

Unacceptable telecommunications masts (23) – the Creag Dhubh appeal, planning for business not people

Description



Creag Dhubh and site of the now approved mast. Photo credit Alistair Todd

On 21st October the Scottish Government upheld WHP Telecom’s appeal against Highland Council’s refusal of planning permission for the proposed O2 phone mast on Creag Dhubh ([see here](#)). The Reporter’s decision ([see here](#)) has potentially serious implications for the number of competing telecommunications masts in rural areas and for the landscape.

Background

Under the Shared Rural Network (SRN) programme the UK Government agreed to pay the Mobile Operators c£500m to install new masts in areas without any mobile coverage - Total Not Spots – while the operators agreed to address Partial Not Spots. The latter were areas where there was

coverage from at least one but not all four of the main operators. The proposed purpose of the Creag Dhubh mast was to fill a partial not spot in O2 and Vodafone's coverage between Laggan and Newtonmore. Under the SRN programme the mobile operators are expected to share mast sites to fill in gaps in coverage wherever possible.

The Creagh Dubh mast is also in a National Park, in an area acknowledged by Highland Council as a 'Special Landscape Area' and right next to the most used walkers path up Creagh Dubh.

Despite this, Cairngorms National Park Authority (CNPA) planning staff failed to call in the planning application, claiming it had no implications for the objectives of the National Park and left the decision with Highland Council. Having effectively been told by the CNPA that the impact of the mast was unimportant, it would have been very difficult for Highland Council staff to find otherwise and they recommended (see here for their report) the mast be approved.

It is to the great credit of councillors on the Highland South Area Planning Committee, reflecting the concerns of local constituents and the Laggan Community Council, that they found another reason for refusing the mast. They decided O2/WHP Telecoms had provided insufficient information to show why they couldn't share masts with other operators in the area notably EE at Cat Lodge.

WHP Telecoms then appealed to the Scottish Government. Their appeal submission and the Reporter's response covers all aspects of the proposed development and not just Highland Council's grounds for refusing the application.

The need for the proposal site sharing

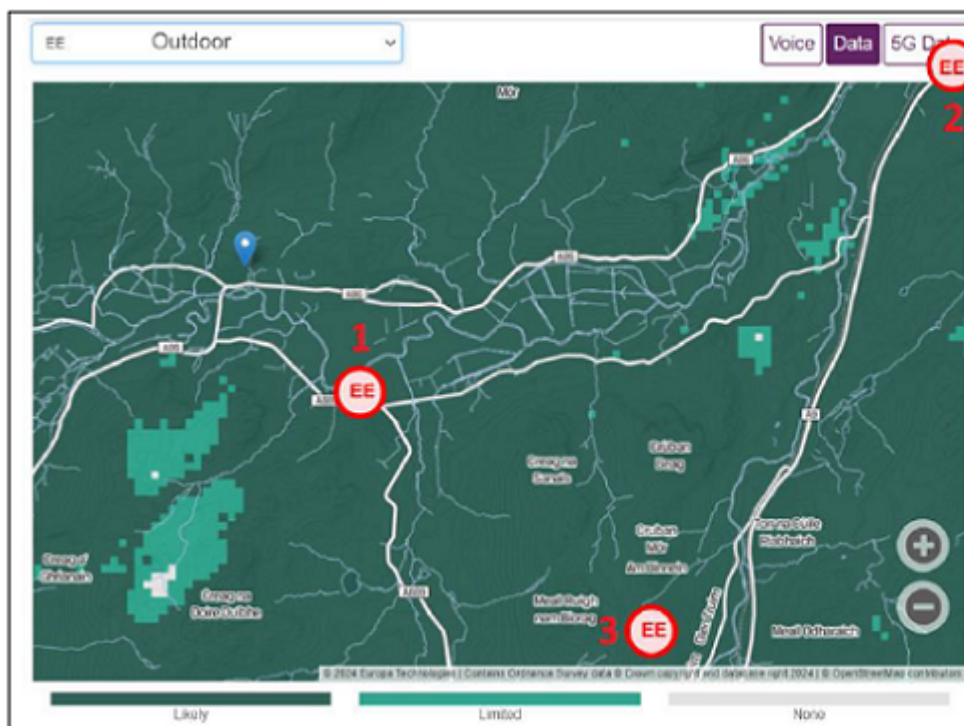


Figure 5.
EE Outdoor coverage, from Ofcom site.

Compare with Figure 4.

Also shown are the three nearest EE mast sites:

1. Catlodge
2. Ralia
3. Crubenmore (shared with O2 & Vodafone)

It is evident that EE coverage in the target area meets the SRN standard: 'good outdoor coverage'.

