



Appeal Decisions

Site visit made on 20 October 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th December 2020

Appeal Refs: APP/L3245/C/19/3234443 & 3234444

Land at Thornacre Farm, Stoke St. Milborough, Ludlow SY8 2ES

- 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 made by Mr Peter Thomas Middleton and Mrs Leah Middleton against an enforcement notice issued by Shropshire Council.
 - The enforcement notice, numbered 18/06050/ENF, was issued on 2 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the Land from agriculture to a mixed use of agriculture and use for recreational motorcycling activities comprising racing of motorcycles (motocross), practising for motorcycle (motocross), including the formation of race track incorporating jumps, berms together with erection of a track observation tower all part of the material change of use.
 - The requirements of the notice are:
 - i) Cease the use of the Land for recreational motorcycling activities comprising racing or motorcycles/motocross and practicing for motorcycle racing events. The approximate location of the motorcycle track is indicated with the hatch symbol on the attached plan¹.
 - ii) Remove from the Land the track observation tower located in the approximate position marked with an 'X' in the attached plan.
 - iii) Restore the Land to a condition before the breach took place removing all man made jumps, berms and other excavations/operations undertaken to level area of the Land to form a motocross.
 - iv) Remove from the land all culverting operations to Batch Gutter including all pipework installed, including excavations to dam the watercourse and restore the Land to a condition before the breach took place. The operations are shown with a 'O' symbol on the attached plan.
 - The period for compliance with the requirement 5(i) is one day after the notice takes effect and the period for compliance with requirements 5 (ii), 5 (iii) and 5 (iv) is 6 months after the notice takes effect.
 - The appeals are proceeding on the ground set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
-

Summary Decisions: Both Appeals are dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decisions.

Procedural Matters

1. I note that the appeal form indicates that the appeals have initially been made under ground (c) only. However, the information provided to support the appeals also relates to other grounds of appeal.

¹ References in this heading to "the attached plan" are to the plan attached to the notice.

2. The matters alleged in the enforcement notice are a material change of use of the land and operations. With regard to the alleged operations for the formation of a track, the appellants state that no construction works have taken place and that only rocks and gorse have been removed from the route of the track. As such, it is the appellants' case that they have not undertaken the operations alleged with regard to the formation of the track. Similarly, the appellants' evidence refers to a motor cross racing use and not, necessarily, a mixed use as alleged in the notice. They say that the use benefits from the provision of Class B of Part 4, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order) for the temporary use of land. They also state that there has been no material change in the use of the land. The appellants' case in this regard is not confined to ground (c) and must in part be considered under section 174(2)(b)² of The Town and Country Planning Act 1990 as amended (the Act).
3. In addition to the above, the appellants also maintain that historically there was a track on the site and that amateur motorcross had previously taken place on the land. These matters ought to be considered under section 174(d)³ of the Act. The appellants' case that the drainage works were undertaken for farming purposes relates to an appeal under 174(2)(f)⁴, and I have considered it as such in this decision.
4. The Council has noted these points and has responded to them in the statement of case. Accordingly, I am satisfied that no injustice has been caused by the consideration of the additional grounds of appeal (b), (d) and (f) in this case.
5. I note the number of representations from interested parties regarding the acceptability or otherwise of the development that is the subject of these appeals. Whilst these representations are acknowledged, there is no ground (a) appeal, namely that planning permission ought to be granted for the development subject of the enforcement notice. I am not, therefore, able to consider the planning merits of the alleged development. Accordingly, many of the points raised are not relevant to the decisive matters in these appeals.

The Notice

6. Part 3 of the enforcement notice refers to a material change of use. This part of the notice also includes the 'formation of race track incorporating jumps, berms together with erection of a track observation tower' as a matter which appears to constitute a breach of planning control. I acknowledge that the notice alleges that these are 'part of the material change of use', and that it only refers to a period of 10 years as the time limit beyond which no enforcement action may be taken, as opposed to both the 10 and 4 year time limit. However, the operations to form a race track and observation tower are part of the allegation and reference to the visual effect of these operations is given as part of the reason for issuing the notice.

