



Appeal Decisions

Site visit made on 12 November 2020

by Simon Hand MA

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

Decision date: 04 January 2021

Appeal A: APP/C1950/C/20/3256004

Land opposite and north of Park Farm, Northaw Road West, Northaw, Potters Bar, EN6 4NT

- 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 appeal is made by Mr A Best against an enforcement notice issued by Welwyn Hatfield Borough Council.
 - The enforcement notice, numbered 2014/0110, was issued on 18 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a motorcycle circuit/track and the formation of circuit/track with associated ramps/jumps to facilitate that change of use.
 - The requirements of the notice are (I) Cease the use of the Land for the riding of motorcycles or motorsport activities (including but not limited to racing, riding round the circuit/track and time trials). (II) Permanently remove from the Land the ramps/jumps created to form the circuit/track as shown by the attached photographs marked A. (III) Restore the land to the condition it was in prior to the commencement of the unauthorised use, including the ground levels. (IV) Remove from the Land all materials, debris, plant and equipment associated with requirements (I) to (III) above.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/C1950/X/20/3256988

Land opposite and north of Park Farm, Northaw Road West, Northaw, Potters Bar, EN6 4NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Best against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2019/3201/LAWE, dated 19 December 2019, was refused by notice dated 5 May 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is existing use of motorcycle track.
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Decisions

Appeal A - 3256004

1. It is directed that the enforcement notice be varied by deleting from requirement (IV) the words "*materials, debris*". Subject to this variation 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 as amended.

Appeal B - 3256988

2. The appeal is dismissed.

Preliminary Matters

3. The appeals concern the use of a field as a motorcycle track. The ground (d) and the LDC appeals are similar and I shall deal with those together first, then the ground (a) appeal and finally (f) and (g).
4. The appellant queries the reasons for issuing the Stop Notice that affects the site but this is not a matter subject to these appeals.

The Appeal on Ground (d) and the LDC Appeal

5. The LDC application and appeal deal with the use of the land as a motorcycle track which needs to have been continuous for 10 years or more. The ground (d) appeal relates to the allegation in the notice which is a mixture of the use of the land (motorcycle track/circuit) which is 10 years and operations (formation of the track) which have to have been substantially complete 4 years ago or more.
6. The appellant argues the use has gone on since 2006 without a break and as to the operations says that if there are jumps they have been formed for a long period, significantly longer than 4 years. Some evidence comes from statutory declarations from the appellant, his family and various people involved in the land. It is clear from this evidence that the Best family lived at Park Farm between 2006 and 2010, after which they moved elsewhere, but retained ownership of the farm. Alfie Best Junior was a child at the time and had an interest in motorbikes and quad bikes which he rode on the site. Various witnesses suggest the track was originally simply worn by the bike, but that jumps were installed in a couple of places. Several witnesses state that the track is maintained by machinery, smoothing out the track when necessary.
7. It is clear that much of this activity took place prior to 2010, when the Bests moved away. It seems that several friends also rode with Alfie Best Jr in those years and it is stated the jumps were installed in that period. Evidence for use after 2010 is less detailed. Alfie Best Jr states he did come back from time to time, but admits usage was less after 2010, not least presumably because by then he was managing several caravan sites for his father. Since 2010 it seems the track has continued to be used on occasions by Alfie Junior and his friends and also for various motorbike events organised by Enduroland. Evidence for these is surprisingly sparse. Several witnesses state they are held regularly but infrequently. There are two screen grabs of internet advertisements for an event in May 2013 and in June 2015. There is also an events log for 2015-16 showing that 2015 was a busy year with motorcycle events in May, June, July, August and October in that year and a single event in May 2016. This picture is therefore one of personal use by Alfie Best Jr and occasionally some friends up to 2010, with some continuing personal use with added organised events thereafter.

