

16. HABITAT REGULATIONS ASSESSMENT IN RELATION TO ENFORCEMENT ACTION AGAINST THE CREATION OF A SURFACED TRACK ON LAND AT MICKLEDEN EDGE, MIDHOPE MOOR, BRADFIELD (ENF: 15/0057)

1. Introduction

- 1.1 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 2017 (the 'Habitats Regulations').
- 1.2 The unauthorised development which is subject of this report lies within the Peak District Moors Special Protection Area (SPA) and South Pennine Moors Special Area of Conservation (SAC), and has the potential to affect the interest features. A retrospective application for the development was refused on 25 June 2018 (application ref: NP/S/1217/1304). Following the refusal of the application the Authority is now proposing to pursue formal enforcement action to secure removal of the track and appropriate restoration. The authority to pursue enforcement action is delegated jointly to the Head of Development Management and Head of Law. However, removal and restoration through enforcement action to remedy the breach of planning control has the potential to affect the interest features of the SPA and SAC so it is also necessary to consider this in making an assessment under the Habitat Regulations.

2. Site and Surroundings

- 2.1 Midhope Moors lies near the north-eastern edge of the National Park and to the south-west of the villages of Langsett and Upper Midhope. The Moors are designated as section 3 Moorland, as defined in the Wildlife and Countryside Act 1981, and are also part of the Dark Peak Site of Special Scientific Interest (SSSI) which extends across more than 30,000 ha of wild, open and continuous moorland in the north of the National Park. The SSSI citation states that "*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.*" It goes on to state that "*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*" and that "*the moorland breeding bird assemblage is of great regional and national importance.*" The breeding birds found in the SSSI include internationally important populations of several species listed in the European Commission Birds Directive as requiring special conservation measures. As mentioned in the introduction, the land is also designated as a SAC and SPA under European legislation.
- 2.2 In common with most of the upland areas in the National Park, the land is also open access land under the Countryside and Rights of Way Act 2000, which means that, subject to certain exceptions, the public normally has a right to roam on foot without keeping to public rights of way. The track, which is the subject of this report, is bisected by the Cut Gate Bridleway, a north-south route across the moors which is very popular with walkers, cyclists and horse riders and 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.

3. RECOMMENDATION

- 3.1 ~~3.1 That this report be adopted as the Authority's Habitat Regulations Assessment in relation to the proposed enforcement action against the laying of a surfaced track.~~

3.2 ~~3.21 It is determined that retention of t~~ The unauthorised development ~~has potential for significant impact is likely to have a significant effect~~ on the SPA and SAC and the special qualities for which they are designated and that in the event of a ground A appeal against an enforcement notice the development would need to be subject to an appropriate assessment.

3.3 ~~3.32 It is determined that t~~ The proposed enforcement action to secure removal of the track and ~~appropriate restoration, as set out below and subject to minor amendments to the wording to be delegated to the Head of Development Management and only to be carried out in the months September to February (inclusive),~~ does not have potential for significant impact on the SPA and SAC and the special qualities for which they are designated and would not, therefore, need to be subject to an appropriate assessment.

- a) ~~Place between 46 cubic metres and 50 cubic metres of locally sourced heather brash, which has been collected between 1 October and 31 January in the following year, alongside the Land. The heather brash shall be placed in bags or piles between 14 and 18 metres apart with each bag or pile consisting of between 1 and 1.5 cubic metres of heather brash.~~
- b) ~~Following the completion of step a), remove the geotextile matting, wooden log ‘rafts’ and any other imported materials used in construction of the track from the Land. The removal shall either be carried out by hand or using low ground pressure tracked vehicles, equipment or machinery. The removal shall commence at the north-west end of the Land and shall progress in a generally south-easterly direction along the Land until all of the geotextile matting, wooden log ‘rafts’ and any other imported materials used in the construction of the track have been removed.~~
- c) ~~Following the completion of step b), spread the heather brash by hand over the Land to a depth of between 1.5 and 2.5 centimetres.~~
- d) ~~Following the completion of step c), plant sphagnum moss plugs by hand at a density of one plug per 5 square metres over the parts of the Land where the wooden log ‘rafts’ have been removed.~~
- e) ~~Any parts of the Land which, twenty months after this Notice takes effect, have more than 30% grass cover per square metre shall be sprayed with a grass-specific, selective herbicide.~~

4. Relevant History

- 4.1 2016 - Planning application submitted for retention of access matting but subsequently deemed invalid, principally due to inaccurate plans.
- 4.2 25 June 2018 – Retrospective planning application refused (ref: NP/S/1217/1304). The submitted application described the proposal as ‘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.’

5. The Breach of Planning Control

- 5.1 The track in question essentially straddles Mickleden Clough near the top of the moor some 2.8km south-west of Upper Midhope. It comprises of an approx. 700m 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 to the lower slopes of Harden Moss around 230m west of the Beck.
- 5.2 The track consists of a two metre wide strip of green plastic ground reinforcement mesh (or matting) held down by metal pins. For most of its length it has been laid alongside a former rutted unsurfaced track but for some sections it has been laid on the line of the former route. The plastic mesh surface was laid in late 2014 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. There are two short breaks in the matting where the track crosses the Cut Gate Path and Mickleden Beck. Since it was laid in 2014 the underlying vegetation has grown through to varying degrees along its length.

- 5.3 The construction methodology submitted with the recent retrospective application states that a tracked vehicle was used to level undulations in the ground with a 45m long steep section near the Cut Gate bridleway 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 methodology stated that in the wet flush sections laying of log rafts may be required in due course. Indeed, since the submission of the planning application, some log 'rafts' have been laid over the matting on some sections.

6. The Habitat Regulation Assessment Process

- 6.4 The Habitats Regulations require that a series of steps and tests, as set out below, are followed for plans or projects that could potentially affect a European site. These are referred to as the 'Habitats Regulations Assessment' (HRA) process:

6.5 Stage 1 – Likely Significant Effect Test

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.

6.6 Stage 2 – Appropriate Assessment

This is the Appropriate Assessment and 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.

6.7 Stages 3 and 4 - Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test

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.

7. Assessment

- 7.1 The SPA covers approximately 45300ha and is an extensive tract of moorland and moorland-fringe habitat. It includes most of the unenclosed moorland areas of the north, eastern and south-western Peak District, where it also extends into enclosed farmland of wet rushy pasture, hay meadows and small wetlands in the valley bottoms. The moorland habitat, which we are concerned with here, includes extensive tracts of blanket bog and dry heath. The SPA as a whole supports several important species assemblages, including higher plants, lower plants and insects, as well as breeding birds. The qualifying species, listed in Annex I of the SPA citation, are Merlin, Golden Plover and Short-eared Owl. The breeding bird assemblage supported by the SPA includes several other species, such as Peregrine, Lapwing, Curlew and Ring Ouzel.

- 7.2 When the retrospective application for the development was considered by the Authority's Planning Committee on 15 June (application ref: NP/S/1217/1304), a Habitats Regulation Assessment was carried out. One of the conclusions of the assessment was that if the Authority was minded to grant permission on a permanent basis, this was likely to have a significant impact on the SPA and SAC and the special qualities for which they are designated. In particular, it was identified that harm had been caused to the moorland ecology and habitat along the length of the track from the initial installation and associated groundworks coupled with the damage caused subsequently from the increased vehicle use of the route. In coming to this view the Authority relied on advice from Natural England which stated that continued and regular use of the track for agricultural and non-agricultural use, may result in an increase in soil compaction, a localised effect on hydrology and a limited recovery of vegetation, with potential for a credible risk to the qualifying features. In these circumstances, it was resolved that permanent retention of the development would need to be subject to an HRA assessment. The same considerations would apply in the event of an appeal against an enforcement notice under ground A (i.e. that planning permission should be granted for the unauthorised development).
- 7.3 With regard to the steps for compliance in an enforcement notice, it is anticipated that, in summary, these would require removal of the plastic mesh surfacing, log rafts and any imported soil, stone or other materials used in the construction of the track. It is also likely that some revegetation work would be required in order to re-establish the former dwarf shrub vegetation, rather than the grassland which may otherwise establish. In drafting an enforcement notice, it is not possible to be too prescriptive about the particular method of removal and restoration. However, it is anticipated that the actual removal of materials and revegetation works could be carried out without the use of heavy machinery or vehicles. Given the remote upland location, the use of vehicles to transport personnel and materials to and from the site would be expected, although small all-terrain vehicles should be adequate for this purpose. With regard to timescale, it is anticipated that the surfacing materials could be removed in a matter of days. Any adverse impact on the moorland habitat or supported species, as a result of enforcement action, is therefore likely to be very limited and short-lived. In these circumstances, it is concluded at Stage 1 of the HRA that the proposed enforcement action to secure removal of the track would be unlikely to have significant effects on the integrity of the SPA or SAC. Thus the action would not be contrary to the provisions of the Habitat Regulations and the EU Habitats Directive, and an appropriate assessment is not considered necessary.

Report Author and Job Title

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