

6. FULL APPLICATION - 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.
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 The report was withdrawn from the Planning Committee in June so that officers could check the precise route of the existing track and the proposed works, particularly in relation to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. 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. Consequently, the application is recommended for approval, subject to planning conditions.
3. The accompanying Appropriate Assessment report concludes that there will not be any unacceptable impacts on the integrity of the designated interests.

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 set 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. Following the deferral of the application from the June Planning Committee, the applicant's agent has clarified the location of the existing track and the proposed works. He says the proposed works are resurfacing the existing track with local sandstone, which is the same stone that the track was originally surfaced with. The works would be within the current boundary of the existing track and therefore, the work would not alter what is already on the ground. He says that there would be no effects on the appearance and character of the track as the finish will be two-wheel ruts with a vegetation strip down the middle. He also responds to the Authority's ecologist's queries, saying no habitat will be lost as the works are resurfacing an existing hardcore road; there seems to be a misunderstanding within the process where it is thought that the works will be outside of the existing boundary. The soil deposition which is referenced has been left when the Authority stopped the works from being completed. This soil would have been used on the track to maintain the character of the track. He does, however, question the need for planning permission for works to an existing track.
10. He also points out that his client has spent a considerable amount of money on conservation work for the surrounding habitat and he attaches further details setting out the conservation works that have taken place information. The original supporting statement also pointed 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.
11. 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.
12. 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.
13. 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.

Planning History

14. The application is partly retrospective. The work commenced in October 2020, as the applicant had thought that repairs to the track did not require planning permission. However, they were advised to stop by the Authority's Planning Enforcement team and to apply for planning permission. This was done, but the level of information provided in the application was poor so it was not validated until more information was received earlier

this year. Consequently, the surface on some parts of the track have been in a partly surfaced condition for nearly two years, leading to complaints by users.

15. It is understood that the applicants have served a section 56 Notice on Kirklees Council in respect of the bridleway. This is a noticed under Section 56 of the Highways Act, requiring the Highway Authority to repair any highway for which it is liable. Kirklees Council have confirmed that this is the case and support the works to the track (see below).

RECOMMENDATION:

16. That the application be **APPROVED** subject to the following conditions:
1. **Statutory time limit for implementation.**
 2. **Development in accordance with the submitted plans and specifications, subject to the following conditions:**
 3. **Submit a Construction Environmental Management Plan (CEMP) for approval; carry out scheme in accordance with approved plan.**
 4. **A programme of timing of the works be agreed to avoid the bird nesting season in the designated SPA.**
 5. **Agree sample/specifications of stone to be used for surfacing and carry out a sample section of surfacing for approval prior to carrying out the scheme.**
 6. **Agree the location of any storage areas for materials.**

Key Issues

17. The principle of development within the Natural Zone.
18. The justification and need for the works.
19. The impact of the proposed track on the nationally and internationally designated sites of ecological interest on the moorland.
20. The landscape impact of the proposed works.
21. Impact on users of the public right of way.

Consultations

22. **Natural England**: Following the deferral of the application from the June Planning Committee Natural England were reconsulted on the application and the HRA assessment carried out by the Authority. They have now sent a revised response, as follows:

“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”.

23. This refers to the assessment set out in the HRA appropriate assessment report to the

June meeting so it is necessary to refer to this. In Natural England's initial response they advised:

"We consider that without appropriate mitigation the application 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, the following mitigation measures are required / or the following mitigation options should be secured: An appropriate construction environmental management plan (CEMP) should be established prior to the commencements of any permitted work on site. We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures".

24. *Habitats Regulations Assessment: The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, i.e., the consultation does not include a Habitats Regulations Assessment. In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out. The following advice should be taken in to account by the competent authority within the HRA.*

25. *The potential impact pathways which have been identified are summarised below;*

- 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. It is considered that the creation of an appropriate CEMP should address the potential pathways outlined above, thus enabling appropriate mitigation measures to be established prior to commencement of development".*

26. Highway Authority: No reply (A response has been received from Derbyshire County Council, but the site is not within Derbyshire).

27. Kirklees Public Rights of Way Project Officer: Recommends that the path be maintained and not changed, and notes that in its current state is not desirable for public use. Following the deferral of the application from the June Planning Committee the Kirklees Council Rights of Way Officer has provided additional information about the definitive right of way and this confirms that the established line on the ground does depart from

the line on the definitive map in some places, presumably because of topography. The Rights of Way officers confirm that they support the proposal for the repairs to the bridleway in its established location.

