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PEAK DISTRICT NATIONAL PARK AUTHORITY

Town and Country Planning Acts

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

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PEAK DISTRICT NATIONAL PARK AUTHORITY ECOLOGIST

1.0 Introduction

1.1 My name is Frances Horsford. I am employed by the Peak District National Park Authority as an Ecologist. I am responsible for ensuring that ecological and nature conservation advice is provided to Authority officers and members, and to the public, in all areas of the Authority's activities.

1.2 I hold a BSc honours degree in Environmental Protection from Harper Adams University College (2003) and an MSc in Environmental Conservation Management from the University of Glamorgan (2004). I hold a PG Certificate in Biological Recording: Collection and Management from the University of Birmingham (2008). I am a member of the Association of Local Government Ecologists. I have worked for the Peak District National Park Authority since June 2007. Prior to this, I worked for the Environment Agency as a Biodiversity Officer from 2005 to 2007. My work experience has included ecological survey of a broad range of British habitats, and assessment of the nature conservation value and management requirements of such sites. This has also included assessment of protected habitats and species and habitats/species of local concern when considering planning applications, mineral applications and other inter-functional consultations.

1.3 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.

1.4 This evidence concerns the ecological aspects of the appeal regarding apparent breaches in planning control under Section 171 A (1) (a) of the Town & Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) to construct a track consisting of the laying of geotextile matting and wooden log 'rafts' without planning permission. The Enforcement Notice issued by the PDNPA 21st September 2018 sets out the matters that appear to constitute the breach of Planning control in paragraph 3, with steps to rectify this given in paragraph 5. This ecological evidence covers both grounds a and f.

2.0 Policy Background

2.1 Under the Environment Act 1995 (Section 62) one of the two National Park purposes is to conserve and enhance the natural beauty, wildlife and cultural heritage of the area. This is supported by paragraph 172 of the National Planning Policy Framework (NPPF), February 2019, stating *"The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads"* Paragraph 175 of the NPPF sets out the principles that should be applied to habitats and biodiversity when determining planning applications. In particular, paragraph 175 b 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;". These sites are protected under separate legislation with ODPM Circular 6/2005: *'Giving Guidance on Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System'* (CD1).

2.2 The Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 provide protection of internationally and nationally designated sites in England. The Countryside and Rights of Way Act 2000 strengthened the protection afforded to these sites. The National Park Authority has a statutory duty under section 28G of the Wildlife and Countryside Act (1981) to ensure that development proposals that may impact on National Sites (SSSIs) do not damage these sites and that they further their conservation and enhancement.

2.3 Section 41 of the Natural Environment and Rural Communities Act (NERC Act 2006) provides a list of habitats and species that are of principle importance for the conservation of biodiversity in England. The NERC Act (2006) places clear responsibility on Local Planning Authorities to further the conservation of Section 41 habitats and species where a planning proposal may adversely affect them.

2.4 The Peak District National Park Authorities Core Strategy policy L2 reinforces the protection of international, national and local designated sites through the planning process. Core Strategy policy L2 states that "*development must conserve and enhance any sites, features or species of biodiversity importance and where appropriate their setting."* Development Management Policy DMC 12 states that development may be permitted under exceptional circumstances for internationally designated or candidate sites:

> *"For sites, features or species of national importance, exceptional circumstances are those where development is essential:*
>
> *(i) for the management of those sites, features or species; or*
>
> *(ii) for the conservation and enhancement of the National Park's valued characteristics; or*
>
> *(iii) where the benefits of the development at a site clearly outweigh the impacts on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs"*

2.5 The Peak District National Park Authority supports moorland restoration works, as they accord with national and local policies seeking to bring the moorland back into favourable condition. The initial reason given for laying temporary plastic matting and log 'rafts' was to facilitate such works. However, the evidence provided in Section 3 suggests that these works have now been completed and the retrospective planning application was for the retention of a permanent track.

3.0 Habitat Description and case background

3.1 The track is located on the Midhope Moors to the south of Langsett reservoir and falls within the Peak District Moors Special Protection Area, South Pennine Moors Special Area of Conservation and Dark Peak SSSI. According to our records, it is located on modified blanket bog habitat and skirts through flush habitat to the north of the site.

3.2 The development comprises approximately a 700 metre length of 2m width green plastic reinforcement mesh, along with sections of wooden 'rafts' that have been placed on top of flush habitat. The planning application states that this is for '*the restoration of previously damaged access route to include the laying of plastic access mesh to facilitate vehicular access'*.

