

9. REQUEST FOR AUTHORITY TO DECLINE TO DETERMINE AN APPLICATION FOR PLANNING PERMISSION UNDER S70C OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) RE: (NEW) FULL APPLICATION FOR PLANNING PERMISSION FOR 'RETENTION OF EXISTING TRACK SURFACE IN QUARRIED LIMESTONE AT EXISTING TRACK AT CARTLEDGE FLAT / RUSHY FLAT DIKE, NORTH OF HOLLINGDALE PLANTATION, STRINES, BRADFIELD, SOUTH YORKSHIRE' (JK)

Summary

1. The Authority served an Enforcement Notice (EN) on the land in 2018 (reference 18/0062) which requires the landowner to remove the crushed stone from the land which was placed without planning permission on an existing access route across the moorland.
2. An appeal against the notice, which included Ground (a), (a deemed planning application) was subsequently dismissed with the notice then coming into effect in 2019.
3. No action has been taken to comply with the notice.
4. The landowner has now applied for planning permission to retain the works arguing that with the passage of time the track has weathered in harmoniously with the landscape and therefore this represents a material change in circumstance which warrants reconsideration.
5. The natural weathering argument was advanced by the Appellant as part of their Ground (a) appeal against the EN (that planning permission should be granted) but was dismissed by the Inspector.
6. S70C of the Planning Act gives a power to local planning authorities to decline to determine a retrospective application for planning permission where the proposal relates to those matters specified as the breach in an enforcement notice.
7. Officers have notified the applicant that they are minded to decline to determine the application but under current standing orders the use of such a power is not delegated. Therefore, this report seeks authority from the Planning Committee to formally decline to determine this application.

Site and Surroundings

8. The subject track lies on open moorland to the north-west of Sheffield which forms part of the Bradfield Moors and the Fitzwilliam-Wentworth estate. The track is located in an area known as Rushy Flat Dike – between Bole Edge and Holling Dale Plantations (to the east) and Cartledge Flat (to the west). Approximately 1.5km to the south is the Strines Inn.
9. The land is designated as Natural Zone under our Development Plan Policy and is Section 3 Moorland, as defined in the Wildlife and Countryside Act 1981, and is also part of the Dark Peak Site of Special Scientific Interest (SSSI).
10. The land is also designated as a Special Area of Conservation (SAC), as defined in the European Union's Habitats Directive (92/43/EEC), and a Special Protection Area under the European Union Directive on the Conservation of Wild Birds.

11. In common with most of the upland areas in the National Park, the land concerned is also open access land under the Countryside and Rights of Way Act 2000 which means that, subject to certain exceptions, the public normally has a ‘freedom to roam’ on foot without keeping to public rights of way.
12. The surfaced track which is the subject of the Notice is part of a longer route which extends for approximately 2.7km from a gated access point on Mortimer Road (just east of Strines Bridge). The route climbs in a generally north-westerly direction from Mortimer Road and terminates on the open moorland where it meets a footpath known as Dukes Road which runs roughly north-south.

Proposal

13. An application for full planning permission for the retention of existing track surface in quarried limestone has been submitted which Officers consider raises no new issues and therefore seek authority to decline to determine using S70C of the Town and Country Planning Act.

RECOMMENDATION:

14. That authority to **DECLINE TO DETERMINE** the retrospective planning application under **S70C of the Town and Country Planning Act 1990 (as amended)** for the following reasons:
 1. The application relates to development of land to which an existing enforcement notice relates and seeks permission for the retention of the matters specified in the enforcement notice as constituting a breach of planning control.
 2. There is no material change in circumstances to warrant consideration of the application. The case for the development has been heard at appeal where the ‘weathering in’ argument in support of the ground (a) appeal was heard and dismissed by the Inspector.

Key Issues

15. The continued harmful impact of the development on the character and appearance of the moorland landscape and special landscape qualities of the National Park having regard to its designation as an area of national and international importance for nature conservation.
16. Public confidence in the planning system through the effective enforcement of the planning regulations.

Planning History

17. There is no relevant planning history other than the enforcement notice (18/0062) and appeal (APP/M9496/C/18/3208720) referred to above.

