



Maria Ferguson

PLANNING CONSULTANCY

PROOF OF EVIDENCE OF MISS MARIA FERGUSON MRTPI

On Behalf of the Appellant: Dunlin Limited

**Relating to: Enforcement Notice Appeal relating to land at Mickleden Edge,
Midhope Moor, Bradfield, South Yorkshire, S36 4GX**

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

Our ref. MF/18/055v1

LPA ref. ENF/15/0057

PINS ref. APP/M9496/C/18/3215789

6th November 2020

Reference: MF/18/055

planning@mariaferguson.co.uk
www.mariaferguson.co.uk



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1.0 INTRODUCTION AND PERSONAL QUALIFICATIONS AND EXPERIENCE

- 1.1 I am Maria A Ferguson and I am a chartered member of the Royal Town Planning Institute (RTPI) and have 20 years' planning experience in both the public and private sectors. I am the Managing Director of Maria Ferguson Planning Ltd., which I established in 2014.
- 1.2 I hold a BA in Town and Country Planning, and an RTPI accredited post-graduate Diploma in Town Planning, both from the University of Newcastle upon Tyne. I have been a full Member of the Royal Town Planning Institute (RTPI) since November 2002. I am a practicing member of the Newcastle University RTPI Partnership Board whose aim is to ensure that the University's planning courses can continue to be accredited by the RTPI.
- 1.3 During my professional career I have worked in both the public and private sector, on a range of development management and enforcement matters for both local authorities and consultancies. I have specialised in rural planning matters and have for around 10 years been involved in planning issues surrounding the construction of buildings and infrastructure, including several tracks, roads and hardstandings on moorland landscapes in the North of England.
- 1.4 The evidence which I have prepared and provide for this appeal reference APP/M9496/C/18/3215789 in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions.
- 1.5 I was formally instructed on this matter by the appellant, Dunlin Limited, to provide advice, assistance, and expert evidence in respect of this appeal on 5th November 2018, shortly after the receipt of the Enforcement Notice to which it relates.
- 1.6 Since the outset, the appellant has taken a professional, open and responsible approach to the matter having sought to engage fully with the LPA in seeking to resolve the issues outside of the appeal process. Matters explored have included a revised application with conditions, a legal agreement to secure improvements to the track, and alternative restoration proposals.

2.0 SITE AND DEVELOPMENT DESCRIPTION

2.1 The track to which this appeal relates is situated on Midhope Moors which are located in the north east section of the Peak District National Park. The Landscape Character Assessment shows the site to be straddling Open Moors and Moorland Slopes and Cloughs Landscape Character Types within the Dark Peaks Landscape Character Area. It is identified as being within the Natural Zone on the LPA's development plan proposals map.

2.2 The appeal site also falls within an area designated as part of the South Pennines Moors Special Area of Conservation (SAC), the Peak District Moors (South Pennine Moors Phase 1) Special Protection Area (SPA), the Dark Peak Site of Special Scientific Interest (SSSI).

2.3 The alleged unauthorised works are described in the Enforcement Notice issued by the LPA on 21st September 2018 as follows:

“Without planning permission, engineering operations consisting of the laying of geotextile matting and wooden log ‘rafts’ on the Land to form a track”

2.4 I first visited the site on 31st October 2018. I visited again on 15th October 2020. The track runs roughly in a north west to south easterly direction and crosses undulating land which is steep and boggy in parts. Towards the eastern end, it crosses the Cut Gate bridleway.

2.5 The matting is 2m wide, and covers a length of approximately 650m, with two log raft areas. The matting is widened at the western end of the track. The route leading to the appeal site is clearly evident on the ground and rutted and braided in part.

3.0 SITE AND CASE HISTORY

- 3.1 I understand that Dunlin Limited, the appellant, purchased Midhope Moor in July 2012. At that time, owing to previous usage before the land's purchase, access routes across the moor had suffered considerable damage, with deterioration to surface vegetation, rutting and braiding.
- 3.2 Following the purchase of the land, on 20th August 2013 the appellant was advised in writing by Natural England that their application for Entry Level and Higher Level Stewardship (HLS) was successful which related to the management and improvement of the moor, and in order to facilitate the restoration of land west of Mickleden Beck, repairs were undertaken to enable safe access while undertaking those works. Natural England consent for operations within the SSSI (including the surfaced track which is subject to this appeal) was given on 16th October 2014.
- 3.3 I understand that the matting was laid between mid-December and February 2015, and the log rafts in 2018.
- 3.4 Mr Andrew Cook, Monitoring and Enforcement Officer for the Peak District National Park Authority, wrote to Mr Daniel Richmond-Watson, Director of Dunlin Limited on 23rd June 2015, advising that planning permission was required for the track. The appellant was given the opportunity to apply for retrospective planning permission for the track, but advised of the particular sensitivities and the need to clearly justify the need for its retention.
- 3.5 An application for full planning permission to retain the track was made to the Peak District National Park Authority on 18th December 2017, and registered valid on the 22nd December 2017. That application was recommended for refusal by planning officers, and planning permission was subsequently refused by the planning committee on 15th June 2018. The decision notice setting out the reasons for refusal was issued on 25th June 2018.
- 3.6 The reasons for the application's refusal are set out below:

1. The justification for the access matting advanced in the applicants supporting statement does not amount to exceptional circumstances to warrant development in the Natural Zone. The proposal is contrary to policies L1, LC1, GSP1-3 and paragraph 115 and 118 of the NPPF.
2. The adverse visual impact of the matting itself and the consequent changes to the vegetation along its length arising from its installation significantly harms the valued character and appearance of the moorland landscape contrary to policies L1, LC4, GSP1-3 and NPPF paragraphs 115 and 118.
3. Harm to the moorland ecology and habitat along the length of the track.

3.7 The enforcement notice subject to this appeal was served on 21st September 2018. Part 4 of the enforcement notice sets out the LPA's reasons for issuing the notice, and Part 5 sets out a series of steps which are required to remedy the alleged breach of planning control. This includes placing locally sourced heather brash (collected between 31st October and 31st January) on the land prior to removal of the matting and rafts using low ground pressure tracked vehicles. The heather brash is then to be spread on the land before sphagnum moss plugs are planted by hand at a minimum specified density. This must all be done within 12 months of the notice taking effect. Thereafter, the following steps are to spray with grass specific selective herbicide any areas with more than 30% grass cover, and to spread heather brash (again collected between 31st October and 31st January) by hand over any areas of grass or bare peat to a specified depth. This must be done within 42 months

3.8 The LPA in making its decisions, determined that the development was EIA development. The appellant applied to the Secretary of State for the Ministry of Housing, Communities and Local Government (SoS) for a Screening Direction. This was issued on 8th March 2019 and the SoS concluded that *"any significant visual and landscape effects on the Peak District National Park, the SSSI, SAC or SPA would be limited and temporary. He recognises that initially the geotextile matting will be visible. However the matting allows grass, heather and other vegetation to grow up through the matting. Therefore the visual impact of this project in this greenfield location would reduce over time. The 'log raft' will also have an initial negative visual impact. However, this*

impact is not considered to be significant in EIA terms and, over time, due to the natural weathering of the logs, this visual impact will also reduce.”