² Section 174(2)(c) of the Act - That those matters have not occurred.

³ Section 174(2)(d) of the Act - That, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

⁴ Section 174(2)(f) of the Act - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

7. Having considered the notice as a whole, I am of the view that it alleges two types of breach, namely the operations and the material change of use. For the sake of clarity I will correct the notice to identify these operations as such. I will also make the necessary corrections to the allegation that result from this correction, as well as adding the word 'racing' after 'practicing for motorcycle' as it would appear that this word is missing from the description. Finally, I will add reference to operational development in the heading of the notice as well as the 4 year period to part 4 of the Notice. I acknowledge that the 4 year period relating to the operational development is shorter than the 10 years to which the notice already refers. However, in response to the allegation of operations having been undertaken, the appellants have referred to works they undertook in June 2018 (i.e. within the shorter 4 year period) and works undertaken by the previous owner of Thornacre Farm sometime in the 1980s. Accordingly, I am of the view that the corrections will not cause injustice to any party.

Ground (b)

8. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellants must demonstrate that on the balance of probability the matters stated in the enforcement notice have not occurred. These matters include both a material change of use and operations.

Operations

9. With regard to the works to form the race track, which include the construction of jumps and berms, the appellants suggest that only rocks and gorse have been removed from the route of the race track and that no construction works have taken place, as noted above. The Council refer to a number of physical changes to the land that have occurred, in particular the jumps and the creation of berms that traverse across the valley slopes. Photographs of these features at various points of the route of the track have been provided in the Council's evidence.
10. During my site visit I was able to walk and/or see most of the route of the track, which is partly across undulating field parcels and partly within a steep sided valley, referred to as Batch Gutter. My visit was, of course, some 16 months following the issue of the notice, during which time there has been no recreational motorcycling at the site. Despite this I was able to see the berms on the valley sides as well as banks on the outside edge where the track bends or turns. I was also able to see some parts of the track that were undulating, which are the jumps referred to by the Council. Whilst I noted that some of the track had experienced some regrowth of vegetation (in particular the sections of the track closest to the farm buildings), its route was still visible, particularly in and around the valley area.
11. The features shown in the Council's photographs⁵, as well as those I observed on site have an artificial or man-made appearance. This is also evident from the photographs provided by interested parties⁶. The photographs show areas

⁵ Photographs shown in the Council's appendices JB4, JB5, JB8 and JB9.

⁶ In particular, those provided in the representations from the Shropshire Hills Area of Outstanding Natural Beauty Partnership and the representative of the residents of Wheathill, Blackford and Stoke St Milborough.

where there is an abrupt difference in ground levels; where a flat section of track cuts into the valley side; and where it appears that material has been shaped to form a jump or bank to support the edge of the track. Indeed, the appellants' photographs at figure 6 (MT2.6) show an example of the banks I observed at certain bends of the track, which have the appearance of man-made features.

12. I have noted the appellants' photographs taken in June 2018 which they say were taken before and after the process they describe as the clearing of the track. They suggest that the photographs at figure 3 and figure 4 (MT2.3 and MT2.4) are the same section of track as shown in figure 5 (MT2.5) but were taken after clearing.
13. Whilst I acknowledge that these before and after photographs show a minimal amount of disturbance of the land and ground levels, they only show a small area of the overall site. They do not provide an indication of the condition or ground levels in other parts of the track (either before or after the clearing works), particularly in the areas shown in the Council's photographs referred to above, which were taken on 31 July 2018, just some 5 weeks after those provided by the appellants.
14. Having regard to my findings above, I conclude that, on the balance of probability, the operations referred to in the enforcement notice with regard to the formation of a race track have occurred on the land.
15. In reaching the above conclusion, I acknowledge the appellants' claim that only minimal works were undertaken in June 2018. My conclusion under the ground (b) appeal is simply that the operations to form the race track have, on the balance of probability, occurred on the land at some point. Whether these operations are historic or were undertaken in June 2018 is a matter I consider under the ground (d) appeal.
16. Turning to the other operation referred to in the notice, at my site visit I saw the observation tower in the approximate location indicated on the enforcement notice plan. This had the same appearance as that shown in the Council's photograph taken on 21 February 2020⁷. This structure is also shown in the Council's photograph dated 6 September 2018⁸, taken before the issue of the enforcement notice. Having regard to the evidence before me, I conclude that the operation consisting of the observation tower has, on the balance of probability occurred.