3.3 Natural England's letter dated 09/02/2016 (CD2) provides a breakdown of habitat that the route crosses in more detail, listed as follows:

Dry heath – 320m2
Dry heath/acid grassland - 380m2
Bracken - 110m2
Marshy grassland/juncus flush - 360m2
Flush/stony ground/river bed - 50m2
Blanket bog - 100m2

3.4 This totals 1320m2. The letter also states that 3500m2 (including the area of the mesh track) of habitat has been affected by vehicle use along the route. Natural England do note that the '*actual condition of the ground crossed may not correspond to the habitat described in the list above due to previous use of the route, therefore Natural England does not consider that the effect of this work is the complete loss of the amounts of the habitats described'*.

3.5 During site visits in 2018 and 2020, I noted that the surrounding landscape is dominated by ling heather (*Caluna vulgaris*) on the plateau and the upper slopes of the clough, which then gives way to acid grassland, changing to flush habitat in the valley bottom. The flush is dominated by soft rush (*Juncus effusus*), with *Sphagnum fallax*, bog pondweed (*Potamogeton polygonifolius*), marsh pennywort (*Hydrocotyle*

vulgaris) and cranberry (*Vaccinium oxycoccus*) being noted. Please note this was not a full survey, but observations during site visits.

3.5 I noted that the vegetation along the track in 2018 was dominated by non-indicator grasses, along with the bare surface of the matting. During the 2020 visit, the track was still dominated by non-indicator grasses, which were providing more cover than noted on the previous visit. Heather and bilberry (*Vacinium myrtillus*) had established in some areas along with the presence of acidic indicator species (including heath bedstraw, *Galium saxitile*), however, the matting was breaking up in other areas and was still visible.

3.6 Natural England's letter dated 13th April 2018 (CD3) gave no objection to the retrospective planning application, subject to appropriate mitigation being secured, which included granting permission for use over a limited time period. The letter states that the restoration scheme was continuing and was currently expected to be completed within the next 5 years. However, the application and the letter were unclear as to what works remain and whether alternative methods were available that would not require the use of the track. This information was requested from the appellants on numerous occasions during the planning application process, but it was not provided.

3.7 No information on the requirements for follow up works was provided. Therefore the planning application could not be supported under DMC 12 as the evidence to support the need for the conservation of the site, features or species was not provided.

3.8 An email sent from Mr Osbourne on behalf of the appellant dated 3rd September 2020 (CD4) states:

'There are no further works planned at this location under the existing HLS Agreement. In this, there is no requirement for follow up works or maintaining but for the sake of best practice, the Estate is very keen to follow up and maintain the work which has already been completed.'

3.9 The email goes on to highlight potential for further works at this site, but it is our understanding that no further works have been agreed between the appellant and NE (CD5).

4.0 Key Ecological Issues

4.1 In my opinion 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, based on figures provided in the retrospective

planning permission). 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 dated 13th April 2018 (CD3), the surfacing may lead to an increased use in preference to other tracks on the site.

'… 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'

4.2 A Natural England review on the impact of tracks was compiled in 2013 which provides evidence of the effects on the integrity and hydrological function of blanket peat, which concluded:
'Tracks alter the structural integrity of blanket peat. Building upon peat compresses the peat and alters the drainage patterns on and around the peat, both within the peat body and over its surface. The level of compression and disruption depends upon the structure and wetness of the peat in question'.

4.3 The upper layer of the peat (known as the 'acrotelm') tends to be stronger as it comprises living vegetation and roosts that create a fiberous mat, over a layer of partially decomposed plant remains. On deep peat and blanket bog, the humus layer beneath (known as the 'catotelm' is weaker as a result of materials breaking down and may also contain sub-surface structures such as natural pipes or relict, desiccation cracks that act as conduits for rapid subsurface drainage of rainwater.

4.5 The compression has the potential to change the peat structure and alter the nutrient and hydrological environment, affecting the ecosystem services and biodiversity of blanket peat (CD6).

4.6 McKendrick-Smith, Holden & Parry (2017) completed an intensive study of tracks over a two year period and found clear impacts on the surface profile and vegetation characteristics, with lowering of surface peat elevation directly under mesh, wooden and unsurfaced tracks. Compared with before disturbance data, reduced cover in ling heather, hare's-tail cotton grass (*Eriophorum vaginatum*) and *Sphagnum capillifolium*, a lowering in the height of the vegetation, and increased bare peat occurrence, were found 22 months after track installation and 13 months after the commencement of driving (CD7). It was noted that some of the impacts would be associated with construction and the cover of non-indicator grasses and sparse heather has certainly improved on the Midhope track overtime (when comparing the site from 2018 to 2020). However, there is clear evidence on this site showing that the plastic

mesh is beginning to fall apart (Appendix 1, figure 1), which is likely to contribute to vegetation loss / bare peat if traversed on in a poor state (as well as releasing small pieces of plastic into the environment).