- 3.9 The Direction then states that *“in relation to impacts on the ecological and historic environment, the Secretary of State has carefully assessed all of the evidence before him and has had due regard to the views of statutory consultees. He notes that they do not have any comments or concerns in respect of this development. He also notes that the site covers a relatively small area of land, which is the site of a pre-existing track, and that although visual impacts will initially be evident, these are not considered to be significant, even at their highest level, and that they will reduce over time due to the nature and characteristics of the materials used.*

The Secretary of State concludes that although there would be an initial visual impact, this impact is not deemed significant and will be temporary, After carefully assessing the evidence before him, the Secretary of State has concluded that there are no other issues or factors in this case, in this specific location, that either in isolation, or cumulatively, indicate a likelihood of there being significant environmental effects from this proposal. EIA is not required”

4.0 PLANNING POLICY

Local planning Policy – The Development Plan

- 4.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, decisions on planning applications should be made in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises:

- Peak District National Park Local Development Framework Core Strategy (October 2011) (CS);
- Peak District National Park Development Management Policies (May 2019) (DMP);
- Policies Maps

4.2 It should be noted that Policies LC1 and LC17 of the Peak District National Park Local Plan (2001) are listed as questionnaire documents, and copies are enclosed with the questionnaire for the benefit of the parties. The Local Plan is superseded by the CS and DMP, is no longer part of the Development Plan. As such, it can carry no weight. It is acknowledged however that it is, at least in part, these policies that formed the basis for the refusal of planning permission and serving the enforcement notice subject to the appeal. It should also be noted that Policy LC4 of the Local Plan is cited in refusal reason 2 (LPA reference NP/S/1217/1304) for the development subject to this appeal, but is not cited as being relevant to the enforcement notice seeking removal of the development. Policy LC4: Design, Layout and Landscaping relates to the detail of new design and in summary requires, in cases where development is acceptable in principle, it will be permitted provided that its detailed treatment is of a high standard that respects, conserves and where possible it enhances the landscape, built environment and other valued characteristics of the area.

4.3 The CS was adopted in 2011 and covers the period to 2026. The policies contained in the CS which are relevant to this appeal are set out below, together with summaries. Full copies are questionnaire papers:

Table 1: Relevant Core Strategy Policies

Policy	Summary
Policy GSP1: Securing National Park Purposes and Sustainable Development	This Policy requires all policies to be read in combination and all development to be consistent with the National Park’s legal purposes and duty. Where there is an irreconcilable conflict between the statutory purposes, the Sandford Principle will be applied and the conservation and enhancement of the National Park will be given priority. In securing national park purposes major development should not take place within the Peak District National Park other than in exceptional circumstances.

Policy	Summary
	<p>And such development will only be permitted following rigorous consideration of the criteria in national Policy. Where a proposal for major development can demonstrate a significant net benefit to the National Park, every effort to mitigate potential localised harm and compensate for any residual harm to the area's valued characteristics would be expected to be secured.</p>
<p>Policy GSP2: Enhancing the National Park</p>	<p>Opportunities for enhancing the valued characteristics of the National Park will be identified and acted upon and development intended to enhance the National Park will need to demonstrate it offers significant overall benefit to the natural beauty, wildlife and cultural heritage of the area. When development is permitted, a design will be sought that respects the character of the area, and where appropriate, landscaping and planting schemes will be sought that are consistent with local landscape characteristics and helping to achieve biodiversity objectives.</p>
<p>Policy GSP3: Development Management Principles</p>	<p>Policy GSP3 requires all development to respect, conserve and enhance all valued characteristics of the site and buildings that are subject to development. This is with particular regard to, where relevant to the appeal proposal, scale of development, siting, landscaping and building materials, and design in accordance with the National Park Authority Design Guide</p>
<p>Policy L1: Landscape Character and Valued Characteristics</p>	<p>This Policy requires development to conserve and enhance valued landscape character, as identified in the Landscape Strategy and Action Plan, and other valued characteristics. In addition, it states that other than in exceptional circumstances, proposals for development in the Natural Zone will not be permitted.</p>

4.4 The DMP was adopted in 2019 and covers the period to 2026. This document has been produced in the context of the 2012 NPPF, however in terms of the approach to major development and affordable housing, the 2019 NPPF has been taken into consideration. The policies contained in the DMP which are relevant to this appeal are set out below, together with summaries. Full copies are questionnaire papers:

Table 2: Relevant Development Management Policies

Policy	Summary
DMC1: Conservation and Enhancement of Nationally Significant Landscapes	Policy DMC1 states that in countryside, any development proposal with a wide scale landscape impact must provide a landscape assessment with reference to the Landscape Strategy and Action Plan. The assessment must be proportionate to the proposed development and clearly demonstrate how valued landscape character will be conserved and, where possible, enhanced taking into account cumulative impact of existing or proposed development and the effect of the proposal on the landscape and, if necessary, the scope to modify it to ensure a positive contribution to landscape character. Where a development has potential to have significant adverse impact on the purposes for which the area has been designated (e.g. by reason of its nature, scale and setting) the Authority will consider the proposal in accordance with major development tests set out in national Policy. Where a building or structure is no longer needed or being used for the purposes for which it was approved and its continued presence or use is considered by the Authority to be harmful to the landscape, its removal will be required by use of planning conditions.

Policy	Summary
DMC2: Protecting and Managing the Natural Zone	<p>The exceptional circumstances in which development is permissible in the Natural Zone are set out in 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. Development which only serves to make land management or access easier will not be regarded as essential. Where development is permitted it must be in accordance with Policy DMC3 and where necessary and appropriate permission will initially be restricted to a period of (usually) 2 years to enable the impact of the development to be assessed, and further permission will not be granted if the impact of the development has proved to be unacceptable in practice; in addition, permission will initially be restricted to a personal consent solely for the benefit of the appropriate person.</p>
DMC3: Siting, Design, Layout and Landscaping	<p>Where development is acceptable in principle, it will be permitted provided that its detailed treatment is of a high standard that respects, protects and where possible enhances the natural beauty, quality and visual amenity of the landscape, including the wildlife and cultural heritage that contribute to the distinctive sense of place.</p> <p>Particular attention will be paid to siting, scale, form, mass, levels, height and orientation in relation to existing buildings, settlement form and character, including impact on open spaces, landscape features and the wider landscape setting which contribute to the valued character and appearance of the area. In addition, attention will be paid to the degree to which buildings and their design, details, materials and finishes reflect or complement the style and traditions of the locality as well as other valued characteristics of the area such</p>