Material change of use

17. The entirety of the land outlined in red on the plan attached to the notice may properly be considered to be a single unit of occupation. Beyond the hatched area shown on the plan attached to the notice, the sole primary use of that unit of occupation is for agriculture. However, in addition to the use for agriculture, the motorcycle track introduces a different function within the hatched area that does not occur anywhere else within the unit of occupation. Although not physically separated from the remainder of the unit of occupation, the motorcycle track is wholly within the hatched area. This leads me to conclude that the hatched area forms a single planning unit within the wider unit of occupation. The allegations in the notice are directed at this planning unit.

⁷ The Council's Appendix JB7.

⁸ Again, the Council's Appendix JB7.

18. Within this planning unit the Council allege that a mixed use for agriculture and recreational motorcycling has occurred. A mixed use is one where two or more primary uses occur within a single planning unit, but where it is not possible to say that one is incidental to the other or where, as a matter of fact and degree, the uses are not physically and/or functionally separated.
19. Having considered the Council's evidence, it would appear that it is not entirely consistent with the allegation of a mixed use. The Council suggest that the operations to form the race track, together with its use mean that the track is unable to revert to grazing in between races. In support of its case the Council refer to the case of *Ramsey v Secretary of state for the Environment Transport and the Regions & Suffolk Coastal District Council*⁹ (the Ramsey case). However, that case concerned itself with a proposed material change of use of the planning unit from agriculture to a motorcycle scrambling use, as opposed to a change to a mixed use as is alleged in this case. In referring to this case, it would appear that the Council is suggesting that within the planning unit, one component of the mixed use prevents the other from occurring. Therein lies the inconsistency.
20. Notwithstanding the above, there is no dispute that the lawful use of the land within the planning unit is for agriculture. There is also no dispute that recreational motorcycling has taken place on the land. The appellants evidence points to motorcycling events having taken place on the land on two occasions, 19 August and 9 September 2018. This is not disputed by the Council. Indeed, the presence of the race track, which I note is contained within the hatched area, is evidence of this. However, the track does not occupy the whole of the planning unit. The part of the hatched area closest to the farm buildings is where I noted some of the undulating field parcels. Although I could appreciate the route of the track across this area, including some of the artificial features I refer to above, the land also provided vegetation for grazing and I saw evidence of its use as such.
21. The section of the track in the hatched area covering the steep sided valley was more prominent, as noted above, and there were few signs of vegetation for grazing on the route of the track itself. Indeed, this is a point noted by the Council and demonstrated in the series of photographs provided at appendix JB8. Nevertheless, I observed plenty of vegetation either side of the track that would allow for grazing. Similar vegetation is seen either side of the track in the Council's photographs¹⁰. Whilst there were no animals in the valley on my visit, evidence that the area is used for grazing animals was drawn to my attention (for example, worn animal tracks were visible at the base of the valley).
22. Having regard to my findings above, I am satisfied that both agriculture and recreational motorcycling have taken place alongside each other within the planning unit. In addition to this, the very nature of recreational motorcycling, involving visitors to the site and the practicing and racing of motorcycles, makes it a distinctly different activity from agriculture, which in this case primarily involves the keeping of animals. As uses of the land, they cannot be regarded as part of the same use. Similarly, the different nature of the uses also leads me to conclude that one cannot be regarded as incidental to the

⁹ *Ramsey v Secretary of state for the Environment Transport and the regions & Suffolk Coastal District Council* [2002] EWCA Civ 118.

