

**7. FULL APPLICATION - 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**

**1. Site and Surroundings**

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.

**2. Proposal**

- 2.1. 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.
- 2.2. 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.

- 2.3. 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.

### **3. RECOMMENDATION**

**That the application be REFUSED for the following reasons:**

- 1. The justification for the access matting advanced in the applicants supporting statement does not amount to exceptional circumstances to warrant development in the Natural Zone. The proposal is therefore unacceptable in principle and contrary to policies L1, LC1, GSP1-3 and paragraph 115 and 118 of the NPPF.**
- 2. The adverse visual impact of the matting itself and the consequent changes to the vegetation along its length arising from its installation significantly harms the valued character and appearance of the moorland landscape contrary to policies L1, LC4, GSP1-3 and NPPF paragraphs 115 and 118.**
- 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.**

### **4. Key Issues**

- The principle of development within the Natural Zone.
- The impact of the track and associated works upon the fabric, character and appearance of this moorland Landscape
- The ecological impacts of the development.

## 5. Relevant Planning History

- 5.1. 2012 It is understood the applicant purchased Midhope Moor around this time for use as a grouse shooting moor. At that time the moor had suffered from some damage along moorland routes due to excessive vehicular use by the previous owners. This had damaged the vegetation and caused rutting/exposure of the underlying peat/substrate. And especially in the vicinity of the application site.
- 5.2. 2014 December - Ranger reports new track works to Monitoring and Enforcement Team.
- 5.3. 2015 January – Update from ranger with photographs reporting plastic matting laid down on route. Furthermore, ranger discussions with Natural England (NE) had ascertained the track was to be temporary and had been consented by NE to enable a gully blocking excavator to access the moor to the west for conservation works.
- 5.4. 2015 June – Monitoring and Enforcement Team write to owner advising that the matting and associated works were unauthorised and requesting an application be submitted by August, pointing out however that the Authority's policies normally seek to prevent any development in the Natural Zone and that enforcement action will be considered if the track remained after that date. Correspondence followed with the agent who initially disputed the need for consent before an application was submitted in 2016.
- 5.5. 2016 Planning application submitted for retention of access matting but subsequently deemed invalid, principally due to inaccurate plans. A revised application was requested with better drawings and a more detailed justification statement, eventually resulting in the current application.

## 6. Consultations

- 6.1. Bradfield Parish Council – Recommend refusal based on the impact on nature, conservation interests and biodiversity opportunities, Landscaping, Risk of flooding, Inappropriate use of plastic on the landscape.
- 6.2. Natural England – No objection - subject to appropriate mitigation being secured. Comment in detail as follows:
- 6.3. *“The planning application documents show that the plastic access mesh was put in place as a temporary feature to support a Higher-Level Stewardship scheme for moorland restoration. Its purpose is to prevent damage to the SSSI/SAC by reducing braiding and erosion from vehicles being driven on to the moor as part of restoration works. The restoration scheme is continuing and is currently expected to be completed within the next 5 years. Removal of the track before these restoration works are completed is likely to result in the SSSI/SAC being damaged again due to the vehicular access required to carry out these restoration works. Once restoration works have been completed, the temporary trackway should be removed and the area restored. Removal and restoration works would be subject to separate Habitats Regulations Assessment.*
- 6.4. *If the Park are considering granting permanent planning consent then we have set out the considerations which they would need to take into account when reaching a decision. The advice below will also allow the Peak District National Park Authority to undertake a Habitats Regulations Assessment (HRA) as competent authority when determining the application*
- 6.5. *We consider that without appropriate mitigation the application would:*
  - *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*