Extract from David Craig's work on the EE coverage included in the NEMT submission

As explained in my last post on Creag Dhubh, the North East Mountain Trust (NEMT) submitted extensive evidence to the reporter showing *existing coverage from O2 and EE masts in the area* and concluding that *from the information that is publicly available, that the EE mast at Cat Lodge could, if shared, eliminate the small partial not spots in O2 and Vodafone coverage.*

The proposed mast at Creag Dhubh would not be needed if operators shared masts as per UK Government guidance on the Shared Rural Network programme and the Planning Advice Note on Digital Telecommunications ([see here](#)) issued by the Scottish Government in December 2023 which has a whole section on site sharing:

4.8 The Electronic Communications Code (Conditions and Restrictions) Regulations 2003, as amended, (the Code Regulations) require an operator to share the use of electronic communications apparatus, where practicable. Site sharing minimises the number of sites required and reduces proliferation. In the light of this, operators have site sharing arrangements with each other and with the wholesale infrastructure providers. They also have similar arrangements with the utilities and some large landlords.

4.9 When operators are seeking to deploy new sites, they will therefore look first at maximising site sharing opportunities and facilitating prompt delivery without the need to search for new parcels of land and to have to enter into potentially lengthy negotiations and legal agreements on an individual basis. These potential sites may offer additional benefits, such as having existing or ready access to a power supply, access to fibre or an existing vehicular access. Sharing will often enable quicker and more economic installation and, subject to requirements, additional equipment may be undertaken under PDR. [Permitted Development Rights].

The Reporter's decision makes no reference to this Scottish Government guidance or to the evidence provided by NEMT but instead argues as follows:

Looking first at the need for increased coverage, the appellant says that EE's existing coverage information is not available to the appellant (or to the council or me) due to sensitivities around competition [Comment: this is not true see above]. While I cannot therefore be certain what EE's coverage is in this area, I understand that the SRN seeks to increase coverage by all operators, with a view to increasing connectivity as well as consumer choice. Over time, I expect that this would logically result in increasing duplication of coverage by the different operators, as well as filling in gaps within a single provider's coverage.

Instead of questioning why O2 could not share EE's mast/mast site, the Reporter accepted their word and ignored the planning advice from the Scottish Government. That advice is obviously completely worthless if all providers have to do to get round it is cite *sensitivities around competition*.

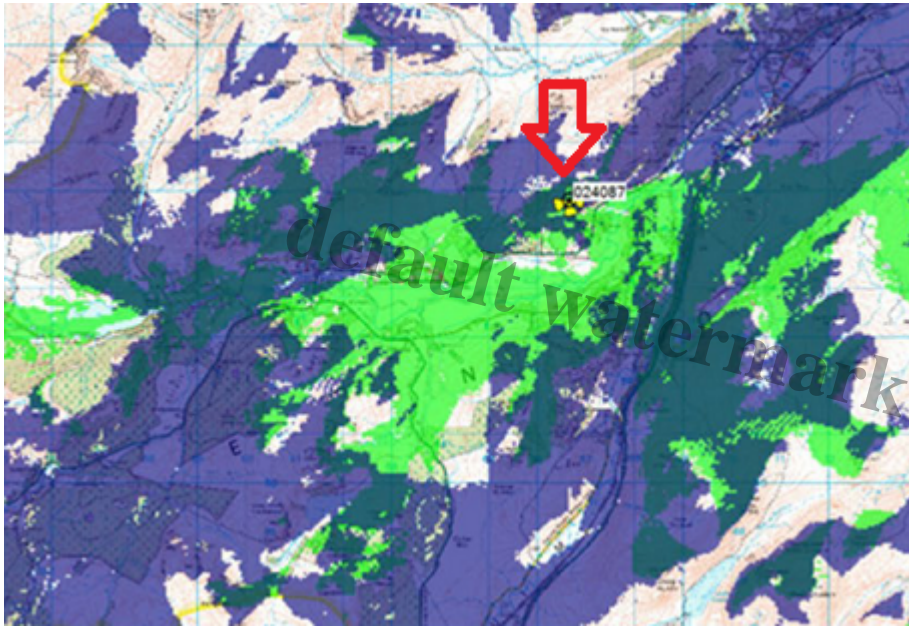
Bizarrely, the Reporter goes on to claim that the Creag Dhubh proposal does provide an example of mast sharing:

In relation to site choice and sharing, the appellant highlights that the proposal would allow for two operators to share one mast (VMO2 and VF) and I find this to be a benefit. In terms of sharing existing masts, the appellant says that there are no masts within a suitable distance to serve the entire cell area.

On this logic, if two out of the four mobile operators in Scotland share each new mast in partial not spots, we will end up with double the number of masts necessary to provide comprehensive coverage to rural communities. Is this what the Scottish Government intended with the Planning Advice Note?

