

## **DELEGATED ENFORCEMENT REPORT**

**Case Officer:** Andrew Cook

**P File No:** 4842

**Enforcement Ref:** 15/0057

**Site:** Land at Mickleden Edge, Midhope Moor, Bradfield

**Date of Report:** 19 September 2018

**Core Strategy Policies:** GSP3, L1, L2.

**Local Plan Policies:** LC1, LC17.

**List of Background Papers (not previously published):** Nil

### **1. Introduction:**

- 1.1 This report seeks authority to commence formal enforcement action in respect of the construction of a surfaced track.

### **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. The land is also designated as a Special Area of Conservation (SAC), as defined in the European Union's Habitats Directive (92/43/EEC), and a Special Protection Area (SPA) under the European Union Directive on the Conservation of Wild Birds.

- 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.
- 2.3 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.

### **3. Relevant history:**

- 3.1 2016 - Planning application submitted for retention of access matting but subsequently deemed invalid, principally due to inaccurate plans.
- 3.2 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.'

### **4. The breach of planning control:**

- 4.1 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 or early 2015 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 the underlying vegetation has grown through to varying degrees along its length.
- 4.2 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.
- 4.3 It is considered that the works carried out to surface the route, including the ground preparation, laying of the matting and the more recent overlaying of log 'rafts' along some sections, amounted to an engineering operation and thus constituted 'development', as defined in section 55 of the Town and Country Planning Act 1990 ("the 1990 Act").
- 4.4 Class E of Part 9 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO") permits the carrying out on land within the

boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way. In this case it may be argued that, when the works were carried out in 2014, the route in question was a private way and that the works amounted to maintenance or improvement of the way. It is understood that prior to the surfacing works taking place in late 2014, there was a pre-existing route comprising of an un-surfaced track which had become rutted and eroded through vehicle use. However, for most of its length, the current surfaced track runs alongside the previous route. For this reason, the permitted development rights in Part 9 would not apply as the works must take place within the boundaries of the private way in order to qualify as permitted development.

- 4.5 If the former route was a private way, and the works had taken place within its boundaries, the works did not, in the Authority's view, constitute maintenance or improvement so could not benefit from the provisions in Part 9. In coming to this conclusion, the Authority has relied on Counsel's opinion that where there is a fundamental alteration to the character of a private way resulting from the carrying out of surfacing works, of the sort carried out here, then it is possible that those works would fall outside the scope of Part 9. This could be because of not only the fundamental change in construction and surfacing of the way but the change in the appearance of the way in the landscape. In other words, environmental amenity can be an aspect of 'character' and therefore can be a factor in considering whether the character of the way is so changed by the works to be something different, thus taking the works outside the ambit of Part 9.
- 4.6 It is considered that the works undertaken in 2014 resulted in a significant change in the construction and surfacing of the route and in its appearance in the landscape compared to its condition immediately prior to the works being carried out. As a result, it became significantly more visible in the landscape and has had a greater detrimental impact on the character and appearance of the area. The significant change in the character and appearance of the route has been exacerbated by the recent addition of log 'rafts'. It follows that the works are beyond the scope of 'maintenance or improvement' in Part 9 and that express planning permission should have been sought and secured.
- 4.7 A further consideration with regard to permitted development rights is that regulation 75 of the Conservation of Habitats and Species Regulations 2017 states as follows:

**"General development orders**

75. It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority)."

In this case, the Authority considers that the development has had a significant effect on a European site (that is, an SPA and SAC) and that the development is not directly connected with or necessary to the management of the site. As written notification of the Authority's approval under regulation 77 was not sought or received before the development was begun, the condition set out in regulation 75 has not been met. For this reason, the development could not qualify as permitted development under the GPDO.

