

APP/M9496/C/18/3215789

ENF/15/0057

Enforcement Notice Appeal relating to Land at Mickleden Edge, Midhope Moor, Bradfield, South Yorkshire, S36 4GX

Regarding the alleged unauthorised 'engineering operations consisting of the laying of geotextile matting and wooden log 'rafts' on the Land to form a track'.

Proof of Evidence Summary  
on behalf of the Appellant Dunlin Ltd  
for Ecology and Habitats Regulations Assessment

By

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# Contents

1	Qualifications and Experience .....	1
2	Background .....	1
3	Scope of Evidence .....	2
4	Evidence of historical use of the track .....	2
5	Ecological Survey and Assessment.....	2
6	Ecological effects of the 'development' .....	3
7	Ecological Effects of Track Removal .....	3
8	Legal implications for the protected sites.....	4
9	Policy Assessment .....	5
10	Third party representations.....	6
11	Conclusions.....	6

# 1 Qualifications and Experience

- 1.1 I am Andrew Baker, Director of the ecological consultancy Baker Consultants Limited, established March 2009. I hold the degree of Bachelor of Science with Honours in Botany from the University of Nottingham (1986). I have been a member of the Chartered Institute of Ecology and Environmental Management since 1994. My experience as a practising ecologist is extensive over 30 years, across many organisations and clients, in public, private and voluntary sectors. I was made a Fellow of CIEEM in 2016.
- 1.2 I have significant experience of the application of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations), and I am frequently called upon to give evidence to both local plan examinations and public inquiries into individual planning applications. I also have considerable experience in moorland ecology.

# 2 Background

- 2.1 The section of track which is the subject of the enforcement notice is located entirely within three legally protected overlapping statutory designations, which protect the wildlife of the moorland.
- 2.2 The track, which is the subject of the enforcement notice, has been in use for many years, and it is clear that the track is necessary for the management of the moor both for the ongoing restoration of the blanket mire, and for Dunlin Ltd's lawful use of the moor. Natural England granted consent in 2014 for the Site Delivery Plan, which included capital works to the access track (installation of plastic netting), to facilitate habitat restoration work on the moor.

### 3 Scope of Evidence

3.1 Based on the written evidence and field survey results I will present my professional opinion on;

- the current state of the track,
- my assessment of the requirements of, and implementation of, the enforcement notice, and
- my assessment of the legal steps that would need to be met before enforcement can be implemented without contravention of national and international legislation.

3.2 I will also comment on the steps which are proposed for the continued maintenance and improvement of the track as set out in the appellants Statement of Case.

### 4 Evidence of historical use of the track

4.1 From review of aerial photographs, the track was being used in 1999 with evidence of peat erosion correlated to the steeper and wetter parts of the track by 2005. By 2009 areas of braiding is evident. Consented reinforcement matting (hereafter referred to as 'matting') and timber sections of the track were installed in 2014, and by 2017 the matting is clearly visible on the photographs and it is also evident that the areas that were previously braided and eroded have started to restore their vegetation cover.

### 5 Ecological Survey and Assessment

5.1 I visited the site on September 9<sup>th</sup> with my colleague Mark Woods. Our survey found that both the track and the surroundings habitats have substantially revegetated with both dry heath and acid grassland communities. The areas of wet flush had also substantially recovered.

5.2 The condition survey found no evidence that there had been any demonstrable impact of either the matting or the timber rafts sections on the hydrology of the site either impeding drainage or causing surface erosion. Where the matting has been placed on the shallow dry peat/mineral ground it has evidently helped to prevent surface erosion and stabilise the vegetation. The previous damage to the flush areas where the track had become braided will evidently have damaged the vegetation and also interrupted the drainage in the area compacting the wet peat and causing erosion in the ruts. The installation of the matting and timber rafts has both prevented further damage to the moorland around the track and allowed the natural drainage to recover from the previous damage.

## 6 Ecological effects of the 'development'

6.1 The 'development' was entirely positive for the ecology of both the track and the surrounding moorland. Indeed, it is apparent that that was also the view of Natural England which not only part-funded the 'development' but also carried out a positive Habitats Regulations Assessment of the 'development' (21<sup>st</sup> August 2013).

## 7 Ecological Effects of Track Removal

7.1 The removal of the track matting and the timber rafts would damage habitats and have a high risk of failure, initiating erosion of the moorland which would require further remedial action.

7.2 Following removal an alternative track will need to be found, which will inevitably cause further damage to protected habitats, risking the same damage to dry heath, and braiding in the wet flush areas. The removal of the matting will entirely undo the restoration gains which were apparent since the matting was installed.

- 7.3 The track matting and timber rafts also provide an access route for tackling the increasing problem of wild fires, including access to a water supply, this access would be lost if the track were to be removed.
- 7.4 By contrast, and because of the small scale of the areas involved, remedial measures proposed by the appellant are much more likely to be successful when compared to the removal of the track, and unlikely to result in further erosion.

## 8 Legal implications for the protected sites.

- 8.1 Three Habitats Regulations Assessments have been carried out. The first HRA, carried out by Natural England (21<sup>st</sup> August 2013) of the Midhope HLS agreement under the Habitats Regulations 2010, under Regulation 21, concludes that the HLS could be granted consent.
- 8.2 The second HRA was carried out by the PDNPA when it considered the Retrospective Planning application presented to the Planning Committee for adoption on 15<sup>th</sup> June 2018. This HRA is flawed throughout for a number of reasons. I do however, concur with the conclusions that the laying of the track would not give rise to Likely Significant Effects or an adverse effect upon the integrity of the sites, as the installation of the matting and the wooden rafts has had and will continue to have a beneficial effect upon the moorland habitats. Despite giving the planning application a clean bill of health under the HRA, the recommendation under the planning application is for refusal. This conclusion is illogical and it is unfathomable as to why the committee report recommended refusal on grounds of harm to the moorland ecology.
- 8.3 The third HRA that was carried out was presented to the PDNPA planning committee on 14<sup>th</sup> September 2018 and purported to be an HRA of the proposed enforcement action. This HRA is entirely at odds with the previous PDNPA HRA and that of Natural England's 2013 HRA, and is flawed.

- 8.4 The grant of planning permission would be entirely compliant with the tests set out in the Habitats Regulations. Not only was this the conclusion of the PDNPA in its HRA but it was when considering the Environmental Impact Assessment Screening. The Secretary of State (SoS) (8<sup>th</sup> March 2019) concluded that the proposed project (laying of matting and timber rafts) did not require an EIA because the proposal was not likely to have significant effects on the environment. In coming to this conclusion, the SoS has clearly considered the location of the proposal within a SSSI, SAC and SPA.
- 8.5 Three of the Dark Peak SSSI citation habitats would be damaged by the removal of the track and by the subsequent damage caused by the passage of vehicles following removal of the matting and timber rafts. By contrast, the appeal development has not damaged or destroyed any of the interest features of the SSSI.

## 9 Policy Assessment

- 9.1 The proposed enforcement action is not compliant with Policy 170 of the NPPF (2019) and is contrary to paragraphs a) and b) of Policy 175. The enforcement will clearly cause damage to a SSSI and therefore, should not normally be permitted (175b). The PDNPA has not demonstrated that the benefits of the action clearly outweigh these impacts.
- 9.2 The enforcement action is not compliant with any of the relevant paragraphs of Policy L2 of the PDNPA Core Strategy as it will damage features of biodiversity importance, have an adverse impact on statutory designated sites of international and national importance, and there are no exceptional circumstances which would justify the adverse impact that will be caused.
- 9.3 Development Management Policies of part 2 of the Development Plan underpin the Core Strategy. Policy DMC12 specifically deals with the protection of designated site, and the enforcement action is contrary to both parts A and B.



## 10 Third party representations.

- 10.1 The RSPB claim that the track has been laid on blanket bog habitat. Unfortunately, this claim is fundamentally flawed. Our survey of the track found no blanket bog habitat next to the track but rather other vegetation types that do not equate to blanket bog.
- 10.2 The RSPB has also claimed that the original 'development' was damaging to the Habitats Sites and was not necessary to the management of the sites concerned, claiming that heavy machinery for the restoration of the blanket bog used the track before the matting and timber rafts were put down. I cannot comment whether this statement is true or not, however it is clear from Natural England's letter of 13<sup>th</sup> April 2018 to the PDNPA that the restoration works are continuing and the track will be needed for this work. The RSPB also claims that the 'development' would result in adverse impacts upon the integrity of the Habitats Sites. I do not agree with this assessment.
- 10.3 A number of other representations have mentioned that the use of the track would harm nesting birds and species such as cuckoo, golden plover and merlin, and other raptors have been mentioned. I can see no reason why the presence or use of the track at its current levels would cause any disturbance to nesting birds.
- 10.4 PDNPA has also implied that the track may affect water voles along Mickleden Beck, in reference to '*historical records*'. It is my view that the presence of the track and its use would be entirely inconsequential to this species.

## 11 Conclusions

- 11.1 I am of view that the removal of the track would result in adverse effects upon the integrity of the Habitats Sites. Furthermore, the removal of the track would require consent from Natural England under Section 28 E (1) of the Wildlife and Countryside Act 1981 (as amended), and if carried out without such consent, would be an offence

under the same legislation. Removal would also give rise to a section 28 P (6) and/or (6A) offence. The enforcement actions, if carried out, would be contrary to the PDNPA's own planning policies on the protection of biodiversity.