Note too how the Reporter accepts unquestioningly that the "cell area" identified by O2 needs to be covered by one new mast without considering what would happen if all existing masts in the area were shared.

The Reporter did at least seek "further information from the appellant on the existing coverage by VMO2/VF" which was provided at the end of September:



The blue shows the existing VMO2 coverage, the green the new coverage from the Creag Dubh mast and the dark green where there new and existing coverage would overlap. The light green in the middle of the map is the "cell area".

This was a "small win" and such information should be provided for EVERY mast application. Had the Reporter, however, compared this "cell area" to the area already covered by EE (as shown in the map above) the case for the mast would have collapsed. One wonders whether the Reporter even read the evidence submitted by the NEMT?

There is another provision in the Scottish Government's planning advice note on Digital Telecommunications that the Reporter also ignored:

"Operators should make use of existing buildings, structures, sites and masts, wherever practicable, to reduce the need for new development and reduce the environmental impact and visual intrusion of installation. This may involve redeveloping an existing site, including the installation of a replacement mast to accommodate additional equipment"

In other words, even if the existing EE mast infrastructure at Catlodge was not at present suitable for supporting O2 equipment and mast sharing, the planning guidance states it would be better to redevelop that site than develop a new one to reduce "environmental impact and visual intrusion".

Highland Councillors were absolutely right to make the decision they did!

The need for the Creag Dhubh Mast alternative sites

As part of their justification for the Creag Dhubh site, WHP telecoms rejected an alternative site called the Allt Mhoraich circuit. The NEMT, in a further submission to the appeal, explained why this was wrong:

The applicant does not reject this site on the basis of inadequate coverage. The applicant rejects this site almost entirely on the grounds of the need to upgrading the access track stating that this is in a poor state of repair. The section of track required is not that lengthy and resurfacing it would avoid completely the additional environmental damage the applicant cites. The applicant also states that some tree lopping may be required. Together, these two reasons for rejection of the site are extremely weak and raise the question as to whether construction costs would be more than for the Creag Dhubh site thus leading the applicant to reject it on financial grounds. If that is the case, cost is of no concern to the planning authority. It would seem, therefore, that this site would be suitable and would avoid the very significant detrimental landscape effects of the Creag Dhubh site. The Allt Mhoraich site also benefits from a level of screening by trees.

Strangely the Reporter made NO reference to that evidence in her consideration of this site but instead accepted the word of WHP Telecoms:

The appellant says that an alternative site called Allt Mhoraich Circuit would have a larger environmental impact than the proposed site, particularly in relation to its access track. Given the proposed limited use of the access track relating to the appeal site, I requested further information on the reasons for discounting the alternative site. Taking account of the appellant's further evidence, I consider it likely that the condition of the access track at Allt Mhoraich Circuit would require significant additional works to allow for all terrain vehicle use (as at the proposed site), which could have visual, soils and other impacts that would make it less suitable for the proposed development.

Not only that but a follow up letter from DPEA in response to a question from Dave Morris (who has also written about the Creag Dhubh application ([see here](#)) established that the Reporter failed to visit the Allt Mhoraich Circuit site and check on what WHP were saying. That makes her whole decision unsound.

Landscape and visual impact

The Reporter did at least visit the Creag Dhubh site. While agreeing with Laggan Community Council that Creag Dhubh is a prominent and isolated hill she mistakenly describes it as a Corbett having driven around the area and looked towards the site from a number of points along the local roads she concluded the mast will not be visible from a distance. That may or may not turn out to the case.

The Reporter did, however, accept that the mast site was by a popular walking route and that there would be significant adverse visual effects on parts of the hill itself. However, she discounted these impacts on people's ability to enjoy the countryside on the grounds that the effects were localised and that *given the lack of other infrastructure or manmade features within the elevated area, I find no cumulative effects*. An alternative viewpoint might have given weight to this being the first development along what is otherwise an unspoilt path and area of countryside.

The Reporter was clearly influenced by the positions taken by Highland Council and the CNPA:

The Council does not raise specific concerns over the landscape or visual impact. The Cairngorms National Park Authority (CNPA) considers that the proposal does not raise any planning issues of general significance to the park aims.

The Reporter was not helped by Highland Council officers, in their submission to the appeal, stating they did not have time to provide any further evidence on the landscape issues. Far more significant, however, was the failure by the CNPA, which has a statutory duty to protect the landscape, to call-in the application. That allowed the Reporter to reach the following conclusion:

Given the small scale of the development, I consider that it would not alter the landscape character of the area. In light of my findings above, I am satisfied that significant visual effects of the proposal would be limited to the area around the mast and between the mast and the hill summit. As a result, I consider that they would not compromise the objectives of the National Park designation or the overall integrity of the National Park.