28. Holme Valley Parish Council: *“Oppose. The stone topping of the surface is not appropriate for horses and riders. The lane needs to be maintained as a bridleway.*
29. Senior Archaeologist (PDNPA): No archaeology comments.
30. Ranger Service (PDNPA): *“The resurfacing work started 2 years ago(?) without the necessary permissions, and was stopped by PDNPA enforcement and Kirklees MC. Any work to continue the resurfacing must be clearly justified to prevent the apparent landscape and user impacts of the work, as, in our view, the large-scale importation of aggregate onto a track surface which was in reasonably good condition is detrimental to the visual and recreational amenity of the area”.*

In a subsequent email the following advice was provided: *“Given the circumstances and having seen the site and the rather large stones that are currently on the right of way I think going forward and dealing with the planning application is the best way forward. So we support a determination that is favourable with the following caveats:*

- *The stone should be blinded with gritstone fines that provide a good enough surface in line with the latest British Horse Society guidance*
- *It however should not be over engineered and we would like to see only parts of the right of way surfaced not all of it as it does not need it*
- *Gritstone fines will enable vegetation to grow through and in time look something like it is now*
- *There is a danger that access will become too easy and criticism may arise from mountain bikers and so a balance needs to be struck*
- *There is also a danger that the works will facilitate illegal access by motorised vehicles but that is for Kirklees and the police to deal with”.*

31. Ecology (PDNPA): Interim response (March 2023): *Holding objection This response is made without the benefit of a site visit and only from a brief assessment of the submitted information. To provide further informed advice and response it will be necessary to undertake a site visit.*

The majority of the track length lies variably within and immediately adjacent to the SSSI (Dark Peak) and European designated sites (South Pennine Moors Special area of Conservation & Peak District Moors (South Pennine Moors Phase 1). The proposal has the capacity to result in permanent loss of designated and priority habitat and adversely affected adjacent habitat.

As an Authority we are required to undertake a Habitats Regulation Assessment (HRA). Natural England should be consulted on the proposals.

A response has been requested on the latest information, but none received to date.

Representations

32. The following representations have been received in response to public notification.
33. Peak and Northern Footpath Society: *“Object to this application. The bridleway has been excavated and left unusable for two and a half years. In that time Kirklees Council have failed to take appropriate action as Highway Authority. The Peak Park have also failed to take any action as Planning Authority despite being aware of the damage and works undertaken without planning consent. The bridleway should be simply and sensitively reinstated to fit with the moorland surroundings and it's public status. It is a valuable multi*

user route in a national park and should not have a road way for motor vehicles built over it. This would ruin the amenity value of the route and character of the area enjoyed by the public. Please refer to National Planning Policy Framework paras 100 and 92”.

34. Huddersfield Group of the Ramblers' Association. Object: *“The desecration of this bridleway took place 2½ years ago with the throwing down of (what we believe to be) an unauthorised stony surface. Both Kirklees Council and the Peak Park should have worked together to take enforcement action then to restore this lovely route to its previous condition as a hill track for walkers, horse-riders and mountain bikers. This planning application essentially validates the creation of a permanent vehicular route. In Huddersfield Ramblers we cannot support it”*
35. British Horse Society: Object to the application: *“The plans show that this bridleway will effectively be made into a road, the increased use of vehicular traffic will spoil the enjoyment of this bridleway for all users. Because of the complete disregard for the amenity and safety value of the public on bridleway Meltham 50 in this planning application and the serious detrimental impact it will have on the safety and amenity of the public bridleways in the area.*
Further, this proposal will allow vehicles to drive along and turn on an unsurfaced public bridleway which will cause extensive surface damage. Such a proposal will change the rural open nature of this public route to the greatest detriment. I can find no meaningful mitigating or compensating proposals put forward in the application to safeguard the public bridleway for pedestrians, cyclists and horse riders. The importance and amenity value of the public bridleway has been completely ignored. At all times in law public rights take precedence over private rights of access and development. This bridleway has in part already had the collapsed stone culvert replaced with pipework including a blue plastic pipe as seen in the photographs included in the application, this work was undertaken without planning permission or consultation with users. The work completed so far has made this bridleway unusable and a safety risk to both equestrians and cyclists. We would ask that this bridleway be repaired, reinstated in character with its surroundings open moorland, exactly as it was prior to the unauthorised works taking place.”
36. One further objection has been received from a member of the public: *“This track has been destroyed, so shooting club could have access with cars on the bridal way. Enforcement should’ve happened over two years ago when this was done submitting a planning application after the work has been done is wholly unacceptable. This is a beautiful area that has been destroyed to make way for vehicles. A bridleway is not for vehicles and I object to this use and application”.*

