



Appeal Decisions

Site visit made on 2 July 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal A Ref: APP/C3240/C/18/3207619

Land to the east of Villa Farm, Grove Lane, Rodington, Shrewsbury, SY4 4QP

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act").
- The appeal is made by Gareth Davies ("the Appellant") against an Enforcement Notice issued by Telford and Wrekin Council ("the Council").
- The Enforcement Notice was issued on 26 June 2018.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the unauthorised change of use of the land from agriculture to a motocross site including the formation of a racetrack with associated jumps, fencing and laying of hardcore for vehicular access.
- The requirements of the Enforcement Notice are: (1) Cease the use of the land for the riding of motorcycles or motor sports activities. (2) Permanently remove from the land the track including all jumps, and return the land to its previous condition and contours as agricultural land. (3) Permanently remove from the land the access road to the track, including the removal of any associated stone/hardcore, and return the land to its previous condition and use as agricultural land. (4) Permanently remove from the land the post and wire fencing erected around the perimeter of the motocross site, and remove any other items associated with the unauthorised use including benches and sign boards.
- The period for compliance with requirement (1) above is seven days.
- The period for compliance with requirements (2) to (4) above is two months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice is upheld with corrections and variations.

Appeal B Ref: APP/C3240/W/18/3207805

Villa Farm, Grove Lane, Rodington, Shrewsbury, SY4 4QP

- The appeal is made under Section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by the Appellant against the decision of the Council.
- The application Ref TWC/2017/0784, dated 4 September 2017, was refused by notice dated 22 June 2018.
- The development proposed is a private motocross practice track,

Summary of Decision: The appeal is dismissed.

Procedural Matters – Appeal A & B

1. The address specified in Part 2 of the Enforcement Notice states the postal town as Telford. The parties agreed that the correct postal town for the postcode quoted is Shrewsbury. I will correct the address specified in the Enforcement Notice. This can be done without injustice to either party.

2. In my Appeal Decision I will refer to:
 - a) The land edged red on the plan attached to the Enforcement Notice and on the Location Plan and Block Plan relating to Appeal B as "the Appeal Site".
 - b) The motocross track within the Appeal Site as "the Track".
 - c) The access track within the Appeal Site leading to the Track as "the Access Track".
3. At my site visit I walked:
 - a) from the junction of Church Road with Rodington Road along the unadopted highway to the access to Villa Farm,
 - b) along the tracks from Villa Farm that lead to the Access Track,
 - c) along the Access Track to, and then, around the Track.
4. I also viewed, on an unaccompanied basis, part of the Appeal Site from the driveway at the dwelling-house known as Overdale.
5. I am also aware in general terms that the dwelling-houses at Villa Farm and Grove House are Grade 2 Listed Buildings. However, following my site visit and on the limited information available, I do not consider the Appeal Site to be within the setting of either listed building.
6. Part 3 of the Enforcement Notice refers to the formation of a "racetrack". There is no evidence before me that the Track has ever been used as a racetrack. I consider that the allegation should simply refer to the formation of a "track". This correction can be made without injustice to either party.

Relevant Background Matters

7. That part of the Appeal Site where the Track has been formed was last used for a productive agricultural use in about 1995.
8. I understand that another part of Villa Farm was used for the riding of motocross bikes prior to the formation of the Track.
9. There is disputed evidence as to when the Track was constructed. The Council produced a Google Earth photograph dated July 2012 which shows that neither the Track nor the Access Track were in place at that date.

Policy

10. The Development Plan for the area includes Policies COM1, SP4 & BE1 of the Telford & Wrekin Local Plan 2011-2031 ("the Local Plan").
11. I have also had regard to the material considerations referred to in the National Planning Policy Framework 2019 ("the NPPF").

Main Issue – Appeal A (Ground (a)) & Appeal B

12. I consider the main issue is whether the motocross use of the Appeal Site materially harms the living conditions of nearby residential occupiers having particular regard to noise and disturbance.