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- *damage or destroy the interest features for which The Dark Peak Site of Special Scientific Interest has been notified.*
- 6.6. *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:*
- 6.7. 1. *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.*
- 6.8. 2. *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. Please refer to our explanatory information for more detail.*
- 6.9. *We advise that an appropriate planning condition(s) or obligation(s) is attached to any planning permission to secure these measures.”*
- 6.10. *Annex A: Explanatory information in support of Natural England’s advice*
- 6.11. *Decommissioning of previous ad-hoc track upgrades*  
*In order for the laying of the mesh to take place, decommissioning of any previous ad-hoc track was required. However, limited information is supplied for the necessary site preparation in advance of laying plastic meshing down. Without more detail of the above requirement to decommission the site, it is not easy to ascertain what the immediate impact would be to the qualifying features of the European sites. Without additional supporting information to dispel any of the potential impacts, at this stage it is considered that there is a credible risk to qualifying features from activities required to decommission existing structures on the track and as such mitigation measures are required.*
- 6.12. *Construction of the mesh track*  
*The considered method of construction may present a credible risk of localised soil compaction, hydrological change and vegetation change to the qualifying features of the SAC. As with decommissioning, mitigation measures are required.*
- 6.13. *Further advice on mitigation requirements*  
*Uncertainty remains over the long-term use of mesh tracks for vehicle access on the impact of qualifying features: namely Blanket bog. In a recent summary report of a study ‘The Impact of Tracks on Blanket Peat Ecohydrology (McKendrick-Smith et.al. 2017a), it is suggested that presence of a stone track can affect soil moisture content, particularly where*

*tracks cut across flow pathways.*

- 6.14. *The age of the track appears to influence the average moisture content of the peat around the track' (McKendrick-Smith et.al. 2017 b). The study also considered the effect of tracks on other hydrological properties including overland flow and it is suggested that there is a higher overland flow immediately in and around a stone track, and where vegetation is least established.*
- 6.15. *Whilst some plastic mesh tracks were included in the wider track survey, the main plastic track research was carried out on a recently laid track over a two-year period. The results of research indicated a non-significant impact of the mesh track on peat hydrological processes. **The evidence base on this type of use is limited and thus we are prepared to accept a time-limited consent which will allow reviews as the evidence base on mesh track usage develops.***
- 6.16. *Continued operation and de-commissioning*  
*Natural England cannot identify any adverse effects on integrity arising from the removal of previous ad hoc track upgrades and the laying of a mesh track for restoration work, provided conditions are set out for monitoring and review of ground conditions and restriction of vehicular use.*
- 6.17. *Our advice on considerations for HRA in relation to long term use of the track is at Annex B. Officer note – A summary is included below with only relevant sections reproduced;*
- 6.18. *Annex B: Advice on long term use of the track and HRA*
- 6.19. *We advise that it is for your authority to determine the need for a track on a long term basis. In coming to this decision, you should consider all options, including other access arrangements that may be available.*
- 6.20. *In coming to a view on the long term status of the track in this location for this application using the existing mesh track, you may find the following advice useful in order to assist you in undertaking a Habitats Regulations Assessment (HRA) as part of any planning consent.*
- 6.21. *Your authority should consider the potential ways in which the plan or project might credibly pose a risk to European Site(s), based on an early and rapid assessment of the location of European Sites, their proximity to the plan or project in question and the nature, type and scale of the plan or project in question.*
- *The available advice provided by Natural England's Impact Risk Zones and /or statutory Advice on Operations for European Marine Sites should be considered as appropriate to inform this initial risk assessment.*
  - *Any future decisions on the potential modification of the track to incorporate a log raft would require clear supporting information that would need to be considered separately to this retrospective planning application.*
  - *The retrospective planning application maintains that the access track provides 'a long term solution to facilitate access across dangerous terrain'. The application states that 'installation of the matting has reduced further erosion and minimised impact and enabled the ground to be restored towards favourable condition'. Additional justification is provided within the application for the use of the route, including continued restoration work for distribution of bags of sphagnum and transferring cut heather for brash from one part of the site to the other. Other uses include: safe access and egress for the Estates staff across difficult terrain, a safe route for gathering stock grazing the moor, grouse moor management, and a linking*

route to access this, and the neighbouring site for wildfire control.

However, the residual and long-term effects of surfacing the access route with plastic matting may include an increased use of this track in preference to others, going beyond the function originally intended in the Higher Level Stewardship Scheme for restoration works. 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. There is then potential for a credible risk to the qualifying features.

- 6.22. Your authority will therefore need to take these considerations into account when considering whether to grant permission for the long term use of the trackway and ensure you have sufficient evidence in order to carry out an HRA to determine no LSE on these N2K sites.
- 6.23. Further general advice on consideration of protected species and other natural environment issues was provided at Annex C and is available on the Authority's web site in the full copy of the response".
- 6.24. PDNPA Landscape Architect – Object – Highly significant impact which is not possible to mitigate.

