



Appeal Reference No: APP/M9496/C/18/3215789

LPA Reference No: 15/0057

Date: November 2020

PEAK DISTRICT NATIONAL PARK AUTHORITY

Town and Country Planning Act 1990 (as amended) (“the 1990 Act”)

Appeal by Dunlin Limited against an Enforcement Notice relating to engineering operations consisting of the laying of geotextile matting and wooden log ‘rafts’ to form a track on land at Mickleden Edge, Midhope Moor, Bradfield, South Yorkshire.

PROOF OF EVIDENCE

OF

ANDREW COOK BA (Hons)

1. Introduction

- 1.1 My name is Andrew John Cook and I am employed by the Peak District National Park Authority (“the Authority”) in the post of Team Manager - Monitoring and Enforcement. I am a Bachelor of Arts (Honours) in Town and Country Planning, having graduated in 1987. Between 1987 and 1990 I was employed by the North Devon District Council as a Planning Assistant. From 1990 until 2006 I was employed by the Authority as an Enforcement Planner. During that period I dealt with general planning casework in addition to enforcement matters. I have been in my current post since July 2006.
- 1.2 I have considerable experience of taking formal enforcement action and have presented the Authority’s case in numerous enforcement appeals, including acting as a witness in several public inquiries. I am very familiar with this case, having become involved shortly after the development was carried out almost 6 years ago.
- 1.3 This appeal relates to a Planning Enforcement Notice, reference No: 15/0057 (‘the Notice’) that was issued by the Peak District National Park Authority (‘the Authority’) on 21 September 2018. Details of the Notice are as set out in the Authority’s statement of case.
- 1.4 The appeal against the Notice is proceeding on grounds (a) and (f). The appellant also claims that the enforcement notice is a nullity and the enforcement notice is invalid.
- 1.5 This proof of evidence is only in respect of the ground (f) appeal.

2. Site and Surroundings

- 2.1 A detailed description of the site and surroundings is set out in the Authority’s statement of case so there is no need for me to repeat that.

3. Planning History

- 3.1 The planning history is also set out in the Authority’s statement of case so, again, there is no need for me to repeat that in this proof of evidence.

4. Response to the Ground (f) Appeal

Ground (f)

- 4.1 The appeal on ground (f) is that the steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections.
- 4.2 The appellant’s case on ground (f) can be summarised as follows:
1. The appellant has laid geotextile matting and wooden log ‘rafts’ on a pre-existing track;
 2. The appellant can only be required to remove the geotextile matting and the wooden log ‘rafts’;
 3. As the enforcement notice requires the appellant to do more than

remove the geotextile matting and the wooden log 'rafts' it follows that the steps required to be taken exceed what is necessary.

- 4.3 In essence, the appellant is suggesting that the Notice should simply require the matting and timber log 'rafts' to be removed and that the remaining requirements should be deleted.

Response to Appellant's Case

- 4.4 The purpose of the Notice is to remedy the breach by restoring the land to its condition before the breach took place. It is my opinion that the steps required are consistent with that purpose and are not excessive. They are necessary to achieve the removal of the unauthorised development and the restoration of the land to its previous condition. More specifically, the requirements are designed to achieve this in a way which will minimise the risk of damage being caused to the land on which the track has been laid and to land immediately adjacent to the track. Steps e) and f) are designed to ensure, as far as possible, the long-term establishment of surface vegetation which is appropriate to the location.
- 4.5 In my view, it is an over-simplification to say that the geotextile matting and log 'rafts' have been laid on a pre-existing track. On 1 March 2019, Natural England's Conservation and Land Management Adviser for The Dark Peak, Richard Pollitt, responded by e-mail to the Ministry of Housing, Communities and Local Government following a request for information in relation to the EIA screening opinion for this appeal (**Document AJC1**). In his e-mail, Richard Pollitt stated that he was, at the time of the work under discussion, the responsible officer for the SSSI and the HLS agreement. He attached to his e-mail a casework summary, which he had prepared in 2015 and updated in March 2019 (**Document AJC2**). In the third paragraph of his casework summary, he suggests that use of the route prior to 2005 must be assumed to be light since it is scarcely evident from aerial photographs. In the same paragraph he says that the route is not referred to directly in the Moorland Management Plan ("MMP") of 2005 (which includes an Access and Tracks Map), but that the MMP describes use of all-terrain vehicles (ATVs) as permitted where not causing damage through rutting of soils. Relevant extracts from the MMP are appended to the casework summary.
- 4.6 Richard Pollitt's casework summary also notes, in paragraph 4, that this track does not appear on a draft MMP map in 2008 although in paragraph 5 he says that subsequent visits by Natural England identified problems of over use on the route creating damage and that this was part of a pattern of increased use of vehicles on the moor under the ownership established in 2006. In my opinion, the evidence of Richard Pollitt's casework summary, together with the aerial photograph I have referred to, demonstrate that the route, in any recognisable form, had only existed for a relatively short period of time before the geotextile matting was laid in 2014.
- 4.7 Furthermore, it appears that, for the vast majority of its length, the route that did exist before the development was carried out comprised a rutted, unsurfaced route formed by the passage of vehicles. Significant sections were wet, and some even waterlogged during periods of heavy rainfall. Again this is evident from Richard Pollitt's casework summary as in paragraph 5 he

referred to erosion problems associated with waterlogged soils and in paragraph 11 he described particular problems that were identified in 2012, including a wet rushy section with soft soils susceptible to disturbance on the descent to and rise from Mickleden Beck. It was apparent that vehicles which had difficulty negotiating these wetter sections, in particular, did not always follow the same narrowly defined route. This resulted in parts of the route becoming 'braided' – with multiple interconnected lines of passage. A few short sections were previously surfaced with wooden log 'rafts', presumably to provide a useable surface for vehicles where the ground was becoming impassable. In Richard Pollitt's casework summary he notes, in paragraph 5 that unconsented track repairs using timber sleepers was undertaken after 2009. On 30 November 2014, shortly before the matting was laid, one of the Authority's Rangers took some photographs of the route. A selection of these photographs, which indicate the condition of the route as I have just described is appended as **Document AJC3**. I have also appended **Document AJC4** – a series of extracts from aerial imagery obtained in 2012. Again, these indicate the condition of the route, particularly the 'braiding' I have described

4.8 In summary, therefore, my opinion is that it is wrong to describe what existed previously as a track – in the conventional sense. The vast majority of the route was not surfaced and it did not follow a consistent path on the ground. In any event, significant sections of the current track lie alongside what was previously used as a vehicular route and in these sections the matting and log 'rafts' were laid on top of the pre-existing moorland vegetation. This is evident from photographs which I took during a site meeting in September 2015 (**Document AJC5**).

4.9 In my view, therefore, it is legitimate for the Notice requirements to go beyond simply removal of the geotextile matting and wooden log 'rafts' and to seek restoration of the pre-existing vegetation. For these reasons, I consider that the ground (f) appeal should fail.