

6. HABITAT REGULATIONS ASSESSMENT IN RELATION TO RETROSPECTIVE PLANNING CONSENT ON MIDHOPE MOOR TO RESTORE AND REPAIR PREVIOUSLY DAMAGED ACCESS ROUTE TO INCLUDE THE LAYING OF PLASTIC ACCESS MESH TO FACILITATE VEHICULAR ACCESS. OPEN MOORLAND SITE, SPLIT BY THE CUT GATE PATH AND CROSSING MICKLEDEN BECK ON MIDHOPE MOOR (NP/S/1217/1304)

APPLICANT: WAKEFIELD FARMS LTD

Site and Surroundings

Midhope Moor lies near the north-eastern edge of the National Park and to the south-west of Langsett and Upper Midhope. The moor is designated as part of the South Pennine Moors Special Area of Conservation, the Peak District Moor (South Pennine Moors Phase I) Special Protection Area, the Dark Peak Site of Special Scientific Interest and is Section 3 land forming the 'Natural Zone' in the PDNPA Development Plan. It is also open access land under the CROW Act and is bisected by the Cut Gate Bridleway, a very popular north-south route across the moor for walkers, cyclists and horse riders which runs from Langsett Reservoir southwards to the Upper Derwent at the northern end of Howden Reservoir. The Authority's Landscape Strategy and Action Plan places the site within the Moorland slopes and cloughs landscape character type within the Dark Peak landscape character area.

The application site essentially straddles the Mickleden clough near the top of the moor some 2.8km SW of Upper Midhope. It comprises of an approx. 760m long sinuous section of a longer access route running roughly east-west from 'Lost Lad' down over the Cut Gate Bridleway and across Mickleden Beck rising up to the lower slopes of Harden Moss around 230m west of the Beck. This section of the route has been overlaid, after the underlying vegetation was cut back, with a 2m wide run of green plastic ground reinforcement mesh held down by metal pins. It is laid along mostly what appears to be the former route, but in places has been laid adjacent to some sections which were very badly eroded from over use. It was laid in December 2014 by the current owner to reinforce the route for vehicular access to the moor west of the site where works to conserve and enhance the moor had been consented by Natural England. At the western end it has been widened to 4m over a 20m section. Some short sections underlying the matting were repaired/improved by inverting the substrate and/or using existing material from within the line or close by to provide a level surface for the matting to be overlaid. There are two breaks in the run of matting where it crosses the Cut Gate Path and Mickleden Beck. Since it was laid in 2014 the underlying vegetation has grown through the meshing to varying degrees along its length.

Access from the nearest public road is gained to the site firstly via an established access track from the public road adjacent Upper Midhope up to a timber shooting cabin some 1.2km east of the application site. From the cabin informal access routes lead west to the application site past numerous shooting butts, a number of which were noted at the officer site visit to have been replaced/rebuilt in the recent past.

The application seeks retrospective planning permission to retain, on a permanent basis, the plastic ground reinforcement matting and associated groundworks. The site is a 700m length of route with matting laid down over 670m approx. at 2m wide. The matting has gaps where it crosses the Cut Gate path and Mickleden Beck. At the western end the matting has been doubled in width to 4m to allow room for parking and turning. The application states the matting is only to be used by 'All Terrain Vehicles' or ATV's.

The construction methodology describes that a tracked vehicle was used to level undulations in the ground from previous use of the route with a 45m steep section near the Cut Gate path

manipulated by inverting the ground level material to create a level surface on which the matting was laid. Loose rutted stone was flattened out and existing material realigned along the route and consolidated; old wooden structures in the wetter areas were removed. The application states that in the wet flush sections laying of log rafts may be required in due course. It was noted at the officer site visit that large pallets of logs have been recently delivered alongside these areas which are already suffering vehicle damage which has caused the matting to break apart and sink into rutting. The application states that after laying the entire route of the matting was then seeded (no details of the seed used) and additions of lime and fertiliser repeated until a suitable covering of vegetation achieved.

The application is accompanied by a supporting statement which explains the need for the matting. It includes photographs of the route before and after the works as well as a copy supporting letter from Natural England (dated 9/2/16 and submitted previously with the 2016 invalid application), an extract from 'the restoration plan' with description of the methodology for the laying of the matting, product details for the 'GrassProtecta' grass reinforcement mesh, a plan showing cross sections through the matting as laid, and a copy of Natural England's consent notice for moorland restoration works to be carried out between 2014 and 2017 on the moor west of the application site with associated Habitats Regulation Assessment.

RECOMMENDATION:

- 1. That this report be adopted as the Authority's Habitat Regulations Assessment in relation to the proposed development in relation to application NP/S/1217/1304.**
- 2. It is determined that restoration and repair of previously damaged access route including the laying of plastic access mesh to facilitate vehicular access to the open moorland site, Midhope Moor has potential to have a significant effect on the integrity of a European designated site. Thus, approval of application NP/S/1217/1304, the subject of a separate report to Planning Committee, would not be contrary to the provisions of Regulation 61 of the Conservation of Habitats and Species Regulations 2010(as amended) (the 'Habitats Regulations') and the EU Habitats Directive and an Appropriate Assessment is not considered necessary.**
- 3. Harm to the moorland ecology and habitat along the length of the application site from the initial installation of the matting and associated groundworks coupled with the damage caused subsequently from the increased vehicle use of the route contrary to policies L2 and LC17.**

Key Issues

The UK is bound by the terms of the Habitats Directive (92/43/EEC). Under Article 6(3) of the Habitats Directive, an appropriate assessment is required where a plan or project is likely to have a significant effect upon a European Site, either individually or in combination with other projects in view of the European Site's conservation objectives. The Directive is implemented in the UK by the Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations').

It has been identified that the site for the application Code No: **NP/S/1217/1304** at Midhope Moor lies within the Peak District Moors SPA, South Pennine Moors SAC, and therefore the proposed development has the potential to affect its interest features if permitted.

It has also been identified that removal and restoration may be secured either through the granting of a temporary consent or, if the planning application is refused, through enforcement action which may be taken to remedy the breach of planning control. Removal and restoration also has the potential to affect the Peak District Moors SPA, South Pennine Moors SAC.

The Habitat Regulation Assessment (HRA) Process

Requirements are set out within Regulations 61 and 62 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 61 and 62 are referred to as the 'Habitats Regulations Assessment' (HRA) process, which involves several stages:

- Stage 1 – Likely Significant Effect Test
- Stage 2 – Appropriate Assessment
- Stages 3 and 4 – Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test.

Stage 1: This is essentially a risk assessment utilising existing data, records and specialist knowledge. This stage identifies the likely impacts of a project upon a European Site and considers whether the impacts are likely to be significant. The purpose of the test is to screen in or screen out whether a full Appropriate Assessment is required. Where likely significant effects cannot be excluded, assessing them in more detail through an appropriate assessment is required to reach a conclusion as to whether an adverse effect on the integrity of the site can be ruled out.

Stage 2: This is the Appropriate Assessment and this involves consideration of the impacts on the integrity of the European Site with regard to the conservation site's structure and function and its conservation objectives. Where there are adverse effects an assessment of mitigation options is carried out. If the mitigation cannot avoid any adverse effect or cannot mitigate it to the extent that it is no longer significant, then development consent can only be given if an assessment of alternative solutions is successfully carried out or the Imperative Reasons of Overriding Public Interest (IROPI) test is satisfied.

Stages 3 and 4: If a project will have a significant adverse effect and this cannot be either avoided or mitigated, the project cannot go ahead unless it passes the IROPI test. In order to pass the test, it must be objectively concluded that no alternative solutions exist. The project must be referred to the Secretary of State on the grounds that there are Imperative Reasons of Overriding Public Interest as to why the project must proceed. Potential compensatory measures needed to maintain the overall coherence of the site or integrity of the European Site network must also be considered.

Assessment

The SPA covers approximately 45300.57ha and comprises a number of constituent Sites of Scientific Interest (SSSIs). The section of the SPA of relevance to this HRA falls mainly within the area coincident with Dark Peak SSSI, notified on the basis of its mixed interest including the combination of plateaux blanket mires; wet and dry heaths and acid grasslands, together with associated flushes and mires on moorland slopes, represents an extensive tract of semi-natural upland vegetation typical of and including the full range of moorland vegetation of the South Pennines. Several vegetation types, plants and animals are at either the southern or northern limits of their distribution in this country. The Dark Peak moorlands support the full range of

breeding birds found in the South Pennines, some of which are represented at their southern most viable English locations. The moorland breeding bird assemblage is of great regional and national importance. It includes internationally important populations of several species, listed in the European Commission Birds Directive as requiring special conservation measures. More information on the designation is available here:

<https://designatedsites.naturalengland.org.uk/SiteGeneralDetail.aspx?SiteCode=UK9007021&SiteName=penn&countyCode=&responsiblePerson=&unitId=&SeaArea=&IFCAArea=>

The SAC covers 65024.32 ha Annex 1 habitats that are a primary reason for selection of this site include: European Dry Heaths; Blanket Bogs; and Old sessile oak woods with Ilex and Blechnum. Also present are Northern Atlantic wet heaths with Erica tetralix and Transition mires and quaking bogs. More information on the citation of the designation is available here: <http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK0030280>

In their consultation response, Natural England, conclude that both the removal and restoration of the track OR the grant of planning permission should be subject to HRA assessment.

Natural England conclude that without appropriate mitigation the application would:

1. *Have an adverse effect on the integrity of the South Pennine Moors Special Area of Conservation and the Peak District Moors (South Pennine Moors – Phase 1) Special Protection Area*
2. *Damage or destroy the interest features for which The Dark Peak Site of Special Scientific Interest has been notified.*
3. *In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:*
 - *Suitable ground monitoring by the operator and agreement holder should be undertaken as part of the restoration operation to ensure relevant precautions are taken so that vehicles do not impact upon the qualifying features of the above named sites.*
 - *Restrictions on vehicle use are: track decommissioning and construction – machinery storage and re-fuelling and thereafter daily use for purposes of restoration limited to ATVs only.*
 - *Permission for the trackway should be granted for a time limited period. This would allow reviews to be undertaken as the evidence base on mesh track usage on moorland develops.*
 - *The time limitation could allow for the completion of the restoration programme for this area of moorland detailed in the supporting information provided with the planning application.*
 - *Continued use for agricultural and non-agricultural purposes beyond the restoration programme element of the application should be considered in accordance with the Advice on long-term use of the track and HRA at Annex B.*
 - *This should be for no more than 5 years to allow for a future assessment of the suitability of the track against any new evidence on the impacts of mesh trackways.*
 - *We advise that an appropriate planning condition(s) or obligation(s) is attached to any planning permission to secure these measures. Please refer to our explanatory information for more detail.*

Conclusion

It is concluded at Stage 1 of the HRA that the information presented with the application is sufficient to demonstrate that in the event of the grant of planning permission for the development, or alternatively enforcement action to remedy the breach of planning control, conditions and requirements can be specified to ensure that the development is unlikely to have significant effects on the integrity of the Peak District Moors SPA, South Pennine Moors SAC. Thus, the development is not considered to be contrary to the provisions of Regulation 61 of the Conservation of Habitats and Species Regulations 2010 and the EU Habitats Directive, and an Appropriate Assessment is not considered necessary.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil

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