

Appeal Decision

Site visit made on 3 July 2019

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal ref: APP/F4410/C/19/3222999

Blaxton Quarry, Land off Thorne Road, Blaxton, Doncaster, South Yorkshire DN9 3AX

- The appeal is made by Mr Nadeem Shah under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The notice was issued on 21 January 2019; reference No. 19/00001/ENFNOT.
- The breach of planning control was: Without planning permission, change of use of the Land from countryside/disused quarry to a motocross and outdoor activity site including the development and formation of fishing 'piers or pegs' along with engineering works the creation, alteration and removal of earthen 'bunds' of various sizes and the setting out of both formal and off-road motocross/motor sport race tracks, together with its associated activities of the siting/use of a residential caravan and hot/cold food sales and HGV container storage, all as part of the material change of use.
- The requirements of the notice are to:
 - (1) Permanently cease the use of the Land for the riding of motorcycles or motor sports activities (i.e. bike, quad or other vehicle) other than for non-leisure use of security/site inspection on the OS defined and marked trackways of Levels Lane/Nan-Sampson Bank)
 - (2) Permanently cease any further engineering operations on the Land for the alteration, creation or removal of earthen (or other materials) bunds/embankments
 - (3) Permanently remove all HGVs, storage containers and caravans from the Land
 - (4) Permanently remove from the Land any track markers, bollards, traffic cones or other implements used to define motocross/motor sports tracks
 - (5) Cease the use of the Land for fishing, boat use activities and for hot and cold food sales
- The period for compliance with the requirements is 28 days.
- The appeal was made on grounds (c) and (e) as set out in the amended Act.

Summary of decision: The enforcement notice is upheld

Appeal site

1. The appeal site is an extensive 123.5ha area of mostly overgrown former quarry and arable land just to the north-east of the small settlement of Blaxton. Access is obtained from Kettering Road to the west along a roadway, Levels Lane, that is normally gated and locked. There are several large lakes at the

northern end of the land. Apart from a level area of hardstanding near the access at the western side, much of the site has an undulating predominantly sandy surface that has been crossed by numerous off-road motorcycle tracks. Earth bunds have been built, particularly on the southern side of the lakes. Other earthworks have been carried out, seemingly in part to provide tracks suitable for motocross activities. An arable field at the western side of the site is let to another party.

Enforcement notice – validity

2. The Appellant, Mr Nadeem Shah, said the enforcement notice plan's red line showed a vast area of land. There was no specific reference to exactly where the alleged motocross activities were taking place. The red line covered areas where no breach as stated in the notice had ever taken place. The notice was defective. It was invalid.
3. The Courts use the concept of the planning unit to determine the area of land to be considered when identifying the primary use of land, (and its ancillary uses), and whether any material change of use has occurred. In the case of *William Newland v SSCLG and Waverley BC QBD 22 December 2008*, HHJ Hickinbottom said the identification of the relevant planning unit was quintessentially a matter of fact and degree for the primary decision maker, (also see *Johnstone v Secretary of State for the Environment (1974) 28 P&CR 424* and *Church Commissioners for England v Secretary of State for the Environment [1995] 2 PLR 99*).
4. In the case of *Burdle v SSE [1972] 1 WLR 1207*, Bridge J. determined that there were three criteria to determine the planning unit:
 1. When occupier uses for single main purpose to which secondary activities are incidental, the unit of occupation to be taken as the planning unit.
 2. When a variety of activities none incidental or ancillary to the other, again consider the entire unit.
 3. When two or more areas occupied for substantially different purposes. Each area so used is a separate planning unit.

Bridge J. said: "*It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*"

5. In the case of *Thomas David (Porthcawl) Ltd and others v Penybont Rural District Council and others [1972] 3 All ER 1092 5 Oct 1972*, the Appellants had complained that an enforcement notice had been served on an entire plot of land when the activities complained of, sand and gravel extraction, had occurred on only two smaller parts. There it was held that the site should be looked at as a whole.
6. It is clear from the above decisions that, where there is no evident demarcation between activities or works, the unit of occupation is generally to be taken as the planning unit, even where there may be a nil use on part of the land. But particularly where access roads and paths are shared and there is some flexibility in the location of activities, there cannot be a sensible separation of the site into different planning units. In my view, it was entirely appropriate for

the Council to have identified the entire enforcement notice red line site as the planning unit where a mixture of activities and engineering operations have taken place.

7. The Appellant's assertion that the enforcement notice here is a nullity is incorrect. A notice is only a nullity if it is invalid on its face, *R v Wicks [1996] JPL (CA)*, that is, for example, if it failed to comply with the requirement in s.173(3) of the Act to specify the steps, or specify a period for compliance, (s.173(9)). Neither is the notice invalid; that is, containing an error that may or may not be correctable. I consider that the notice before me appropriately identifies the planning unit and correctly describes the mixture of uses. It is a valid notice. The notice could have included an agricultural use as part of the mix of uses. But the notice does not attack that lawful use. Its omission from the allegation is not fatal to the notice.

