

5. CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2019 - TO REPAIR MAGDALEN ROAD (PRIVATE CARRIAGE ROAD AND BRIDLEWAY). TO REPLACE A COLLAPSED STONE CULVERT WITH PLASTIC PIPE AND REPAIR THE TRACK USING LOCALLY SOURCED SANDSTONE. THE FINAL COVERING WILL BE 20MM TO DUST. THE WHEEL MARKS MADE DURING THE WORK WILL BE FILLED SEPARATELY, LEAVING GRASS IN THE CENTRE. PUBLIC BRIDLEWAY MELTHAM/50 MAGDALEN ROAD MELTHAM MOOR, MELTHAM (NP/K/0121/0026, JRS)

APPLICANT: MELTHAM SHOOTING CLUB

Summary

1. This application proposes repairs to Magdalen Road, an unsurfaced public right of way which also serves as a private road for the land owners. The works are required to repair damage caused by the surface being washed away and by erosion through use. The application site is situated in open moorland, within the Natural Zone and in an area designated for its habitat and biodiversity interest as an SSSI, SAC and SPA. It is therefore necessary to consider whether the proposed development is likely to have a significant effect on designated sites and therefore an appropriate assessment is required.
2. The report was withdrawn from the Planning Committee in June so that officers could check the precise route of the existing track and the proposed works, particularly in relation to the designated areas. Officers have concluded that there is a need for essential repairs to the track in order to make it safe and convenient to use by the public and that the works would not harm the integrity of the designated areas. The proposed works are the minimum standard required for this purpose in order to avoid unnecessary vehicular use. The submitted scheme seeks to minimise the environmental impacts as far as possible.
3. It is concluded that that, taking into account proposed planning conditions, there would be no adverse effects upon the integrity of designated sites either alone or in combination with other plans or projects.

Site and Surroundings

4. The Magdalen Road track runs from the A635 Greenfield to Holmfirth Road in the south to Royd in the north, south-west of Meltham. The National Park boundary is approximately 0.5km to the east.
5. The moorland through which the track runs is within the Dark Peak Landscape Character Area, which is an area of high landscape and nature conservation value. It is designated as a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Special Protection Area (SPA). These designations are of national and international nature conservation importance. The moorland is also classified in the Core Strategy as Natural Zone.
6. Magdalen Road is one of several public rights of way in this area, forming part of a popular network of routes to the west of Holmfirth and Meltham.

Proposal

7. To repair Magdalen Road (private carriage road and bridleway). To replace a collapsed stone culvert with plastic pipe and repair the track using locally sourced sandstone. The final covering will be 20mm to dust. The wheel marks made during the work will be filled separately, leaving grass in the centre.

8. The supporting statement sets out the justification for the works. It explains that the track is a public right of way but that the owners have “private carriage rights to use motor vehicles” and that repairs are required to maintain those rights, and those of the farming tenant. The statement says that the private occupation road is 7.32m wide, whereas the public bridleway is 2.4 metres wide. It goes on to say that in recent years the deteriorating state of the track surface means that the bridleway users have been passing outside the occupation road width, onto the adjacent land. Whilst walkers have access to this land in terms of open access (CROW Act), horse riders and cyclists are legally restricted to the bridleway. This encroachment onto the adjacent land has caused damage and erosion. The landowners have considered erecting fencing, but they say that this would restrict access to Kirklees Highways to the bridleway for maintenance purposes.
9. The supporting statement also points out that the applicants have been carrying out Higher Level Stewardship (HLS) and Natural England moorland restoration and conservation schemes on the moorland and that the movement of vehicles to carry out this work has caused some erosion. These works are ongoing and will continue until Natural England consider the land to be in a satisfactory condition.
10. The statement adds that the lower section of the track (at the northern end from Royd Road) is in such a poor condition that it is sometimes impassable and the owners have had to approach it from the A635 to the south.
11. In terms of the proposed works, the statement says that these will be restricted to within the 24 feet wide occupation road, but will not cover the whole of that width. The intention is to provide adequate width for a vehicle to use the track and for other users to pass vehicles within that width. It says that the widening would be achieved by removal of vegetation within the 24 feet width of the occupation road. The submitted plans shows the sections of the track that will be repaired/improved and the nature of the works proposed, although they are not detailed in respect of every section.
12. All new surfacing would be with locally obtained natural sandstone, with a 20mm to dust top finish. The works also include some pipework to improve drainage and to repair some existing pipework in culverts.