8. Further evidence is provided by the many third parties who wrote in. The bulk of this concerns the recent increase in activities since March 2020, but it is clear that over the years there have been occasional events, such as those referred to by the appellant.
9. There is also considerable evidence from the Council. The first is a letter of 3 March 2010 to Mr Best noting the creation of a quad bike track and an event held on the site in November 2009. A further report in March 2010 concludes the quad bike racing is permitted development as long as it is less than 14 days a year and the track does not involve any permanent earth moving such that the land cannot still be used for agriculture. However, it seems the quad bike track was on different land to the appeal site.
10. There is then a flurry of letters and e-mails in late 2011 to early 2012. In November 2011 it is noted the quad bike track issue is unresolved and this was followed up by other letters on the same lines in December and then two in January 2012. In February 2012 there is an internal e-mail about noise complaints involving random weekend motorcycle events. Nothing seems to have happened about these issues until June 2013 when further complaints led to an investigation into a motorcycle racing track, but the case was closed in July as there was no evidence the use exceeded the 14 days a year permitted development allowance. Again it seems this relates to a different part of the farm than the appeal site.
11. In June 2014 there is a further closure report, which suggests that following another complaint the matter was looked into again and again found not to exceed the permitted development rights. In August 2014 there is a detailed complaint from the local resident's association about a number of issues at the farm which mentions three Enduroland motorcycle events had been held. This presumably relates to the events that triggered the June closure report.
12. There is also a list of noise complaints received by the Council. Three spread out across 2014, one of which in April is possibly linked to the events mentioned by the residents' association. Six in 2015, which are closely related to the dates provided in the events log for motorcycle events in May, June, August and October. Four complaints in 2017 all on the 6th September, four in March and April 2019 and 23 in 2020.
13. So, the evidence would suggest occasional personal use by Alfie Best Jr and some friends created a worn track on the land culminating in an 'event' in 2009 and an investigation by the Council in 2010 into a possible quad bike track. The Council concluded there was no material change of use and no operations to form a track. This very much chimes with the picture from the statutory declarations. There is a further investigation into the alleged quad bike track in 2011-2012 which goes nowhere, but there would seem to be complaints about occasional weekend events in 2012. There is also considerable doubt whether a number of these investigations relate to the appeal site at all. In May 2013 there is evidence for an Enduroland event and complaints about noise that were investigated. Again this led nowhere as the Council concluded there was no material change of use in excess of permitted development rights. In 2014 there is evidence for three more events (the resident's association complaint) and possibly two more linked to noise complaints that post-date the resident's association letter. Four events in 2015 (the events log and noise complaints), one in 2016 (events log) and one in 2017 (the noise complaints). There is

- nothing in 2018 then noise complaints suggest one or possibly two events in 2019, but some residents' letters also suggest a general increase in motorcycle noise that year until 2020 when there has clearly been a significant change, with motorcycling taking place on an almost daily basis through the spring and summer. I should also note the Statutory declarations suggest continued personal use by Alfie Best Jr during this period (2010-2020), although there is little or no evidence as to frequency.
14. Before concluding on what this evidence suggests it is worth looking at the question of permitted development rights. Class B of Part 4 of the General Permitted Development (England) Order 2015 allows the temporary use of land for "*motor car and motorcycle racing including trials of speed, and practising for these activities*" for 14 days a year. In other words if there is a material change of use of the land to motorcycle racing then that change of use is granted planning permission for 14 days a year. The occasional riding of a motorbike or quad bike by a farmer or other land-owner or guest on agricultural land for the purpose of personal pleasure does not amount to a material change of use. If such an activity begins to be regular and confined to one area such that a track is worn in the grass then it may be considered to amount to a material change of use, but that would depend on the evidence in each case. One would expect to see complaints from neighbours about the noise for example, and in this case neighbours have clearly not been shy in coming forward when there have been noisy and disruptive events. But it seems there have been no complaints about the regular, individual, use of the land for motorcycling. This is not to say it hasn't happened (there is plenty of evidence for Alfie Best Jr's personal use of the land), but that it hasn't impinged on local sensibilities. That would suggest it has never amounted to a nuisance and so hasn't been particularly intensive.
 15. It is also a separate point whether the use by Alfie Best Jr and occasional friends could ever amount to actual motor cycle racing such that it would fall within Class B. If it did amount to a material change of use then it would most likely have been to something different, such as use of the land for practicing motorcycling for hobby purposes, or whatever. Overall, therefore, there is no evidence that the general use of the site by individuals ever amounted to a consistent material change of use of any sort.
 16. The use for events is a different matter and these clearly represent a material change of use to motor cycle racing and so are covered by the Class B rights. The busiest years seems to have been 2014 (possibly five) and 2015 when there were four events, but at 2 days each that is within the 14 days permitted. The Council seem to have taken this view in 2010 and 2013 when they explicitly concluded there had been no material change of use. Despite regular complaints since then they also have taken no action, presumably again because the evidence is the use has not exceeded the permitted development rights.
 17. Even if I were to take a much more generous view of the use by Alfie Best Jr, and assume that some of the time his use did amount to racing motorbikes and practicing for racing then it might be reasonable to assume that in conjunction with the official events there would be some years when the 14 days was exceeded, but there would also be others when it was not. Almost nothing seems to have happened in 2017 and 2018 for example, one event in 2009 and nothing in 2010. Every time the usage falls below the 14 days a year limit

then it is permitted development and the clock starts again. However, there is no evidence that Alfie Best Jr has ever used the land other than as a hobby and then that was a use that declined after 2010.