Summary of detailed comment;

This is development within the natural zone and can therefore only be justified in exceptional circumstances.

I am unsure why a permanent vehicular track is required to facilitate ongoing restoration works – this would only be necessary for the duration of the restoration works?

After the track was installed it was highly visually intrusive and it is accepted that the visual effects of the track have reduced over time; however, the track is still a visually intrusive and incongruous development in the natural zone.

The new track has also not been laid on the route of the previous eroded track – and this eroded route has not been restored. Given that, I do not support the application.

6.25. PDNPA Ecologist:

The track falls within the Peak District Moors SPA, South Pennine Moors SAC and Dark Peak SSSI. According to our records, it is located on modified blanket bog habitat and skirts around a flush to the north of the site. Natural England's letter dated 09/02/2016 provides a breakdown of habitat that the route crosses in more detail, listed as follows:

Dry heath	320m <sup>2</sup>
Dry heath/acid grassland	380m <sup>2</sup>
Bracken	110m <sup>2</sup>
Marshy grassland/juncus flush	360m <sup>2</sup>
Flush/stony ground/river bed	50m <sup>2</sup>
Blanket bog	100m <sup>2</sup>

This totals 1320m<sup>2</sup>. The letter also states that 3500m<sup>2</sup> (including the area of the mesh track) of habitat has been affected by vehicle use along the route.

As well as upland bird interest, there are historical records for water vole along the Mickleden beck.

Natural England's letter dated 13th April 2018 notes that HRA is required, but have no objection to the application, subject to appropriate mitigation being secured, which includes granting permission for use over a limited time period. The letter states that the restoration scheme is continuing and is currently expected to be completed within the next 5 years. However, the application and the letter are unclear as to what works remain and whether alternative methods are available that would not require the use of the track.

A permanent track cannot be justified on ecological grounds as it is not necessary for management of the site in the long term and likely to have a significant effect on a European site. In addition to loss of habitat, it is likely that compaction and hydrological damage has occurred through the construction method that has been used (levelling the route with a tracked vehicle and the inversion technique that was carried out along 45m of the route). Continued use would also exacerbate this problem. It would be difficult to avoid harm through modifications, conditions or restrictions. Conditions on track use in terms of type of vehicle use would be impossible to enforce. As stated in NE's letter, the surfacing may lead to an increased use in preference to other tracks on the site.

Doubling the width of the track to 4m over 20m length is also not acceptable.

A temporary track to facilitate moorland restoration could be acceptable on ecological grounds, but only if:

(a) there are no alternative means of carrying out the restoration, such as airlifting materials into the site, alternative routes etc. The applicant would need to clearly demonstrate that any alternatives could not be implemented at this site, especially given that these techniques have been used on other sites in the Peak District, avoiding vehicular access. Only two alternatives are presented in the application – the creation of a stone track, which is also unacceptable, and leaving the route in its previous state, which would cause further damage. However, stopping vehicle use altogether has not been considered, which would have allowed the site to recover.

(b) the timescales for restoration and retention of the track are clear, and limited. In order to assess this, further information is required on the remaining works that are being completed, along with a clear timescale for these works.

If temporary permission is deemed to be acceptable, then details of the track restoration must also be provided with the application for the restoration of the track, so that this can also be assessed under HRA. Restoration works within 10 metres of the watercourse would need to consider the presence of water voles.

#### PDNPA Rangers (consulted on the bridleway impacts/access issues)

The proposed access route crosses a public bridleway (Cut Gate), popular with walkers, horse riders and cyclists. It also crosses Access Land and is clearly visible from a wide area. The plastic mesh previously laid across the bridleway has already been removed following objections from the Highway Authority.

Although the track/mesh are clearly visible from public access locations and may be considered therefore to have a detrimental visual impact, public access is not impaired directly by the proposal.

It is therefore recommended that efforts are made to ensure that the bridleway surface remains unaffected and visual intrusion is minimised.

#### Suggested mitigation/conditions/footnotes:

- Replace plastic mesh with locally derived stone to a minimal length and width necessary to facilitate an overall reduction in the impacts of both track and vehicle use on the natural beauty and amenity of the area.
- Ensure use of the track by vehicles is minimised to prevent continued collateral

damage to the moor.

