



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

**LPA Reference No: 15/0057**

**Date: July 2020**

**PEAK DISTRICT NATIONAL PARK AUTHORITY**

**Town and Country Planning Act 1990 (as amended) (“the 1990 Act”)**

Appeal by Dunlin Limited against an Enforcement Notice relating to engineering operations consisting of the laying of geotextile matting and wooden log ‘rafts’ to form a track on land at Mickleden Edge, Midhope Moor, Bradfield, South Yorkshire.

**Statement on behalf of Peak District National Park Authority as Local Planning Authority**

## **1. Introduction**

1.1 This appeal relates to a Planning Enforcement Notice, reference No: 15/0057 ('the Notice') that was issued by the Peak District National Park Authority ('the Authority') on 21 September 2018. Details of the Notice are as set out below.

1.2 The breach of planning control alleged in the Notice is:

*"Without planning permission, engineering operations consisting of the laying of geotextile matting and wooden log 'rafts' on the Land to form a track."*

1.3 'The Land' subject of the Notice is marked in red on the plan attached to the Notice.

1.4 The steps required by the Notice, and the time periods for compliance are as follows:

*"The steps below ((a) to (f), inclusive) shall only be carried out between 1 September and 28 February, in the following year:*

- a) Place between 30 and 35 cubic metres of locally sourced heather brash, which has been collected between 1 October and 31 January in the following year, alongside the Land. The heather brash shall be placed in bags or piles between 20 and 50 metres apart with each bag or pile consisting of between 1 and 2 cubic metres of heather brash.*
- b) Following the completion of step a), remove the geotextile matting, wooden log 'rafts' and any other imported materials used in the construction of the track from the Land. The removal shall either be carried out by hand or using low ground pressure tracked vehicles, equipment or machinery. Any equipment or machinery used in the removal shall at all times during the removal works be stationed on the Land. 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 geotextile matting, wooden log 'rafts' and any other imported materials used in the construction of the track have been removed.*
- c) Following the completion of step b), spread the heather brash by hand over the Land to a depth of between 1.5 and 2.5 centimetres.*
- d) Following the completion of step c), plant sphagnum moss plugs by hand at a minimum density of one plug per 5 square metres over the areas where the wooden log 'rafts' have been removed. The sphagnum moss plugs shall consist of the following mix, or an equivalent in order to stabilise the peat bog, 10% Sphagnum capillifolium; 10% Sphagnum papillosum; 40% Sphagnum palustre; 30% Sphagnum fallax; 5% Sphagnum cuspidatum; 5% Sphagnum fimbriatum.*

*Time for compliance for steps a), b), c) and d): Within 12 calendar months of the date when the Notice takes effect.*

- e) *Any parts of the Land which, 30 calendar months after this Notice takes effect, have more than 30% grass cover over any 10 metre long section, shall be sprayed by hand with a grass-specific, selective herbicide.*
- f) *Following the completion of step e), spread heather brash, which has been collected between 1 October and 31 January in the following year, by hand over any areas of grass or bare peat on the Land to a depth of between 1.5 and 2.5 centimetres.*

*Time for compliance for steps e) and f): Within 42 calendar months of the date when the Notice takes effect.”*

- 1.5 The appeal against the Notice is proceeding on grounds (a) and (f).
- 1.6 The appellant also claims that the enforcement notice is a nullity and the enforcement notice is invalid.