The National Planning Policy Framework

18. Paragraph 59 on Enforcement states;
19. ‘Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a

way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.'

The PDNPA Local Enforcement Plan (updated 2024)

20. In respect of Retrospective planning applications this states;
21. '...Although the submission of retrospective planning applications will be discouraged where we consider a development to be clearly unacceptable, the person responsible will still have the right to submit a retrospective application if they wish, unless an Enforcement Notice has already been issued in relation to the same development in which case we have the power to decline to determine a retrospective application.'

Legislation - The Town and Country Planning Act 1990 (as amended). S70C Power to decline to determine retrospective application

This states that;

22. 'A local planning authority may decline to determine an application for planning permission or permission in principle for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.'
23. 'For the purposes of the operation of this section in relation to any particular application for planning permission or permission in principle, a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority.'

Assessment

24. Sections 70C is one measure to speed up the planning system and avoid delaying tactics caused by repeat applications. It gives a Local Planning Authority the power to decline to determine a retrospective planning application in cases where the works are specified in a valid enforcement notice, which is the circumstance here.
25. The failure to comply with the Enforcement Notice for such a long period of time has inevitably led to further weathering since the notice came into effect in 2019. However, the crushed stone and the harm it is causing to the special qualities of the National Park remains. The visual change caused by the further weathering and vegetation growth since 2019 is noted but it is not significant and does not mitigate the ongoing visual and physical harm identified to the landscape and the ecological interests of this designated area. It is therefore not considered to amount to a material change that warrants any change to the need to remove the stone in accordance with the Enforcement Notice.
26. This applicant has already exercised their opportunity to appeal against the enforcement notice, and within that discuss the planning merits of their proposal via their ground (a) appeal and the deemed planning application. This included arguing that by the time of the appeal, some four years after the work commenced, the track had and would continue to 'weather in' making it less visually prominent in the landscape. This weathering in over time was therefore considered at the appeal and was dismissed by the planning Inspector.
27. At the appeal the appellant also argued the need for the work was connected with the

estate's conservation work and how it was necessary to prevent degradation through concentrating access along a defined route, whilst also increasing public access. However, the Inspector noted that Policy LC1 and DMC2 clearly state that development that would serve only to make land management or access easier will not be regarded as essential.

28. The Inspector also considered the suggestion that the route facilitated the estate's wildfire strategy and agricultural work. Whilst the Inspector accepted the benefit the track offered in that respect, she concluded that the evidence suggested the track's primary purpose was recreational to access the grouse 'butts' on a relatively regular basis for shooting. It had therefore not been shown that the development was essential within the meaning of the development plan policy.
29. Those same policies are still in place and there has been no significant change in either national or local policy since 2019, nor are there considered to be any other material considerations that would warrant further reconsideration. Consequently, Officers consider that the applicants have had their case to retain the works thoroughly examined and would therefore not be disadvantaged by taking this action to decline to determine the new application.

Conclusion

30. Whilst enforcement action is discretionary there were strong grounds in 2018/9 to pursue action to remove the harm in order to conserve the special qualities of this nationally and internationally designated moorland landscape. The Planning Inspector agreed and dismissed the appeal, confirming the notice and the timescale for the removal of the crushed stone from the land by the 9th September 2019.
31. Given the weathering has not and will not mitigate the harm, and all the other elements of the applicant's case were dismissed by the Inspector, there are no reasonable grounds to delay removal of the stone. The applicants have had their case to retain the works thoroughly examined would therefore not be disadvantaged by taking this action to decline to determine the new application.
32. The current application therefore represents an unnecessary delaying tactic which frustrates the effective enforcement of planning control. It is therefore now considered both reasonable and necessary that appropriate consent is sought to utilise S70C and allow officers to decline to determine the application.
33. The landowner must comply with the enforcement notice. If this does not take place then the Authority should consider appropriate action to secure compliance with the enforcement notice.

34. Human Rights

35. Any human rights issues have been considered and addressed in the preparation of this report.
36. List of Background Papers (not previously published)
37. Nil
38. Report Author: John Keeley – Area Planning Manager – North Team