Key Policies

37. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. It was last updated in 2021. The Government’s intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority’s Core Strategy 2011 and those in the Development Management Plan adopted in May 2019. Policies in the Development Plan provide a clear starting point consistent with the National Park’s statutory purposes for the determination of this application.
38. Paragraph 176 of the NPPF states that *“great weight should be given to conserving 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 landscape and scenic beauty. The conservation of wildlife and cultural heritage are important*

considerations in all these areas and should be given great weight in National Parks and the Broads.”

39. Paragraph 100 of the Framework says: *“Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails”.*

40. With regard to Habitats and Diversity, paragraph 180 of the NPPF is relevant to this application:

180. “When determining planning applications, local planning authorities should apply the following principles:

a) 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;

b) 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;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity”.

Development Plan

41. The main Development Plan policies which are relevant to this proposal are: Core Strategy policies: GSP1, GSP2, GSP3, GSP4, L1, L2, L3 and CC1, and Development Management policies: DM1, DMC2, DMC3, DMC11, DMC12 and DMT5.

42. Policy GSP1 sets out the broad strategy for achieving the National Park’s objectives having regard to the Sandford Principle, (that is, where there are conflicting desired outcomes in achieving national park purposes, greater priority must be given to the conservation of the natural beauty, wildlife and cultural heritage of the area, even at the cost of socio-economic benefits). GSP1 also sets out the need for sustainable development and to avoid major development unless it is essential, and the need to mitigate localised harm where essential major development is allowed.

43. Policy GSP2: *Enhancing the National Park* states that:

- Opportunities for enhancing the valued characteristics of the National Park will be identified and acted upon.
- Proposals intended to enhance the National Park will need to demonstrate that they offer significant overall benefit to the natural beauty, wildlife and cultural heritage of the area.
- When development is permitted, a design will be sought that respects the character of the area.
- Opportunities will be taken to enhance the National Park by the treatment or removal of undesirable features or buildings. Work must be undertaken in a manner which conserves the valued characteristics of the site and its surroundings.
- Development in settlements necessary for the treatment, removal or relocation of

- nonconforming uses to an acceptable site, or which would enhance the valued characteristics of the National Park will be permitted.
44. Policy GSP3 *Development Management Principles* sets out development management principles and states that all development must respect, conserve and enhance all valued characteristics of the site and buildings, paying particular attention to, amongst other elements, impact on the character and setting of buildings, scale of the development appropriate to the character and appearance of the National Park, design in accordance with the National Park Authority Design Guide and impact on living conditions of communities.
45. Core Strategy policy GSP4: *Planning conditions and legal agreements* states that the National Park Authority will consider the contribution that a development can make directly and/or to its setting, including, where consistent with government guidance, using planning conditions and planning obligations.
46. Core Strategy Policy L1 *Landscape character and valued characteristics* states that development must conserve and enhance valued landscape character and valued characteristics, and other than in exceptional circumstances, proposals in the Natural Zone will not be permitted.
47. Core Strategy Policy L2 states that development must conserve and enhance any sites or features of geodiversity importance, and any sites, features or species of biodiversity importance and where appropriate their settings. For international and national sites, the relevant legislation and protection will apply in addition to the requirements of policy. As set out in Core Strategy policy L2, the granting of planning permission is restricted for development likely to significantly affect a European (International) site, requiring that an appropriate assessment is first carried out of the implications of the development for the site's conservation objectives. Primary legislation restricts the cases in which exceptional circumstances may justify development, particularly development having a significant effect on the ecological objectives or integrity of a Special Protection Area (classified under the Birds Directive) or Special Area of Conservation (designated pursuant to the Habitats Directive).
48. Core Strategy policy L3 provides core policy principles for cultural heritage assets and requires that all development conserves and where appropriate enhances or reveals the significance of archaeological, architectural, artistic or historic assets and their settings. Development will not be permitted where there is harm to the significance of a heritage asset other than in exceptional circumstances.
49. Policy CC1 *Climate change and mitigation* requires that all development must build in resilience to and mitigate the causes of climate change.
50. Development Management policies
51. DM1 *The presumption of sustainable development in the context of National Park purposes* states:
When considering development proposals the National Park Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (2012). It will work proactively with applicants to find solutions that are consistent with National Park purposes:
- i. to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park; and
 - ii. to promote opportunities for the understanding and enjoyment of the valued characteristics of the National Park.
- Planning applications that accord with the policies in the Development Plan will be

