



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

LPA Reference No: 15/0057

Date: 6th 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 John Keeley Dip URP MRTPI - North Area Planning Manager Peak District National Park Authority in respect of the ground (a) appeal.

1. Planning Witness

2. My name is John Keeley. I am employed by the Peak District National Park Authority (PDNPA) as the North Area Planning Team Manager within its Development Management Service. In this role I lead the Area Development Management Team responsible for delivery of the Authority's statutory Planning functions in the northern half of the National Park which includes the appeal site. I have held my current role since 2005, prior to which I held a Senior Planning Officer in the South Area Planning Team at the Authority.
3. I have a Diploma in Urban and Regional Planning from Sheffield City Polytechnic and am a full member of the Royal Town Planning Institute.

4. Application of Policies

5. The key issues in determining whether or not planning permission should be granted are considered to be;
 - 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 impacts of the development upon biodiversity.
6. The principle of development in the Natural Zone.
7. NPPF Paragraph 172 states; '*great weight should be given to conserving and enhancing landscape and beauty in National Parks'.....'which have the highest status of protection in relation to these issues'* and that '*the conservation and enhancement of wildlife and cultural heritage are also important considerationsand should be given great weight...*'
8. NPPF Paragraph 175 states, '*if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*'. It also states; '*development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact 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.*'
9. The Development Plan comprises the Core Strategy Development Plan Document 2011 (CS) and the Development Management Plan DPD 2019 (DMPD). Along with CS Policy GSP1, Policy L1 links back to National Park 'Purposes' and both are in accord with the NPPF in stating that;
10. "*Development must conserve and enhance valued landscape character as identified in the Landscape Strategy and Action Plan, and other valued characteristics.*"

11. The appeal site lies within a Site of Special Scientific Interest, a Special Area of Conservation, a Special Protection Area and Section 3 Moorland in the Wildlife and Countryside Act 1981. It is also designated as Natural Zone in the Development Plan which contains a strong presumption against development in CS Policy L1B which states;

'other than in exceptional circumstances, proposals for development in the natural zone will not be permitted'.

12. The exceptional circumstances in which development can take place in the natural zone are set out in DMPD Policy DMC2 and 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". And 'Development that would serve only to make land management or access easier will not be regarded as essential.'

13. The main issue for ground (a) is therefore whether there are any exceptional circumstances to justify retention of the matting and associated works and if so, whether the proposal accords with other policies in the Development Plan. These seek a high standard of design that respects, conserves and enhances the landscape, biodiversity and other valued characteristics.

14. If there are no exceptional circumstances then the presumption in the policy is that planning permission be refused in principle. Furthermore, it is clear from CS Policy GSP1C that should a conflict arise between the purposes then application of the 'Sandford principle' is required to secure priority for the conservation and enhancement of the National Park.

15. *Consideration of whether the appellant's case for retention of the matting amounts to 'exceptional circumstances' sufficient to meet the test in DMPD.*

16. The appellant states;

17. *"the appeal development is directly connected with or necessary to the management of the European site". And ;*

"is of benefit to the moor and its restoration, conservation, enhancement and management and that it also affords emergency services access in the event of a moorland fire and that these benefits are to be weighed in the planning balance".

18. In the 2018 planning application, the appellant explained the matting was laid as a temporary feature necessary to *"facilitate safe access and egress whilst undertaking the works"* by vehicles during moorland restoration works agreed with Natural England taking place 2014 - 2017. The supporting statement went on to explain that retention was required thereafter for *"future land management purposes"*.

19. Moorland restoration works are welcomed as they accord with national and local policies seeking to bring the moorland back into favourable condition. The surfaced route, will likely have reduced vehicle erosion on the route and adjacent areas during those restoration works. That is a benefit to landscape character and appearance, although it may have been possible to achieve that result through other means as has been the case with significant moorland restoration works carried out by the Moors for the Future Partnership without the necessity for formal tracks.
20. The restoration works which provided the reason for the temporary matting are complete. Retention of the development to facilitate daily moorland management or “safe access” to monitor and gather stock may well be of benefit to the landowner, however this would not amount to development that is ‘essential for the management of the Natural Zone’. Vast areas of moorland are managed without such tracks. No evidence has been submitted that retention of the development would be essential for the conservation and/or enhancement of the National Park’s valued characteristics.
21. Because retention of natural and remote character is essential in the Natural Zone, DMPD Policy DMC2 B makes clear that; ‘*development that would serve only to make land management or access easier will not be regarded as essential*’.
22. The appellants state “*the appeal development is directly connected with or necessary to the management of the European site*” and that the track “*is of benefit to the moor and its restoration, conservation, enhancement and management and that it also affords emergency services access in the event of a moorland fire and that these benefits are to be weighed in the planning balance*”.
23. No explanation of any specific conservation and enhancement works on the moor have been advanced to make a clear and convincing exceptional case that retention of the track is essential because it is the only way those works could be achieved. No weight can therefore be attached to this in the planning balance.
24. Emergency services use in the event of a moorland fire is noted. However, little weight can be attached in the planning balance to permanently retain development having a damaging effect upon landscape in the Natural Zone for what would amount to a very rare or occasional use should a fire conveniently occur close to the track.
25. For these reasons, it is considered that retention of the matting and associated works would simply make land management or access easier for the appellants, rather than being required for the essential management of the area. Consequently the development does not fall within the exceptions set out in policy DMC2 of the DMPD. Therefore retention of the matting track either permanently or for a further temporary period conflicts with the general presumption in principle against development in the Natural Zone as set out in CS policy L1 and GSP1 as well as Para 172 of the NPPF. Consequently for these reasons alone and irrespective of any other considerations such as appearance or landscape impact, the ground (a) appeal should fail and planning permission be refused.

26. Impact on Landscape.
27. The Inspector is referred to the proof of evidence setting out the harm from the Authority's Landscape Architect.
28. Impacts upon biodiversity.
29. The Inspector is referred to the proof of evidence setting out the harm from the Authority's Ecologist.
- 30. Conclusion**
31. The appellant's case to retain the development lacks clarity and detail. It fails to demonstrate an essential need to warrant any exception to the very strong policy presumption against development in the Natural Zone.
32. The matting and associated groundworks fails to conserve or enhance the character of its surroundings and has a significant harmful effect on the valued character and appearance of the moorland landscape. The restoration works that generated the temporary consent for the use of the matting from Natural England were completed in 2017.
33. Retention of the development, even on a temporary basis, would perpetuate the harm already caused to landscape and biodiversity without good reason. In the absence of any exceptional circumstances to weigh heavily in the planning balance the proposal is contrary to the statutory purposes of national park designation in the 1995 Environment Act, in conflict with Government policy in NPPF paragraphs 127, 170 and 172 and contrary to Development Plan policies GSP1, GSP3, L1, DMC1 and DMC2.
34. Any approval without very special and exceptional justification, would set a clear precedent. Similar arguments could be made for tracks in comparable moorland across the National Park which the Authority would then find difficult to resist. This could individually and cumulatively cause substantial harm to the landscape and undermine the key conservation purpose of the National Park against the public interest. The concern over precedent is very real in this case as there is constant pressure for improved access to moorland areas through the provision of permanent tracks. This should be considered 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. For the above reasons, the Inspector is respectfully urged to refuse the application for planning permission under Ground (a) in this appeal.