- Undertake restoration of associated vegetation and habitat damage.
- Restore natural hydrology

## 7. **Representations**

7.1 At the time of writing 187 letters of objection had been received raising the following summarised issues/concerns:

- The matting has a negative impact on the landscape being an intrusive feature that can be seen from quite a distance crossing this wild valley and its continued existence detracts from the enjoyment of the area and from those particularly using the Cut Gate Path.
- Access route does not appear on OS mapping and only began use by previous owner in 2004/5.
- Conflicts with PDNPA's planning policies for the Natural Zone in which "development is not acceptable other than in exceptional circumstances". There do not appear to be any exceptional circumstances to justify planning permission for this track to be granted.
- PDNPA own policy GSP1 states 'where there are conflicting desired outcomes in achieving national park purposes greater priority must be given to the conservation of natural beauty , wildlife and cultural heritage of the area, even at the cost of some socio-economic benefits.
- Matting has promoted a grassy sward along a strong linear feature through which the matting is visible in many places rather than the typical mosaic of moorland plants.
- The matting has not achieved any purpose that may have been integral to its initial justification.
- The track has clearly enabled extensive habitat damage through continued vehicle usage; furthermore vehicles don't stick to using the track, they are widening its extent by driving alongside it where it crosses the stream.
- It is likely to further contribute to the already existing problem of peat and sandstone erosion in the area.
- Why allow vehicles to damage scenery and then allow roadway to be built?
- Conveys a message that those charged with protecting the quality and character of the landscape are allowing it to be spoiled; an order should also be made by the Peak Park Planning Authority to remove the plastic track (including sub-base) and restore the moorland to its former or an improved state.
- It is not necessary, impinges on the natural wild nature of the moorland, affects a natural watercourse, affects the natural habitat of the landscape.
- Threat to wildlife / detrimental to the presence of wild birds due to increased access through use of the track.
- does not enhance moorland management; will facilitate an intensification of management of the area to the detriment of the peat.
- The materials used in forming the track are not appropriate to this environment and are an eyesore. They add to the plastic pollution in the environment.

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- the track has not been installed, as is claimed by the applicant, to facilitate habitat restoration works, it has been installed to get to shooting butts, which themselves have not received the required planning consent.
  - The description of the track in the application does not accurately describe what is on site; The forms are incorrect, the site is near water, Mickledon Beck and Bull Clough that run into The Little Don
  - The track does not comply with the EU Habitats Directive and the EU Birds Directive, does not benefit the SAC/SPA/SSSI and indeed is adversely affecting the integrity of these designations and is not necessary for site management
  - The information provided does not detail how long the mesh product can be expected to last, or how it can be removed once it has reached the end of its design life. With no commitment to remove the track at the end of the design life, it is assumed that this track is intended to be a permanent feature.
  - Some of the matting is breaking up and will run off into the water course and cause pollution in the water system. This is completely contrary to current views on the impact of plastics on the environment.
  - Matting is unsafe to walk on, causing a slip and trip hazard.
  - Question durability of the matting which is breaking up and is in itself inappropriate plastic in the environment and this has detrimentally affected moor and watercourse.
  - It is a SSSI and therefore should be absent of vehicle access.
  - The track across open moorland is not required for the benefit of moorland restoration as the original scheme was completed some years ago. The route should have been reinstated on completion of the project, there is no further requirement of an artificially surfaced track to aid moorland management.
  - National Trust and Moors for the Future carry out a great deal of moorland restoration work without the need to report to plastic tacks and so question the validity of the original justification
  - The matting is far too heavy gauge to allow grass to regenerate, the matting is inhibiting its growth and recovery, causing more damage and erosion to the peat bog and sensitive habitat it is supposed to protect.
  - The 2013 Natural England HRA makes no mention of the installation, use, or removal/reinstatement of the polyethylene mesh trackway.
  - Supportive Statement mis-represents NE's HRA. This HRA specifically considers the burning and grazing management of the moor under the HLF management agreement and makes no mention of the presence, use or likely impacts of the access track.
  - New lines of shooting butts have appeared close to the western end of the track. While it may have facilitated some restoration work its primary purpose is clearly to provide vehicle access to the shooting butts. Also of note the locations of the current Butts are not the same as recorded on early versions of OS maps for this area. Is permission required, and was it sought, for these?