4.8 As referred to in paragraph 3.2, above, a retrospective planning application for the laying of plastic access mesh to facilitate vehicular access was refused in June 2018. On the application form that was submitted with the application the applicant stated that work on the development started on 1 December 2014. The timing of the works is corroborated by photographs on the Authority's file which it is understood were taken on 30 November 2014 and which show that on that date the surfaced track, consisting of geotextile matting, had not been laid. A later set of photographs, that it is understood were taken on 3 January 2015, show only part of the route surfaced with geotextile matting so the works were not complete at that time. In the light of this information, the Authority considers that the development was not substantially complete more than four years ago so it is not immune from enforcement action by virtue of section 171B of the 1990 Act.

## **5. Assessment of Expediency**

5.1 Section 172(1) of the 1990 Act states as follows:

(1) The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them—

(a) that there has been a breach of planning control; and

(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

5.2 In order to make an assessment as to whether it would be expedient to take enforcement action against the unauthorised development it is necessary to consider any harm that is caused and whether the development is in accordance with the relevant national and local planning policies.

5.3 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

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

### **Revised National Planning Policy Framework**

5.5 The Revised National Planning Policy Framework (the Framework) was published on 24 July 2018. The Government's intention is that the document should be considered to be 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.

5.6 Paragraph 170 of the Framework says that the planning system should contribute to and enhance the natural and local environment by (amongst other things) protecting and enhancing valued landscape and sites of biodiversity value.

5.7 Paragraph 171 says that Plans should: distinguish between the hierarchy of international, national and locally designated sites and take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure.

5.8 Paragraph 172 says 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 these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should also be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited.

5.9 Paragraph 174 says that to protect and enhance biodiversity and geodiversity, plans should:

(a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and

(b) Promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

5.10 Paragraph 207 states as follows:

*"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."*

### Development Plan

5.11 Core Strategy policy L1 says that all development must conserve and enhance valued landscape character as identified in the Landscape Strategy and Action Plan and other valued characteristics. This policy also states that other than in exceptional circumstances, proposals for development in the Natural Zone will not be permitted. The Natural Zone, as defined in the Development Plan, covers wilder areas with minimal obvious human influence whose 'more natural' beauty it is, in the opinion of the Authority, particularly important to conserve. The unauthorised development in this case is within the Natural Zone.

5.12 Policy L2 states, amongst other things, that development must conserve and enhance any sites, features or species of biodiversity importance and where appropriate their setting. It goes on to say that other than in exceptional circumstances development will not be permitted where it is likely to have an adverse impact on any sites, features or species of biodiversity importance or their setting that have statutory designation or are of international or national importance for their biodiversity.

- 5.13 The exceptional circumstances in which development can take place in the Natural Zone are explained in Local Plan policy LC1. That policy states that the exceptional circumstances are those in which a suitable, more acceptable location cannot be found elsewhere and the development 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.
- 5.14 Policy LC1 goes on to say that development that would serve only to make land management or access easier will not be regarded as essential.
- 5.15 Policy LC17 sets out the detailed policy for sites, features or species of wildlife importance. Where there are statutory designations of international, national or regional importance it requires development applications to be carefully considered to assess the likelihood of adverse effects and states that development considered likely to have an adverse effect will be treated as if that effect is established. In particular, the policy says, 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. Policy LC17 also sets out the information required to be submitted in relation to development on statutorily protected sites or development likely to affect a protected site or species.
- 5.16 Part 2 of the Local Plan for the Peak District National Park, which the Authority is calling the Development Management Policies Document ("the DMPD"), will guide and manage development across the National Park alongside our adopted Core Strategy up to 2026 and will replace the remaining policies in the Local Plan adopted in 2001. Following the consultation stages the published version of the DMPD and Policies Map, along with an addendum of modifications, was submitted to the Secretary of State on 19 February 2018. An inspector appointed by the Secretary of State conducted an examination into the DMPD between 24 and 30 May 2018.
- 5.17 Policy DMC1 of the DMPD states, amongst other things, that development which would not respect, would adversely affect, or would lead to undesirable changes in landscape character or any other valued characteristics of the site and the area will not be permitted.
- 5.18 Policy DMC2 states, amongst other things, that 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 the development is essential: (i) for the management of the Natural Zone; or (ii) for the conservation and/or enhancement of the National Park's valued characteristics. It also states that development that would serve only to make land management or access easier will not be regarded as essential.
- 5.19 Policy DMC 11 requires, amongst other things, that proposals should aim to achieve no net loss of biodiversity as a result of development. In considering whether a proposal conserves and enhances sites, features or species of wildlife importance all reasonable measures must be taken to avoid net loss by demonstrating that the following matters have been taken into consideration:
- (i) enhancement proportionate to the development;
  - (ii) no alternative sites exist that cause less harm;
  - (iii) adverse effects have been avoided;
  - (iv) appropriate mitigation; and
  - (v) in rare cases, as a last resort, compensation measures to offset loss