Policy	Summary
	<p>as the character of the historic landscape and varied biodiversity assets, and the use and maintenance of landscaping to enhance new development. The remainder of this Policy is of less relevance as it imposes criteria more appropriate to urban / village settings (e.g access, parking, refuse bins and cycle storage, flood risk, and the detailed design of existing buildings</p>
<p>DMC11: Safeguarding, Recording and Enhancing Nature Conservation Interests</p>	<p>Proposals should aim to achieve net gains to biodiversity or geodiversity as a result of development. In considering whether a proposal conserves and enhances nature conservation interests, all reasonable measures must be taken to avoid net loss by demonstrating that in the below order of priority the following matters have been taken into consideration:</p> <ul style="list-style-type: none"> (i) enhancement proportionate to the development; (ii) adverse effects have been avoided; (iii) the 'do nothing' option and alternative sites that cause less harm; (iv) appropriate mitigation; and (v) in rare cases, as a last resort, compensation measures to offset loss. <p>Development will not be permitted if applicants fail to provide adequate or accurate detailed information to show the impact of a development proposal on a site, feature or species including an assessment of the nature conservation importance of the site, adequate information about its special interests, an assessment of the direct and indirect effects of the development and details of any mitigating and/or compensatory measures. Details will also be required setting out the degree to which net gain in biodiversity has been sought and details of provisions made for the beneficial future</p>

Policy	Summary
	<p>management of the nature conservation interests of the site. For all sites, features and species development proposals must also consider cumulative impacts of other developments or proposals; and the setting of the development in relation to other features of importance</p>
<p>DMC12: Sites, features or species of geological or geomorphological importance</p>	<p>This Policy requires that proposals should aim to achieve net gains to biodiversity or geodiversity as a result of development. In considering whether a proposal conserves and enhances sites, features or species of wildlife, geological or geomorphological importance all reasonable measures must be taken to avoid net loss by demonstrating that in the below order of priority the following matters have been taken into consideration:</p> <ul style="list-style-type: none"> (i) enhancement proportionate to the development; (ii) adverse effects have been avoided; (iii) the 'do nothing' option and alternative sites that cause less harm; (iv) appropriate mitigation; and (iv) in rare cases, as a last resort, compensation measures to offset loss. <p>Details of appropriate safeguards and enhancement measures for a site, feature or species of nature conservation importance which could be affected by the development must be provided, in line with the Biodiversity Action Plan and any action plan for geodiversity sites, including provision for the beneficial future management of the interests.</p> <p>Development will not be permitted if applicants fail to show the impact of a development proposal on a site including among other things, an assessment of the direct and indirect effects of the development and details of any mitigating and/or compensatory measures.</p>

Material considerations - National Planning Policy Framework (NPPF)

- 4.5 When it came into effect in March 2012, the NPPF replaced all other national planning Policy statements. The current version of the NPPF was published in February 2019. It is a material consideration in the determination of the accompanying planning application.

Presumption in favour of sustainable development:

- 4.6 At the heart of the NPPF is a 'presumption in favour of sustainable development' (paragraph 11). The NPPF identifies three dimensions to sustainable development: economic, social and environmental. For decision makers this means approving proposals that accord with an up-to-date development plan without delay, or where there are no relevant policies or they are out of date, granting permission unless the application of the NPPF provides a clear reason for refusing the development, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole.

Achieving Sustainable Development:

- 4.7 The planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways:
- Economic objective - to help build a strong, responsive and competitive economy
 - A social objective – to support strong, vibrant and healthy communities
 - An environmental objective – to contribute to protecting and enhancing our natural, built and historic environment

Achieving well designed places:

- 4.8 Paragraph 127 of NPPF states that planning policies and decisions should, inter alia, ensure developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development, and create places that are safe, inclusive and accessible.

Conserving and enhancing the natural environment:

- 4.9 Paragraph 170 states that policies and decisions should contribute to and enhance the natural environment by:
- a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
 - b) Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services;
 - c) Maintaining the character of the undeveloped coast, whilst improving access to it where appropriate;
 - d) Minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
 - e) Preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability;
 - f) Remediating and mitigating despoiled, degraded, derelict, contaminated land where appropriate.
- 4.10 Paragraph 172 requires great weight to be given to conserving and enhancing 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. Planning permission should be refused for 'major development' other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The term 'major development' for the purposes of paragraph 172 is not defined – this is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated. Paragraph 172 then goes on to set out some of the considerations that should form part of an assessment.

Habitats and biodiversity

- 4.11 Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles:
- a) If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
 - b) 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 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;
 - c) Development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons;
 - d) Development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

Material considerations – statutory purpose

- 4.12 The 1995 Environment Act establishes the statutory purposes of national park designation, as:
- (i) to conserve and enhance the natural beauty, wildlife and cultural heritage of the national parks;
- and
- (ii) to promote opportunities for the understanding and enjoyment of the special qualities [of the parks] by the public.
- 4.13 Section 62 of the Act also places a general duty on all relevant authorities, including the National Park Authorities, statutory undertakers and other public bodies, to have regard to these purposes. In pursuing these purposes, section 62 also places a duty on the National Park Authorities to seek to foster the economic and social well-being of their local communities

Material considerations – Peak District National Park Landscape Strategy and European Landscape Convention Action Plan 2008

4.14 The PDNP Landscape Strategy places the site in the Dark Peak Character area adjacent to the Dark Peak Yorkshire Fringe. Within the Dark Peak Character Area, the landscape is further subdivided into different Landscape Types. The site straddles Open Moors and the Moorland Slopes and Cloughs Landscape Character Types. The document sets out the human, physical and ecological influences on each character type, the sense of place, and the characteristics of each type such as land use, access, and enclosure.

5.0 GROUND (A) APPEAL

5.1 From an assessment of the site and applicable Development Plan policies, there are considered to be a number of key matters relevant to this appeal, as follows:

- Landscape and visual impact
- Biodiversity impact – protected sites and justification
- Policy compliance
- Possible precedents
- Benefits and justification for the track

These key planning matters are dealt with in turn below:

5.2 Landscape and visual impact

5.2.1 The landscape impact of the development is considered in more detail in the Proof of Evidence of Nick Leeming BA(Hons), Dip LA (Dist), MLI. This is summarised here to provide context to the Policy appraisal in section 5.4 of this evidence.

5.2.2 The valley in which the appeal site is located is of an intimate scale, contained on three sides, and this limits the sense of place. The valley has a mosaic of vegetation colours and textures

with swathes of green grass giving a distinctive patchwork appearance in contrast to the open moor landscape. Tracks, whether dark peat and heather or green grass have been an accepted part of moorland landscapes, and the route to which the appeal relates has been in use for over 20 years.

5.2.3 The majority of the track is not highly visible along most of its length and is well assimilated into the natural moorland. It is not significantly detrimental to the scenic quality and landscape character. The route of the track lies entirely in the Mickleden Valley – this area does not demonstrate the key characteristics of ‘Open Moor’ Landscape Type, but is instead characteristic of Moorland Slopes and Cloughs Character Type – as it is described in paragraph 1.1 of the officer’s report to planning committee when planning permission was refused (dated 15th June 2018). In such locations, the Peak District National Park Landscape Strategy and Action Plan concentrates not on controlling linear features as is the case with Open Moor Character Type, but on controlling associated localised impacts such as footpath erosion.