approved without unnecessary delay, unless material considerations indicate otherwise.

52. DMC1 *Conservation and enhancement of nationally significant landscapes* states:

A. 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:

- (i) the respective overall strategy for the following Landscape Strategy and Action Plan character areas; and
- (ii) any cumulative impact of existing or proposed development including outside the National Park boundary; and
- (iii) the effect of the proposal on the landscape and, if necessary, the scope to modify it to ensure a positive contribution to landscape character.

B. 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.

C. Where a building or structure is no longer needed or being used for the purposes for which it was approved and its continued presence or use is considered by the Authority, on the evidence available to it, to be harmful to the valued character of the landscape, its removal will be required by use of planning condition or obligation where appropriate and in accordance with the tests in national policy and legislation.

53. DMC2 *Protecting and managing the Natural Zone* says:

A. 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.

B. Development that would serve only to make land management or access easier will not be regarded as essential.

C. Where development is permitted it must be in accordance with policy DMC3 and where necessary and appropriate:

- i. permitted development rights will be excluded; and
- ii. permission will initially be restricted to a period of (usually) 2 years to enable the impact of the development to be assessed, and further permission will not be granted if the impact of the development has proved to be unacceptable in practice; and
- iii. permission will initially be restricted to a personal consent solely for the benefit of the appropriate person.

54. Development Management policy DMC3: *Siting, design, layout and landscaping* requires development to be of a high standard that respects, protects, and where possible enhances the natural beauty, quality and visual amenity of the landscape, including the wildlife and cultural heritage that contribute to the distinctive sense of place. It also provides further detailed criteria to assess design and landscaping, as well as requiring development to conserve the amenity of other properties.

55. DMC11 *Safeguarding, recording and enhancing nature conservation interests* states:

A. Proposals should aim to achieve net gains to biodiversity or geodiversity as a result of

- development. In considering whether a proposal conserves and enhances sites, features or species of wildlife, geological or geomorphological importance all reasonable measures must be taken to avoid net loss by demonstrating that in the below order of priority 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.
- B. Details of appropriate safeguards and enhancement measures for a site, feature or species of nature conservation importance which could be affected by the development must be provided, in line with the Biodiversity Action Plan and any action plan for geodiversity sites, including provision for the beneficial future management of the interests. Development will not be permitted if applicants fail to provide adequate or accurate detailed information to show the impact of a development proposal on a site, feature or species including:
- i. an assessment of the nature conservation importance of the site; and
 - ii. adequate information about the special interests of the site; and
 - iii. an assessment of the direct and indirect effects of the development; and
 - iv. details of any mitigating and/or compensatory measures and details setting out the degree to which net gain in biodiversity has been sought; and
 - v. details of provisions made for the beneficial future management of the nature conservation interests of the site. Where the likely success of these measures is uncertain, development will not be permitted.
- C. For all sites, features and species development proposals must also consider:
- ii. cumulative impacts of other developments or proposals; and
 - iii. the setting of the development in relation to other features of importance, taking into account historical, cultural and landscape context.
56. DMC12 *Sites, features or species of wildlife, geological or geomorphological importance* states:
- A. 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.
 - B. 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.
 - C. For all other sites, features and species, development will only be permitted where:
 - i. significant harm can be avoided and the conservation status of the population of the species or habitat concerned is maintained; and
 - ii. the need for, and the benefits of, the development in that location clearly outweigh any adverse effect.
57. Policy DMT5 *Development affecting a public right of way* states, inter alia, that:
- A. Where a development proposal affects the route of a public right of way, either the definitive line of the public right of way should be retained, or, in exceptional

circumstances, where retention of the definitive line is not possible, the developer will be required to provide an alternative route that:

- (i) is of equal, or preferably, of an improved quality compared to the original; and
- (ii) has similar or improved surface appropriate to its setting; and
- (iii) wherever appropriate, is of benefit to users with special needs, including those with disabilities; and
- (iv) is available before the definitive route is affected or, if this is not possible, until the development is complete, a suitable temporary route is available before the definitive route is affected; and
- (v) is as convenient and visually attractive as the original.