¹⁰ JB4, JB5, JB8 and JB9

other. Having regard to how these uses have occupied the hatched area, I am also satisfied that they are not physically and/or functionally separated within the planning unit; they occupy the land one amongst the other.

23. I now turn to consider whether the primary uses of agriculture and motorcycling can be regarded as being permanent uses within the planning unit. With regard to the agricultural use, the evidence as considered above indicates that the parts of the hatched area not occupied by the race track are used for grazing, despite recreational motorcycling also taking place on this land. For this reason I can conclude that agriculture remains a permanent use within the planning unit.
24. As for the recreational motorcycling component of the mixed use alleged, I note that the appellants' evidence points to only two motorcycling events having taken place on the land. They state that there has been no further motorcycling since. Whilst this is not disputed by the Council, it is here that the Council's evidence with regard to the ability of the race track to revert to grazing is relevant.
25. The Council refers to the physical changes to the hatched area of land. It is suggested that these changes, together with the use of the track by motorcycles and its maintenance following motorcycle use make it difficult or impossible for this land to revert back to its previous or normal use, which in this case is agriculture. The Council refers to the *Ramsey* case in its evidence and highlights similarities with the development in this case. The Council suggests that the removal of vegetation and the subsequent use of the track has meant that it has remained as an 'exposed earth feature' and that in between the two incidents of its use it is unlikely that vegetation would have regrown on the track's route. It is suggested that it is unlikely that the track will provide grazing in between races during a motorcycle season or even out of season. The Council's evidence in this regard points to recreational motorcycling being a permanent use of the planning unit alongside agriculture, as opposed to a use of the planning unit that prevents agriculture from taking place.
26. In order to establish whether or not recreational motorcycling is a permanent use of the land (as a component of a mixed use with agriculture), what is decisive in this case is whether or not it can be regarded as having ceased in between motorcycling events; that during the periods between motorcycling events the hatched area can be regarded as having been solely used for agriculture.
27. This principle was considered in detail in the caselaw referred to by the Council, which was finally decided at the Court of Appeal. That case considered whether or not a material change of use (which was a proposed motor cycle scrambling use) would have been temporary. Whilst regard was had to the physical changes to the land that would facilitate the use, what was decisive was whether those physical changes made it 'difficult or impossible for the site to revert realistically to its previous normal use (such as agriculture) in between the occasions when the land is used for the new use'. When determining that case, Lord Justice Keene stated that 'it is duration and reversion to normal use which is of importance'.
28. In that case the Inspector had not found that the proposed motorcycle scrambling use would have prevented the reversion of the land to agriculture in

between occasions when the land was to be used for the new use. For this reason, it was determined that, despite the permanent presence of physical changes to the land (which in that case were lawful), the proposed use would have been temporary and, therefore, would have the benefit of the permission granted by the General Permitted Development Order 1995 (then in force) for a temporary use of land.

