 5km from the site and on road users within 2km of the site.

At operational stage the EIA assesses that there would be no fundamental change in views from that already experienced with the former mast, that the proposed mast offers a slight betterment in the fact that there is a 7.8m reduction in the overall height,

more transparency in the lattice design and reduction in the existing ancillary buildings within the compound. The EIA states that the lighting effects during the early stages of construction would be non-existent and that this is a moderate beneficial effect upon the landscape character and dark skies within the NYMNP, and on visual amenity. The EIA notes that as construction progresses this benefit would reduce to a point where all lights are operational and whereby a minor adverse effect is concluded as a result of the additional layer of lights, for safety reasons, on the Proposed Mast, meaning the top layer of lights are 4m higher than previously compared to the Former Mast. It concludes that this is a relatively minor effect overall and is balanced against the other benefits of the design of the proposed mast.

Overall, it is acknowledged that the direct landscape and visual impacts would be focussed on the construction stage of the development (on the assumption that the situation with the former mast still in situ provides the baseline for assessment of operational stage impacts). It is agreed that construction stage landscape and visual impacts would be most apparent within relatively close proximity to the site.

With regard to lighting impact, this is potentially a significant issue as it is known that temporary lighting in place at the site during winter 2021/22 is highly visible from distances in excess of 10km, contrasting very noticeably with the surrounding dark moorland. There is potential for any lighting needed to serve the construction works to have substantial adverse impact at a significant distance from the site, thus generating a greater degree of harm than is currently acknowledged in the EIA. Impact from site lighting (both temporary impact during the construction works and operational stage impact from additional aviation safety lights and the increased elevation and of those lights) would harm appreciation of the 'dark skies' special quality and such harm would be particularly significant in this location which is, in other respects, very free of artificial lighting.

This is relevant within the context of Local plan Policy ENV4 - Dark Night Skies, which states that 'The darkness of the night skies above the National Park will be maintained and where possible enhanced. All development will be expected to minimise light spillage through good design and lighting management and the following lighting principles will be applied:

'No external lighting will be permitted in remote areas'; and 'In Open Countryside proposals that involve external lighting will only be permitted where it can be demonstrated that the lighting is essential for safety or security reasons and the lighting details meet or exceed those set out in any lighting guidelines adopted by the Authority';

To the extent that the development would introduce additional operational stage lighting, as well as temporary construction stage lighting, within a remote area it is considered that the development would not be consistent with this Policy. It is however also acknowledged that there is potential for mitigation measures to be applied to help reduce construction stage lighting impacts and this should be subject of a planning condition if permission is granted. Whilst the previous mast operated with 'safety' lighting from 'dawn to dusk' every night, negotiations have secured a betterment with the applicant agreeing to use of 'motion sensors' rather than 'dawn to dusk' sensors so that safety lighting is only operative whilst personnel are at the site rather than at all times just in case personnel attend the site. The applicant has also agreed to utilise

'Dark Night Sky' friendly lighting so as to reduce the impact from luminance and colour/one as well as frequency and direction.

With regard to other special qualities impacts, the transmitter mast site itself and surrounding compound, together with first 100m of the eastern access route towards the B1257 lies within a 'Remote Area' as defined in the Local Plan 2020. Local Plan Policy ENV3 states that development will only be permitted in Remote Areas where it can be demonstrated that it is essential for environmental conservation, agriculture or forestry management purposes; and: 'No alternative locations outside Remote Areas are suitable'. As the development does not fall within those specific categories it would not be consistent with this Policy.

'Development will only be permitted in Remote Areas where it can be demonstrated that it is essential for environmental conservation, agriculture or forestry management purposes and no alternative locations outside Remote Areas are suitable.'

Tranquillity within the National Park is subject of protection under Local Plan Policy ENV2. The supporting text defines Tranquillity as 'a state of peace and calm which is influenced by what people see, hear and experience around them'. The Policy seeks to ensure that Tranquillity is maintained and enhanced and that proposals will only be permitted where there is no unacceptable impact on Tranquillity when considered in relation to visual intrusion, noise, activity level as and traffic generation. As noted earlier in this Section, all four of these matters are likely to cause harm, to varying extents, as a result of the proposed construction works. Impact on Tranquillity would be most likely to be experienced by users of public rights of way and open access land within the zone of influence of the development (construction phase), and on users of the road network in proximity to the site, during that same period, who would experience some increase in traffic levels. The mitigation measures proposed would assist in reducing the extent of impact and at 19 months the proposed construction phase may be viewed as relatively short within the context of other major construction projects. Nevertheless, it is anticipated that residual harm on Tranquillity would arise.