5.2.4 There is a low negative effect from the development, its impact mitigated due to the following factors:

- The existing landscape is only changed slightly in a detrimental way, limited to ground level;
- The matting is limited to a short area only, and not the whole route length. In this location is has successfully assimilated into the existing mosaic of vegetation and textures;
- Sections where matting and logs have not fully integrated are short and can be successfully remediated;
- The track is not a new feature and its man-made geometry is not incongruous; and
- A wider, rutted and braided track would be far more unsightly.

5.2.5 The overall change to landscape character is not considered to be significant. This conclusion echoes that of the SoS in his Screening Direction dated 8th March 2019 wherein it is stated “*any significant visual and landscape effects on the Peak District National Park, the SSSI, SAC or SPA would be limited and temporary. He recognises that initially the geotextile matting will be visible. However the matting allows grass, heather and other vegetation to grow up through the*

matting. Therefore the visual impact of this project in this greenfield location would reduce over time. The 'log raft' will also have an initial negative visual impact. However, this impact is not considered to be significant in EIA terms and, over time, due to the natural weathering of the logs, this visual impact will also reduce."

5.2.6 In terms of impact over time it is concluded that, in simple terms, the track immediately prior to the matting being laid, and immediately after, had a negative effect on the landscape. However, this is moderated at the present time due to vegetation having colonised it. Furthermore, in time, and with full mitigation, this moves to an overall positive impact when compared to the situation immediately prior to the development taking place.

5.3 Biodiversity impact – protected sites and justification

5.3.1 The ecological impact of the development subject to this appeal is dealt with in the Proof of Evidence of Andrew Baker BSc (Hons) FCIEEM and it is not proposed to repeat the contents of that in this evidence. I shall summarise it however, to provide context for a Policy analysis of the development in section 5.4 of this evidence.

5.3.2 The route is an historic one, in use for many years. It was evident on aerial imagery as early as 1999, and its poor condition clearly evident in 2005, long before the appellant's purchase of the land.

5.3.3 It has been, and is necessary to the management of the moor, the ongoing restoration of the blanket mire, and for the appellant's lawful use of the moor. In 2014, Natural England consented works on the moor under the Wildlife and Countryside Act 1981, this included laying of the matting. The matting was, and is necessary to allow the restoration of the moor as part of the appellant's HLS agreement without further degradation of the route by vehicles, which was already suffering rutting and braiding, with clear damage to the protected habitat.

- 5.3.4 Since the matting and rafts were installed in 2015, it has been described as being in favourable condition, with substantially revegetated acid grassland and with heather re-establishing along sections of the centre line of the route. Adjacent to the route, areas of previous braiding are recovering and are mostly revegetated, especially in wetter areas. There is no evidence of any ongoing impact on hydrology or drainage and in fact the matting has prevented further damage to the moorland and allowed natural drainage to recover from earlier damage.
- 5.3.5 Removing the matting will inevitably result in the removal of vegetation that has colonised it, along with the peat substrate bound to it by its roots. There will also be associated damage by vehicles during the process of removal. Removal of the matting and the steps required by the enforcement notice to not take into consideration the ongoing and lawful use of the route by vehicles, and the ongoing damage likely as a result, evidenced by history.
- 5.3.6 HRA and Natural England consent would be required, and there is some doubt as to whether this would be forthcoming due to the damage likely and the availability of an alternative (that is, leave the matting in situ).

5.4 Policy compliance

- 5.4.1 The LPA states in section 4 (b) of the Enforcement Notice – Reasons for Issuing the Notice – that the development has a significant visual impact and does not conserve the landscape and scenic beauty of the National Park, so accordingly it is in conflict with Paragraph 115 of the NPPF and that enforcement action is consistent with paragraph 207.
- 5.4.2 The LPA further states at section 4 (c) that the unauthorised development lies within the Natural Zone and none of the exceptions set out in the relevant policies apply. It states the development also fails to conserve and enhance valued landscape character, and therefore the development is in conflict with CS Policy L1, Local Plan Policy LC1, and DMP Policy DMC1.

- 5.4.3 It is stated at section 4 (c) that the development has resulted in a significant loss of habitat and is likely to have led to compaction and hydrological damage which would be exacerbated by continued use of the route by vehicles. The development therefore has had an adverse impact on the integrity of the SAC, SPA and would damage or destroy the interest features for which the SSSI has been notified, in conflict with CS Policy L2, Local Plan Policy LC17, and DMP Policy DMC11.
- 5.4.4 Policy DMC2 (Protecting and managing the Natural Zone) is not cited in reason 4 (c) when referring to harm in the Natural Zone. It is assumed this is an error and its relevance is not questioned.
- 5.4.5 Local Plan policies are now superseded and so I will not refer to them here, as they carry no weight.
- 5.4.6 In addition to those policies referred to in the Enforcement Notice, the LPA's statement refers to paragraphs 127, 170 and 172 of the later 2019 version of NPPF, as well as CS policies GSP1 and GSP3 in the context of landscape harm. It also refers to DMP Policy DMC12 (not a questionnaire document) in the context of ecology.
- 5.4.7 Each NPPF reference and Policy are dealt with in turn below.

NPPF

- 5.4.8 Paragraphs of NPPF referred to in the Enforcement Notice are no longer relevant, the current version of the document post-dating the notice.
- 5.4.9 It is a requirement of paragraph 127 that planning decisions should ensure developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development, are visually attractive as a result of good architecture, layout and landscaping; are sympathetic to local character, including the surrounding landscape setting.
- 5.4.10 The matting track functions well. It provides safe and suitable vehicular access to an otherwise inaccessible part of the moor to carry out land management functions and improve the condition

of the wider protected sites. The track is necessary to both carry out obligations contained within the appellant's higher level stewardship scheme, but also more general functions connected with the management of the moor such as predation control. The track forms an important health and safety function, enabling emergency vehicles to access the moor. This is particularly important in respect of wildfire risk and prevention.

5.4.11 The matting track has also improved the quality of the area. Were it not for the matting track, the route would be degraded, wider than it is, and a far more prominent feature in this setting. In the short term, when it was first laid, it had a greater visual impact. Over time it has assimilated into the landscape and in the future, especially with some remediation which can be required by condition, it will become an almost invisible feature. There is no conflict with paragraph 127 of NPPF.

5.4.12 Paragraph 170, insofar as it is relevant to the appeal subject, requires decisions to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity value, recognising the intrinsic character of the countryside, and wider benefits from ecosystems, minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and by remediating and mitigating despoiled and degraded land.

5.4.13 The matting and log rafts were laid with the purpose of enabling access to otherwise inaccessible parts of the moor whilst protecting the ground underneath in the manner most sympathetic to landscape character and biodiversity value as possible. The access was required to further benefit the site of biodiversity value. The route was previously intensely degraded and covering an area far wider than the matting track. The unsubstantiated allegation in the Enforcement Notice that the continued use by vehicles has likely caused compaction and hydrological damage ignores the lawful use and previous condition of this route.