29. There are comparisons with the *Ramsey* case and that before me. With regard to the works to form the track, I have already noted that these are not insubstantial and have involved a permanent physical change to the land. The appellants do not suggest that the operations to form the track were carried out for the purposes of agriculture on the unit. Indeed, having regard to their form and nature, it would be difficult to conclude that they were. As such, I find that, as a matter of fact and degree, those operations exist to facilitate the recreational motorcycling component of the mixed use alone and not the agricultural use.
30. However, where this case differs from *Ramsey* is the evidence with regard to the ability of the parts of the planning unit occupied by the race track to revert to a sole agricultural use in between motorcycling events. The Council has provided a series of 3 photographs of the track in a similar location (appendix JB8). The first was taken before the two motor cycling events in August and September 2018, the second was taken shortly before the second of the two events, and the third was taken some 17 months after the events. The second photograph shows little evidence of any regrowth of vegetation on that section of the track. There are some small patches of vegetation visible on the track in the third photograph, but I note that this was taken some considerable period after the two motorcycling events. Furthermore, as I have noted above, on my site visit I saw some sections of the track where there was little sign of vegetation growth. This was particularly the case for the sections of the race track in the valley. My visit was over 2 years after the 2018 events.
31. The degree of permanence of the operations on the site that facilitate the recreational motorcycling use point to the permanence of this component of the mixed use. More importantly, I have had regard to the evidence that points to the lack of vegetation regrowth on certain areas of the track. The formation of the track and its use for recreational motorcycling has made it difficult or impossible for it to provide grazing in between motorcycling events. Accordingly, the area of the planning unit occupied by the race track has not, as a matter of fact and degree, reverted back to its normal or lawful use for agriculture in between or following the activity of motorcycling on this land. For this reason, and having regard to the caselaw referred to above, I conclude that the recreational motorcycling use is also a permanent use within the planning unit.
32. I acknowledge that a primary use of land can be temporary. Indeed, reference is made in the *Ramsey* case to examples of such uses, including the holding of a village fête on agricultural land. However, for a primary use to be temporary, it must cease in between occurrences and it must be possible for the land to return to its normal use at these times. In view of my findings above with regard to the permanence of the race track and the lack of evidence of its reversion to the agricultural use for grazing, I conclude that the mixed use alleged in the enforcement notice is, as a matter of fact and degree, a permanent and not a temporary use of the planning unit. Again, the *Ramsey*

case provides examples of such uses, including a race course or a football pitch, where horse races or football matches take place intermittently on the land, but the land is not put to any other use in between.

33. For the reasons given above, I conclude that on the balance of probability the material change of use to a mixed use comprising agriculture and recreational motorcycling has occurred. Accordingly, the ground (b) appeal fails.

Ground (c)

34. To succeed on ground (c), the appellants must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellants.

Operations

35. Dealing first with the operations to form the race track, I have concluded under the ground (b) appeal that these have, on the balance of probability, occurred on the land. I now consider whether or not they amount to development, as defined in section 55 of the Act¹¹ and, if so, whether or not they are permitted.
36. Section 55 of the Act provides the definition of development which includes the carrying out of engineering or other operations in, on, over or under land. The features I observed on site together with those shown in the Council's evidence are, in my view, unlikely to be natural land forms. They are more likely to have been created as a result of engineering works. The features shown in the Council's photographs have necessitated significant earth moving works or involve a substantial change in ground levels. The Council indicates that the difference is up to 2 metres in some areas¹².
37. I acknowledge the appellants' reference to correspondence from the Council dated 13 July 2018, in which the Council officer confirms that the works he saw on site on 12 July 2018 do not fall into the 'category' of engineering operations. In the letter the officer confirms that he saw eight points of the site where grass and topsoil had been scraped off and this soil levelled to create the course. I have not, however, been provided with any information about the parts of the site that were seen by the officer. As such, I cannot be certain that he saw the parts of the track I observed on my site visit or shown in the Council's photographs. To my mind the description of the works he observed do not fit with those shown in the Council's photographs.
38. Having regard to the extent and scale of works undertaken, I conclude that on the balance of probability the works to form the track comprise engineering operations that fall within the defined meaning of development within the Act.
39. As for the observation tower, I acknowledge that this has a light weight appearance, is fairly small and has a simple form of construction. However, I note that the four supporting legs of the structure have been embedded into the ground and the structure has been constructed on top of those supporting legs. It is physically attached to the land and it has a degree of permanence. For these reasons I conclude that, on the balance of probability, the

¹¹ Section 55 (1) of the Act - "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

¹² Paragraph 2.10 of the Council's Statement of Case.

observation tower also falls within the definition of development provided at section 55 of the Act.

40. Reference is made to the permission granted by Class B of Part 4, Schedule 2 of the Order for the temporary use of land. Whilst I consider the provisions of the Order later in my decision in the context of the material change of use in this case, I note that this class of the Order permits the provision on land of any moveable structure for the purposes of the use permitted under the class. Having regard to the nature of the operations undertaken, in particular their degree of permanence and physical attachment, I cannot conclude that they would amount to the provision of moveable structures. Accordingly, even if I conclude that the material change of use in this case would have been permitted by Class B of Part 4, Schedule 2 of the Order, the operations alleged in the Notice do not benefit from the permission granted by this class.
41. My attention has not been drawn to any other provision within the Order that would permit the operations. Whilst I note the provisions of Part 6 of the Order permit some development relating to agriculture and forestry, the appellants do not suggest that the operations referred to in the allegation have been carried out for the purposes of agriculture at Thornacre Farm. I have not been advised of any other permission that would mean the operations in this case do not constitute a breach of planning control.
42. Having regard to my findings above, I conclude that the operations alleged in part 3 of the enforcement notice constitute a breach of planning control.

Material change of use

43. The enforcement notice alleges a material change of use of the land from agriculture to a mixed use for agriculture and recreational motorcycling. Whilst the appellants indicate that two occasions of motorcycling events have taken place on the land, in the last line of their evidence they suggest that there has been no material change in the use of the land.
44. In this regard I have concluded under the ground (b) appeal that on the balance of probability the mixed use referred to in the enforcement notice has occurred. This mixed use includes a use for agriculture, which is acknowledged as being the lawful use of the land. However, the other component of the mixed use is for recreational motorcycling. As I have noted earlier in this decision, having regard to the nature of the recreational motorcycling use, it is distinctly different to the agricultural use in this case.
45. Recreational motorcycling is a sport where visiting participants or observers would gather at the site, bringing with them motorbikes or other motor vehicles to drive over the prepared race track. This activity, in particular the noise it generates, is in contrast to the otherwise tranquil nature of the agricultural use that went before it. The agricultural use at Thornacre Farm is primarily for the keeping of animals. The activities associated with this use are wholly dissimilar in their character to those associated with recreational motorcycling. The track itself and the lack of vegetation growth on it are a contributing factor as these have also resulted in a permanent change to the character of the land. For these reasons I conclude that the change of use from agriculture to the mixed use alleged, which includes recreational motorcycling as well as agriculture, constitutes a material change of use of the planning unit.

46. Notwithstanding the above, the appellants refer to the provisions of Class B of Part 4, Schedule 2 of the Order. This permits 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 motor car and motorcycle racing including trials of speed, and practising for these activities. The appellants suggest that, as motorcycling events have only taken place on the land on two occasions, this is permitted by the above provisions of the Order.
47. Whilst I acknowledge the appellants' case in this regard, I have concluded under the ground (b) appeal that, on the balance of probability, the material change of use to a mixed use comprising agriculture and recreational motorcycling has occurred and, more importantly, that it is a permanent use of the planning unit identified in this case. In view of this, the use simply cannot benefit from the above provisions of the Order as they only permit a temporary use of land. This is a point made in the *Ramsey* case. In the examples that it refers to for permanent uses of land where activity is intermittent (as mentioned above under the ground (b) appeal), Lord Justice Keene states that 'such uses are permanent uses of the land in question, and they fall outside the scope of the deemed permission granted for temporary uses by Part 4 Class B of Schedule 2 to the GPDO¹³. That is so even if the activity, such as the football matches, only takes place for 28 days or less during the calendar year'.
48. I have not been made aware of any other provisions of the Order or any other permissions that would permit the mixed use. Accordingly, and on the balance of probability, the material change of use alleged in the enforcement notice consisting of a mixed use for agriculture and recreational motorcycling constitutes a breach of planning control. For this reason the ground (c) appeal must fail.

