



Appeal Decision

Site visit made on 11 May 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/P2114/C/20/3260291

MotoxIoW, land west of Chilton Farm, Military Road, Brighstone, Newport, Isle of Wight

- 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 Ben Collins of MotoxIOW against an enforcement notice issued by Isle of Wight Council.
 - The enforcement notice was issued on 19 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years the material change of use of the Land from agricultural to a motorsport track together with changes in land levels for the creation of a motorsport track and the use of part of the Land for ancillary participants and spectators parking area.
 - The requirements of the notice are: (i) To cease the use of the Land as a motorsport track including but not limited to any use of the land for motorcycle racing including trials for speed and practicing for these activities (ii) To cease to use the land shown highlighted green on the attached plan B for the parking of motor vehicles, and equipment relating to the use of the Land as a motorsport track (iii) To remove all equipment and materials associated with the motorsport track shown highlighted blue on the attached plan B from the Land. Such equipment and materials shall include but shall not be limited to tyres, wooden posts, wooden marshals islands and any associated paraphernalia (iv) To restore the Land to its condition prior to the breach having taken place by grading the land so that the contours of the land are restored to their former natural levels, and to cultivate the land leaving it in a condition suitable for agricultural use.
 - The period for compliance with the requirements is one month in respect of requirements (i) and (ii), two months in respect of requirement (iii) and three months in respect of requirement (iv).
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Preliminary Matters

2. As no ground (a) appeal has been pleaded, matters such as noise, planning permissions at other sites or representations in support or objecting to the use in general terms are not directly relevant to my assessment. Disputed matters

between the parties concerning the Council's decision to issue notices are also not relevant to my assessment given an appeal has been lodged.

3. The parties were made aware of my intended site visit and this would be on an access required basis. In the event, I was not met at the site by the appellant, but as the site was readily accessible, I was able to proceed with my inspection without giving rise to injustice.

The ground (b) and (c) appeals

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could then be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
5. The Council has enforced against a material change of use to that as a motorsport track together with changes in land levels (engineering operations). The appellant states that there has not been a material change of use because the primary use of the land remains agricultural and his tenancy agreement only allows him use of the land for 28 days. Therefore, he contends that the breach of planning control alleged in the notice has not occurred as a matter of fact.
6. The actual use of the land by motocross bikes is therefore regarded by the appellant as a temporary one. In *Ramsey v Secretary of State for the Environment Transport and the Regions and Suffolk Coastal District Council [2002]* the Court held that the carrying out of operations in connection with a proposed use may be relevant in some cases as to whether the use was a temporary or permanent one.
7. The appellant's tenancy agreement is largely irrelevant, as my assessment concerns the facts on the ground and thus whether there has been the breach of planning control alleged. The appellant also contends that the engineering operations are only small mounds of existing earth, however, the photographic evidence provided by the Council shows that the track was created by a mechanical digger and other machinery. This demonstrates on the balance of probabilities that the engineering operations are development for the purposes of Section 55 of the Town and Country Planning Act 1990, and, based upon what I observed during my site visit, are also quite significant in extent.
8. Whilst it would appear that the appellant's intentions were for a temporary use, the engineering operations undertaken during the first-half of 2020 have served as permanent features since, and, the evidence is that the equipment and materials, including tyres, wooden posts and marshal islands have also remained. Indeed, I could see all the aforementioned during my site visit.
9. The engineering operations, as well as materials and equipment, have therefore changed the character of the use from an agricultural field to a primary use as a motorsport track. Agricultural permitted development rights are therefore not applicable. I do not accept that the engineering operations were intended as a form of agricultural improvement or rewilding, rather, they

were intended as means to construct a motorsport track as evidenced by the Facebook screenshots that are before me.

10. I also do not accept that the physical characteristics of the land are not relevant to the question of whether the land is being used for a permanent or temporary use. Moreover, I have very little evidence before me to demonstrate on the balance of probabilities that the physical changes do not prevent the lawful permanent use from continuing for most of the year, being agriculture, aside from the inevitable growth of grass/wild flowers. Without evidence to the contrary, the physical changes make it difficult for the land to revert to a previous lawful agricultural use in that the track and equipment prevents, for example, the growing of a crop, irrespective of whether the land is considered to be low yielding, and so it otherwise affects the agricultural use of the land as a whole.
11. The appellant also highlights that permitted development rights are available to him for temporary uses up to 28 days each year, although this is disputed by the Council. However, whilst the active use by motocross bikes may only be intended on a twice monthly basis, the land is permanently set out for motorsports and that is therefore its primary use.
12. Accordingly, whether permitted development rights for the motocross use extend to 14 or 28 days is not relevant. The physical changes that facilitate the primary use of the land as a motorsport track have been in situ since mid-2020, and, this period of time significantly exceeds any permitted development rights that have been brought to my attention.
13. The appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the breach of planning control has not occurred as a matter of fact or that it is permitted development.
14. The appeals on grounds (b) and (c) consequently must fail.

The ground (f) appeal

15. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
16. An enforcement notice in this regard cannot take away permitted development rights and so lawful temporary uses may continue in accordance with the relevant provisions of the Act. As the breach alleged relates to use as a motorsport track, it would accordingly be excessive for the first requirement of the notice to require cessation beyond that. That the appellant wishes to discuss with the Council how the site could be altered to facilitate its use for motocross without the need for planning permission is then a subsequent matter entirely for the parties.
17. The engineering operations, tyres, wooden posts, marshal islands and associated paraphernalia all facilitate and are therefore part and parcel of the use that has been enforced against. They can therefore be required to be removed irrespective as to whether planning permission would be required in isolation. It is therefore not excessive to require the reversion of the

engineering operations and removal of the equipment and materials to remedy the breach of planning control. That the appellant does not consider there to be an impact on the surrounding area is not relevant given the absence of a ground (a) appeal.

18. Even though there may be permitted development rights for the temporary use of open land, for uses such as parking, it is not excessive to require the parking relating to the unauthorised use of the land for a motorsport track to cease.
19. As there are then no lesser alternative steps before me, the appeal on ground (f) accordingly only succeeds to a very limited extent.

Overall Conclusion

20. For the reasons given above I conclude that the appeal should not succeed overall. I shall therefore uphold the enforcement notice with a correction.

Formal Decision

21. It is directed that the enforcement notice be corrected by:

- deleting the words '*(i) To cease the use of the Land as a motorsport track including but not limited to any use of the land for motorcycle racing including trials for speed and practicing for these activities*' and their replacement with the words '*(i) To cease the use of the Land as a motorsport track*'

22. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR