



Appeal Decisions

Site visit made on 6 August 2019

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 September 2019

Appeal Ref: APP/A2525/C/18/3207572 & 3207573

**Land at Rose Cottage, King John Bank, Walpole St. Andrew,
Wisbech PE14 7JS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are by Jason Taylor and Louise Taylor against an enforcement notice issued by South Holland District Council.
 - The enforcement notice, ref. SHDC.EN114, was issued on 13 June 2018.
 - The breach of planning control alleged in the notice is the change of use of the Land from agriculture to a motorcycle circuit/track, including the formation of a circuit/track as part of the material change of use.
 - The requirements of the notice are to:
 - i) Cease the use of the Land for the riding of motorcycles or motor sport activities (including, but not limited to, racing, riding round the circuit/track and time trials).
 - ii) Permanently remove the entire circuit/track from the Land and reinstate the ground to its original ground levels.
 - iii) Permanently remove from the Land any motorcycle paraphernalia and any structures used in connection with the unauthorised use of the Land, for example, chemical toilet.
 - iv) On completion of steps (i) - (iii), grade the Land so that the contours of the Land are restored to their former natural levels, and cultivate the Land leaving it in a condition suitable for agricultural use.
 - The periods for compliance with the requirements are:
 - (i) 24-hours after this notice takes effect
 - (ii) Two calendar months after this notice takes effect
 - (iii) Two calendar months after this notice takes effect
 - (iv) 6-months after this notice takes effect
 - The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period, and the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Background matters

2. The appeal site is in a relatively isolated position within open fen countryside and lies on the north-western side of King John Bank some 2 kilometres to the north-west of Walpole St. Andrew. It has a frontage of some 120 metres and extends back from the road by about 110 metres. Rose Cottage itself stands towards the front and south-western boundaries of the site.

3. As I detail below, it can be seen from various aerial photographs that motorcycle circuits have been created by re-modelling of the land along the north-western side of the appeal site and a smaller area to the south-east of that, near the north-western boundary. A further roughly oval circuit is apparent near the road boundary in the eastern corner of the site.
4. On my visit I saw that the roughly oval circuit was not readily discernible, and that the circuits to the north-west and to the south-east of that are greatly overgrown. It appears they had been out of use for some time. Nevertheless, it is readily apparent that the land has been re-modelled with low banks formed partly of bark chippings to define the circuits.
5. The lack of recent use may well be the result of the Noise Abatement Notice served on the appellants by the Council in 2018. This was prosecuted in the Magistrates' Court in May 2019, when the case was determined in the Council's favour. I understand an appeal is being made against that judgement. This is not a matter relevant to these appeals.

The appeals on ground (d)

6. This ground is that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. In a ground (d) appeal – known as a 'legal ground' – the burden of proof is on the appellant to show that this is the case on the balance of probabilities.
7. The appellants claim that under s.171B(1) of Town and Country Planning Act 1990 as amended (the Act) the relevant time limit is 4 years for notices alleging unlawful operational development. This is unarguably the case. However, the enforcement notice does not allege unlawful operational development, but a change of use from agricultural to a motorcycle circuit/track, including the formation of a circuit/track as part of the material change of use.
8. S.171B(1) & (2) provide for a 4-year time limit in cases of operational development, and the change of use of any building to use as a single dwelling house. S.171B(2A) places no time limit in respect of a relevant demolition – that is demolition of an unlisted building a conservation area. S.171B(3) then states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It follows that the relevant time limit in this case is 10 years from the date of the breach.
9. The requirements of the enforcement notice relate not only to cessation of the use, but also to operational development related to the use. It is well established law in the High Court cases of *Murfitt*¹ and *Somak Travel*² that where operational development is part and parcel of a material change of use or integral to it, the four-year rule may not apply. The more recent Court of Appeal case of *Kestrel Hydro*³ has found the previous two cases to be 'good case law'.
10. In this case the only purpose served by the re-modelling of the land is to enable it to be used as a circuit or track for activities on motor-cycles or similar

¹ *Murfitt v Secretary of State for the Environment and Anor* [1980] JPL 598.

² *Somak Travel v Secretary of State for the Environment and the London Borough of Brent* [1987] JPL 630.

³ *Kestrel Hydro v SSCLG and Spelthorne Borough Council* [2015] EWHC 1654 (Admin) [2016] EWCA Civ 784.

vehicles. As a matter of fact and degree this must be regarded as part and parcel of the material change of use and integral to it. Removal of the track is a necessary part of restoring the land to its condition before the breach took place – one of the purposes of an enforcement notice set out in s.173(4)(a). In these circumstances the development should be considered under the 10-year time limit.

11. The appellants had bought the land in 2009. In October 2012 they submitted a planning application for removal of Condition 3 of a previous planning permission relating to demolition of the existing dwelling⁴. That previous planning permission was for replacement of the existing dwelling⁵. In relation to the 2012 application a Council officer had visited the site and took photographs. These show that the relevant area of the appeal site had not been disturbed. The Design and Access statement for a planning application for installation of a wind turbine later in 2012⁶ includes at least one photograph showing that land re-modelling works may have occurred in the north-western part of the site.
12. A Google Earth image of 2007 shows much the greater part of the appeal site in an agricultural use. A Street-view image from May 2009 shows the site as agricultural land. Another image, from August 2016, clearly shows that two circuits had been formed – the larger one along the entire north-western side of the site, the smaller to the south-east of that. A further image of September 2018 shows those two circuits to have merged, and another roughly oval circuit close to the road boundary. Overall, the evidence submitted by the Council indicates that the formation and use of the circuit(s) has probably taken place since about 2012.
13. The appellants say that they started to form a small circuit from 20 August 2009, and to ride quad-bikes and a mini pit-bike. However, that date is some 9 months short of the 10-year period of continuous use before issue of the enforcement notice.
14. I conclude on the balance of probabilities that the appellants have not demonstrated 10 years of continuous use of the appeal site for the riding of motorcycles or motor sport activities before issue of the enforcement notice. The development is not immune from enforcement action, and the appeals on ground (d) therefore fail.

Other matters

15. The appellants have submitted extensive material concerning a number of matters including their family's use of the circuit, the lack of appropriate facilities in the County, development plan aims to promote leisure, recreation and tourism in the South Holland District, and to promote community, health and well-being interests, as well as sport and recreation in South-East Lincolnshire. They have also put in arguments concerning impact of the circuit on the countryside, and the relatively use of the track. While these are matters of relevance to a planning application or an enforcement appeal on ground (a), they are not for me to consider in the context of a ground (d) enforcement appeal.

⁴ Decision notice ref. H-18-0818-12, dated 29 November 2012.

⁵ Decision notice ref. H-18-0487-10, dated 4 August 2010.

⁶ Decision notice ref. H-18-1010-12, dated 30 January 2013.

16. I appreciate that use of the circuit may be a valuable aspect of the appellants' family life, particularly in view of one of the children's disability. However, this consideration does not justify unlawful development. In my opinion the issue of the enforcement notice was a proportionate action and cannot be taken to infringe the appellants' human rights – notably with regard to Article 8 of the Convention to the Human rights Act 1998 - the right to respect for private and family life.

Conclusions

17. For the reasons given above and having regard to all other matters raised, I consider the appeals should not succeed, and that the enforcement notice should be upheld.

Stephen Brown

INSPECTOR