- From Natural England correspondence the bulk of conservation work and access by large machinery had been completed before the first application in 2016.
- Feel previous objection letters to the 2016 application should be included.
- access can be gained by other means albeit may take a bit longer
- This issue has been rumbling now over a couple of years. The Park are not giving the thought and backing to stop this catastrophic degeneration of this special area. Strongly recommend the PDNPA refuses it and begins enforcement action to ensure that the moor can be properly restored.
- Concern about the growing creep of routes in the Park and unease at Authority's response; granting retrospective permission here could set a precedent for future developments.
- Application states another purpose is to aid rescue. However none of the Mountain Rescue Teams are aware of any rescue-related vehicle access on this track. Woodhead MRT - the team who mainly cover this area - will only drive up as far as North America which is over one mile away to the north. As in any other area of the Peak they walk in and out (or heli-medpatients where needed?)

## 8. **Policies**

8.1. National Park designation is the highest level of landscape designation in the UK. The Environment Act 1995 sets out two statutory purposes for national parks in England and Wales:

- Conserve and enhance the natural beauty, wildlife and cultural heritage
- Promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public

When national parks carry out these purposes they also have the duty to seek to foster the economic and social well-being of local communities within the national parks.

### National Planning Policy Framework

8.2. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. The Government's intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority's Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF.

8.3. Paragraph 115 of the NPPF states that *'great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas and should be given great weight in National Parks and the Broads.'*

8.4 Paragraph 118 of the NPPF states that ...*“When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:*

- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- *proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest;*
- *development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;*
- *opportunities to incorporate biodiversity in and around developments should be encouraged;*
- *planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss; ....”*

#### Development Plan policies

- 8.5 Policy GSP1 sets out the broad strategy for achieving the National Park’s objectives having regard to the Sandford Principle, (that is, where there are conflicting desired outcomes in achieving national park purposes, greater priority must be given to the conservation of the natural beauty, wildlife and cultural heritage of the area, even at the cost of socio-economic benefits). GSP1 also sets out the need for sustainable development and to avoid major development unless it is essential, and the need to mitigate localised harm where essential major development is allowed.
- 8.6 Policy GSP3 sets out development management principles and states that all development must respect, conserve and enhance all valued characteristics of the site and buildings, paying particular attention to, amongst other elements, impact on the character and setting of buildings, scale of the development appropriate to the character and appearance of the National Park, design in accordance with the National Park Authority Design Guide and impact on living conditions of communities.
- 8.7 Policy DS1 sets out the development strategy within the National Park and the types of development which are acceptable in countryside outside the Natural Zone and within named settlements.
- 8.8 Policy L1 identifies that development must conserve and enhance valued landscape character and valued characteristics, and other than in exceptional circumstances, proposals in the Natural Zone will not be permitted.
- 8.9 Policy LC1: Conserving and managing the Natural Zone – sets out that;
- (a) The exceptional circumstances in which development is permissible in the Natural Zone are those in which a suitable, more acceptable location cannot be found elsewhere and it is essential:

- (i) in the national interest; or
  - (ii) for the management of the Natural Zone; or
  - (iii) for the conservation or enhancement of the National Park's valued characteristics.
- (b) Development that would serve only to make land management or access easier will not be regarded as essential.
- (c) Where exceptional circumstances prevail, the need for new or significantly enlarged buildings or structures will, nevertheless, be rigorously examined.
- (d) Where development is permitted:
- (i) detrimental effects must be minimised by the use of, for example: appropriate siting; landscaping; layout and design; materials and construction; and
  - (ii) particular attention will be paid to matters such as: scale; intensity; hours of operation; vehicle movements; arrangements for parking; storage of vehicles, equipment and materials;
- and where necessary and appropriate:
- (iii) permitted development rights will be excluded by means of planning conditions; and
  - (iv) permission will initially be restricted to a period of (usually) 2 years, and except where it is essential in the national interest, further permission will not be granted if arrangements for minimising the development's impact prove to be unacceptable in practice; and
  - (v) permission will initially be restricted for the personal benefit of the occupant.