RECOMMENDATION:

13. **That this report be adopted as the Authority’s assessment of likely significant effects on internationally important protected habitats and species under Regulation 63 of the Conservation of Habitats and Species Regulations 2019 (as amended) in relation to the planning application at Magdalen Road (NP/K/0121/0026).**

Key Issues

14. Under Section 63 of the Conservation of Habitats and Species Regulations 2019 (as amended) (the Habitats Regulations) any development that has the potential to result in a likely significant effect (LSE) on a European site and is not directly connected with the management of the site for nature conservation reasons, must be subject to a Habitat Regulations Assessment (HRA).
15. Where the potential for likely significant effects cannot be excluded, a competent authority (in this case the National Park Authority) must make an appropriate assessment of the implications of the development for that site, in view the site’s conservation objectives. The competent authority may agree to the plan or project only after having ruled out adverse effects on the integrity of the habitats site.

16. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.
17. The Habitat Regulation Assessment (HRA) process involves several stages, which can be summarised as follows:
18. Stage 1 – Likely Significant Effect Test (HRA screening). This stage requires a risk assessment to be undertaken utilising existing data, records and specialist knowledge. This stage identifies the likely impacts of a project upon a European Site and considers whether the impacts are likely to be significant. The purpose of the test is to screen whether a full appropriate assessment is required. Where likely significant effects cannot be excluded, assessing them in more detail through an appropriate assessment is required to reach a conclusion as to whether an adverse effect on the integrity of the site can be ruled out.
19. Stage 2 - Appropriate Assessment. This stage involves consideration of the impacts on the integrity of the European Site with regard to the structure and function of the conservation site and its objectives. Where there are adverse effects an assessment of mitigation options is carried out. If the mitigation cannot avoid any adverse effect or cannot mitigate it to the extent that it is no longer significant, then development consent can only be given if an assessment of alternative solutions is successfully carried out or the Imperative Reasons of Overriding Public Interest (IROPI) test is satisfied.
20. Stage 3&4 - Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test (IROPI). If a project will have a significant adverse effect and this cannot be either avoided or mitigated, the project cannot go ahead unless it passes the IROPI test. In order to pass the test, it must be objectively concluded that no alternative solutions exist. The project must be referred to the Secretary of State because there are imperative reasons of overriding public interest as to why the project must proceed. Potential compensatory measures needed to maintain the overall coherence of the site or integrity of the European Site network must also be considered.

Assessment

21. The submitted planning application does not include any assessment of the potential impacts of the proposed development on the surrounding designated sites, nor does it include a 'Shadow Habitats Regulations Assessment' (sHRA), as is seen with some applications to assist in the assessment of the likely significant effects of the proposals. However, given the scale and nature of the development, officers consider that an assessment can be made by the Authority in the absence of this information from the applicants.
22. Natural England responded to the initial consultation but they were reconsulted following the deferral of the application from the June Planning Committee agenda and have now provided a similar, but slightly amended, response. The response is set out in the following report on the planning application, but the key response following the re-consultation is as follows:

"Natural England concur with the conclusion of the current HRA assessment, which, after considering mitigation, states that the proposed development will not have any potentially significant impacts upon the SAC and SPA. Natural England are in agreement that likely significant effects on the above listed European sites cannot be ruled out without the need for mitigation and therefore an appropriate assessment is required. Where the mitigation measures suggested are secured as described, impacts on the SPA and SAC are

considered unlikely. Whilst we concur with the overall conclusion of the report, Natural England suggest that the HRA wording, currently relating to stage 2 of the HRA: appropriate assessment, could be revised to reflect the requirement of the appropriate assessment to assess the likely significant effects of a proposal on the integrity of the site(s) and their conservation objectives. The overall goal of an appropriate assessment is to identify whether a proposal, once mitigation has been considered, is likely to have an adverse effect on the integrity of the site(s) in question; this integrity is defined by the conservation objectives for the site(s)”.