B. Where development occurs, opportunities will be sought to provide better facilities for users of the rights of way network, including, where appropriate, providing links between the development and the rights of way network, including the National Park's Trail network. C. Development that would increase vehicular traffic on footpaths, bridleways or byways open to all traffic to the detriment of their enjoyment by walkers and riders will not be permitted unless there are overriding social, economic or environmental conservation benefits arising from the proposal.

Assessment

Principle of Development

58. The application site lies within the Dark Peak "Moorland slopes & cloughs" (west of the track) and "Densely enclosed gritstone upland" (east of the track) landscape character areas of the National Park and is within the area which is designated as Natural Zone. The Natural Zone represents the wildest and least developed parts of the National Park. The area combines high wildlife value and minimal obvious human influence. The National Parks and Access to the Countryside Act 1949 (as amended) also refers to these areas as 'open country'.
59. Development Plan Core Strategy Policy L1 states that '*other than in exceptional circumstances, proposals for development in the natural zone will not be permitted*'. Core Strategy policy L1 is clear that development in the Natural Zone is acceptable only in exceptional circumstances. Unless it is demonstrated as being essential under the terms of policy DMC2, development should be located outside the Natural Zone and should not, where a proposal is close to the Natural Zone, harm the essential characteristics of these areas. The supporting text in the Development Management Plan explains that exceptions might include:
- works essential for the landscape management of these areas (e.g. a new path or a weir);
 - works essential for the conservation or enhancement of the National Park's valued characteristics (for example development related to the management or restoration of a heritage asset, an area of biodiversity value or work in support of eco-system services);
 - or in a small number of existing farmsteads located within the Natural Zone and on its borders.
60. Policy DMC2 itself says 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 for the management of the Natural Zone or for the conservation and/or enhancement of the National Park's valued characteristics. Development that would serve only to make land management or access easier will not be regarded as essential.
61. Taking these policies as a starting point, it is considered that the essential repair of a

track that is a public right of way may accord with the requirement for the development to be essential for landscape management or the conservation or enhancement of valued characteristics. The repair of the track to allow its safe use would be in the public interest and may overcome the planning policy presumption against development in the Natural Zone, However, the development must be fully justified and must be the only practicable option.

62. The accompanying statement, which is summarised in the “proposals” section above, sets out the need for the repairs to the track. Work began on it in 2020 when the applicants considered that repairs to the track, within its limits, would not require planning permission; indeed, they still question the need for planning permission for works within the existing track. However, officers responded to local concerns about the apparent scale of the work and advised that planning permission may be necessary. Whilst some repairs to existing tracks are permitted development, at that time the scale and nature of the works was unclear. Having now seen what is proposed, there are some elements which would be permitted, such as the limited infilling of heavily eroded sections, but overall it is considered that the work is development requiring permission.
63. In terms of the need for the works, although a formal response has not been received from Kirklees Council (the highway authority), officers have spoken to the Council’s Rights of Way officer and he has stressed the need for works to repair the right of way and he supports the current application. Since the application was deferred from the Planning Committee meeting in June, additional information has been received from Kirklees Council’s Rights of way team which sets out the line of the definitive route. This appears to confirm that in some places the established route on the ground has moved slightly to the west over many years of usage, presumably because of the topography (a steep bank). However, the Council maintains its position that the existing track needs to be repaired and supports the current application. This is echoed by the response from the Authority’s Ranger Service and Rights of Way team.
64. Given that this is an existing public right of way, albeit with some deviations from the definitive map in some places, and there is a need to ensure that it is safe and convenient to use, the principle of the repair and maintenance works is considered to be in accordance with policies L1 and DMC2. The works to the track will also allow the landowners and farm tenant to continue using it for vehicular use to carry out land management works. The supporting statement explains that the applicants are working with Natural England on moorland restoration works so some vehicular access is required to carry out this work and deliver materials. A more recent response from the agent has set these works out in more detail and shows that they are extensive; the agent has made it clear that they do not intend to carry out any works outside the existing line of the track as this would damage the conservation works they have already carried out.
65. There is an existing right for the owners to use this track. The applicants have made it clear that they do not want to encourage any other vehicular access to their land. However, they have also noted that a properly maintained track will allow emergency services access in the event of moorland wildfires. Magdalen Road is one of the key edge-of-moorland tracks in this respect.
66. In summary on this issue, the repair of the existing track is considered to be justified, subject to the finished surface being the minimum required for land management purposes so that there is no increase in the frequency or intensity of vehicular use.