5.4.14 As Natural England stated in its letter to the appellant dated 17th July 2015 (appendix A), the matting covers an area of 1320 sq m. Prior to laying the matting vehicle use adversely affected and was continuing to harm around 3500 sq m of habitat. The appeal site is far more resilient to

current and future pressures than prior to the matting being installed. There is no conflict with paragraph 170 of NPPF, and in fact support for the development is offered by it.

5.4.15 Paragraph 172 of NPPF requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks. Conservation and enhancement of wildlife is also an important consideration and should be given great weight in National Parks.

5.4.16 Paragraph 172 states that planning permission should be refused for 'major development' other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The term 'major development' for the purposes of paragraph 172 is not defined – this is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated. The term 'major development' has been found in case law not to be contiguous with the definition provided in the Town and Country Planning (Development Management Procedure) Order 2015, due to the presence of footnote 55 to that paragraph.

5.4.17 Paragraph 172 goes on to set out some of the considerations that should form part of an assessment of any major development (including the need for the development, the cost of and scope for, developing outside the designated area, and any detrimental impact it may have on the environment and landscape and the extent this can be moderated).

5.4.18 The LPA has not concluded that the development is 'major development' for the purpose of applying paragraph 172, and so accordingly has not applied the tests set out in that paragraph. I would have to agree. Whilst the matting covers a length of around 650m in a sensitive area, it is laid over an existing route that has existed for some 20 years. The matting covers only a small portion of that route. Its lightweight nature, the improvements it has made to the appearance of the route, and to its restoration, as well as the fact that it has no significant landscape or ecological impacts, suggests that it is less than major development.

5.4.19 Even were it considered to be 'major development' for the purpose of paragraph 172, there was a clear need for the development (evidence of degradation of the protected habitat from vehicle use, and a need for safe vehicular access to carry out important land management activities with

a wider benefit to the protected sites). There was no alternative route avoiding the designated area, and the detrimental impact of the development on the environment has been shown to be absent.

5.4.20 It is my opinion that in applying paragraph 172 and affording 'great weight' to conserving and enhancing landscape and scenic beauty in National Parks, and the conservation and enhancement of wildlife, the improvements to the site arising from the matting by reducing vehicular damage, and access to carry out important enhancements contained in the HLS agreement, are of considerable relevance. Accordingly, there is no conflict with paragraph 172 of NPPF.

5.4.21 Paragraph 175 of NPPF states that where determining applications, local planning authorities should apply the following principles:

- (a) If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- (b) 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 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;
- (c) Development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons;
- (d) Development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity

5.4.22 It has been shown that there is no significant harm to biodiversity. Natural England, a statutory body charged with protecting such areas, has consented the matting, and the development was

carried out in accordance with that consent. Even were there harm, there are significant benefits to the development, including preventing damage to the site and its environs from vehicular use and providing safe access for people and materials related to management activities with great benefits to the protected sites. The Inspector's attention is particularly drawn to criterion (d) – development whose primary objective is to conserve and enhance biodiversity should be supported, and this applies wholly to the matting track subject of this appeal. The development is entirely in accordance with paragraph 175 of NPPF.

Core Strategy Policies

5.4.23 CS Policy L1 deals with landscape character. It states that development must conserve and enhance valued landscape character, and that development in the Natural Zone won't be permitted unless in exceptional circumstances. Policy L1 is cited in the Enforcement Notice in support for issuing the notice, in the refusal of planning permission, and in the LPA's appeal statement further justifying its enforcement action against the development.

5.4.24 The 'exceptional circumstances' whereby development in the Natural Zone may be permitted are listed in Development Management Policy DMC2 (Protecting and Enhancing the Natural Zone). It states that 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 where the development is either essential for the management of the natural zone or for the conservation of and/or enhancement of the Natural Park's Valued Characteristics. It goes on to state that development that would serve only to make land management or access easier will not be regarded as essential.

5.4.25 As the appellant has set out in his own statement in relation to this appeal (paragraphs 9 and 10), the previous owner of the land and appeal site had used the track which had resulted in degradation of the surface vegetation, rutting and damage to the underlying substrate. They had installed log rafts to reduce damage. This work had been unsuccessful and the condition of the track prior to the laying of the matting is clear from the photographs at Appendix 4 of the appellant's statement. Both the appellant and Natural England were concerned about this

damage, particularly given that the route is the only safe route for ATV access to the western section of the property and, as has been said previously, is critical for the restoration and on-going management of the moor, with all its designations.

5.4.26 It is not a matter of convenience or to make access easier. The matting/rafts were installed in accordance with the Entry Level, Higher Level Stewardship Scheme and the Moorland Management Plan produced and agreed by Natural England and have facilitated the conservation works required under the scheme. The matting and rafts are directly connected with and an absolute necessity for the on-going management of the moor. The alternative would have been either to not carry out the works under the scheme, or to exacerbate the damage to the track which was already in existence and which had been significantly degraded and damaged already. Clearly this is not the intention of Policies L1 or DMC2. The track provides a safe running surface for emergency vehicles for health and safety purposes, as well as fire fighting vehicles and equipment. I note at paragraph 10 of the appellant' proof of evidence that the appeal track was *"used in direct connection with the successful putting out of a wild fire on a neighbour's land in 2016 when the track was used by our staff and neighbouring keepers with fire fighting equipment when other accesses to the fire had failed. This issue of wild fire is very real as management prescriptions have lead to massive combustible biomass increases over the last few years"*

5.4.27 Because the development, and its retention, is essential to the management of the Natural Zone, it is in accordance with Policy L1 of the CS.

5.4.28 Policy L2 aims to protect sites of biodiversity or geodiversity importance. It requires that development conserves and enhances any sites, features or species of biodiversity importance. Other than in exceptional circumstances, which are set out in Development Management Policy DMC12 (Sites, features or species of wildlife, geological or geomorphological importance), development is not supported by this Policy which is likely to have an adverse impact on any sites or features of biodiversity or geodiversity importance or their setting.

5.4.29 Policy DMC12 states that exceptional circumstances for internationally designated sites are those where the development is essential for the management of those sites, features or species, or

for the conservation and enhancement of the National Park's characteristics, or where the benefits of the development clearly outweigh the impacts.

5.4.30 I have already set out in paragraphs 5.4.23 and 5.4.24 of this statement above why the development was essential for the management of the Natural Zone, and that applies equally to the internationally designated sites. In addition to the matting track providing necessary and safe access to the land, the matting enables this to take place without causing further harm to the sub-surface and enabling the adjacent land and vegetation to recover, bringing about an overall improvement. The development does not in any way conflict with Policy L2 of the Core Strategy. It conserved and enhances the protected sites of biodiversity importance.

5.4.31 Policies GSP1, GSP2 and GSP3 of the Core Strategy are not cited as reasons for serving the Enforcement Notice. They are however referred to in the LPA's statement of case, and the development is described as being at odds with those policies with regard to landscape impact.

5.4.32 Policy GSP1 requires all development to be in accordance with the National Park's purposes. Major development should not take place in the National Park without rigorous consideration of criteria set out in national planning Policy. Where there is significant net benefit to the National Park from major development, every effort to mitigate and compensate for localised harm to the area's valued characteristics would be expected to be secured. Where the Park's purposes are secured, opportunities must be taken to contribute to the sustainable development of the area.

5.4.33 Policy GSP1 does not seek to prevent change from taking place in the National Park, and acknowledges in the case of major development that there may even be localised harm. In such cases where there is a significant net benefit of such development, this may be acceptable were it can be mitigated and compensated for. Whilst this exception appears only to apply to major development, and I have set out why I feel the matting track subject of this appeal is not 'major development' for the purposes of paragraph 172 of NPPF (paragraph 5.4.18 of this statement), I do not see any logic where other forms of development, where there may be significant net benefits, would not be subject to the exceptions of this Policy. There are significant benefits to the matting track, being the substantial repair and revegetation of the severely damaged route. This enables the significant and beneficial ongoing management of the moor in a safe way whilst

preventing any further damage. Conversely there is only minor landscape harm arising, which is highly localised. This can be more than adequately mitigated, and such mitigation can be the subject of suitably worded planning conditions. It is also relevant that the condition of the track prior to the matting being laid caused more landscape, visual and ecological harm.

5.4.34 I do not believe the appeal development will compromise the aims of Policy GSP1. In addition, the development supports the aim set out in criterion D in terms of its contribution to sustainable development (paragraph 7.20 of the Policy's supporting text - conserving and enhancing the ecological interest of the site and the wider moor).

5.4.35 Policy GSP2 of the Core Strategy (Enhancing the National Park) is a generic Policy requiring opportunities to enhance the national park to be acted on. To be in accordance with this Policy, schemes must respect the character of the area, and opportunities for the removal of undesirable features or buildings will be taken.

5.4.36 Any man-made intervention in a remote moorland setting, where there was not one previously, arguably does not respect the character of the area. For example, the cut gate path, with stark stone slabs cutting through the landscape does not in my view respect the character of the area. However, there are other reasons why it is appropriate, including public access and the prevention of damage to the underlying habitat and landscape from heavy pedestrian traffic. Similarly, the creation of a matting track initially may not have respected the character of the area. However, there were compelling reasons for it, which have been discussed in this statement already. Its impact was localised. Furthermore, in time it has brought about significant improvements to the visual appearance of the track and enabled the moor to be managed adequately without further damage and harm being caused. The matting has enabled the vegetation to recover both adjacent to it, and over it. So, whilst in a literal sense, when the development took place, there may have been some conflict with Policy GSP2, this is now minimised, and other material considerations, such as the considerable benefits of the development, now outweigh any remaining conflict.

5.4.37 I question the particular relevance of Policy GSP3 (Development Management Principles). This is also a generic Policy, but I consider it more applicable to development in towns and villages.

Development Management Policies

5.4.38 Policy DMC1 states that development which would lead to undesirable changes in landscape character or any other valued characteristics of the site and area will not be permitted. Where a building or structure is no longer needed or being used for the purpose for which it was approved and its continued presence is considered to be harmful based on the evidence, its removal will be required.

5.4.39 Policy DMC2 sits under the umbrella of Core Strategy Policy L1 and sets out the exceptional circumstances which enable development in the Natural Zone to be considered acceptable. These are discussed in paragraph 5.4.24-5.4.26 of this statement and I conclude that exceptional circumstances *do* exist. In addition to this, the Policy requires compliance with Policy DMC3.

5.4.40 Criteria that may be applied under part 'C' of Policy DMC2 are removal of permitted development rights where appropriate, temporary consent to enable an assessment to be made of the longer-term impacts of a development, and an initial personal consent.

5.4.41 Removal of permitted development rights is not applicable here, and a personal permission is not practical, given the open access nature of the land.

5.4.42 In terms of a temporary consent, I would argue, since the development has been in place for some 5 years now that we can see how the development has begun to assimilate into the landscape. Whilst initial efforts were made to expedite this process, these efforts ceased when planning permission was refused, due to the cost and uncertainty. Further mitigation would show that the development can be fully integrated into the landscape such that the matting can be more fully vegetated.

5.4.43 Policy DMC2 also requires compliance with Policy DMC3. Policy DMC3 states that where development is acceptable in principle, it will be permitted provided that its detailed treatment is of a high standard that respects, protects and where possible enhances the natural beauty,

quality and visual amenity of the landscape, including the wildlife and cultural heritage that contribute to the distinctive sense of place.

5.4.44 The detailed criteria referred to in this Policy - siting, scale, form, mass, levels, height and orientation in relation to existing buildings, settlement form and character, landscape features and the wider landscape setting arguably relate to development in and around towns and villages. I do not think for this reason the application of this Policy adds to the assessment of acceptability of the appeal development. However, there is no conflict with the Policy in terms of landscape setting for the reasons set out elsewhere in this statement, and there are substantial benefits to the development in terms of improving and enabling the management of the wider protected sites and moorland.

5.4.45 Policy DMC11 (Safeguarding, recording and enhancing natural conservation interests) is cited as a reason for serving the Enforcement Notice in relation to the impact of the development on biodiversity. It is alleged that the development has had an adverse impact on the SPA and SAC as well as the interest features of the SSSI. The Policy requires proposals to aim for no net loss in biodiversity, by demonstrating the following:

- i. Enhancement proportionate to harm
- ii. No alternative sites to cause less harm
- iii. Adverse effects have been avoided
- iv. Appropriate mitigation; and
- v. In rare cases and as a last resort, compensation.

5.4.46 Policy DMC11 also requires consideration of cumulative effects of a development, and the ecological networks and species it may affect. Development should incorporate features to enhance biodiversity and retain existing ones. It also sets out the information requirements for applications affecting protected sites.

5.4.47 Having regard to the evidence of Mr Andrew Baker it cannot be argued that there has been harm caused to the protected sites as a result of laying the matting. The sole reason for the matting was to enable the management of the moor in accordance with an agreement with Natural

England, the statutory body charged with identification and protection of such sites. Natural England has consented the track which was to enable the management works without further damage to the protected habitat. Since the matting was installed the track is in favourable condition, with substantially revegetated acid grassland and with heather re-establishing along sections of the centre line of the route. Adjacent to the route, areas of previous braiding are recovering and are mostly revegetated. There is no evidence of any ongoing impact on hydrology or drainage as alleged in the Enforcement Notice, and in fact the matting has prevented further damage to the moorland and allowed natural drainage to recover from earlier damage.

5.4.48 Taking into consideration the condition of the track before the matting was installed, and that it has enabled access to undertake management works to otherwise inaccessible parts of the moor, I would suggest there has been no net loss in biodiversity as a result of the installation of the matting and log rafts. Adverse effects have been fully avoided in accordance with criterion (iii) of Policy DMC11.

5.4.49 There are no cumulative effects arising, or impacts on protected species or their networks. I consider that given the reasons for the development, and the beneficial impact it has had on vegetation and habitat creation, there is no conflict with any aspect of Policy DMC11.

5.4.50 Policy DMC12 relates to sites, features and species of wildlife, geological and geomorphological importance. The exceptional circumstances which need to exist for development within such sites to be permissible under Policy L2 of the Core Strategy are set out in this Policy, and this is discussed in paragraphs 5.4.24-5.4.26 of this statement. Exceptional circumstances exist in this case. The appeal development is in complete compliance with this Policy.