23. The development is not primarily connected with or necessary for the conservation management of the designated sites, although the submitted statement does say that the repairs to the track will assist the landowners in carrying out moorland conservation work. Therefore, it is necessary to screen the development for likely significant impacts upon the designated sites.
24. In the latest response from Natural England, having reviewed the HRA Assessment set out in the report for the June Planning Committee, they say: *“Based on the current assessment of the impacts on the Dark Peak SSSI, with the integration of appropriate mitigation, Natural England considers that the proposed development will not damage or destroy the interest features for which this site has been notified and therefore has no objection”*.
25. The *“current assessment”* referred to was based on Natural England’s initial response on the potential impacts, so these are set out in the following sections, together with the proposed mitigation.
26. The potential impact pathways which have been identified were set out in the response from Natural England, as follows:
 - *Construction materials of use - The proposed development is located near to unit 19 of the SSSI. This unit contains habitat features specific to the acidic environment. As such, any materials used should be local in origin and compliment the pH of the site. Use of alkaline materials may cause pH changes to adjacent SSSI/SAC/SPA habitat, thus having an adverse effect.*
 - *Direct habitat loss - Vehicles and machinery must stay on existing tracks and avoid deviating onto SSSI/SAC/SPA habitat as far as reasonably practicable. Additionally, the width of the bridleway/private carriage road, must not be increased.*
 - *Noise disturbance - Timing of works should be outside of relevant bird breeding seasons and plant machinery should be selected to avoid excessive noise pollution.*
 - *Dust mobilisation - Dust, or particles, falling onto plants can physically smother the leaves affecting photosynthesis, respiration, transpiration and leaf temperature. Larger particles can also block stomata. There may also be toxicity issues (caused by heavy metals particles) and potential changes in pH (particularly if the dust is alkaline (e.g. cement dust)). Lichens can be directly affected by the dust (shading, chemical effects) or by changes in bark chemistry. Thus, measures are needed to prevent excessive dust mobilisation.*
27. Given the proximity of the development to the designated sites, with the track running through parts of it, the likely significant effects from these sources cannot be screened out. Therefore, an appropriate assessment of the potential impacts needs to be carried out.
28. Natural England considered that without appropriate mitigation the proposed development would:
 - have an adverse effect on the integrity of South Pennine Moors, Special Area of Conservation and the Peak District Moors, Special Protection Area
 - damage or destroy the interest features for which Dark Peak Site of Special Scientific

Interest has been notified.

In order to mitigate these adverse effects and make the development acceptable, Natural England advise that mitigation measures are required. They recommend that an appropriate construction environmental management plan (CEMP) should be agreed prior to the commencements of any permitted work on site. They advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures.

29. We agree with Natural England that provided mitigation is secured by planning conditions that any potentially significant impacts upon the integrity of the SAC and SPA can be avoided and that the pre-mitigation assessment of 'likely significant effect' can be revised to no likely significant effect. The CEMP should specifically address those potential issues raised by Natural England, as set out above.

Conclusion

30. At stage 1 of the HRA, that in view of potential impacts of the development during construction and operation, that an appropriate assessment is required.
31. At stage 2 of the HRA, we conclude that provided mitigation is implemented in full that any potentially significant impacts upon the integrity of the SAC and SPA can be avoided and that the development would have no likely significant effects. Mitigation can be secured by planning conditions, as recommended by Natural England, together with additional conditions which are recommended in the report on the planning application.
32. The application proposal is therefore not considered to be contrary to the provisions of the Conservation of Habitats and Species Regulations 2019.

Human Rights

33. Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

34. Nil
35. Report Author: John Scott, Consultant Planner