18. The rest of the evidence is photographic and I am particularly aware of the limitations in using aerial photographs to determine exactly what has happened on the ground. However, the oldest useful evidence is a photograph dated from 2009 of Alfie Best Jr on a quad bike going over a jump on the land. This shows the field to be flat, with a brown track worn around the edge and a wooden jump placed on the grass. This is what I would expect for a low key personal use and no doubt is what is meant by the formation of jumps before 2010. There is an aerial photograph from 2010 provided by the Council, which reveals no activity on the land. Perhaps the faintest suggestion of an overgrown track, but nothing more definite. The same is true of the Council's 2011 aerial photograph. In 2012 it is quite different, there are clear tracks worn into the site, but they also extend onto neighbouring fields. These may result from the weekend events held in 2012 noted above. There are two blurred photographs dated to 2012 showing an Enduroland event but little can be made out apart from a relatively flat area of land with tapes to delineate the track. The wider land has been used regularly for point to point events and camel racing. It has also been noted that the original tracks on the site were worn by horses, so it is difficult to say whether this more extensive use of the land revealed by the tracks was related directly to motorcycle racing or was related to other events. If it did relate to the Enduroland events it seems they covered a much larger area than just the appeal site.
19. In 2013 the aerials show the tracks both in and out of the site to be largely erased. There is some clear track within the site, but most of it has greened up, presumably through lack of use. Ground level photographs from 2014 are most revealing as they clearly show a dirt track worn into the grass but no jumps or raised land. The whole site is remarkably flat. In the 2015 aerial no bare earth is visible, but the imprint of the track can be clearly seen and again some off-site tracks, albeit grown over, can be made out. These at least partly cover a different area outside of the site than the 2012 photographs. This suggests at some time in the past an area wider than the appeal site was used for an activity that left the impression of a track, now overgrown. We know there were four events in 2015 so this is presumably the legacy of those.
20. The 2017 aerial photograph shows a track rather more definitely, though it again links into the wider landscape as in 2015. In 2018 there are only vestigial remains of the track and the site seems to be heavily overgrown with scrub and bushes, which agrees with the lack of evidence for any events in 2018 noted above. The 2020 aerial is interesting as we know the site was heavily used then and there had been considerable earth moving to create bunds and jumps. This is all readily visible in the aerial photograph.
21. While the photographs are only snapshots in time and far from conclusive, they do support, quite strongly, the view I take above, that the use of the land has fluctuated. Sometimes it is clear there has been a regular use, but at other times that use has encompassed other land outside of the site or has ceased altogether and the track become overgrown. I've no doubt that individuals have used the site from time to time, but not sufficiently often to wear a permanent track and to keep it clear. I do not believe the evidence shows on the balance of probability that the land has been continuously used for the

- purposes of a motorcycle track for 10 years or more prior to the issuing of the notice or the application for the LDC.
22. Some of the photographic evidence described above is relevant also to the operational development element of the appeal. Other evidence from the appellant comes from several statutory declarations that suggest machinery was used to maintain the track. Terence Bainbridge is involved in the annual point to point meeting on the farm and he notes that jumps were installed before 2010 and machinery was used to *"spread and flatten soil after riders' bikes churned it up"*. Waseem Hanif, a friend, notes the track *"has been in place physically as it is now for well in excess of four years"*. The same claim is repeated by Emily Jane Best who adds the land was raised to create jumps before 2010. Both claims regarding jumps and that the track hasn't changed physically for over 4 years are made, using the same phrases, by Alfie Best Jr, Alfie Best and Elizabeth Best. Alfred Wenman, who is a maintenance man at the farm agrees and repeats Mr Bainbridge's statement that machinery was used to spread and flatten the soil.
 23. I need to consider exactly what is meant by these statutory declarations in the context of the photographic evidence and that of my site visit. The firmest evidence I have is when I saw the site myself. Although not used for some months the track was still a clear mud/gravel scar around the site, and there were various mounds of differing size providing obstacles and jumps to be negotiated. These were clearly not made by wheel ruts at the edge of the track but were significant engineering operations.
 24. On the question of the earth moving required to create the jumps and berms that I saw on my site visit, an important piece of evidence is the photographs provided by a third party from Facebook dated to May 2020 which show a large digger preparing the ground. In 2014 photographs show there were clearly no earthworks and the aerial photographs from before and after that date show no differences, but that for 2020 does. Given that and the evidence from third parties that the track was constructed in 2020 strongly suggests to me the track, as it now stands, is of recent origin and no later than 2019. This also ties in with statutory declarations that state any machinery was used to spread the earth – there is no mention of the construction of any jumps by machinery. This is quite different to the placing of wooden jumps on the land as shown in the 2009 photograph. There is simply no visual evidence that the land was raised to create jumps before 2014, despite the claims of several witnesses in their statutory declarations. Indeed the evidence strongly suggests that the engineering works I witnessed were created in 2020. There is a considerable difference between the wearing of a track on the ground due to occasional use, as is shown in the photographs up to 2018 and the construction of a track with jumps and ramps as alleged in the notice. On the balance of probabilities therefore I find the operational development to form a circuit/track with ramps and jumps was not carried out over 4 years ago. The appeal on ground (d) fails as does the appeal for a lawful development certificate.