5.5 Possible precedents

5.5.1 It is noted that reference has been made by LPA officers in the course of discussions leading up to the appeal, and by third parties, of two appeal decisions related to tracks in the Peak District National Park

5.5.2 The purpose of this section is to set out why I consider these differ from this appeal.

Appeal Ref: APP/M9496/C/18/3208720 - Land at Cartledge Flat/Rushy Flat Dike, North of Hollingdale Plantation, Strines, Bradfield, South Yorkshire (appeal by Sir Philip Vyvian Naylor-Leyland)

- 5.5.3 This appeal was against an Enforcement Notice which alleged, without planning permission, the laying of crushed stone on the land to form a track.
- 5.5.4 The appellant appealed on a number of grounds, including ground (a), that planning permission should be granted for the works described in the Notice. All grounds, with the exception of ground (f), were unsuccessful and the Enforcement Notice was amended and upheld.
- 5.5.5 The Inspector concluded that the crushed stone track had been laid over the full length of the track, in areas which were not stoned. They concluded that the track was within the ‘open moors’ character type, in the Dark Peak Character Area. The decision letter states that the track was *“visible from a wide area of open access land. The track crosses open moorland that is characterised by its expansive aspect and lack of obvious human influence. It cuts across the landscape and is visually intrusive and damaging to the area’s valued characteristics. Comparing the impact of the track to what existed previously, it is now a defined and obvious manmade feature through an otherwise wild landscape. The previous route was less intrusive. Consequently, its effect is not neutral and the defined valued landscape character is not conserved.”*
- 5.5.6 In the case of the appeal proposal, this is a lightweight matting track which has revegetated over much of its length. It does not cross open moorland without other human influence and its visual impact is much more localised. Indeed, the Cut Gate Path is a significant and obvious feature in the landscape. The previous route was not less intrusive, it was more intrusive, being much wider and seriously damaged ground.
- 5.5.7 In addition, whilst Natural England had also consented the stone track, the appellant in that case had not constructed it in accordance with that consent, and had created it over a much greater

length. The development had not been undertaken in accordance with the Natural England consent. The appellant in this appeal when laying his matting, has done so entirely in accordance with Natural England's consent, and Natural England continue to support it because of its positive impact on the protected sites.

Application reference: NP/S/0718/0606 - Development of permissive paths and a family mountain bike trail at Langsett Reservoir plus package of mitigation (application by Yorkshire Water Services Ltd)

- 5.5.8 Ms Wendy Birks (7th July 2020) has referred to the above application for planning permission in her comment on the appeal. Planning permission was granted, in accordance with officer recommendation, for the development by the Peak District National Park's planning committee on 4th July 2019.
- 5.5.9 In commenting on this appeal she refers to the swathe of information submitted in support of the above application, the inference being that insufficient consideration was given to the appeal development and therefore the appeal should be dismissed.
- 5.5.10 The proposal at Langsett Reservoir is entirely distinguishable from the appeal development. The application is located outside of the Natural Zone, SPA, SAC and SSSI. It was to cross a range of different habitats, over a length of around 3 kilometres. The impacts of such a development could not possibly be known, hence the need for a wide range of surveys to establish the likely impact.
- 5.5.11 In the case of this appeal however, the development is a lightweight matting over a much shorter distance over an existing rutted and braided track. Ironically, because of the high level of protection of the sites affected, a great deal more is known about likely species present at the site, habitats, and so on. The landowner, contrary to what is alleged in the correspondence did not ignore the authority of the planning department. When he was made aware planning permission was required, he applied for planning permission. Prior to this, the development was carried out in full consultation with Natural England, the body responsible for protected sites and their preservation, who themselves acknowledge they weren't aware the matting was

development requiring planning permission. Natural England carried out a detailed HRA of the project, which included the track, and subsequently consented it.

5.6 Benefits and justification for the track

5.6.1 Natural England granted consent in 2014 under the Wildlife and Countryside Act 1981 for the Site Delivery Plan which included capital works to the appeal track (laying of matting) to facilitate habitat restoration work on the moor. This Plan identified not only the scope of the works but also a major constraint in accessing the area where the work was due to take place. The Plan recommended that matting be laid on the worst affected areas as no alternative route could be found. The Moorland Management Plan (MMP) produced by NE required gully blocking, re seeding of bare peat and bank profiling works above the 500m contour, all to be accessed by the track subject to this appeal.

5.6.2 As well as being essential to enable the appellant to carry out the works contained in the MMP, the track also enables access for other functions as well. This includes general activities connected with the appellant's lawful use of the land, access to farmers who will use the track by quad bike to check on and collect ill or dead stock, but there are also significant health and safety benefits of a suitable access for vehicles. Firstly, the track can be used in the event of personal injury. Secondly, the track provides access to more remote parts of the moor which would otherwise be inaccessible by fire fighting equipment, in the event of wildfires. This is evidenced in the appellant's proof of evidence (paragraph 10), in which he provides details of a wildfire in 2016 where the appeal track was used due to a lack of alternatives. Wildfires on moorland landscapes are increasingly headline news. In the last 2 years, regions all over the UK have been affected, including Saddleworth Moor in Greater Manchester, Winter Hill in Lancashire, and Ilkley Moor in West Yorkshire. Already in 2020, warmer weather has resulted in wildfires in North Wales and the Peak District (land between Crowden and Glossop, near Chew Reservoir, in an area measuring about four sq miles).

5.6.3 The ability to safely access areas by vehicle to tackle wildfire, as well as the other management functions set out above, is a material consideration weighing in favour of the development.

6.0 PROPOSED CONDITIONS AND ENFORCEABILITY

6.1 During the course of the appeal, the appellant has sought, via his agent, to agree possible conditions should the appeal be successful, in negotiations around a possible withdrawal of the appeal and in the context of the appeal itself. Conditions that may be imposed on any planning permission granted may require:

- a) Imposition of a temporary consent (Policy DMC2 (iii))
- b) Limitation of the use of the track (personal permission – Policy DMC2 (iv))
- c) Limitation on the use of the track (weight limitation, timing, and purpose)
- d) Steps to further enable vegetation of bare areas of mesh and other repair works

6.2 Policy DMC2 (iii) states that where planning permission is given in the Natural Zone, it may be appropriate to limit the development to a temporary period. It is my belief that a temporary consent is not desirable. This is based on the fact that were the matting removed, vehicular access over the track would continue and cause continuing damage to a much wider area. However, in the event that a permanent planning permission is denied, a temporary consent would allow the imposition of conditions and a sufficient period of time to test the efficacy of mitigation and would therefore be appropriate if a permanent permission was deemed not to be.

6.3 Policy DMC2 also suggests that where permission is given in the Natural Zone, this should be limited to personal use of the applicant only for a period of 2 years. In my view, the open access nature of the area, and its remoteness, makes this impractical to enforce.

