

Secretary of State for Communities and Local Government  
Casework Unit  
Department for Communities and Local Government  
5 St Philips Place  
Colmore Row  
Birmingham  
B3 2PW

Direct Dial: [REDACTED]  
Direct Fax: [REDACTED]  
Direct Email: [REDACTED]

By Post & By Email - [REDACTED]

Our Ref: RDP/7984.1

Your Ref:

26 November 2018

Dear Sirs

**Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (2017/571)  
Regulation 37 Notice relating to Enforcement Notice – Request for regulation 38 Screening  
Direction from Secretary of State  
Land at Mickleden Edge, Midhope Moor, Bradfield  
Enforcement Notice dated 21 September 2018**

We act on behalf of Dunlin Limited (“the Appellant”) who is the freehold owner of land at Mickleden Edge, Midhope Moor, Bradfield (“the Property”). Please treat this letter as a formal application for a screening direction from the Secretary of State in accordance with Regulation 38 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (2017/571).

Background

The Appellant was served with an Enforcement Notice (“EN”) dated 21 September 2018 by the Peak District National Park Authority (“PDNPA”) in relation to alleged unauthorised engineering operations consisting of the laying of geotextile matting and wooden log rafts on the Property to form a track. The EN was accompanied by a screening opinion prepared by PDNPA, however PDNPA failed to serve the required notice setting out the requirements of Regulation 37(3)(b).

PDNPA subsequently sent a regulation 37 notice dated 6 November 2018 to the Appellant, with a deemed date of service of 8 November 2018.

Enclosures

In accordance with regulation 38(a), we enclose the following: -

1. A copy of the regulation 37 notice dated 6 November 2018.
2. A copy of the EN dated 21 September 2018, together with accompanying screening opinion of PDNPA.

In addition to the above, in accordance with the requirements of regulations 38(a) and 6(2)(a), we enclose a Land Registry plan showing the extent of the Property and the location of the track which is the subject of the EN shown as a red line on the plan.

### The Development

The alleged unauthorised development (“the Development”) comprises a stretch of geotextile matting which has been laid along a length of a pre-existing track situated at Mickleden Edge, Midhope Moor in the Peak District National Park. The length of track over which the geotextile matting has been laid extends to approximately 670m in length and is 2m in width. In addition, a number of wooden poles which are strapped together to form log “rafts” have been laid along two short stretches of the track extending to approximately 15-20m in length each.

The works carried out to undertake the development comprised the rolling out of the geotextile matting which was then pegged to the ground and the placement of log rafts on two sections of the track. In addition, there has been minor infill of the track prior to the laying of the matting along a short steep section of the track (approximately 10m), with infill material taken from the adjoining land.

### The Site

The Property lies within the Peak District National Park and the Dark Peak Site of Special Scientific Interest. The Property is also located within an area which has been designated as a Special Area of Conservation (“SAC”) and a Special Protection Area (“SPA”). The Development is located within an area subject to the above statutory protections and is therefore considered to be in a “sensitive area.”

### The Approach of PDNPA

PDNPA considers that the Development is EIA development on the basis that the Development falls within Schedule 2 [10 Infrastructure projects, (f) construction of roads] of the EIA regulations. PDNPA alleges that the Development has resulted in the loss of moorland habitat, that there has been compaction and hydrological damage and that there has been a significant impact on biodiversity. PDNPA also allege that the Development is a landscape feature which detracts from the established and valued character and appearance of the Dark Peak moorland.

In contrast to the Development, PDNPA does not consider that the works to remove the track and other works required under the terms of the EN would be EIA development and it also considers that any impacts would be very limited and short-lived.

### Consideration of Impact of the Development

Contrary to PDNPA’s conclusion, the laying of the matting and the short stretches of log “rafts” plainly did not comprise the “construction of a road” within the meaning of Schedule 2 to the EIA Regulations.

It is submitted that the Development does not have a significant visual impact on the landscape, does not detract from the established and valued landscape character and appearance of the Dark Peak moorland and that it is visually unobtrusive. Similarly, the Appellant considers that the Development has not resulted in a significant loss of the moorland habitat and that there has not been compaction or hydrological damage. In addition, the Appellant considers that Development has not had any significant impact on biodiversity within the SAC and SPA. Therefore, the Development does not constitute EIA development in the circumstances.

The Appellant submits that the requirements set out in the EN, which PDNPA do not consider would be EIA development, would have a more significant impact than that of the current Development. In the

circumstances, if the requirements of the EN do not constitute EIA development it is difficult to understand in what circumstances the Development could be construed as such.

There is no cumulation with other existing development and/or approved development. The use of land and soil is discussed above. The Development does not use water. Biodiversity is discussed above. The Development does not produce waste, pollution or nuisances. There is no risk of major accidents or disasters. There is no risk to human health. Environmental sensitivity is discussed above. The geographical area of the Development is very small, with no population affected. The impact of the Development has effectively reduced already, owing to grass and heather growing up through the matting and it will continue effectively to reduce in future as they continue to grow. There is no transboundary impact.

In order to assist the Secretary of State in determining this application for a screening direction, we enclose the following by way of additional information: -

- Photographic record of current status of the track and log rafts.
- Copy Natural England Higher Level Stewardship Agreement with the full management of the Moor, including track works, together with Natural England consent.

#### Conclusion

It is submitted that the Development does not have significant environmental impact and that, whilst the Development does raise some important planning considerations which are to be determined at the enforcement appeal, the Development has not led to the type or scale of environmental impact which would trigger a requirement for an EIA.

I trust the above information is of assistance and we look forward to receipt of your form of screening direction in the timescales prescribed by Regulation 38(d). In the meantime, please do not hesitate to contact us if you require any further information.

A copy of this letter of application and its enclosures has been sent to PDNPA.

Yours faithfully



Loxley

Copy to: Peak District National Park Authority

Encl.