Reasons – Appeal A – Ground (a) and the deemed planning application –

that planning permission should be granted for what is alleged in the Enforcement Notice & Appeal B

13. The Local Plan explains that the Council will support:
 - a) New community facilities to meet the needs of local residents.
 - b) Development which meets the criteria specified in Policy BE1. As such development has to demonstrate that there is no significant adverse impact on nearby properties by reason of noise or that new development does not prejudice or undermine existing surrounding uses.
14. The NPPF explains that planning decisions should:
 - a) Contribute to and enhance the local environment by preventing existing development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.
 - b) Ensure that new development is appropriate to its location taking into account the likely effects of pollution on living conditions. In doing so new development should mitigate and reduce to a minimum potential adverse impacts resulting from noise and avoid noise giving rise to significant adverse impacts on the quality of life.
15. The Appeal Site is located within an area that can best be described as a very quiet and tranquil area.
16. In August 2017 a Noise Monitoring Assessment ("the First Assessment") was carried out on behalf of the Appellant. The First Assessment concluded that the motocross use of the Track is theoretically likely to have a significant adverse impact on surrounding residents.
17. The First Assessment reflects the comments made by many local residents who state that the motocross use of the Track results in very intrusive, irritating, disturbing, incessant and unpleasant noise both within their gardens and in their houses. Some residents have explained that they have to leave their homes when the motocross use is carried on so as to get away from the noise generated by the motocross use and another said that they have considered selling their home and moving away because of the noise caused by the motocross use.
18. The Appellant explained that:
 - a) The Track is used only by himself and others which he personally invites as a non-commercial hobby use.
 - b) The Track allows a safe and supervised place for young local people who wish to participate in motocross sports.
 - c) The Track would only be used on Saturdays between March and October (subject to satisfactory weather conditions) between 10:00 and 14:00. During that period there would be breaks in the use whilst riders recover from their physical exertions (including breaks for food and drink), and whilst machines were adjusted.
 - d) The Track is used by no more than 15 riders.

- e) Some of the users of the Track would also use the village's public house after the motocross use ceased thus benefitting the financial viability of that business.
19. I am also aware that there are:
- a) About the same number of households within the village that support the continued motocross use of the Track as the number who object to it.
 - b) Others from nearby towns and villages who also support the continued motocross use of the Track.
20. Supporters of the continuation of the motocross use of the Track explained:
- a) That the Track allows amateur riders to practice their riding skills rather than having to race one another.
 - b) That the motocross use allows both youngster and adults of all abilities to participate in an active sports activity.
 - c) The motocross use allows families to use the Track.
 - d) That the land surrounding the Track (when not in motocross use) is a beautiful location akin to a nature reserve.
 - e) That there are other noisy activities in the area including:
 - (i) agricultural vehicles and machinery, and
 - (ii) residents that use lawnmowers.
21. In addition, the Appellant has pointed out that the Town and Country Planning (General Permitted Development) (England) Order 2015 allows the temporary unrestricted use of land on 14 days per year for, amongst other things, motorcycle racing and practicing for racing. Such unrestricted use would be far more intrusive than his limited motocross use of the Track.
22. The comments received from local residents adversely affected by the motocross use of the Track together with the First Assessment indicates to me that the motocross use is contrary to the relevant parts of the Local Plan and had a significant adverse impact on the quality of life of some local residents.
23. The Appellant commissioned a further Noise Assessment ("the Second Assessment"). The Second Assessment assumed:
- a) The construction of a further bike jump to reduce speeds and thus lower the noise levels.
 - b) The construction of a two-metre high earth bund.
24. The Second Assessment was submitted to the Council in November 2017 and concluded that there would be an adverse impact on local residents. The Appellant pointed out that the Local Plan and the NPPF refer to a "significant adverse impact".
25. The Council's Environmental Health Officer considered that further mitigation was necessary and that the First and Second Assessments had failed to have regard to the location of some local residents' dwelling-houses in relation to the Track. Accordingly, additional monitoring and mitigation was necessary.

26. The Appellant has also suggested that:

- a) The motorbikes using the Track could be fitted with exhaust inserts so as to further reduce the levels of noise. I consider that it would be very difficult to draft a condition that achieves this or for the Council to monitor compliance with that. No legal agreements have been submitted so as to achieve this.
 - b) Tree belts could be planted to reduce noise from the motocross use of the Track. However, no details of such planting have been provided nor has any assessment been made as to the likely impact of such planting on noise reductions.
27. The Appellant has pointed out that the noise monitoring was carried out from the garden nearest the Track. However, it is clear from representations received from other nearby residents that the current motocross use is, for the reasons explained above, having a significant adverse effect on their living conditions and I cannot be satisfied that the proposed mitigation referred to in the Second Assessment will have an impact which will reduce the noise levels to an acceptable level for all of the residents affected.
28. The Appellant is also aggrieved as he claims that his application for planning permission would be supported by Officers. In my experience it is very difficult for Planning Officers to be sure as to whether a proposal will be supported until all the relevant information has been assessed. I note that the decision to refuse the application was delegated to Officers and their professional opinion was that permission should be refused and enforcement action instigated.
29. I also note the Appellant's frustration that he was not afforded further opportunities to explore ways with the Council's Environmental Health Officer of making the motocross use of the Track acceptable in terms of noise. I note that the appeals were lodged in July 2018. There is no information before me as to why progress relating to matters of noise monitoring / reduction could not have been explored in the intervening months.