6.4 In terms of a limitation on the use of the track by vehicles, in particular those over a certain weight, the appellant is happy to accept such a condition. This would assist in maintaining the appearance and condition of the track, and would ensure no damage caused to it or the subsurface. We have suggested to the LPA previously that unless in the case of emergency, the use of the track is to be limited to persons on foot or to motor vehicles with a maximum laden weight of 1,500kgs. This is sufficient to minimise damage to the track and compaction.

6.5 Throughout this evidence I have referred to possible mitigation that will enable the appellant to improve the appearance of areas of the track which have not as successfully revegetated. Suggested steps to be incorporated into a condition as follows:

a) Spray up to 20% of the existing grass sward with selective herbicide in the Spring following the Appeal Decision, followed by the re-seeding by hand of this area with good quality vernalised local heather. Additional herbicide spraying and re-seeding in the following Spring if heather establishment has not increased by 6% of the total area.

b) Hand works to the geotextile matting on the 25m total length (6 short lengths) of vertically and horizontally unstable stretches pursuant to agreed protocols.

c) Hand works to deploy coarse heather brush mini bales and small quantities of local soil to round off the ends of the wooden log 'rafts' to encourage further sediment to accumulate, and to encourage growth in the grooves and in the depressed areas between the individual poles, with the possible installation of two under 'raft' drainage pipes.

d) Targeted deployment of various *Sphagnum* plugs in the two wet flush areas with high organic matter content and also in the sediment areas around the wooden log 'rafts' in the year following the Appeal Decision and annually thereafter for a defined period.

e) Possible *Sphagnum* plug deployment, but at a higher density than currently proposed, on the small areas of exposed peat face on the modified deep peat close to the south east origin of the track. This work to occur in the year following the Appeal Decision and annually thereafter for a defined period

In addition, the condition may require the maintenance of the matting in terms of any exposed, damaged areas in accordance with a scheme of maintenance that should be submitted to and approved by the LPA within 12 weeks of planning permission being granted.

6.6 The above conditions, particularly a mitigation scheme for the matting, would in my view render the development acceptable in planning terms, and achieve a better remedy than the removal of the track and its attempted restoration while in active use by vehicles.

7.0 GROUND (F) APPEAL

- 7.1 An appeal is made on ground (f) that the steps required by the Enforcement Notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
- 7.2 Part 5 of the Enforcement Notice (a-b) sets out how the matting should be removed, that is, collecting heather brash between 1st October and 31st January and placing it alongside the track, before removing the matting using a particular vehicle or by hand, the removal commencing at the north west side of the track.
- 7.3 This is overly prescriptive and goes beyond what is necessary to remedy the breach, namely to remove the matting and rafts.
- 7.4 Notwithstanding the fact that replanting is unlikely to be successful due to the ongoing lawful use of this route by vehicles, the Enforcement Notice then requires, in steps 5 (c-f) a series of planting measures which in my view are aimed at improving the track, not simply restoring it to its former appearance and condition. This includes a series of requirements including planting, spraying off grass, spreading heather brash (by hand), over a period of in total, 42 months.
- 7.5 There is, submitted with this appeal and within the proof of evidence of Mr Andrew Baker, ample evidence of the appearance and condition of this track prior to the working being undertaken. To require the restoration of the land to a condition superior to this, as well as setting out a detailed methodology for doing so (prescribing the vehicles to be used and the direction of travel and so on) goes far beyond the steps necessary to remedy the breach, which is simply, without planning permission, the laying of geotextile matting and wooden rafts.
- 7.6 The Inspector in the Strines appeal (appendix B to this proof) agreed. In that case, the notice required:

“Remove the crushed stone from the Land. The removal shall be carried out using low ground pressure tracked 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 crushed stone has been removed. Any equipment or machinery used in the removal of the crushed stone shall at all times during the removal works be stationed on the Land”

7.7 The Inspector concluded in that case as follows:

“The requirement specifies how the crushed stone should be removed. The NPA explains this to minimise the risk of further damage to the sensitive habitat. While I appreciate the concerns of the NPA, the removal of the crushed stone alone would remedy the breach and satisfy the statutory purpose behind the notice. The method of removal specified exceeds what is necessary to remedy the breach and should be deleted”

7.8 There was an existing track on the land and the matting and log rafts were laid over this. The Enforcement Notice goes far beyond the removal of the matting and log rafts, therefore it follows that the steps are excessive.

8.0 CONCLUSION

8.1 The development subject to this appeal is the laying of geotextile matting and log rafts to strengthen and make resilient and safe, an existing route over the land, which had been damaged by vehicular use by a previous owner. The damage was such that it had a scarring effect on the landscape, and was damaging to the ecological and biodiversity interests of the site.

8.2 The track was consented by Natural England as part of a series of management works on the moor which are in the interests of the conservation of the protected sites. Natural England to date has raised no objections to the development.

- 8.3 There are no significant landscape or visual effects caused by the retention of the matting and log rafts, and that with conditions related to repair and mitigation, this would result in an overall positive impact when compared with the site prior to laying the matting.
- 8.4 Similarly, the matting and log rafts had a beneficial impact on the condition of the site surface, vegetation and the biodiversity interests of the site. It has reduced the overall surface area given over to the vehicular access, and allowed the revegetation and recovery of the whole surface. This would not be possible without the matting and log rafts.
- 8.5 The matting and log rafts provide a safe and satisfactory access for essential reasons connected with the management of the moor, but provide protection from the erosion that would be an inevitable consequence of continued vehicular use.
- 8.6 For these reasons, there is no conflict with Development Plan policies or NPPF.
- 8.7 Conversely, the removal of the track would cause significant damage to the appeal site, visually and ecologically. This could not be repaired in the manner proposed in the steps set out in the Enforcement Notice, even if this were reasonable bearing in mind the steps seek betterment and not to simply remedy the breach of planning control. Even if the steps were reasonable and successful, the continued use of the track by vehicles would degrade the surface and return it to the poor and unsightly condition it was in prior to the development taking place.
- 8.8 Habitats Regulations Assessment and Natural England consent would be required to remove the matting and log rafts, and there is some considerable doubt as to whether this would be forthcoming due to the damage likely and the availability of a suitable alternative (that is, to leave the matting in situ). In the event that the removal of the matting and log rafts failed the tests of that Assessment and Natural England's consent thereafter withheld, this would mean the Enforcement Notice could not lawfully be complied with.
- 8.9 There are significant benefits to the matting aside from making the surface vegetation and substrate resilient to vehicular use. It provides a suitable access to carry out management



activities on the moor, access for health and safety reasons, and a suitable access in the event of wildfire for firefighting equipment and vehicles.

8.10 Given compliance with Development Plan policies and guidance in NPPF, the appeal proposal is in my opinion, subject to mitigating conditions discussed in this evidence, an acceptable form of development.

8.11 In the event the ground (a) appeal is unsuccessful however, and the Enforcement Notice upheld, the steps to remedy the breach contained in the Notice are excessive. It is not appropriate, as was concluded in the Strines appeal discussed in this evidence, to specify *how* the track material is removed, or to seek betterment of the site surface.