

**LAND AT MICKLEDEN EDGE, MIDHOPE MOOR, BRADFIELD, SOUTH
YORKSHIRE**

APP/M9496/C/18/3215789

STATEMENT OF COMMON GROUND

The appeal site and surroundings

1. The appeal site (“the Site”) is land at Mickleden Edge, Midhope Moor, Bradfield, South Yorkshire as shown marked red on the plan attached to the enforcement notice (“the EN”) the subject of this appeal.
2. The Site is within the Peak District National Park, for which the Peak District National Park Authority (“the Authority”) is the local planning authority.
3. The Site is within the Dark Peak Site of Special Scientific Interest (“SSSI”). Notification pursuant to section 28 of the Wildlife and Countryside Act 1981 (“the 1981 Act”) was given on 8 July 1993.
4. The Site is also within the South Pennine Moors Special Area of Conservation, Peak District Moors (South Pennine Moors Phase 1) Special Protection Area and the Natural Zone (as defined in the development plan). It is within the Dark Peak Character Area, and characteristic of the “Moorland Slopes and Cloughs” Landscape Character Type.
5. The Site is within open access land pursuant to the Countryside and Rights of Way Act 2000.
6. The Site is within land owned by the Appellant with HM Land Registry title number SYK361745, which it purchased (together with other land) on 9 July 2012.

Planning and other history

7. On 20 August 2013, Natural England confirmed that an application for Entry Level and Higher Level Stewardship had been successful. The resulting Agreement (“the Agreement”), reference AG00444068, consists of Natural England’s 20 August 2013 letter and the accompanying Parts 1A-7. It runs from 1 September 2013 to 31 August 2023. The Site is within one of the land parcels (RLR field number SK19978590) covered by the Agreement.
8. The Agreement includes written consent under section 28E of the 1981 Act for the carrying out of the agreed operations during the period of the Agreement on land within the Dark Peak SSSI. It also provides that written notice must be given to Natural England for the undertaking of any additional operations within the Dark Peak SSSI during the lifetime of the Agreement.
9. The Midhope Moors Moorland Management Plan (“MMMMP”) accompanies and is to be read in conjunction with the Agreement. It comprises sections 1-6, Tables 1-2, Schedule 1 and Maps 1-4.
10. On 28 August 2013, Dan Richmond-Watson signed and returned to Natural England the necessary declaration essentially as a binding legal commitment whereby the land would be managed in accordance with the Agreement and the MMMMP. Natural England has approved the MMMMP.

11. On 15 September 2014, Natural England was given notice of proposed operations for the restoration of degraded peatland habitat within the Dark Peak SSSI in accordance with an agreed plan. These proposed operations included the laying of the geotextile matting the subject of this appeal. On 13 October 2014, Natural England gave its written consent to the proposed operations although this included a misprint and on 16 October 2014 it gave replacement written consent to the proposed operations.
12. By way of an application form dated 25 February 2016, an application was made to the Authority for planning permission for the matting. The Authority deemed the application to be invalid, on the basis of an issue as to the accuracy of the plans.
13. By way of an application form dated 18 December 2017, another application was made to the Authority for planning permission for the matting. Natural England did not object to the application, subject to planning conditions. On 15 June 2018, the Authority's Planning Committee resolved that the development is unlikely to have significant effects on the integrity of the SPA and SAC and that Appropriate Assessment was not necessary, but it also resolved to refuse the planning application. The decision notice is dated 25 June 2018. There are three reasons for refusal.
14. On 14 September 2018, the Authority's Planning Committee resolved that the development would need to be subject to an Appropriate Assessment in the event of a ground (a) appeal against an enforcement notice but that no

Appropriate Assessment would be needed for the proposed enforcement action to secure removal of the track and restoration.

15. On 20 September 2018, the Authority adopted a screening opinion to the effect that the appeal development is EIA development. On 20-21 September 2018, it authorised the issuing of the EN. It was issued on 21 September 2018, and served on the Appellant under cover of a letter of even date.
16. By way of a letter dated 6 November 2018, the Authority served on the Appellant a notice under regulation 37 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 to the effect that the appeal development is EIA development and that the Appellant had to provide two copies of an environmental statement with any appeal against the EN.
17. On 26 November 2018, the Appellant made a request for a Secretary of State screening direction as to whether or not the appeal development is EIA development. On 8 March 2019, the Secretary of State directed that the appeal development is not EIA development.
18. The Appellant has appealed against the EN on the basis that it is a nullity or invalid and on grounds (a) and (f).