Environmental Impact:

67. The proposal falls below the thresholds where an Environmental Impact Assessment is

required. As noted above, Natural England say that without appropriate mitigation the proposals would have an adverse effect on the integrity of South Pennine Moors, Special Area of Conservation and the Peak District Moors Special Protection Area and would damage or destroy the interest features for which Dark Peak Site of Special Scientific Interest has been notified. However, they add that in order to mitigate these adverse effects and make the development acceptable an appropriate construction environmental management plan (CEMP) should be agreed prior to the commencement of any permitted work on site. On this basis Natural England have no objection. This demonstrates that whilst the works have the potential to cause harm, properly controlled and managed, they would be acceptable. Turning to the specific issues, the key impacts are likely to be on the landscape character of the area and on ecology and biodiversity.

Landscape Impact

68. The existing route of Magdalen Road is a very popular bridleway used by walkers, cyclists and horse riders. As can be seen from the representations received on the application, the route is highly valued by these users as it passes through a very attractive landscape, from the moorland edge into the valley to the north. The track runs through the Dark Peak Landscape character area, with two landscape types to the east and west of the track. The existing track is a very clearly defined route running to the east of the clough, below rising ground to the east. It runs between two gates, one at the crest of the hill to the south, the other at the northern end of the track, beyond which where there are farm building groups. The existing track is an established feature, with either a loose stone surface, bare earth or grass. As is common with such tracks, in many places it runs in a slight hollow in the landscape.
69. The repair and resurfacing of the existing track within its existing limits would be acceptable provided it is carried out in a way that avoids “urbanising” its appearance. The proposal is to surface parts of the track with locally obtained sandstone, with a final covering of 20mm to dust (although elsewhere in the application there is a reference to 40mm). The wheel marks made during the work will be filled in, leaving grass in the centre. This is the traditional approach to surfacing tracks and, if carried out sensitively, would be an acceptable way of repairing the track. However, particular care needs to be taken where the existing surface is less eroded and is primarily vegetation. The supporting statement says that not all vegetation will be removed in these places. If the work is carried out in the manner and locations proposed, it would not have a harmful impact on the character and appearance of the track, although in the short term the interventions will be evident.
70. Given the importance of achieving a satisfactory appearance, it is recommended that a sample section of track be agreed before the works begin on the rest of it, in the same way that stone sample panels are required to be approved for building works.
71. In addition to the resurfacing works, the application also proposes replacing a collapsed stone culvert with plastic piping. Provided this is completely buried, including the end so that it is not visible, this would be acceptable as it would avoid erosion of the track through rainwater run-off.

Biodiversity and Ecology

72. The effects of the development on ecology and biodiversity need to be considered as the track runs through a part of the Dark Peak SSSI, the South Pennine Moors SAC and the South Pennine Moors SPA. These designations aim to protect the integrity of the habitats and protected species.
73. As noted above, the works are restricted to within the width of the existing track, although

during the period that the works are taking place there may be the need to store materials, such as loose stone (a pile of stone has been stored at the southern end of the track since the works were halted). A condition should be added to any approval to agree the location of any storage. In terms of length of the construction period, the supporting statement says that the works will take seven days. It is important that the breeding season for the ground nesting birds is avoided.

74. Taking these factors into account, it is considered that if properly controlled, the works will not have an adverse impact on ecology and biodiversity. As noted above, Natural England's response is important. Natural England does not object to the application, subject to an appropriate construction environmental management plan (CEMP) should be agreed prior to the commencement of any permitted work on site. This will cover the issues set out above. The holding objection from the Authority's Ecologist was based on the potential impacts on the integrity of the designated areas and it also recommended that Natural England should be consulted. This has been done (twice) and Natural England have confirmed that, subject to the proposed mitigation, there is no objection.