4.7 The same study found little effect on water table depth when monitoring a mesh and wooden track over a two year period. However, the survey of existing stone tracks found higher volumetric moisture content upslope of the track compared to downslope, suggesting influences on hydrology (CD7). Although the track in question is mesh based, the site visit from 2018 shows that stone (Appendix A, figure 2) has been used to raise the track. In doing this, a greater surface load has been created, exerting more pressure, which can result in consolidation and water loss (CD8). This is likely to be more significant over-time, as has been exhibited in older tracks (CD7).

4.8 I note that not all of the trackway falls on habitat defended as blanket bog, but similar impacts on vegetation and hydrology are likely to occur flush habitat over peat and on dry heath and to a lesser extent (CD8).

4.9 The two-year intensive study was part funded by Natural England and they conclude from the results they are content in giving time-limited consent (typically 5 years) for mesh and timber tracks required for access and conservation objectives. However, Natural England then highlight the need to seek whether planning consent is required (as also highlighted in Natural England during the SSSI consent process). Natural England also acknowledge that the study does not cover the long-term impact of mesh and timber tracks (CD8).

4.10 As highlighted in my consultation response to the retrospective planning application:

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 competed, along with a clear timescale for these works.

4.11 The retrospective application was submitted as a permanent trackway and there was insufficient information regarding points a and b above. As far as I'm aware, various partnerships (including MFF, Yorkshire Peat Partnership, North Pennines ANOB, Exmoor mires Project) have not installed tracks to carry out large scale moorland restoration works over the lifetimes of these projects. These projects have relied on existing tracks, the use of bog tracks/low ground pressure machinery and lifting materials to site via helicopter.

5.0 Justification for restoration under the enforcement notice

5.1 In relation to ground f, aerial photography from 2005 suggests that the use of the route was light as it is hardly visible and there is no evidence of a parallel track (Appendix 1, Figure 3).

5.2 Approximately 260m of the track is situated alongside the original unsurfaced route which would have resulted in additional habitat damage (Appendix 1, Figure 4). Case notes from Natural England (detailed in Andrew Cooks Proof of Evidence) and aerial imagery from 2012 suggest that some areas had suffered damage prior to the installation of the matting, however, this is a result of previous unconsented works. Therefore, it is my opinion that restoration to previous habitat is justified. Habitat works of a similar nature are done elsewhere to repair eroding/disturbed peat and have been successful. Examples of such techniques were visible when visiting the site in 2020, where heather brash had been cut alongside the track and used to repair eroding surfaces (Appendix 1, Figure 5).

6.0 Conclusion

6.1 I consider the retention of the track on a permanent basis cannot be justified on ecological grounds as it is not necessary for the long term management of the features or species associated with the designation of the European site. On the contrary, I consider that a permanent track in this location would be damaging to the designation due to the likely damage of the structure and integrity of the peat, contributing towards issues with vegetation structure and hydrology.

6.2 I consider that a temporary track may be acceptable in the location on ecological grounds, providing it can be fully demonstrated that there are no alternative means in carrying out the restoration and clear timescales are provided for the retention and restoration of the track. This evidence was not provided during the planning process.

6.3 At present, moorland restoration works are being carried out at a landscape scale in the Peak District National Park and elsewhere without the need for additional track creation.

6.4 Part of the newly surfaced track runs parallel with the original unsurfaced route as a result of unconsented works over a number of years. Therefore, it is my option that the area should be restored to its previous state before unconsented works took place. The methods set out in the enforcement notice follow standard restoration techniques.

7.0 References

Adopted Planning Policy and Guidance

The National Planning Policy Framework, Department Communities and Local Government 2019

CD 1 ODPM (2005). Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System.

The Peak District National Park Local Development Framework Core Strategy Development Plan Document – adopted October 2011

Background and Evidence Base Documents

CD 2 Letter from Natural England February 2016

CD 3 Letter from Natural England July 2018

CD 4 Email sent from Mr Osborne on behalf of the appellant 3 September 2020

CD 5 Email from Natural England 23 October 2020

CD 6 Grace, M., Dykes, A. P., Thorp, S. P. R. & Crowle, A. J. W. 2013. Natural England review of upland evidence - The impacts of tracks on the integrity and hydrological function of blanket peat. Report No. NEER002 Available: http://publications.naturalengland.org.uk/publication/5724597 [Accessed October 2020]

CD 7 McKendrick-Smith, K., Holden, J., and Parry, L. (2017) The Impact of Tracks on Blanket Peat Ecohydrology – Summary Report, University of Leeds.

CD 8 Blanket Bog Track Trial Moor House NNR (The Moorland Association, North Pennines AONB and Natural England, Undated)