Conclusion – Appeal A - Ground (a) and Appeal B

30. I have had regard to the First and Second Assessments, the proposed actions to reduce the levels of noise outlined above, the actual levels of use of the Track and the permitted development rights for motorcycle uses on open land. However, I am not satisfied on the evidence before me that the levels of noise generated by the motocross use of the Track will not result in a significant adverse impact on some nearby properties by reason of noise and disturbance. Consequently, the motocross use of the Track prejudices and undermines the existing surrounding residential uses of some of the nearby dwelling-houses.
31. I therefore conclude that the motocross use of the Track materially harms the living conditions of some nearby residential occupiers having particular regard to noise and disturbance. Accordingly, the said use is contrary to the relevant parts of the Local Plan and the NPPF.

Reasons – Appeal A – Ground (f) - that the steps required to comply with the requirements of the Enforcement Notice are excessive and lesser steps

would overcome the objections

32. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the removal of the unauthorised operational development and the cessation of the unauthorised change of use ("the Enforcement Notice's Objectives").
33. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. An appeal on Ground (f), in a case such as this, is limited to an argument that the steps specified in the Enforcement Notice exceed, as a matter of fact, what is necessary to achieve the Enforcement Notice's Objectives.
34. In this case the Appellant argues that the removal of the post and wire fencing erected around part of the perimeter of the Appeal Site ("the Fencing") is unnecessary because the Fencing delineates the boundary between land which he owns and land which his brother owns. In my assessment the land ownership issue genuinely requires the Fencing to delineate the ownership boundaries and would be necessary even when the motocross use of the Track ceases.
35. The Access Track is largely formed by the compacting of the earth surface due to vehicles using it. I am aware that some stone/hardcore was laid along a small part of the Access Track (where it was particularly boggy). That stone/hardcore is barely discernible now. I also agree with the Appellant that if that part of the Appeal Site where the Track has been formed were to be brought back into any active agricultural use then the Track is the only feasible way in which the Appellant can access it with vehicles.
36. I therefore intend to vary the requirements of the Enforcement Notice so as to allow the Access Track and Fencing to remain. I conclude that to require their removal would be excessive and that the remaining requirements of the Enforcement Notice will achieve the Enforcement Notice's Objectives.
37. I consider all the other requirements of the Enforcement Notice are entirely appropriate to achieve the Enforcement Notice's Objectives and there are, in my assessment, no lesser steps that could be taken to achieve those objectives.
38. I conclude that no good reason is advanced by the Appellant as to why the other requirements of the Enforcement Notice exceed what is necessary to achieve the Enforcement Notice's Objectives and, for the reasons explained above, this is the limited scope of a Ground (f) appeal in a case such as this. This ground of appeal must therefore fail in respect of the other requirements.

Reasons – Appeal A – Ground (g) that the time given to comply with the Enforcement Notice is too short.

39. The Enforcement Notice simply requires the removal of the Track including all jumps and to return the land to its previous condition and contours as agricultural land. The Appellant indicates that he needs twelve months to do this. It is not clear why that is the case. From my site visit there appeared to be no good reason why such a length of time was required.

40. In my assessment the 2-month compliance period is a reasonable period within which the Appellant should be able to achieve compliance with the Enforcement Notice. The appeal on Ground (g) therefore fails.

41. If it transpires that some additional time is needed, and the Appellant is able to provide evidence to the Council as to why that is the case, the Council have powers in Section 173A of the 1990 Act to extend the compliance period.

Overall Conclusion – Appeal A

42. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice with those corrections and variations explained above and refuse to grant planning permission on the deemed application.

Overall Conclusion – Appeal B

43. For the reasons given above I conclude that the appeal should not succeed.

Formal Decision – Appeal A

44. It is directed that the Enforcement Notice be corrected and varied by:

- a) Deleting the word “Telford” and substituting the word “Shrewsbury” in Part 2.
- b) Deleting the word “racetrack” and substituting the word “track” in Part 3.
- c) Deleting paragraph 3 of Part 5.
- d) Deleting paragraph 4 of Part 5 and substituting the following paragraph 3 to Part 5 of the Enforcement Notice, “3 Permanently remove from the land all items associated with the unauthorised use including benches and sign boards.”

Subject to these corrections and variations the appeal is dismissed, and the Enforcement Notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

45. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decision – Appeal B

46. The appeal is dismissed.

Tim Belcher

Inspector