Impacts on Ecology

The potential for the development to impact on ecology is a particularly important consideration in this case, as the mast site is located within an area of moorland designated as SAC/SPA/SSSI. The SAC qualifying features are:

- Blanket bogs (Annex I priority habitat)
- European dry heaths
- Northern Atlantic wet heaths with *Erica tetralix*. (Wet heathland with cross-leaved heath)

The SPA qualifying features are:

- Merlin *Falco columbarius*
- Golden Plover *Pluvialis apricaria*

The primary area for construction work would be within the existing compound, which is excluded from the SPA and SAC designation. Out with of the compound fence, all of which is included in the North York Moors SAC, SPA and SSSI, works would be restricted to the creation of temporary access roads along the line of permanent concrete stays with the expansion of the six existing stay blocks plus the installation of two small new permanent stay blocks. Soils (primarily topsoil and peat) and vegetation within this area would be cleared to a depth of approx. 200mm to a firm ground strata and removed soil stockpiled within a suitably sized spoil heap for reuse upon removal of the access tracks and temporary stay blocks. Turves would be salvaged and stacked for reinstatement post works. It is anticipated that the ground area impacted will comprise a total area of 5570m² (0.56ha) of the SAC/SPA.

Following erection of the proposed mast, the stay access tracks and temporary stay blocks would be removed, soils reinstated and the area revegetated, via relaying salvaged turves and reseeding with appropriate heath species where required. In total 5570m² would be reinstated once works completed. Due to the permanent retention of new winch and pilot stay blocks, and expansion of the footprint of existing mast stay blocks, there would be a small loss of semi-natural habitat however there would be no net loss of SAC qualifying habitat.

A detailed assessment of the potential for impact on the SAC/SAC has taken place via a Habitats Regulations Assessment, including through close consultation with Natural England. The HRA identifies that the project alone is likely to have a significant effect (or *may* have a significant effect) on the qualifying features of the European Sites. However, after detailed assessment of the potential adverse effects and proposed mitigation measures, the Assessment allows a conclusion of 'no adverse effects on integrity' to be drawn in relation to the project. Natural England has confirmed that it agrees with this conclusion.

If permission is granted it will be important to ensure that the proposed mitigation measures are secured through planning conditions.

A further consideration is the potential for impact from the development more broadly on ecological considerations. The Authority's ecological adviser notes that, even if no adverse effects are being caused by the works in HRA terms, there would nevertheless be short to medium term impacts on the quality of surrounding habitats and species due to the level of construction activity, and the time during which habitat will be temporarily lost as a result of works and the time taken for full restoration of these habitats.

To address this, the applicant has proposed a Habitat Compensation and Enhancement Strategy for ecology, to compensate for overall site impacts on surrounding habitats.

The overall aim of this package of measures is to extend the current area of dry heath (a qualifying habitat of the SAC and supporting habitat of the SPA) via a package of measures, primarily being control of extensive bracken from an area of moor and restoration of heath habitat at Easterside Hill, near Hawnby. The applicant has offered a S106 obligation to secure delivery of this. It is considered that this approach represents a necessary, reasonable and justified approach for compensating for ecological impact, alongside the on-site measures to be implemented.

Section 106 obligations

In assessing the overall planning balance and in particular ‘other material considerations’, it is necessary to give consideration to proposed section 106 planning obligations put forward by the applicant. Section 106 obligations can, subject to satisfaction of very important legal tests, provide a means to address the residual impacts of a development, in circumstances where use of planning conditions would not be appropriate. This is confirmed in the NPPF (para. 55), which states that: ‘Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.’

The legal tests for section 106 obligations are set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). These require that, for any such obligations to be taken into account as a reason for granting permission they must be:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

The North York Moors Local Plan (2020) contains a specific policy, Policy CO1 Developer Contributions and infrastructure, requiring consideration of potential requirements for section 106 obligations in relation to development proposals, including provision of environmental infrastructure. This Policy states:

‘Developer contributions will be required where they are considered necessary to:

- Ensure that development can be made acceptable in the context of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park and ensuring the continued understanding and enjoyment of its special qualities.’

In this case the applicant has agreed s106 obligations to address a number of residual adverse impacts of the development which cannot fully be addressed through on-site mitigation measures. In summary the obligations are:

- a) To implement a detailed off-site Habitat Compensation and Enhancement Strategy for bracken control works at Easterside Hill near Hawnby (or alternative strategy to be agreed) subject to a cost cap of £35,000.
- b) A Special Qualities Mitigation Contribution of £59,855 to be used for the purposes of off-site mitigation/compensation for impact on landscape and National Park Special Qualities relating to the landscape, including on Tranquillity, Sense of Remoteness, Wide Sweeps of Heather Moorland and Dark Night Skies, with any unspent part of such some to be repaid if it is not used within 5 years.
- c) A Public Access Improvement Contribution of £5,000 to be used to facilitate the provision of a water course bridge which would significantly improve circulation access in the locality.

