



**Maria Ferguson**

PLANNING CONSULTANCY

**SUMMARY OF 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**

6<sup>th</sup> November 2020

Reference: MF/18/055

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- 1.1 This is the Summary of the Proof of Evidence of Maria Ferguson.
- 1.2 This appeal concerns the laying of geotextile matting and log rafts on the land over an existing track. It cannot be disputed that a track was in use by vehicles on the land for some 20 years prior to the development taking place. That use of the largely unsurfaced route caused significant harm to the site – it eroded the track surface and vegetation cover, which then resulted in rutting and braiding along its length. The effect of this was that the track affected a greater area of habitat than was necessary, it was unsightly, and it was damaging to the biodiversity interests of the site.
- 1.3 The programme of works agreed with and consented by Natural England necessitated the use of the track, and there was no alternative. Accordingly, the matting, and later the log rafts, were laid without planning permission. Planning permission was later applied for and subsequently refused for three reasons. These were that there are no exceptional reasons to justify the development in the Natural Zone so the development is unacceptable in principle, that there was harm to the valued character and appearance of the landscape, and harm to moorland ecology due to the construction itself, and the anticipated likely increased vehicle movements encouraged by the matting.
- 1.4 The Enforcement Notice was served on 21<sup>st</sup> September 2018. This also cites a significant visual impact arising from the development, conflict with policies aimed at protecting the Natural Zone from unnecessary development, and the alleged significant loss of habitat, compaction and hydrological damage at the time of the works and on an ongoing basis.
- 1.5 The steps require the removal of the matting, using a specified methodology as set out in steps (a) to (f) in the Enforcement Notice, and using specified equipment or by hand. This should take place within 42 months, or 3 and a half years, of the Enforcement Notice taking effect.

1.6 I discuss in my main proof of evidence the applicable development plan policies, and relevant sections of the National Planning Policy Framework (NPPF). I contend that the Appeal Proposals comply with those policies and that there are no policies therein that indicate that development should be restricted in this case.

1.7 The main issues relating to the ground (a) appeal are

- Landscape Impact
- Biodiversity impact
- Policy compliance
- Possible precedents
- Benefits of the development.

1.8 It is acknowledged that the visual impact of the matting when it was first laid was greater than it is now. However, that is now almost fully mitigated by the vegetation that has colonised it, as was intended. It is not agreed that the vegetation that has colonised it causes any adverse impact in itself. There is no significant visual or landscape impact arising from the matting, or the log rafts, and any small negative effects can be fully mitigated by a condition requiring planting and repairs. This temporary impact, and the lack of significant visual impact was recognised by the Secretary of State in issuing his Screening Opinion in respect of EIA

1.9 The overall impact on biodiversity is a positive one. The LPA conclusions do not appear to be founded on any sound evidence base. The allegations regarding likely intensification of use arising from the surfacing of the route are unfounded, along with the subsequent alleged compaction and hydrological damage. As Natural England pointed out, the matting has enabled a reduction in the habitat affected by the existing and established vehicular use of the route from 3500 sqm to 1320 sqm. Furthermore, it

would enable restoration and management works to take place without further harm to the route, which offers an overall net benefit to the protected sites. The matting has allowed the vegetation to recolonise the surface of the route, and the recovery of adjacent land.

- 1.10 There is clearly compelling justification for the matting. The track is essential to provide access to parts of the moor where there is no alternative. Access is required in connection with management of the protected sites in accordance with the agreement with Natural England. Natural England consented the matting and the development was carried out in accordance with that consent. It can also be used for emergency access if necessary, for health and safety reasons or in the case of wildfire. The reasons and justification for the matting and log rafts are the exceptional circumstances necessary to comply with development plan policies.
- 1.11 It is my view that the development complies fully with the development plan, and there are no material considerations that suggest that planning permission should be withheld. Other examples of tracks cited by third parties and the LPA, such as the Strines appeal, are not comparable for reasons explained in my main proof and as such do not present any form of precedent for dismissing the appellant's ground (a) appeal.
- 1.12 Should the appeal be allowed, I have considered whether conditions may be necessary to make the development acceptable, and whether such conditions would be reasonable, necessary and enforceable. Of those conditions, I consider that a condition requiring a method statement to set out further steps to enable the vegetation of bare areas of matting and other repair works is necessary, reasonable and enforceable. A limitation on the weight of the vehicles using the track is not necessary in my opinion, but since the appellant would not use vehicles over the suggested laden weight, I know the appellant will accept such a condition if considered necessary. Likewise, if the Inspector considered a temporary consent was appropriate, I know the appellant would

favour this over a refusal. However, I am of the strong opinion that the track as mitigated will assimilate into the landscape better than the unsurfaced route ever did, and this is evidenced by progress to date and the condition of the track prior to the matting being laid.

- 1.13 Part 5 of the Enforcement Notice sets out the steps considered by the LPA necessary to remedy the breach of planning control. They specify a methodology which is quite detailed in content. This is that the matting is removed in a particular direction, by particular vehicles and equipment, or by hand, and then replanted. If there are areas of bare ground or grass after a certain period, steps are to be repeated.
- 1.14 Whilst the motives for such a detailed methodology are understood, and I have some sympathy with the intentions, they go far beyond the steps necessary to remedy the breach, which is the removal of the matting and log rafts. The Inspector in the Strines appeal referred to in my full proof of evidence agreed and allowed the appellant's ground (f) appeal on that basis.
- 1.15 The requirement for planting and ongoing monitoring is also excessive, as it seeks to restore the track surface to a condition which would be an improvement on its appearance and condition prior to the development taking place. The photographic evidence shows that the majority of the surface of this part of the overall route was bare earth. The condition of the route leading up to the appeal site, which was noted to be in better condition than the appeal site, also evidences this. During my site visit on 15<sup>th</sup> October, significant stretches of the route leading to the appeal site were rutted and braided with no vegetation cover.
- 1.16 The Inspector in the Strines appeal stated of the requirements in that Enforcement Notice *"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"*

- 1.17 This is the basis of our ground (f) appeal. If the Inspector is minded to agree that such steps are excessive, it further supports the fact that the removal of the track would have a far greater negative impact on visual amenity and biodiversity than its retention.