## **2. Site and Surroundings**

- 2.1 Midhope Moors lies near the north-eastern edge of the National Park and to the south-west of the villages of Langsett and Upper Midhope. The Moors are designated as section 3 Moorland, as defined in the Wildlife and Countryside Act 1981, and are also part of the Dark Peak Site of Special Scientific Interest (SSSI) which extends across more than 30,000 ha of wild, open and continuous moorland in the north of the National Park. The SSSI citation states that *“the combination of plateaux blanket mires; wet and dry heaths and acid grasslands, together with associated flushes and mires on moorland slopes, represents an extensive tract of semi-natural upland vegetation typical of and including the full range of moorland vegetation of the South Pennines.”* It goes on to state that *“the Dark Peak moorlands support the full range of breeding birds found in the South Pennines, some of which are represented at their southern most viable English locations”* and that *“the moorland breeding bird assemblage is of great regional and national importance.”* The breeding birds found in the SSSI include internationally important populations of several species listed in the European Commission Birds Directive as requiring special conservation measures. The land is also designated as a Special Area of Conservation (SAC), as defined in the European Union’s Habitats Directive (92/43/EEC), and a Special Protection Area (SPA) under the European Union Directive on the Conservation of Wild Birds.
- 2.2 In common with most of the upland areas in the National Park, the land is also open access land under the Countryside and Rights of Way Act 2000, which means that, subject to certain exceptions, the public normally has a right to roam on foot without keeping to public rights of way. The track, which is the subject of this report, is bisected by the Cut Gate Bridleway, a north-south route across the moors which is very popular with walkers, cyclists and horse riders and which runs from Langsett Reservoir southwards to the Upper Derwent at the northern end of Howden Reservoir.
- 2.3 The track in question essentially straddles Mickleden Clough near the top of the moor some 2.8km south-west of Upper Midhope. It comprises of an approximately 700m long sinuous section of a longer access route running

roughly east-west from 'Lost Lad' down over the Cut Gate Bridleway and across Mickleden Beck, rising to the lower slopes of Harden Moss around 230m west of the Beck.

### **3. Planning History**

- 3.1 2016 - Planning application submitted for retention of access matting but in May 2016 the application was deemed invalid, principally due to inaccurate plans, and no further action was taken in relation to it.
- 3.2 25 June 2018 – Retrospective planning application refused (ref: NP/S/1217/1304). The submitted application described the proposal as 'retrospective planning consent on Midhope Moor to restore and repair previously damaged access route to include the laying of plastic access mesh to facilitate vehicular access.' **(Document 1)**

### **4. Response to the Appeal Grounds**

- 4.1 The grounds of appeal advanced by the appellant are set out in the document headed 'STATEMENT OF APPEAL' and dated 7 November 2018. This was submitted to the Planning Inspectorate with the appeal form on 8 November 2018. A considerable period of time has lapsed since the Notice was issued and the grounds of appeal were submitted. So, although the Authority is responding to those grounds of appeal, it is necessary to take into account the changes in circumstances that have arisen during that period, including updated and revised national and local policies. Before considering the appeals on ground (a) and (f) it is proposed to respond to the appellant's claims that the Notice is a nullity and that the Notice is invalid.

#### **Nullity**

- 4.2 The appellant claims that the Notice is a nullity as, in his opinion, the requirements in paragraph 5 of the Notice require the appellant to commit a criminal offence, in that, for example they require it to contravene section 28E(1) of the Wildlife and Countryside Act 1981 ("the 1981 Act").
- 4.3 The appellant has not specified which of the requirements in paragraph 5 of the Notice would result in him committing a criminal offence, neither has he explained how he has come to this conclusion.
- 4.4 Section 28E(1) of the 1981 Act requires, in essence, the owner or occupier of any land included in a SSSI not to carry out, or cause or permit to be carried out, certain specified operations on that land unless notice of the proposed operation has been given to Natural England and one of the three conditions in subsection (3) of that section is fulfilled. The conditions in subsection 3 are:
- a) that the operation is carried out with Natural England's written consent;
  - b) that the operation is carried out in accordance with the terms of an agreement under section 16 of the 1949 Act, section 7 of the Natural Environment and Rural Communities Act 2006 or section 16 of the Environment (Wales) Act 2016];

c) that the operation is carried out in accordance with a management scheme under section 28J or a management notice under section 28K.