Access and Recreation

75. This part of the report deals with the effects of the development on access and recreation. As noted above, Magdalen Road is a well-used public right of way, forming part of the extensive network of routes in the National Park fringe to the west and south of Holmfirth, Meltham and Marsden. The route drops from the A635 Holmfirth to Greenfield road down to the Royds area to the west of Meltham.
76. As can be seen from the consultation responses, there is concern about the current condition of the route. However, this largely arises from the fact in some sections, particularly at the northern end, relatively large pieces of stone have been laid as a preliminary to providing a smaller profile top covering. This situation is a result of the work stopping when the Authority and Kirklees Council raised concern about the need for permission for the works in 2020. This has led to the unfortunate situation where the unfinished surface of some parts of the track is difficult to use. This was observed by officers on a recent site visit, with walkers skirting the edge of the track, on the raised edge and on adjacent moorland. The responses from the three bodies representing walkers and horse riders make this point and express their concern about the works that have been carried out so far, but they are judging the works on their unfinished state. There is therefore a need to resolve this situation by completing the repair works in a satisfactory manner,
77. The need to complete the works in a sympathetic way, to allow the track to be used as a public bridleway is supported by the Authority's Rights of Way team and by the Kirklees Public Rights of Way officer. This would be in accordance with DM policy DMT5.

Archaeological and Cultural Heritage

78. The Authority's Senior Archaeologist has no objection to the proposals, advising that it does not raise any archaeological issues.

Summary of Impacts

79. Landscape: There would be an impact on landscape character. However, this would be limited by following the route of the existing track. Nonetheless, the track cannot be regarded as a landscape improvement or enhancement measure as it is a man-made feature into the Natural Zone, which is also designated as an SSSI, SAC and SPA.
80. Ecology: This impact will largely occur at the construction stage and there would be no

significant effects on ecology once the track is in place, other than the impact of disturbance through potential increased recreational use.

81. Archaeology: There would be no effect on archaeological and cultural heritage.
82. Access and Recreation: The completion of the works in a satisfactory manner would allow the recreational users of the track to continue using it in a safe and convenient way, resolving the problems that have been experienced while the track has been in its unfinished state.

Environmental Management

83. No statement has been submitted with the application to set out how the development meets the requirements of this policy, but given the nature of the proposal this is considered to be acceptable.

Conclusion

84. This application proposes the repair of an existing track in open moorland, within the Natural Zone and in an area designated for its habitat and biodiversity interest as an SSSI, SAC and SPA. The track is a well-used public right of way, popular with walkers, horse-riders and cyclists. The repairs will also allow the applicants vehicular use for land management purposes. National policy and environmental law, together with the Authority's policies, set out a very strong presumption against development in these designated areas. Consequently, development must only be approved in exceptional circumstances. Any works to tracks which are essential for the management of the Natural Zone or for the conservation and/or enhancement of the National Park's valued characteristics may be acceptable in principle (policy DMC2).
85. Although it is not a significant part of the application, the supporting statement says that the track provides emergency access for tackling wildfires in an area where there has been a high incidence of fires in recent years, notably near Marsden to the north.
86. From a Habitat Regulations perspective, the accompanying report on Appropriate Assessment concludes that provided there is appropriate mitigation, there will be no unavoidable impacts on the integrity of the designated habitat and species. As noted above, in the Consultation section, the response from Natural England is that the proposed works are acceptable only if there is a construction environment management plan (CEMP), which can be required by condition and can cover the other issues set out in this report.
87. Officers have concluded that there is a need to carry out the essential repair and maintenance works to the existing track, within the confines of the existing track. If properly managed and controlled, these works will not have a harmful impact on the designated areas and its ecological and landscape interest. There is a need to carry out the repair works to make it safe and convenient to use as a public right of way, but it is also important to ensure that this work is done to a standard that does not encourage or facilitate increased vehicular use, beyond that required for the essential management of the land. These are considered to be the exceptional circumstances required for making an exception to the policy presumption against development in the Natural Zone. Consequently, the application is recommended for approval, subject to the conditions set out above.

Human Rights

88. Any human rights issues have been considered and addressed in the preparation of

this report.

89. List of Background Papers (not previously published)

90. Nil

91. Report author: John Scott, Consultant Planner