The appeal development

19. The appeal development comprises the laying of geotextile matting and wooden log “rafts”.
20. The geotextile matting was laid by Dinsdale Moorland Services Limited during the period January to 4 February 2015. It is approximately 670m in length, with two short breaks¹ where it is crossed by the Cut Gate Bridleway and Mickleden Beck, running roughly east-west from “Lost Lad” to the lower slopes of Harden Moss. It is generally 2m wide, albeit with a 4m wide section as its western end (to allow for parking and turning) over 20m of the matting’s length. The matting has been laid on and alongside a pre-existing rutted and unsurfaced route, formed by the passage of vehicles, comprised of bare earth and loose stones in poor condition with some timber structures to seek to reduce rutting. This previous use by vehicles led to damage to the moor. Provision of the matting entailed the levelling of undulations by running a tracked vehicle over the route, with some ground manipulation using an inversion technique on a previously damaged and non-interest vegetation section to provide a level stable surface upon which to lay the matting. It is pinned in place at intervals.
21. The matting’s visual impact was the greatest at the time it was laid. Its visual impact has reduced since then. Following the laying of the matting, the route was seeded for vegetation with periodic additions of lime and

¹ Including these breaks generates a length of approximately 700m.

fertiliser thereafter. Grass, heather and other vegetation grows under and up through it.

22. The head keeper laid the wooden log “rafts” in late Spring 2018. They comprise two stretches each of 15m-20m in length. There were previously other wooden log “rafts” on or alongside the pre-existing track. The wooden log “rafts” are “floating” albeit each log is tied to an adjacent log or logs. Their visual impact was the greatest at the time they were laid. That visual impact has reduced since then due to natural weathering, and the fact that the “rafts” are untreated. Grass, heather and other vegetation grows under and up through the “rafts”.
23. The appeal development is in accordance with the Agreement, MMMMP and section 28E consent. The Authority welcomes the Appellant’s moorland restoration, conservation, enhancement and management. The appeal development is very likely to have reduced vehicle erosion on its route and on adjacent land. It affords emergency services access in the event of a moorland fire.

Development plan policy, national planning policy and landscape character assessment

24. The development plan policies relevant to this appeal are:
 - (i) Peak District National Park Authority Local Development Framework: Core Strategy (October 2011) Policies GSP1, GSP2, GSP3 (possibly), L1 and L2; and
 - (ii) Peak District National Park Authority Development Management Policies (May 2019) Policies DMC1, DMC2, DMC3, DMC11 and DMC12.

25. The relevant policies of the National Planning Policy Framework are 8c, 55, 58, 124, 127, 170, 172 and 175.

26. The Authority's most recent landscape character assessment is its 2009 Landscape Character Assessment.

Non-issues

27. It is common ground between the parties that none of the following provides grounds for dismissal of the ground (a) appeal:
- (i) Flood risk or drainage;
 - (ii) Noise;
 - (iii) Contamination, pollution, refuse or recycling;
 - (iv) Public access;
 - (v) Residential amenity or privacy;
 - (vi) Lighting;
 - (vii) Traffic generation, highway safety, parking provision or cycle storage;
 - (viii) Safety or human health;
 - (ix) Heritage or cultural impact;
 - (x) Cumulative impact of the appeal development with other development;
 - (xi) Shooting;
 - (xii) Archaeology; or
 - (xiii) Climate change.
28. Before any removal of the geotextile matting and wooden log “rafts”, the Appellant would be obliged to give Natural England notice pursuant to

section 28E(1)(a) of the 1981 Act and fulfil one of the three conditions in section 28E(3) of the same. Before giving any written consent under section 28E(3)(a) of the 1981 Act, Natural England must apply section 63 of the Conservation of Habitats and Species Regulations 2017.

29. The appointed Inspector has power to grant permanent or temporary planning permission for either the laying of the geotextile matting or the laying of the wooden log “rafts” (or for both).
30. A planning obligation under section 106 of the Town and Country Planning Act 1990 is not required.

Main issues

31. The main issues between the parties are:
 - (i) Whether or not the EN is a nullity;
 - (ii) Whether or not the EN is invalid, and, if so, whether or not it can be varied without causing injustice;
 - (iii) Landscape impact;
 - (iv) Past and future visual impact;
 - (v) Biodiversity impact;
 - (vi) Natural Zone policy;
 - (vii) The extent of and weight afforded to the benefits of the appeal development;
 - (viii) The implications of removing the appeal development;

- (ix) Conditions; and
- (x) The ground (f) appeal.

Signed: *Mugwan*

Dated: *2nd December 2020*

For and on behalf of the Appellant, with all necessary authority

ARok

Signed:

Dated: 2 December 2020

For and on behalf of the Authority, with all necessary authority