- 4.5 Before issuing the Notice the Authority sent an e-mail dated 13 July 2018 to Natural England (**Document 2**) which requested its comments and suggestions on the enforcement notice requirements. As stated in that e-mail, the Authority wished to ensure that any enforcement action was compatible with protected sites objectives. At that stage the detailed requirements had not been formulated but the consultation with Natural England summarised the likely requirements, including the removal of the plastic matting and log 'rafts' and some revegetation work to re-establish the former dwarf shrub vegetation.
- 4.6 The e-mail dated 13 July 2018 was followed by a further e-mail to Natural England dated 25 July 2018 (**Document 3**). This clarified the information sought but reiterated the previous request for comments and suggestions on the Notice requirements.
- 4.7 The Authority did not receive a reply to either of these two e-mails and at no point did Natural England suggest that there was a conflict between the suggested enforcement notice requirements and the 1981 Act. In these circumstances, the Authority considers that it was entitled to conclude that the proposed enforcement action was compatible with protected sites objectives and that there was no conflict with the 1981 Act.
- 4.8 Furthermore, in recent e-mail correspondence, Natural England has stated that in its view no such conflict automatically arises and the enforcement notice does not of itself require the appellant to commit a criminal offence (**Document 4**). The Authority is in agreement with Natural England's view.
- 4.9 The Appellant has failed to understand the basic principles relating to an enforcement notice being rendered a nullity. An enforcement notice is a nullity if it is *so defective* on its face that it is without legal effect. This is a high bar and the Appellant has done little to reach it. In the case of *McKay v Secretary of State for the Environment* [1994] J.P.L 806 the notice was a nullity because it required works giving rise to criminal liability under the Ancient Monuments and Archaeological Areas Act 1979 *unless* scheduled monument consent was first obtained. In our case, it is not difficult for the landowner to give notice to Natural England that it seeks to undertake operations to comply with the enforcement notice, and for the consent to undertake works in order to comply to be readily forthcoming.

### **Invalidity**

- 4.10 The appellant suggests that the Notice requirements need to be varied to allow him to resolve the claimed conflict with section 28E of the 1981 Act. He also states that the requirements need to be varied so as to avoid him committing any other criminal offence and that the reference to 'peat bog' in paragraph 5 d) should be deleted and substituted with an accurate description or descriptions. These defects, he implies, render the Notice invalid.
- 4.11 The appellant's view is that remedying these defects, by varying the terms of the Notice as he suggests (whether individually or in combination), would cause him injustice and that, for this reason, the Notice should be quashed.

- 4.12 The Authority considers that the Notice satisfies the requirements set out in Section 171B, 172 and 173 of the Town and Country Planning Act 1990. The appellant's arguments pursuant to invalidity are poorly defined and at the time of writing also misconceived. Notwithstanding this, even if there was a point to substantiate invalidity, it is more than likely that the same would be resolved through an Inspector's power to amend the notice.
- 4.13 As to the basic principles relating to the validity of an enforcement notice, the case of Miller-Mead v Minister of Housing and Local Government [1963] 2 Q.B. 196, 232, Upjohn LJ made clear, '*does the notice tell [the person on whom it is served] fairly what he has done wrong and what he must do to remedy it?*' For the reasons which follow, the appellant can be in little doubt as to what is required.
- 4.14 The Authority does not accept that the Notice requirements need to be varied, as suggested by the appellant, to allow him to resolve the claimed conflict with section 28E of the 1981 Act. For the reasons set out in paragraphs 4.2 – 4.9, above, the Authority does not consider that such a conflict arises.
- 4.15 There is no need, in the Authority's view, to vary the Notice requirements so as to avoid the appellant committing any other unspecified criminal offence. Section 173 of the 1990 Act prescribes the contents of an enforcement notice and in subsection (3) it is stated that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the purposes in subsection (4). Subsection (5) gives a number of examples of what an enforcement notice may require. The Government has included guidance on enforcement notices in its Planning Practice Guidance ("PPG") which has been published online. Nothing in section 173 (or in any other part of the 1990 Act), requires a local planning authority to include in an enforcement notice a specific requirement that is designed to avoid the possibility of a criminal offence being committed. Neither does Planning Practice Guidance suggest that it is necessary to do so.
- 4.16 As to the reference to 'peat bog' in requirement 5 d), the Authority does not agree with the appellant's suggestion that this term is inaccurate. It is a commonly used term to describe a bog containing peat or a compact brownish deposit of partially composed vegetable matter saturated with water. The words '*or an equivalent in order to stabilise the peat bog*' in 5 d) are intended to explain the purpose of the requirement to plant sphagnum moss plugs. If the inspector considers it necessary to vary this sub-paragraph by deleting those words the Authority would have no objection. To do so would remove any possible uncertainty and would not cause any injustice to the appellant. It would be clear what he is required to do.

#### **Ground (a)**

- 4.17 The appeal on ground (a) is that planning permission should be granted for what is alleged in the enforcement notice.
- 4.18 The appellant's position on ground (a) is summarised as follows:

1. the development does not have a significant visual impact and it conserves the landscape and scenic beauty of the National Park;
2. the development conserves and enhances valued landscape character;
3. the exceptions set out in the relevant policies apply to the development;
4. the development has not resulted in damage or destruction of the interest features for which the SSSI has been notified and has not had an adverse impact on the SAC and SPA;

4.19 The Authority's case on ground (a) is essentially as summarised in section 4 of the Notice headed 'Reasons for issuing this Notice' and is set out in more detail below. Firstly, the relevant national and local planning policies are set out and, secondly, these are applied to the alleged unauthorised development as described in section 3 of the Notice. For clarity and ease of reference, the application of policies is considered under the three headings of Landscape Character and Appearance, Natural Zone and Biodiversity.

#### Statutory Purposes

4.20 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.

4.21 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.

#### The National Planning Policy Framework

4.22 The National Planning Policy Framework ("NPPF") was revised on 19 February 2019 and sets out the Government's planning policies for England and how these should be applied. It is a material consideration which must be taken into account in planning decisions. Paragraph 58 of the NPPF says that effective enforcement is important to maintain public confidence in the planning system; that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. It states that they should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

4.23 Paragraph 127 of the NPPF states that planning policies and decisions should ensure that developments, amongst other things, will 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 appropriate and effective landscaping; and are sympathetic to local character and history, including the surrounding built environment and landscape setting.

- 4.24 Paragraph 170 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes and sites of biodiversity value; recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services; and minimising impacts on and providing net gains for biodiversity.
- 4.25 Paragraph 172 of the NPPF states that great weight should 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. It goes on to say that the conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. It also states that the scale and extent of development within these designated areas should be limited.
- 4.26 Paragraph 175 of the NPPF states, amongst other things, that 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. It also states that development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest.

#### The Local Development Framework Core Strategy

- 4.27 The National Park Authority's Core Strategy was formally adopted on 7 October 2011 and sets out the vision, objectives and spatial strategy for the National Park, and core policies to guide development and change in the National Park to 2026. **(Document 5)**
- 4.28 Core Strategy Policy GSP1 states, amongst other things, that all development shall be consistent with the National Park's legal purposes and duty and that 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.
- 4.29 Core Strategy Policy GSP3 requires all development to respect, conserve and enhance all valued characteristics of the site that are subject to the development proposal. It states that particular attention will be paid to, amongst other things, scale of development appropriate to the character and appearance of the National Park; and siting, landscaping and building materials.



- 4.30 Core Strategy policy L1 says that all development must conserve and enhance valued landscape character as identified in the Landscape Strategy and Action Plan and other valued characteristics. This policy also states that other than in exceptional circumstances (as set out in Local Plan policy LC1 and the Development Management Policies Document (“DMPD”) policy DMC1) proposals for development in the Natural Zone will not be permitted. The Natural Zone, as defined in the Development Plan, covers wilder areas with minimal obvious human influence whose ‘more natural’ beauty it is particularly important to conserve.
- 4.31 Core Strategy policy L2 states, amongst other things, that development must conserve and enhance any sites, features or species of biodiversity importance and where appropriate their setting. It goes on to say that other than in exceptional circumstances development will not be permitted where it is likely to have an adverse impact on any sites, features or species of biodiversity importance or their setting that have statutory designation or are of international or national importance for their biodiversity.

#### Development Management Policies Document

- 4.32 The Development Management Policies Document (“DMPD”) was adopted by the Authority on 24 May 2019. It builds on the strategic principles set out in the Core Strategy and contains a written statement of policies for the positive management and control of development and the use of land. All previously ‘saved’ policies in the Local Plan (2001) have already expired or are replaced by the policies in the DMPD. **(Document 6)**
- 4.33 DMPD Policy DMC1 states that In countryside beyond the edge of settlements listed in Core Strategy policy DS1, 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, including natural beauty, biodiversity, cultural heritage features and other valued characteristics will be conserved and, where possible, enhanced taking into account, amongst other things, the respective overall strategy for the Landscape Strategy and Action Plan character areas; 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.
- 4.34 Policy DMC 1 also states that 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.
- 4.35 DMPD Policy DMC2 states that the 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 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. It goes on to say that development that would serve only to make land management or access easier will not be regarded as essential.

- 4.36 DMPD Policy DMC 11 requires, amongst other things, that proposals should aim to achieve no net loss of biodiversity as a result of development. In considering whether a proposal conserves and enhances sites, features or species of wildlife importance all reasonable measures must be taken to avoid net loss by demonstrating that the following matters have been taken into consideration: (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.
- 4.37 DMC Policy DMC12 states that for internationally designated or candidate sites, or European Protected Species, the exceptional circumstances where development may be permitted are those where it can be demonstrated that the legislative provisions to protect such sites or species can be fully met. The policy also states that for sites, features or species of national importance, exceptional circumstances are those where development is essential: (i) for the management of those sites, features or species; or (ii) for the conservation and enhancement of the National Park's valued characteristics; or (iii) where the benefits of the development at a site clearly outweigh the impacts on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.

#### Landscape Strategy and Action Plan

- 4.38 The Peak District Landscape Strategy and Action Plan (2009), is one of several strategies which set out in more detail how the National Park Management Plan will be delivered. It is underpinned by a Park-wide Landscape Character Assessment. Although the Strategy and Action Plan are not formally part of the Development Plan, the Core Strategy states (in paragraph 9.4) that it forms a strong material consideration when making planning decisions. The DMPD introduces a 'Landscape First' approach, using the Landscape Strategy and Action Plan to assess whether the character and quality of the landscape will be conserved and enhanced by a development. The development which is the subject of this report is within the Dark Peak Landscape Character Area and straddles two Landscape Character Types, namely Moorland Slopes and Cloughs and Open Moors. **(Document 7)**
- 4.39 The Landscape Strategy notes that The 'Moorland Slopes and Cloughs' is a wild unsettled landscape. The key characteristics are described as steep slopes and cloughs rising to the moorland plateaux above; prominent gritstone outcrops, boulders and scree slopes; thin soils over gritstone bedrock; rough acid grassland, bracken and heather moorland grazed by sheep; exposed views over lower ground, sometimes limited by clough sides; numerous springs and flushes arising on slopes and clough sides; and relict areas of oak-birch woodland in cloughs.
- 4.40 The 'Open Moors' Character Type is said to be characterised by undulating high gritstone plateau; localised rock outcrops and boulders, in the form of rocky edges and tors; thick deposits of peat with incised groughs (drainage channels); unenclosed heather and grass moorland and extensive areas of blanket bog; rough grazing land; and a wild, unsettled landscape with vast panoramas over surrounding hills and lower ground.

## Biodiversity Action Plan

- 4.41 The Natural Environment and Rural Communities Act 2006 imposes a duty on public authorities to have regard to the conservation of biodiversity in England when carrying out their normal functions. The Authority has produced a Biodiversity Action Plan (“BAP”) for the National Park which is based largely on the three National Character Areas, including the Dark Peak, within which the appeal site is located. The BAP identifies important species and habitats and sets out a broad vision, objectives and detailed targets for their management, protection and enhancement. The Biodiversity Action Plan, which is available as an online resource, is a material consideration under the NPPF and ‘Biodiversity 2020: A Strategy for England’s Wildlife and Ecosystem Services’. New development should contribute to the aims of the Biodiversity Action Plan. **(Document 8)**
- 4.42 The Authority’s priorities for the Dark Peak, as set out in the BAP, include restoration of degraded moorland habitats (especially blanket bog), maintenance of diverse heathlands (supporting invertebrates like craneflies, mammals such as mountain hare and birds such as short-eared owl and merlin) and safeguarding and enhancement of associated habitats such as wet heath, moorland streams, upland flushes, fens and swamps, rock outcrops and scree and moorland scrub.

## Application of Policies

### Issue 1: Landscape Character and Appearance

- 4.43 The development alleged in the Notice consists of a two metre wide strip of green plastic ground reinforcement mesh (or matting) held down by metal pins. For much of its length it has been laid alongside a former rutted unsurfaced track but for some sections it has been laid on the line of the former route. The plastic mesh surface was laid in late 2014 or early 2015 to reinforce the route for vehicular access to the moor west of the site where works to conserve and enhance the moor had been consented by Natural England. At the western end it has been widened to 4m over a 20m section. There are two short breaks in the matting where the track crosses the Cut Gate Path and Mickleden Beck. The construction methodology submitted with the retrospective planning application stated that a tracked vehicle was used to level undulations in the ground with a 45m long steep section near the Cut Gate bridleway manipulated by inverting the ground level material to create a level surface on which the matting was laid. The methodology states that loose rutted stone was flattened out and existing material realigned along the route and consolidated; old wooden structures in the wetter areas were removed. In June 2018, some log ‘rafts’ were laid over the matting in some of the wetter sections.
- 4.44 The development is situated in an elevated and prominent position in an area of very attractive open moorland and is clearly visible from the Cut Gate bridleway. As the public has a right to roam on foot, without being confined to public rights of way, the development is also visible to the public from a much wider area. When it was laid it was a bright, almost turquoise green colour which was an extremely visible feature in the landscape running almost from horizon to horizon in the field of view. In this open moorland landscape, the matting stood out as a stridently different and significantly intrusive and

incongruous man-made feature causing significant harm to the scenic quality of the moorland landscape

- 4.45 Since the matting was laid, the colour has faded a little and due to the seeding, liming and fertilising regime followed by the owner, the underlying vegetation (mainly grass) has grown through the open weave to varying degrees. In some areas, particularly in wetter sections, the matting has disintegrated, probably through a combination of vehicle use and exposure to the atmosphere. This has resulted in the matting becoming fragmented and may indicate that the material is primarily suited to short-term use in areas where the ground conditions and climate are more favourable. The net result is a mixed appearance along the length with some sections of lush green grass and heather across the full width, whereas other sections are relatively bare of through growth with the plastic matting being the predominant feature. In other sections, where the matting has broken up this results in a particularly disfiguring appearance.
- 4.46 Whilst it must be acknowledged that the matting has been obscured to a degree over time by the vegetation since it was first laid in 2014, nevertheless it can still be clearly seen over long sections and in close views where it is an incongruous and intrusive feature on an otherwise open moor. Even where the matting has been largely hidden by the vegetation the resulting route appears mainly as a grass-rich, green swathe running through the very contrasting darker heather moorland vegetation either side of the route. The difference in appearance is marked and this green strip has become a landscape feature which detracts considerably from the established and valued character and appearance of the dark peak moorland. The harmful impact of the development has been exacerbated by the recent addition of log 'rafts', which are very visible 'man-made' features.
- 4.47 In conclusion, the unauthorised development fails to respect or enhance the character of its surroundings and has a significant harmful effect on the character and appearance of the landscape in this part of the National Park. This is contrary to the statutory purposes of national park designation as set out in the 1995 Environment Act and in conflict with Government policy as set out in the NPPF, notably in paragraphs 127, 170 and 172. In addition the development is at odds with the Authority's Development Plan policies – notably policies GSP1, GSP3 and L1 of the Core Strategy and DMPD policy DMC1.

#### Issue 2: Natural Zone

- 4.48 The Natural Zone represents the wildest and least developed parts of the National Park, combining high wildlife value and minimal obvious human influence. The Authority's designation of certain areas as Natural Zone is designed to meet its obligations under Section 3 of the Wildlife and Countryside Act. The National Parks and Access to the Countryside Act 1949 (as amended) also refers to these areas as 'open country'. The areas are of particular relevance for certain types of recreation associated with adventure and contact with nature. The basis for defining the area is given in paragraph 9.17 of the Core Strategy. Here it states that to qualify for inclusion, areas must substantially include: a quality of 'wilderness'; relatively natural vegetation which is largely self-sown; few obvious signs of human influence such as field

boundaries; 'open country' which has particular importance for certain types of recreation associated with adventure and contact with nature; high wildlife value; comprising habitats falling within the statutory Section 3 Map (or limestone dale) definition<sup>131</sup>; and natural beauty, which in the opinion of the National Park Authority, is particularly important to conserve. The appeal site is located in an area of high moorland which clearly includes all of these characteristics.