The Appeal on Ground (a)

25. The site lies in the green belt and in the open countryside, within the Northaw Common Parkland Landscape Character Area (LCA)¹. I shall deal first with the

¹ The enforcement notice states it lies within the Potters Bar Parkland LCA, but the Council's statement corrects this to Northaw Common. It is clear from the Welwyn Hatfield LCA that the latter is correct.

green belt. Paragraph 146 of the NPPF states that certain forms of development are not inappropriate development as long as they preserve openness. The appeal concerns a material change of use of the land for outdoor sport and engineering operations to create the track, both are included within the list of potential exceptions in paragraph 146. The riding of motorcycles does not harm openness and so is not inappropriate development. The engineering works, according to the Council do not preserve openness, but there is no explanation why. The land may have more undulations than before and it may look scarred and artificial, but that does not affect openness in any way. No permanent structures have been erected when the motorcycle events take place and there has been no mention of any temporary structures either. In my view the proposed development does not affect openness and so is not inappropriate development in the green belt.

26. Setting aside the green belt, the Council's main three concerns are impact on the landscape character and visual amenity, which are closely related, and noise. Policy RA10 of the Welwyn Hatfield District Plan (2005) deals with LCAs and requires development should either conserve, maintain or enhance the relevant LCA. Policies D1 and D2 aim to ensure high quality design and that development should respect and relate to the character and context of the locality. In terms of noise R19 suggests proposals will be refused if they generate unacceptable noise for other land uses.
27. Although the appellant does not raise the issue, I am bound to note the local Plan is old and pre-dates the NPPF by many years. However, that does not make it's policies out of date, they need to be considered in the context of the latest government policy in the NPPF. At paragraph 170 the NPPF says that policies should recognise the intrinsic character and beauty of the countryside and the LCA assessments are aligned with this policy. Certainly the consideration of conserving the character of an LCA, as in policy RA10, is important. The same paragraph in the NPPF says that policies should help prevent existing development from being put at risk from unacceptable levels of noise pollution and this reinforced at paragraph 180 which says development should reduce to a minimum potential adverse impacts resulting from noise. This is the aim of policy R19. Good design is given considerable weight throughout the NPPF, particularly section 12. In my view therefore policies RA10 (particularly the conservation of LCAs), D1, D2 and R19 are up to date and accord with the NPPF.
28. The appellant provides a Landscape and Visual Impact Assessment (LVIA). This suggests that due to the ordinariness of the site and its location near to a model flying club and an annual music festival at Park Farm it is considered to be of low landscape sensitivity and has a good ability to accommodate the proposed change. It notes that public and private views of the site are limited by topography and vegetation. There are no views from the two main rights of way to the north and east but there are partial views from various houses to the west and south and through gaps in the hedge along Northaw Road West which is to the south. It is assessed that riders and bikes will form a small element in any views. The conclusion is the impact will be neutral and the only adverse element would be on tranquillity, due to noise and this would be slight.
29. Setting aside the noise element which I shall discuss below, I think this assessment rather underplays the character of the site and impact of the proposal. The site lies in a gently sloping dip with a small stream that flows

west to east down to the Chain Walk at the bottom of the valley. It is thus in a bowl of land with Northaw Road West on a ridge to the south, Northaw village forming the head of the valley to the west and Vineyards Road and the Hertfordshire Way on the ridge to the north. Although public views are limited, the site is in a prominent location at the bottom of a valley of pleasant, gently sloping agricultural land with hedgerows and small parcels of woodland, very typical of the LCA which the Assessment notes has a strong sense of enclosure with limited views. The site is entirely isolated from any man made features in the middle of a gentle pastoral landscape. In my view its sensitivity to change has been under-appreciated by the LVIA and its ability to absorb change somewhat exaggerated. As the Council say a motorcycle track here would be an entirely alien intrusion, particularly a regularly used one, which would have permanent scarring of the land and would be an obvious man-made construct.