A summary 'CIL compliance assessment' has been carried out in relation to the obligations and it is concluded that meet the necessary tests and would be consistent with the requirements of Local Plan Policy CO1 in that they are required in order to assist in conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park and ensuring the continued understanding and enjoyment of its special qualities. They are also considered to be a necessary and justified response to meeting the requirement under Strategic Policy D (Major Development Test) criterion 4): 'The extent to which any detrimental effect on the environment, the landscape and recreational opportunities can be moderated'.

The Section 106 agreement was completed on 17 February 2022.

Matters raised during the consultation process not covered above.

Both The Environment Agency and the CPRENY have raised the issue that, whilst mandatory Biodiversity Net Gain (10%) has not yet been enacted it should be negotiated on major schemes given it is the Government's 'direction of travel'. The Authority's Ecologist notes that using the DEFRA BNG metric is not ideal for SAC sites, which should have a bespoke approach, however the DEFRA metric 2 shows a net increase in units of plus 14.45 and minus 6.29, whilst it would take significantly more work to convert this into a BNG percentage, the key point is that there would be a BNG and therefore the proposal would be consistent with Local Plan Strategic Policy H criterion 2 (b), which seeks a net gain.

A third party objection has been received regarding the unsuitability of the southern access route for anything other than emergency use. Officers concur and the applicant acknowledges the concern, and a planning condition is recommended regarding the minimising of use of the southern access route for construction.

Historic England draw attention to potential for WW1 & WW2 archaeological artifacts to be uncovered. A written scheme of investigation was submitted with the application and this has been confirmed as satisfactory by the Authority's Archaeologist.

Planning Balance including assessment under the major development test

Assessment of the application indicates that the construction stage of the development would give rise to conflict with a number of adopted policies in the Local Plan 2020. In anticipation of this, the application was publicised as a 'departure' and the period for receipt of representations has expired. The main areas of potential policy conflict identified are in respect of:

Strategic Policy G – Landscape

Policy ENV2 – Tranquillity

Policy ENV3 – Remote Areas

Policy ENV4 – Dark Night Skies

Policy BL6 - Tracks

However, with the exception of Policy ENV4, and when considered against an operational baseline of the original mast still in situ, the harm caused by the development would only relate to the construction stage lasting approximately 19 months. The agreed s106 obligations providing for additional off-site mitigation and compensation works relating to the landscape and related special qualities would reduce the extent of any residual conflict with Strategic Policy G, and Policies ENV2, ENV3 and ENV4. The Habitat Compensation and Enhancement Strategy via section 106 obligations would also offset harm caused to the natural environment as a result of track works during construction. Additional operational stage lighting would lead to some minor increase in lighting impact over the longer term and would not be consistent with Policy ENV4 and bearing in mind the location of the mast within a 'Remote Area'. This has been reflected in the s106 contribution for Special Qualities mitigation.

A key policy consideration in this instance is whether the development is consistent with Strategic Policy D – Major Development and related national planning policy. This issue is discussed in more detail earlier in the report, where it was concluded that:

'the development would represent an element of essential infrastructure which is significant at a range of levels from local to national. It is also accepted that, at the current time, the need for this cannot be met elsewhere or in some other way to enable the required level of service to be delivered and, taking into account the proposed mitigation, that the need for the development outweighs the harm caused, notwithstanding the important national interest that lies in conserving and enhancing the National Park landscape. It is therefore considered that exceptional circumstances have been demonstrated and that the proposal is in the public interest.'

On balance it is concluded that the clear 'public interest' and 'exceptional circumstances' considerations in this case, together with the proposed on-site and off-site mitigation and compensation measures and proposed planning conditions override any residual conflict with other elements of the development plan, and any other harm, such that the overall planning balance lies in favour of the development.

It is therefore recommended that planning permission be granted. In reaching this conclusion, regard has also been had to the Environmental Assessment submitted by the applicant; the Habitats Regulations Assessment undertaken; the views of consultees and third parties and to other known material considerations.

Pre-commencement conditions

There are no pre-commencement conditions.

Contribution to Management Plan objectives

Approval is considered likely to help meet Policies C7 & C8 which seek to provide and /or improve delivery of electronic facilities to local communities.

Explanation of how the Authority has worked positively with the applicant/agent

Over recent months, the Authority's Officers have appraised the draft and submitted scheme against the Development Plan and other material considerations and recommended changes to the proposal including design changes and mitigation and compensation to reflect the international designated status of the site, so as to deliver sustainable development.