4.49 As set out above, the Authority's policies state that other than in exceptional circumstances, proposals for development in the Natural Zone will not be permitted. The exceptional circumstances are set out in Local Plan policy LC1 and refined in DMPD policy DMC2.

4.50 In a supporting statement submitted with the retrospective planning application in February 2018, the appellant explained that the matting track was laid to facilitate safe access and egress to land west of Mickleden Beck whilst undertaking moorland restoration works agreed under a Higher Level Stewardship agreement consented in 2014 and for works taking place between 2014 and 2017. Furthermore, the supporting statement stated that retention of the matting was required to facilitate future land management. It is understood that the surfacing work was consented by Natural England in association with the moorland restoration works. Such restoration works are welcomed as they accord with national and local policies seeking to bring the moorland back into favourable condition. It is very likely that the existence of a newly-surfaced route, which could be used all year round, will have reduced vehicle erosion – both on the route itself and on the adjacent areas. That is a benefit in terms of landscape character and appearance, although it may have been possible to achieve that result through other means. It is worth noting, for example, that significant moorland restoration works have been carried out across the Peak District and South Pennines by the Moors for the Future Partnership without the necessity for formal tracks.

4.51 The Authority understands that the restoration works are now complete and so the retention of the development to facilitate "safe access" is not essential to the conservation or enhancement of the Natural Zone or for the conservation and/or enhancement of the National Park's valued characteristics. Because retention of natural and remote character is essential in the Natural Zone, ease of land management is not in itself a justification for development. As DMPD policy DMC2 puts it, development that would serve only to make land management or access easier will not be regarded as essential.

4.52 For these reasons, it is considered that the development does not fall within the exceptions set out in policy DMC2 of the DMPD. It therefore conflicts with the general presumption against development in the Natural Zone as set out in core strategy policy L1.

### Issue 3: Biodiversity

4.53 Midhope Moor is identified as of national and international importance for its biodiversity and this is recognised in its designation as a SSSI, SPA and SAC, as referred to above. The SPA is classified under Article 4.1 of the Wild Birds Directive for breeding population of Merlin and Golden Plover. As well as

upland bird interest, there are historical records of water vole along Mickleden Beck.

4.54 According to the Authority's records, the track is located on modified blanket bog habitat and skirts around a flush to the north of the site. Natural England have provided a detailed breakdown of habitat that the route covers, as follows:

Dry heath	320m <sup>2</sup>
Dry heath/acid grassland	380m <sup>2</sup>
Bracken	110m <sup>2</sup>
Marshy grassland/juncus flush	360m <sup>2</sup>
Flush/stony ground/river bed	50m <sup>2</sup>
Blanket bog	100m <sup>2</sup>

4.55 The Authority considers that retention of the track could not be justified on ecological grounds as it is not necessary for management of the site in the long term and is likely to have a significant effect on a European Site. The ground area covered by the track extends to approximately 1400 square metres. This is considered to represent a significant loss of habitat within an ecologically sensitive area. In addition to loss of habitat, it is likely that compaction and hydrological damage has occurred through the construction method that has been used (levelling the route with a tracked vehicle and the inversion technique that was carried out along 45m of the route). Continued use of the route by vehicles, and other users, would exacerbate this problem, particularly as the surfacing of the route may lead to an increased use in preference to other informal tracks in the area. It would be difficult to mitigate harm through modifications, conditions or restrictions and restrictions on track use in terms of type of vehicle use, for example, would be impossible to enforce.

4.56 The provision of a temporary track to support moorland restoration works could be justified on ecological grounds but only if there were no alternative means of carrying out the restoration, such as airlifts or alternative routes etc. However, no detailed analysis of alternatives appears to have been carried out and, in the absence of evidence to the contrary it must be assumed that the track is intended to be a permanent development. The retrospective application, which was refused in 2018, sought permanent retention of the track.

4.57 In its consultation response to the planning application, Natural England indicated support for temporary retention of the track, in connection with moorland restoration works, subject to appropriate mitigation being secured. As indicated above, however, no details of future restoration works or a likely timescale have been provided. Natural England also advised that if the Authority was considering granting permanent permission then, without appropriate mitigation, the development would have an adverse effect on the integrity of the SAC and the SPA and would damage or destroy the interest features for which the Dark Peak SSSI has been notified. **(Document 9)**

4.58 In conclusion, it is considered that the unauthorised development has resulted in an adverse impact on the designated site and fails to safeguard or enhance nature conservation interests. To grant planning permission for its retention would thus be in conflict with the NPPF, notably paragraphs 170, 172 and 175. It would also be at odds with policy L2 of the Authority's Core Strategy, policies

DMC 11 and DMC12 of the DMPD and the vision and objectives for the Dark Peak as set out in the Authority's Biodiversity Action Plan.

### **Ground (f)**

4.59 The appeal on ground (f) is that the steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections.

4.60 The appellant's case on ground (f) can be summarised as follows:

1. The appellant has laid geotextile matting and wooden log 'rafts' on a pre-existing track;
2. The appellant can only be required to remove the geotextile matting and the wooden log 'rafts':
3. As the enforcement notice requires the appellant to do more than remove the geotextile matting and the wooden log 'rafts' it follows that the steps required to be taken exceed what is necessary.

4.61 The purpose of the Notice is to remedy the breach by restoring the land to its condition before the breach took place. The Authority maintains that the steps required are consistent with that purpose and are not excessive. They are necessary to achieve the removal of the unauthorised development and the restoration of the land to its previous condition. More specifically, the requirements are designed to achieve this in a way which will minimise the risk of damage being caused to the land on which the track has been laid and to land immediately adjacent to the track. Steps e) and f) are designed to ensure, as far as possible, the long-term establishment of surface vegetation which is appropriate to the location.

4.62 In this context, the Authority does not accept that the geotextile matting and log 'rafts' have been laid on a pre-existing track. Any route that existed before the development was carried out comprised a rutted, unsurfaced track, formed by the passage of vehicles. However, much of the current track lies alongside any pre-existing route and it is evident that in these sections the matting and log 'rafts' were laid on top of the pre-existing moorland vegetation. It is, therefore, legitimate for the Notice requirements to seek restoration of that pre-existing vegetation.

## **5. Conclusion**

5.1 The Authority does not accept the appellant's claims that the Notice is a 'nullity' and/or that it is 'invalid'. The claimed conflict with the Wildlife and Countryside Act 1981 is not fully set out by the appellant in his submissions to date and, for the reasons given in paragraphs 4.2-4.9, above, the Authority maintains that there is no such conflict arising. With regard to the 'invalidity' argument, the Notice is clear on its face and its contents meet the statutory requirements as set out in the 1990 Act. Any minor variations to the detailed wording of the Notice requirements which the inspector may wish to make could be carried out without causing any injustice to the appellant.

5.2 In relation to ground (a), the Authority submits that there are clear and substantial reasons, based on national and local policies, why permission

should not be granted for the alleged development. National Parks in general have the highest level of protection in terms of conserving and enhancing landscape and scenic beauty. This part of the National Park also merits special protection on ecological grounds in view of its inclusion in a designated SSSI and its status as a European Site.

- 5.3 The unauthorised development fails to respect or enhance the character of its surroundings and has a significant harmful effect on the character and appearance of the landscape. It also conflicts with the general presumption against development in the Natural Zone, as set out in the Core Strategy and Development Management Policies Document, has resulted in an adverse impact on the designated site and fails to safeguard or enhance nature conservation interests.
- 5.4 In respect of ground (f), the steps required are not excessive and are consistent with remedying the breach and restoring the land to its condition before the breach took place. However, the Authority would not object to the slight amendment to the requirements as referred to in paragraph 4.16, above.
- 5.5 For all of the above reasons the Authority urges the inspector to dismiss the appeal. As stated above, this statement has been prepared in response to the appellant's submissions in November 2018. Given the passage of time since then, the Authority reserves the right to make further submissions in the event that the appellant updates or amends his case.