30. I accept the lack of public visibility reduces the harm, but the site is not invisible, and even if it was, that would not remove entirely the impact on the landform of this intrusive activity. In my view there is harm to character of the countryside and the LCA would not be conserved. This harm is not great, but exists nevertheless.
31. The appellant argues the track is not a designed feature but has developed organically over time. This is not what the evidence shows, it seems more the opposite that a flat field has been moulded into a motorcycle track. As such it is well designed for its given purpose, but as noted above in this location it stands out as intrusive. I do not agree that because motorcycle tracks are generally found in rural areas, they are inherently suitable for any rural location, which seems to be the thrust of the appellant's arguments on design. Consequently I find the proposal is contrary to policies RA10, D1 and D2 and does not recognise the intrinsic beauty of this part of the countryside.
32. Noise is clearly an issue. The appellant suggests that in the absence of any evidence it cannot be taken there would be any nuisance to local residents. There have been many years without complaint which suggests the noise generated is relatively harmless. However, over 100 individuals and several groups of local residents have written letters of complaint, all mentioning noise. Unusually in my experience, there is no evidence of a stock letter being used and no general petition. Everyone who has written in has expressed their personal frustration and annoyance at the noise generated by the site in 2020.
33. While the site is not readily visible from many homes, it is ringed by houses to the south, west and north. Many of the houses in Northaw are within 300-500m of the site, some even closer. A steady hum of traffic noise from the M25, which lies roughly 2km to the south in a separate valley, was audible throughout my site visit and I have no reason to doubt the consistent information from local residents that the noise from the much closer appeal site is intrusive to the point of forcing them indoors. I note that far from there being no complaints in the past, it would seem there have been complaints that tally well with the holding of Enduroland events. The fact that there has not been a deluge of complaints in the past suggests to me the use was then very low key, and it was only the occasional 'events' that caused concern. Indeed many residents noted that while those 'events' were noisy, as they were only occasional, they put up with them.

34. The appellant suggests conditions can reduce any harmful impacts, in particular limiting the use to 30 days a year. This would certainly be preferable to an unrestrained planning permission but is still more than twice the number allowed under permitted development rights. If 15 summer weekends were taken up with noisy and intrusive events that would be every weekend from the final May bank holiday to August bank holiday potentially ruined. A further suggested condition is the submission of a noise management plan, but there is no information how noise could be managed. By their very essence motorbikes, especially off-road bikes, are noisy, especially when they are being raced and the site is in open countryside so any external noise reduction methods would likely to be intrusive. The appellant's comments on the third party representations suggest that noise barriers could be installed, but these would have a knock-on effect on the green belt. I have no evidence that noise could be controlled or how.
35. In my view the noise issue is a major problem. The use of the site has clearly produced serious noise pollution that has significantly harmed the amenity of nearby residents. Even restricted in use as suggested the harm would remain and would be likely to be significant. The proposal is thus contrary to policy R19 and the NPPF.
36. The appellant argues that various policies support the provision of outdoor sport and leisure and rural tourism, which is true. But such development should be sustainable and not cause significant harm to the amenities of local residents.
37. The proposal is contrary to RA10, D1 and D2, but more importantly to R19 and the relevant part of the NPPF. To allow the use of the land as a motorcycle track, even restricted to 30 days would be harmful and nothing has been suggested that would overcome or outweigh that harm. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

38. It is well known that an enforcement notice cannot take away rights granted by Parliament, thus a prohibition on motorcycle use would not prevent the appellant from exercising his permitted development rights. The use of motorcycles for agricultural purposes would also be unaffected, if such a use is possible. The first requirement is not excessive.
39. The second requirement deals with jumps and ramps. The appellant characterises these as almost natural undulations that can be left to grow over so they disappear. In my view they are actually large and obvious and need to be flattened so that it is possible for the agricultural use of the land to recommence.
40. The third requirement is to restore the land to its condition before the engineering works took place, which it would seem from the photographs was a relatively flat field. This seems entirely appropriate to me.
41. Finally I agree the only materials on the land are soil and stone which has simply been moved around the site to create the humps. It would be unnecessary to remove any of that from the land so I shall delete "materials" and "debris" from the fourth requirement.

The Appeal on Ground (g)

42. All that is required is for the use to cease and a bulldozer or digger to level the site. It is difficult to see how this could take a single person more than a couple of days at the most or why it should be impeded by the coronavirus regulations. I can see no reason why the time period should be extended beyond a month.

Simon Hand

Inspector