5.20 The Peak District Landscape Strategy and Action Plan (2009), is one of several strategies which set out in more detail how the National Park Management Plan will be delivered. It is underpinned by a Park-wide Landscape Character Assessment. Although the Strategy and Action Plan are not formally part of the Development Plan, the Core Strategy states (in paragraph 9.4) that it forms a strong material consideration when making planning decisions. The DMPD introduces a 'Landscape First' approach, using the Landscape Strategy and Action Plan to assess whether the character and quality of the landscape will be conserved and enhanced by a development. The development which is the subject of this report is within the Dark Peak Landscape Character Area and straddles two Landscape Character Types, namely Moorland Slopes and Cloughs and Open Moors.

#### Application of policies

5.21 It is considered that the three key issues in this case are, firstly, whether the unauthorised development causes harm to the character and appearance of the landscape; secondly, whether any of the exceptions for development in the Natural Zone would apply and, thirdly, whether the development is compatible with the policies on biodiversity in light of the statutory designations that are in place.

#### Issue 1: Landscape character and appearance

5.22 The development is situated in an elevated and prominent position in an area of very attractive open moorland and is clearly visible from the Cut Gate bridleway. As the public has a right to roam on foot, without being confined to public rights of way, the development is also visible to the public from a much wider area. When it was laid it was a bright, almost turquoise green colour which was an extremely visible feature in the landscape running almost from horizon to horizon in the field of view. In this open moorland landscape, 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.

5.23 Since the matting was laid, the colour has faded a little and due to the seeding, liming and fertilising regime followed by the owner, the underlying vegetation (mainly grass) has grown through the open weave to varying degrees. The net result is a mixed appearance along the length with some sections of lush green grass across the full width, whereas other sections are relatively bare of through growth with the plastic matting being the predominant feature. In other sections, in addition to the grass sward, heather is growing through.

5.24 Whilst it must 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 an incongruous and intrusive feature 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 strip has become a landscape feature which detracts considerably from the established and valued character and appearance of the dark peak moorland. The harmful impact of the development has been exacerbated by the recent addition of log 'rafts'.

5.25 In conclusion, the unauthorised development fails to respect or enhance the character of its surroundings and has a significant harmful effect on the character and appearance of

the landscape in this part of the National Park in conflict with the relevant policies – notably paragraph 115 of the NPPF, Core Strategy policy L1 and DMPD policy DMC1.