The appeal on ground (e)

8. An appeal on ground (e) asserts that the enforcement notice was not properly served. Pointing out the alleged flaws in the service of the notice, it was said that Mr N Shah was a director of TLB Properties who were managing agents of the site. Mr Imran Shah did not live at Gatewood Farm. The Yorkshire Enduro Company was not registered at Cavendish Court, South Parade, Doncaster. There was no such commercial concern at Cavendish Court. It was also said the access serving the quarry was shared with an adjacent landowner who appeared not to have been served with notice despite having an interest in the land.
9. The Council responded by setting out in considerable detail their efforts to find and serve those with an interest in the land. They said information from the Land Registry showed the land to be owned by a company registered in Jersey. Legislation there had no requirement to list directors and details of ownership. The Appellant, Mr Nadeem Shah, was the only person to have contacted the Council in relation to the enforcement notice. The Council had sent a copy of the enforcement notice to the adjacent landowner for information purposes only. They considered him to be not involved in the breach.
10. In my view, the Council did all that was required of them to find the persons and parties with an interest in the land prior to issuing the enforcement notice. They were entitled to rely upon a Land Registry search to identify all those with an interest. The Appellant produced no evidence of any person or party that had an interest in the land who had not been served with the enforcement notice nor, if so, how they might have been disadvantaged by any omission in service of the notice. Mr Nadeem Shah appealed against the notice, submitting grounds of appeal. He also produced an appeal statement. No evidence was brought forward to show that any injustice had been caused to any person or party by any possible failure to serve the enforcement notice correctly. The appeal on ground (e) fails.

The appeal on ground (c)

11. An appeal on ground (c) asserts that there has not been a breach of planning control. It was Mr Shah's case that the motocross activity had taken place on no more than 14 days each year for the last 4 years. Event paraphernalia were

removed after each event. The occasional motocross activity was therefore permitted development.

12. The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), Part 4 at Class B - temporary use of land, grants planning permission for the use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of – (b) motor car and motorcycle racing including trials of speed, and practising for those activities and the provision on the land of any moveable structure for the purposes of the permitted use.
13. In the case of *Ramsey v SSETR & Suffolk Coastal DC [2002] CA JPL 1123*, it was determined that where agricultural land was used for vehicular leisure purposes, even if permanent physical changes take place on land to facilitate a temporary use, provided that they do not prevent the normal permanent use from continuing for most of the year, and it does so continue, there is no reason why the permitted development rights under the Order at Class B should not be available.
14. In this instance, arguments around the reversion to “the normal permanent use” do little to resolve the question of the lawfulness or otherwise of the claimed temporary use. Most of the land used for motocross activities has taken place on former quarry land, much of which appeared to have little topsoil cover and is now overgrown with trees. That land looked to me to be of little or no use for agricultural purposes, said by the Council to be the lawful use of the land.
15. Any reliance by the Council on the apparent permanence of the engineering works to construct, for example, motorcycle tracks to show an intention to develop a permanent motocross facility, is not necessarily, of itself, decisive as to lawfulness. However, in *Ramsey*, the physical works would only be acceptable to facilitate a temporary use. Mr Imran Shah’s, (Mr Nadeem Shah’s son), own LinkedIn page says that; *“Since early 2016 have been developing a problem site into a purpose built motorbike enduro circuit. We have recently completed the first stage of works to the site and have been operating for almost 2 years.”*. He also said: *“A project I’ve been running over the last year converting a disused quarry into an outdoor pursuits centre... Three lakes enduro, just the start.”*. Also, a Change.org – petition, (now closed), to keep Three Lakes Enduro open, (the name of the appeal site’s motocross facility), had 2,735 signatories, suggesting a permanent, not a temporary, motocross use.
16. The Three Lakes Enduro Facebook page contains reviews of the motocross facility from 47 persons. An entry from the operators in 2017 said: *“We are trialling Wednesday and Thursday afternoon/evenings so which ever day you can make it this week pop down and ride and let us know what you think. This is just a trial we will pick the most suitable day to add to future weeks.”*. That does not suggest a temporary facility available for no more than 14 days in any year.
17. Even if the use of the appeal site for motocross had been limited to the 14 days a year set out in the Order, the physical alterations to the land to provide the various tracks and courses within the land strongly support the Appellant’s stated intention to develop a permanent facility. In *Ramsey*, the Judge said, *“It seems to me that as a matter of law physical changes that have been made to*

the land are capable of being a relevant consideration in the decision-makers assessment of the character of the proposed use. Is not simply limited to looking at duration in every case."

18. In my view, the evidence shows a definite intention to continue to develop the Three Lakes site. Quotes on line from the change.org petition by Imran Shah demonstrate that intention - such as: "... we have managed to create a track so good people from every corner of the country have had to visit us.", and "We will not give up on THREE LAKES ENDURO if you can help us here we promise to provide you the best safest and most diverse place to ride your bikes in the UK."
19. There was little emphasis by either party on the fishing use by members of the public of the large lakes at the northern end of the appeal land. Mr Shah said the lakes had been used for over 30 years for fishing by appointment only. An application for a certificate of lawfulness to that effect was to be made. The Council merely said such an application could be made. However, it would appear that Mr Shah considers the fishing use activity is carried out at a level that could justify issue of a certificate of lawfulness. In the meantime, the fishing use of the land as part of the mix of unlawful uses persists, even though it may be at a low level.
20. I consider that the use of the appeal site for motocross and fishing activities and the associated facilitating operational development went well beyond that which would have been permitted by the Order. The appeal on ground (c) fails.

FORMAL DECISION

21. The enforcement notice is upheld.

John Whalley

INSPECTOR