You could apply exactly the same argument to the proposed mast at Ryvoan where recently the CNPA concluded an Environmental Impact Assessment (EIA) was not required ([see here](#)). Following that post, some eagle eyed activists from the Badenoch and Strathspey Conservation Group noticed the CNPA had cut and paste information from the playpark at Cairn Gorm into the Ryvoan mast EIA scoping opinion:

during the first phase of public consultation. Further supporting papers were then published requiring a second phase of public consultation which closed on October 23.

One of these additional papers was an EIA screening opinion prepared by the CNPA planner involved.

This screening opinion was used to decide that a full environmental impact assessment was not required.

However, can we trust the opinion of the CNPA planner?

It is clear that at least one of the opinions was a cut and paste from another application.

In answer to the question, "Will construction, operation or decommissioning of the project involve actions which will cause physical changes in the topography of the area?", the planner inserts:

"Levelling and micro siting of each element of play equipment will be required, as the site is fundamentally not level....".

There is NO play equipment associated with this proposed telecoms mast!

We are left with the question as to whether we can trust this EIA screening opinion, and what other parts of it were just cut and paste. It certainly looks like a CNPA rubber stamping exercise.

**Gordon Bulloch
The Dulaig
Grantown**

Ryvoan Telecoms mast a 'CNPA planner blunder'

ABOUT 550 objections were received by CNPA Planning:

The Ryvoan documentation has now been corrected but it provides a perfect illustration of just how bad the CNPA is when it comes to protecting the landscape. Instead of assessing the impact of each proposed development on its merits, they cut and paste and take a blanket approach which basically says small developments don't matter. That is wrong and totally out of step with public opinion: local does matter.

The Reporter, however, did get one thing right on landscape in her Decision Notice. She required the Creag Dhubh mast to be completely removed and the land restored should it cease to operate for 12 months. At present planning authorities in Scotland have not made such requirements as a matter of course. For example Highland Council approved an application for a mast at Inverinate, in the Kintail National Scenic area, earlier this year without any such requirement although I have found an approval by the Loch Lomond and Trossachs National Park Authority for a mast in Balquhidder which did.

Such conditions are very important not just because they potentially offer some protection to the landscape being blighted by an abandoned mast but because they potentially create a significant financial liability for the mobile phone operators. That could happen sooner rather than later given the rapid development of satellite technology which could make masts redundant. The condition may encourage O2 to think again in this case as it would be much cheaper for them to restore an existing site like Catlodge!

The far from objective planning appeals process and what can be done

Reading the Decision Notice, it is noteworthy that the Reporter basically accepted EVERYTHING the WHP Telecoms/VMO2 said without question. By contrast, she makes no comment on the evidence submitted by objectors. One wonders what would have happened if she had invited both the developer and objectors for a site visit? At the very least that might have forced her to visit the Catlodge and Allt Mhor sites and properly consider the alternatives but it might have also influenced her evaluation of the landscape impacts of the proposed mast.

Unfortunately there is no right of appeal against decisions made by Reporters appointed by the Scottish Government, however poorly made. The only legal recourse for objectors is to seek a judicial review, a very expensive process and totally beyond the means of small organisations like the North East Mountain Trust whose work on this and other mast planning applications has been done entirely by volunteers.

The risk now is the Reporter's Decision in the Creag Dhubh case will open the gates to further appeals where masts are refused either on the grounds they are not needed or because of their impact on the landscape.

One way to prevent this happening would be for the Scottish Government to issue a clear message that competition is not a reason for mobile operators failing to share masts and that it expects them to do so. Another would be for the Scottish Government and the Cairngorms National Park Authority to make it clear that localised landscape impacts DO matter. If you are concerned about this please consider lobbying your MSP and, if you live in the Cairngorms National Park, approaching the locally elected Board Member for your area.

It would also help, however, if those responding to mast applications were to ask planning authorities to impose, as a matter of course, conditions requiring sites to be restored and to provide guarantees this will be done. For reference, here is the condition imposed by the Reporter in this case which is both clear and thorough:

Should the telecommunications mast hereby approved not supply mobile network signals for a continuous period of 12 months, the mast shall be deemed to have ceased to be required and, unless otherwise agreed in writing by the planning authority, shall be removed from the site, along with all associated development, including the compound and all fixtures and fittings, cabinetry and associated equipment; and the site thereafter reinstated with re-grading of surfaces and laying of turf and/or a suitable seed mix native to the area along with associated protective fencing. The decommissioning works shall be undertaken within 6 months from the date of the last use of the mast to the satisfaction

of the planning authority.â?•

Category

1. Cairngorms

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Author

nickkempe

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