## Issue 2: Natural Zone

- 5.26 As referenced above, the Authority's policies state that other than in exceptional circumstances, proposals for development in the Natural Zone will not be permitted. The exceptional circumstances are set out in Local Plan policy LC1 and refined in the DMPD. In policy DMC2 of the DMPD the national interest exception, set out in policy LC1, is not included.
- 5.27 The explanation set out in the supporting statement that was submitted with the recent planning application is that the matting was laid 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 and 2017. Furthermore, the supporting statement states that retention of the matting is required to facilitate future land management. It is understood that the surfacing work was consented by Natural England in association with the moorland restoration works. These restoration works are welcomed as they accord with national and local policies seeking to bring the moorland back into favourable condition. It is very likely that the existence of a newly-surfaced route, which could be used all year round, will have reduced vehicle erosion – both on the route itself and on the adjacent areas. That is a benefit in terms of landscape character and appearance, although it may have been possible to achieve that result through other means. It is worth noting, for example, that significant moorland restoration works have been carried out across the Peak District and South Pennines by the Moors for the Future Partnership without the necessity for formal tracks. In any event, the restoration works are now complete and the laying of the matting and the associated groundworks to facilitate "safe access" are not works that are essential to the conservation or enhancement of the natural zone or for the conservation and/or enhancement of the National Park's valued characteristics.
- 5.28 Notwithstanding the emerging DMP, no case has been made that retention of the matting is essential development in the national interest
- 5.29 For these reasons, it is considered that the development does not fall within the exceptions set out in policy LC1 of the Local Plan, or as refined in the DMPD. It therefore conflicts with the general presumption against development in the Natural Zone as set out in core strategy policy L1.

## Issue 3: Biodiversity

- 5.30 Midhope Moor is identified as of national and international importance for its biodiversity and this is recognised in its designation as a SSSI, SPA and SAC, as referred to above. The SPA is classified under Article 4.1 of the Wild Birds Directive for breeding population of Merlin and Golden Plover. As well as upland bird interest, there are historical records of water vole along Mickleden Beck.
- 5.31 According to the Authority's records, the track is located on modified blanket bog habitat and skirts around a flush to the north of the site. Natural England have provided a detailed breakdown of habitat that the route covers, 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	360m2
Flush/stony ground/river bed	50m2
Blanket bog	100m2

- 5.32 The Authority's ecologist, when consulted on the recent retrospective planning application, stated that a permanent track could not be justified on ecological grounds as it was not necessary for management of the site in the long term and was likely to have a significant effect on a European site. She stated that, in addition to loss of habitat, it was likely that compaction and hydrological damage had occurred through the construction method that had been used (levelling the route with a tracked vehicle and the inversion technique that was carried out along 45m of the route). She advised that continued use would also exacerbate this problem. She considered that it would be difficult to avoid harm through modifications, conditions or restrictions and that restrictions on track use in terms of type of vehicle use would be impossible to enforce. She also referred to a comment by NE that the surfacing may lead to an increased use in preference to other informal tracks in the area.
- 5.33 In her response the Ecologist also stated that a temporary track to support moorland restoration works could be justified on ecological grounds but only if there were no alternative means of carrying out the restoration, such as airlifts or alternative routes etc. However, no detailed analysis of alternatives appears to have been carried out and, in the absence of evidence to the contrary it must be assumed that the track is intended to be a permanent development. The recent application sought permanent retention of the track.
- 5.34 In its consultation response to the recent planning application, Natural England indicated support for temporary retention of the track, in connection with moorland restoration works, subject to appropriate mitigation being secured. As indicated above, however, no details of future restoration works or a likely timescale have been provided. Natural England also advised that if the Authority was considering granting permanent permission then, without appropriate mitigation, the development would have an adverse effect on the integrity of the SAC and the SPA and would damage or destroy the interest features for which the Dark Peak SSSI has been notified.
- 5.35 In conclusion, it is considered that the unauthorised development has resulted in an adverse impact on the designated site and is thus in conflict with the relevant policies – notably paragraph 115 of the NPPF, Core Strategy Policy L2 and Local Plan policy LC17.
- 5.36 Enforcement action to secure removal of the track and appropriate restoration has the potential to affect the special interest features of the SPA and SAC. Under the Habitats Directive (92/43/EEC), the Authority is required to consider whether the potential effects are significant enough to mean that the works required by the enforcement notice should be subject to an appropriate assessment. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'), which implement the Directive in the UK, refer to this as the 'Likely Significant Effect Test'. On 14 September 2018, the Authority's Planning Committee considered a report on this and resolved as follows:
- 1 The unauthorised development 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.
  - 2 The proposed enforcement action to secure removal of the track and 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), is not likely to have a significant effect 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 previous 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.