Ground (d)

49. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. My consideration of this ground (d) appeal is confined to the matter of the material change of use and the operations to form a race track. The appellants do not claim that the observation tower is a historic feature.
50. In order to succeed on this ground, the appellants must show that the use had been continuous for a period of ten years beginning with the date of the breach¹⁴. With regard to the operations to form the track, they must show that a period of four years has passed beginning with the date on which these were substantially completed¹⁵. The test in this regard is the balance of probability and again the burden of proof is on the appellants.

Operations to form the race track

51. Under the ground (b) appeal I am satisfied that the Council's photographs together with those provided by interested parties show that the works to form the track comprise engineering operations. To succeed in the ground (d)

¹³ The provision refer to here were replaced in the present version of the Order (the 2015 Order) by Class B of Part 4, Schedule 2.

¹⁴ In accordance with section 171B (2) of the Act.

¹⁵ In accordance with section 171B (1) of the Act.

appeal the appellants must show that on the date the notice was issued more than four years had passed since these operations were substantially completed. The relevant date in this case would be 2 July 2015.

52. In paragraph 3 of the appellants' evidence, they refer to the presence of a winding dirt track when they purchased the property in 2013, believing it to have been formed by the former owner's vehicles. They say that they later discovered that motorcycling previously took place on the land. Having contacted the Newport Motor Cross Club, the appellants suggest that the works undertaken to the track to prepare it for motorcycling events were cosmetic and were limited to the removal of rocks and gorse. Having regard to the appellants' photographs¹⁶, it appears that these works took place on and around 22 June 2018.
53. The photographs referred to above have been provided in an attempt to demonstrate that there was a pre-existing race track and that minimal works were undertaken to prepare it for motorcycling. It is suggested that figures 3 and 4 are the same section of track as shown in figure 5, but were taken after clearing. Whilst these are noted, I am not persuaded that the photograph at figure 5 shows a section of an existing overgrown track prior to the clearance of vegetation. I can see an area of land in the foreground that has a lower level of vegetation than the land in the far ground. I can also see that the foreground has been driven over. This photograph does not, however, show a discernible pre-existing section of track.
54. I agree that figure 1 and 2 (MT2.1 and MT2.2) show a clearly visible section of track in a diagonal line across the valley side. However, at the site visit it was confirmed that this is not on the route of the race track, but is part of the existing agricultural track referred to in the Council's evidence, the position of which is shown in the Council's appendix JB2. I cannot see any other features in these photographs that could be readily described as a section of race track.
55. As I have already noted, the appellants' photographs at figure 6 show an example of the banks I observed at certain bends of the track. The surface of the track in these locations is likely to have been prepared in the month or so proceeding the photographs. As such, figure 6 does not assist in demonstrating that the banks or the wider track in these areas were pre-existing, let alone that they had been substantially completed more than four years prior to the issue of the notice. With regard to the engineering operations shown in both the Council's photographs and those provided by interested parties, again there is a lack of evidence to show that these operations were pre-existing and that they had been substantially completed prior to the relevant date in this case.
56. At the site visit the appellants pointed to areas within the valley that they said were sections of a pre-existing track. In these areas I noted certain features, including undulating ground and a section of almost level ground across the side of the valley. However, these areas were not part of the route of the current race track. The presence of features in these areas do not assist in demonstrating that the race track that is the subject of the enforcement notice was pre-existing and had been substantially completed more than four years prior to the issue of the notice.

¹⁶ The figures 1 to 6 on pages MT2.1 to MT2.6 of the appellants evidence.

57. Having regard to my findings above, the evidence submitted is not sufficient to show that the operations that are the subject of the enforcement notice undertaken to form the race track were, on the balance of probability, substantially completed more than four years prior to the issue of the notice. Accordingly, I conclude that the appellants have failed to prove on the balance of probability that on the date the enforcement notice was issued no enforcement action could be taken in respect of the operations to form the race track.