8.10 Policy LC17: Sites, features or species of wildlife, geological or geomorphological importance states that

- (a) For statutorily designated sites, features or species of international, national or regional importance:
- (i) development applications in the vicinity of designated sites will be carefully considered to assess the likelihood of adverse effects; and
  - (ii) development considered likely to have an adverse effect will be treated as if that effect is established; and
  - (iii) in particular, development having a significant effect on the ecological objectives or integrity of a Special Protection Area or Special Area of Conservation will not be permitted unless there is no alternative site or better practical approach available, and it must be carried out for imperative reasons of overriding public interest. Where a site hosts a priority habitat or species, development will not be permitted unless there is no alternative and it is required for reasons that relate to human health, public safety, or beneficial consequences of primary importance to the environment, or for other imperative reasons of overriding public interest determined by the European Commission,
- (b) Development that would detrimentally affect the value to wildlife of established patterns of wildlife stepping stones and corridors will not be permitted.
- (c) Development will not be permitted unless adequate information is provided about its likely impact on the special interests of a site. In particular, if development is likely to affect a

designated site or species, information should include:

- (i) an assessment of the nature conservation importance of the site including a habitat/vegetation map and description (with identification of plant communities and species), and a description of fauna and geological/geomorphological features; and
- (ii) an assessment of the direct or indirect effects of the development including pollution, changes in hydrology, associated visitor pressure, and changes to the ease of management of habitats; and
- (iii) details of any mitigating measures.

8.10 The Authority's Landscape Strategy and Action Plan are relevant offer further guidance on the application of these policies.

## 9.0 **Assessment**

### 9.1. Principle of development in the Natural Zone.

The application site lies within the Dark Peak Open Moorland area of the National Park which is designated as Natural Zone. In this area, Development Plan Core Strategy Policy L1 states that '*other than in exceptional circumstances, proposals for development in the natural zone will not be permitted*'. The exceptional circumstances in which development can take place in the natural zone are set out in saved Local Plan policy LC1. It should be noted that the local plan policy has been reviewed in the Development Management Policies DPD with the main change being the omission of the exceptional circumstance for development that is essential "in the national interest."

The exceptional circumstances are therefore "*those in which a suitable, more acceptable location cannot be found elsewhere and it is essential: (ii) for the management of the Natural Zone; or (iii) for the conservation or enhancement of the National Park's valued characteristics*". It goes on to state in LC1(b) that 'Development that would serve only to make land management or access easier will not be regarded as essential.' The key issue is therefore whether there are any exceptional circumstances in this proposal to justify retention of the matting and if so, whether the proposal accords with other policies in the plan which seek the normal high standard of detailed design and that it respects, conserves and where possible enhances the landscape and other valued characteristics of the area.

### 9.2 Consideration of the applicants case for retention of the matting

Notwithstanding the emerging DMP, no case has been made that retention of the matting is essential development in the national interest (LC1(i)). Neither has a case been advanced that it is essential for the management of the Natural Zone (LC1(ii)).

9.3 The explanation set out in the applicants supporting statement is that the matting was carried out to facilitate safe access and egress to land west of Mickleden Beck whilst undertaking moorland restoration works agreed under a Higher Level Stewardship agreement consented in 2014 and for works taking place between 2014 - 2017. Furthermore, the supporting statement states that retention of the matting is required to facilitate future land management.

9.4 Although the matting may have been consented by Natural England in respect of access to carry out those beneficial works to enhance the condition of the moorland, their consent does not override the need for other consents that may be necessary under other legislation in this case the need for prior planning permission before carrying out development.

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- 9.5 Clearly the enhancement works which have been carried out to the moorland are welcomed as they accord with national and local policies seeking to bring the moorland back into favourable condition. The laying of the matting and the associated groundworks to facilitate “safe access” have however damaged part of the fragile moorland habitat natural zone and in themselves are not works that are essential to the conservation or enhancement of the natural zone (policy LC1(iii)). They therefore would not normally warrant any exception to the strong presumption against development in the Natural Zone.
- 9.6 The only way the matting could be considered for retention, even on a temporary basis (although the application itself seeks a permanent consent) would be on the basis of a very clear and convincing essential need case that it was constituted the only way that the conservation and enhancement works to the moorland could be carried out. However, the retrospective nature of the work is such that it has pre-empted any proper consideration of alternatives that would normally occur through engagement with officers prior to development through the pre-application process.
- 9.7 The supporting statement advanced to explain the need for the matting and the case for its retention is considered by officers to be weak, despite very clear officer steer given to the applicant about the very strong policy presumption against development in this landscape and hence the need in any application for clear justification. The statement simply states that the matting was needed for safe access and egress to facilitate the 2014-17 restoration plan on land west of Mickleden Beck and for future land management purposes. That period has passed and no details have been submitted in the statement to confirm if any further moorland conservation/enhancement works are outstanding or planned. The statement only makes passing reference to the intentions of the owner being keen to expand upon past conservation works subject to the matting remaining and that if it has to be removed, further works will have to be curtailed. The response from Natural England seems to suggest further on-going works are taking place, hence their support for a 5 year retention. In the absence of any clear detailed information from either party as to what these works actually are, officers can only conclude that insufficient information exists to properly consider the need for any exception.
- 9.8. The retention of the access matting long term for the “future land management purposes” as the agent sets out (for estate staff daily duties, stock monitoring and gathering and access for fire management) would be unacceptable in principle by virtue of being contrary to saved Local Plan policy LC1(b) and the emerging Development Management Policy DMC2. These policies both state that development that would serve only to make land management or access easier will not be regarded as essential and thereby do not benefit from being considered an exceptional circumstance to permit development in the Natural Zone.
- 9.9 Consequently whilst officers agree that the previous conservation works already carried out to the moorland west of the site have benefitted the valued characteristics of this area, it is clear that the development comprised of this matting and the underlying ground works cannot be accepted in principle under policies L1, LC1 and the emerging DMC2, given the whole purpose of the matting was to make access easier, notwithstanding the fact that it was used in connection with beneficial moorland restoration works. Furthermore given the experience of other enhancement works being carried out without the need for such access tracks the consideration of alternatives in the applicants supporting statement is limited. The suggested two alternatives dismissed in the statement of essentially either doing nothing or to lay a stone access track are of course both harmful and unacceptable.

## 10. Ecological Considerations

- 10.1 The application site lies within the SAC, SPA and is part of an SSSI. Policy L2 in the Core strategy covering sites of biodiversity or geodiversity importance states that development must conserve and enhance such sites and that other than in exceptional circumstances development will not be permitted where it is likely to have an adverse impact on such sites. Furthermore, saved local plan policy, LC17 seeks to protect sites, features or species of wildlife, geological or geomorphological importance.
- 10.2 The Authority's Ecologist refers to Natural England's letter which states that the restoration scheme is continuing and currently expected to be completed within the next 5 years, but notes that it is unclear as to what further conservation works remain and whether alternative methods are available that would not require use of the track. The Planning officer has already noted above that the supporting statement from the applicant is equally unclear.
- 10.3 The Ecologist concludes the proposed permanent track cannot be justified on ecological grounds as the development is not necessary for the management of the site in the long term and is likely to have a significant effect on a European site. The doubling the track width to 4m at the western end is also considered unacceptable. In addition to the loss of habitat, the ecologist considers that it is likely that compaction and hydrological damage has occurred through the construction method and that continued use would exacerbate this problem. She concludes it would be difficult to avoid harm through modifications, conditions or restrictions and that any conditions to restrict the type of vehicles used would be impossible to enforce.
- 10.4. In her response the Ecologist has stated that a temporary track could be justified on ecological grounds BUT only if there are no alternative means of carrying out the restoration such as airlifts or alternative routes etc. Only two alternatives are stated in the application to have been considered by the applicants, a stone access track or doing nothing and leaving the route in its previous state, both clearly unacceptable alternatives that would cause obvious further damage. In this case the application is for permanent retention of the track and whilst it is within the remit of the planning authority to consider a temporary consent, for the reasons outlined above this would equally be unacceptable in principle as well as on landscape and ecological harm grounds in these circumstances.

## 11. Design and landscape Impact considerations

- 11.1 The matting is a green coloured heavy-duty polyethylene open weave meshing designed to permanently reinforce parking areas or heavy pedestrian routes. The product is designed to be laid on the ground with grass normally being allowed to grow up and 'knit' with and around the mesh, reducing its visual impact and increasing its strength and ability to resist wear and tear of the ground. When it was laid it was a bright, almost turquoise green colour which in 2015 was an extremely visible feature in the landscape running almost from horizon to horizon in the field of view from the Cut Gate path. In this Dark Peak open Moorland Landscape that totally surrounds the site the matting stood out as a stridently different and significantly intrusive and incongruous man-made feature causing significant harm to the scenic quality of the moorland landscape.
- 11.2. Since the matting was laid, the colour has faded a little and due to the applicants seeding, liming and fertilising regime, the underlying vegetation (mainly grass) has grown through the open weave to varying degrees. The net result today is a mixed appearance along the length with large areas of lush green grass across the full width, whereas other areas relatively bare of through growth with the matting are the predominant feature and in other sections, in addition to the grass sward, the heather is growing through. In the boggy areas near the beck, sections of the matting have completely broken apart and sunk into deep ruts formed as a result of vehicle usage. Consequently, as set out in the applicant's statement, there is no doubt that any continued use will require the use of the log rafts anchored over the matting, which, although a natural product, will nevertheless also have an adverse visual

impact on the landscape.

- 11.3. Whilst it has to be acknowledged that the matting has been obscured to a degree over time by the vegetation since it was first laid in 2014, nevertheless it can still be clearly seen over long sections and in close views where it is it is an incongruous and intrusive feature in itself on an otherwise open moor. Even where the matting has been largely hidden by the vegetation the resulting route appears mainly as a grass rich, green swathe running through the very contrasting darker heather moorland vegetation either side of the route. The difference in appearance is marked and this green 'drive' route has become a landscape feature which in itself detracts considerably from the established and valued character and appearance of the dark peak moorland.
- 11.4. Furthermore, it was noticeable on each officer site visit that the compaction of the route appeared to be making the route wetter than the adjacent land and thus helping the lush grass growth which in turn was seemingly drawing sheep to the route. These were clearly grazing the grass and other young plants growing through the matting and over most of the length were keeping it generally to a low sward. Other than the section west of the beck this leads to concerns that after nearly four years the underlying vegetation has still failed to grow sufficiently through and provide any reasonable mitigation of the routes appearance by matching the adjacent heather moorland vegetation. Consequently, the officer conclusion is that the appearance of the matting covered route is wholly unacceptable in terms of its landscape impact. It is therefore contrary to both adopted planning policies and the Peak District National Park Landscape Strategy and Action Plan which seek to protect the valued characteristics of the Dark Peak moors, especially in terms of its open undeveloped character and its sense of remote wildness and tranquillity.
- 11.5. This harm to landscape character is therefore wholly contrary to adopted policies L1, LC4, GSP1-3 and NPPF paragraphs 115 and 118.

#### Highway/Public Right Of Way Considerations

- 11.6. These relate mainly to the impact of the matting upon the public right of way known as Cut Gate Path crossing the line of the matting, although the whole of the area is access land. When installed the matting was physically laid over the Cut Gate path. However, following representation from the public to the Highway Authority, the applicants were required to remove it from the path. It was therefore cut back to finish on either side away from the line of the bridleway and the subsoil/gravel material was removed that had been used to infill the recessed bridleway and create a 'level' surface with the matting either side. The proposal as so amended no longer raises any rights of way concerns in relation to the Cut Gate path.
- 11.6 Some concerns have been raised from objectors regarding the difficulty of walking upon the matting given that it is within open access land. Having walked the matting on a few occasions, the officer view is that the matting has largely created an easier route to walk upon compared with the adjacent heather moorland, apart from the steeper sections which are a significant slip concern, especially if conditions are wet. However, given the area covered in the context of the wider moor, little weight has been attached to this compared to the substantive objections outlined above.

#### **12.0 Conclusion**

- 12.1 The laying of the matting and its associate groundworks has caused clear physical and visual harm to the moorland landscape which is continuing. The case advanced by the applicants to support the need to retain the development lacks clarity and detail and fails to demonstrate any overriding essential need to warrant any exception to the very strong presumption in national and local policy against development in this highly protected Natural Zone landscape.

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13.1 Furthermore, retention of the development, even on a temporary basis, would perpetuate the ecological harm already caused without good reason. Any approval in these circumstances would therefore set a clear precedent for other similar development in many comparable areas of moorland across the National Park that could individually and cumulatively undermine the key landscape conservation purpose of the National Park. This would be against a background where other equally important moorland conservation and enhancement works and indeed land management have been successfully undertaken without the need for reinforced vehicular access routes.

13.2 For all the above reasons, the application is recommended for refusal.

14.0 **Human Rights**

14.1 None.

15.0 **List of Background Papers** (not previously published)

None

**Report Author and Job Title**

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