### **Human Rights and Equalities Issues:**

In determining whether to take enforcement action, consideration must be given to the rights and freedoms afforded by the Human Rights Act 1998. Planning Practice Guidance indicates that enforcement action is compatible with the Convention on Human Rights.

#### **Which and Who's Human Rights are affected?**

<b>Article no.</b>	<b>Does the decision affect a right</b>	<b>Yes</b>	<b>No</b>	<b>If so, how and who is affected</b>
Article 6	Have the owners had a fair trial?		No	The recipient of an enforcement notice has a right to appeal to the Planning Inspectorate on the planning merits. It is only if that is not done, or the appeal is lost, and the enforcement notice is not complied with that a criminal offence is committed. A case would then be brought before the Court for a trial (the Magistrates initially), and there is a right of appeal from the decision.
Article 8	Would the action interfere with		No	

	anybody's private or family life?			
Article 1 of the First Protocol	Disrupting someone's peaceful enjoyment of their possessions?		No	
Other Articles			No	

**Are there any exceptions to the rights affected as detailed above?**

Relevant Article	Exception
Article 6	The recipients of the notice will not have had the right to a fair trial with the service of the notice; however, the recipient retains the right to appeal the Notice to the Planning Inspectorate on the planning merits.
Article 8	The Authority is entitled to interfere with this right under the Planning Acts where this action is necessary in a democratic society. In this case, the exception is in the protection of the health, rights and freedom of others.
Article 1 of the First Protocol	The Authority is entitled to interfere with this right if it is in the public interest and subject to the conditions provided by law. The Authority is entitled to enforce under planning law to control the use of the Land in the public interest.

**How important is the interference with the Human Right? What is the balance of competing interests?**

In favour of proposed course of action	Views of other parties
The action is necessary to safeguard the Planning Acts and control development which if left unchecked will result in harm to the valued characteristics of the National Park.	The legitimate expectation of the public that the Authority will ensure that unauthorised development is controlled and its impact mitigated against. The recipient may argue that there is a sufficient justification to support the alleged breach and provision for this is afforded under the appeal process, as this relates to the planning merits.

**Recommendation:**

**That formal enforcement action be AUTHORISED to secure the following:**

**The steps below ((a) to (f), inclusive) shall only be carried out between 1 September and 28 February, in the following year:**

- a) Place between 30 and 35 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 20 and 50 metres apart with each bag or pile consisting of between 1 and 2 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 the 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. Any equipment or machinery used in the removal shall at all times during the removal works be stationed on the Land. 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.

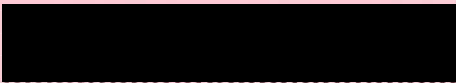
- c) Following the completion of step b), spread the heather brash by hand over the Land to a depth of between 1.5 and 2.5 centimetres.
- d) Following the completion of step c), plant sphagnum moss plugs by hand at a minimum density of one plug per 5 square metres over the areas where the wooden log 'rafts' have been removed. The sphagnum moss plugs shall consist of the following mix, or an equivalent in order to stabilise the peat bog, 10% Sphagnum capillifolium; 10% Sphagnum papillosum; 40% Sphagnum palustre; 30% Sphagnum fallax; 5% Sphagnum cuspidatum; 5% Sphagnum fimbriatum.

Time for compliance for steps a), b), c) and d): Within 12 calendar months of the date when the Notice takes effect.



- e) Any parts of the Land which, 30 calendar months after this Notice takes effect, have more than 30% grass cover over any 10 metre long section, shall be sprayed by hand with a grass-specific, selective herbicide.
- f) Following the completion of step e), spread heather brash, which has been collected between 1 October and 31 January in the following year, by hand over any areas of grass or bare peat on the Land to a depth of between 1.5 and 2.5 centimetres.

Time for compliance for steps e) and f): Within 42 calendar months of the date when the Notice takes effect.

Authorised By:

  
..... (Head of Development Management)

Date... 20/9/18 .....

  
..... (Assistant Solicitor) 

Date... 21-9-2018 .....