Material change of use

58. The evidence relevant to the ground (d) appeal relating to the material change of use is limited. The appellants say that they were made aware of occasional amateur motocross previously taking place on the site around 1984. A number of interested parties also refer to motorcycle events taking place on the farm in the 1980s.
59. Whilst the above is noted, for the ground (d) appeal to succeed the appellants must show that the mixed use alleged in the notice had been continuous, without significant interruption, for a period of ten years beginning with the date of the breach. I have no reason to doubt that motorcycling events took place at Thornacre Farm during the 1980's. However, I have insufficient evidence to show on the balance of probability that the motorcycling events formed part of a mixed use of the site with agriculture; that the area of Thornacre farm used in this way was within the hatched area shown on the enforcement notice plan; the date on which this use began; or that this use was continuous for a period of 10 years or more beginning with the date of the breach.
60. Accordingly, I am unable to conclude on the balance of probability that on the date the enforcement notice was issued no enforcement action could be taken in respect of the material change of use. For this reason the ground (d) appeal fails.

Ground (f)

61. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
62. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control. The appellants' case under this ground relates only to requirement (iv) to remove the culverting operations to Batch Gutter. These operations have been undertaken in two locations at the base of the valley and are indicated on the enforcement notice plan with an 'O'. In these locations the watercourse has been culverted with the laying of a drainage pipe and the infilling of material around and on top of the pipe.
63. The appellants confirm that when they moved to Thornacre Farm they noted that works were needed to Batch Gutter. They suggest that the culverting operations undertaken were for the purposes of farming and that these have improved accessibility to that part of the farm, allowing them to reach animals in the valley.

64. As stated earlier, on site I noted that the valley area was not enclosed and physically separated from other areas of the wider site which were used for grazing, and that there is evidence that the valley area is used as such. I could see that the culverting operations assist with access across the water course at the base of the valley and allow easy access to both valley sides. Accordingly, I have no reason to doubt that the culverting operations facilitate the agricultural use. Indeed, the Council acknowledges that these operations may benefit the agricultural operation. However, it maintains that the operations were primarily carried out to allow the race track to cross Batch Gutter, suggesting that the drainage works were only undertaken to facilitate the recreational motorcycling element of the mixed use.
65. I acknowledge that the culverting operations are within the route of the race track and that they sustain the recreational motorcycling element of the mixed use. I also acknowledge that they were undertaken at the same time as the formation of the race track. However, the appellants have provided their reason for undertaking the culverting operations and this is to sustain the agricultural use of the site. The Council's evidence in this regard does not give me sufficient reason to doubt this. For this reason I find the requirement to remove the culverting operations to be excessive and conclude that it is not necessary to remedy the breach of planning control in this case. I shall, therefore, vary the notice to remove this requirement. For this reason the appeal on ground (f) succeeds.

Conclusions

66. For the reasons given above, whilst I conclude that one of the requirements of the notice is excessive to remedy the breach of planning control, in all other regards I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decision

67. It is directed that the enforcement notice is corrected by:
- The insertion in the title after the words 'MATERIAL CHANGE OF USE' of the words 'AND OPERATIONAL DEVELOPMENT';
 - The deletion in part 3 of the words 'Without planning permission, a material change of use of the Land from agriculture to a mixed use of agriculture and use for recreational motorcycling activities comprising racing of motorcycles (motocross), practising for motorcycle (motocross), including the formation of race track incorporating jumps, berms together with erection of a track observation tower all part of the material change of use' and their substitution with the words 'Without planning permission, a material change of use of the Land from agriculture to a mixed use of agriculture and a use for recreational motorcycling activities comprising the racing of motorcycles (motocross) and practising for motorcycle racing (motocross); and the carrying out of operations comprising the formation of a race track incorporating jumps and berms, and the erection of a track observation tower'; and
 - The insertion at the end of the first sentence in part 4 of the words 'in the case of the alleged material change of use and four years in the case of the alleged operational development'.

68. It is directed that the enforcement notice is varied by the deletion from part 5 of requirement (iv).
69. Subject to the corrections and variation, the appeals are dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR