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Our Ref: RDP/7984.1

Your Ref: ENF.15/0057

18 October 2018

Dear Sir

**Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)**  
**Planning Enforcement Notice**  
**Our clients: Dunlin Ltd – land at Mickleden Edge, Midhope Moor, Bradfield**  
**Enforcement Notice dated 21 September 2018**

We are instructed on behalf of Dunlin Ltd in relation to the enforcement notice dated 21 September 2018 issued by the National Park Authority in relation to land owned by our clients at Midhope Moor.

On reviewing the enforcement notice (“the Notice”), we note there appear to be a number of errors, as follows:

1. Paragraph 4(b) of the Notice refers to the National Planning Policy Framework (NPPF); and in particular purports to refer to paragraphs within the NPPF which are relevant to enforcement action and the National Park. However, the Park Authority has referred to the incorrect version of the NPPF (which was reissued in updated version in July 2018) and therefore the references are incorrect and, in any event, the Notice is misleading. Therefore, the Notice does not meet the requirements of Section 172 of the Town and Country Planning Act 1990 and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002/2682) (the Regulations).
2. Whilst the Park Authority have identified a number of policies in paragraph 4(c) of the Notice, it has not identified the relevant local plan policy document to which they specifically relate. This, together with 1. above, means the Notice does not properly identify relevant policies in the development plan as required by the Regulations.
3. The requirement of paragraph 5(a) of the Notice sets out steps to be carried out between 1<sup>st</sup> September and 28<sup>th</sup> February in the following year. However, the Notice appears to indicate that both dates relate to the following year and therefore the Notice is ambiguous as to when these requirements are to be met. In addition, and depending upon which year is being referred to, the Notice appears to require the works to be carried out over a month prior to date the Notice takes effect, namely 12 November 2018. The date the Notice takes effect is a particularly important date, because it starts running from the time within which the requirements are to be met, failing which criminal offences are committed. Given that criminal sanctions flow from a failure to comply with a valid enforcement notice, it is critical that the steps to be taken and the time limits for those steps should be clearly and unambiguously set out within the Notice and the

requirements for action to be taken under the terms of the enforcement notice should not precede the Notice taking effect. As currently drafted, the Notice is ambiguous and therefore contrary to sections 173(9) of the 1990 Act.

In the circumstances, we respectfully request that the Notice is withdrawn. In the event that the notice is not withdrawn, we reserve the right to bring the above matters before an Inspector in any appeal proceedings.

Given the clear practical difficulties which our clients is faced with, in complying with the terms of their current Higher Level Stewardship Agreement with Natural England and the clear benefits to the moorland habitat which such works will bring (with direct benefits to the SSSI, SAC and SPA), we submit that it cannot be expedient in the circumstances to issue enforcement action against our client.

The National Park Authority will be aware of the use of the track for the capital works for the improvement of the moorland habitat under the Higher-Level Stewardship Agreement and that there are further works, including the planting of sphagnum moss over a wide area of moorland habitat, which our clients is keen to progress, in conjunction with Natural England. The current track forms a very necessary means of access to the moorland for those purposes outlined above and it cannot be in the interests of the National Park, or indeed to the benefit of the extensive scheme of restoration works being undertaken to the moorland, for the Park to pursue enforcement proceedings in such circumstances. In fact, enforcement action will undermine such efforts. Our client has indicated that it is happy to discuss a temporary permission to allow for the matting to remain in place for a limited period and we would therefore invite the National Park Authority to consider such a proposal before pursuing enforcement action any further.

In the first instance, we look forward to hearing from you with confirmation that enforcement notice will be withdrawn, in any event, before Thursday 25<sup>th</sup> October, in order to avoid further costs being incurred in relation to the appeal.

Yours faithfully



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