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## Appeal Decisions

Site visit made on 11 May 2021

by **C Osgathorp BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

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### **Appeal A Ref: APP/N1730/W/21/3266697**

#### **Camberley Kart Club, Blackbushe Airport, Camberley GU17 9LG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Darren Jones (Camberley Kart Club) against the decision of Hart District Council.
  - The application Ref 19/02772/AMCON, dated 13 December 2019, was refused by notice dated 7 August 2020.
  - The application sought planning permission for kart racing circuit, outbuildings and portakabins without complying with conditions attached to planning permission Ref HDC/21916 dated 12 April 1994.
  - The conditions in dispute are Nos 8 and 9 which state that:  
*8. "notwithstanding the provisions of Class B in Part 4 of Schedule 2 of the Town and Country Planning (General Development) Order 1988, or of any equivalent provisions in any order revoking and re-enacting that Order, the development hereby permitted shall not take place on more than 40 days in any one calendar year, whether for race meetings, practice purposes or for any other purpose ancillary to or associated with kart racing".*  
*9. "the land shall not be used on more than 2 days per calendar month during the months May – October inclusive of any year, for race meetings or practice purposes or for any other purpose ancillary to or associated with kart racing".*
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### **Appeal B Ref: APP/N1730/W/21/3266784**

#### **Camberley Kart Club, Blackbushe Airport, Camberley GU17 9LG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Darren Jones (Camberley Kart Club) against Hart District Council.
- The application Ref 20/02034/AMCON is dated 27 August 2020.
- The application sought planning permission for kart racing circuit, outbuildings and portakabins without complying with conditions attached to planning permission Ref HDC/21916 dated 12 April 1994.
- The conditions in dispute are Nos 8 and 9 which state that:  
*8. "notwithstanding the provisions of Class B in Part 4 of Schedule 2 of the Town and Country Planning (General Development) Order 1988, or of any equivalent provisions in any order revoking and re-enacting that Order, the development hereby permitted shall not take place on more than 40 days in any one calendar year, whether for race meetings, practice purposes or for any other purpose ancillary to or associated with kart racing".*

9. *"the land shall not be used on more than 2 days per calendar month during the months May – October inclusive of any year, for race meetings or practice purposes or for any other purpose ancillary to or associated with kart racing".*

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## **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed and planning permission is refused for kart racing circuit, outbuildings and portakabins without complying with Conditions 8 and 9 attached to planning permission Ref HDC/21916 dated 12 April 1994.

## **Preliminary Matters**

3. Appeal A seeks to substitute Condition 8 with *'the site shall not be used on more than 80 days in any one calendar year for race meetings, practice purposes or for any other purpose ancillary or associated with kart racing, unless otherwise agreed in writing by the Local Planning Authority'*. It is also proposed to remove Condition 9.
4. Appeal B seeks to substitute Condition 8 with *'the site shall not be used for more than 60 days in any calendar year for the purpose of race days, practice days or for any other purpose ancillary to kart racing'*.
5. Furthermore, it is proposed to replace Condition 9 with *'the use of the site for the purpose of race days, practice days or for any other purpose ancillary to kart racing shall be permitted Monday to Friday and on Saturdays during the period November to April but shall not be used for more than 2 Saturdays per month during May, July and September and for no more than 3 Saturdays per month during June, August and October in any calendar year'*.
6. The Council did not make a decision on planning application Ref 20/02034/AMCON within the statutory period and this has taken the jurisdiction to determine the application away from the Council. The Council has provided an appeal statement which indicates that it would have refused planning permission had it been in a position to determine the application.
7. In respect of Appeal B, the appellant's appeal statement indicates that, if necessary, they would be willing to alter the proposed variation of Condition 9 to restrict the usage of the kart track to a maximum of 3 days per month during the May to October period. Nevertheless, I am very conscious of the Wheatcroft Principles derived from *Bernard Wheatcroft Ltd v SSE (1982)* which are further explained in the Procedural Guide: Planning Appeals – England. The appeal process is not the appropriate place to evolve the scheme; and the scheme that is considered at appeal ought to be the same one that was considered by the Council and subject of consultation.
8. It is my view, in the interests of fairness, that this appeal must be determined on the basis of the proposed variation of condition set out in the planning application form, and described above, which has been subject to consultation. To do otherwise could prejudice unacceptably the interests of interested people and/or consultees who would not have been consulted on the changed proposal and who may have observations to make.

## **Main Issue**

9. The main issue in both appeals is whether the variation of Conditions 8 and 9 would be acceptable having regard to the effect of the proposal on the living conditions of the occupiers of neighbouring properties in respect of noise.

## **Reasons**

10. The appellant's original Environmental Noise Impact Assessment (the original noise assessment)<sup>1</sup> submitted with planning application Ref 19/02772/AMCON surveyed the background noise level on 5 August 2017, and recorded practice operational noise levels from the kart track on 12 August 2017 during daytime hours (between 10:00 – 16:00 hours). It identified a background noise level of 40dB LA90, 1 hour and a Rating Level of 46.5dB LAeq, 1 hour at the nearest residential properties to the north-east, including Little Vigo. This results in an excess over background noise level of 6.5dB and was assessed as an Adverse Impact. The original noise assessment identified that the installation of an acoustic screen would result in a Rating Level of 43.5dB, which is 3.5dB over the background noise level and assessed as a Low Adverse Impact.
11. The appellant subsequently submitted a revised Environmental Noise Impact Assessment<sup>2</sup> (the revised noise assessment). This states that the previous assessment looked at noise levels associated with general track use and unrestricted practice days, and the previous levels were recorded during a practice day where the karts being used had much louder exhausts. Further, it comments that the karting club confirms that these karts can be excluded from the requested extended practice days but remain in place on the existing permitted practice days.
12. On this basis, the revised noise assessment includes further measurements taken on 14 March 2020, which it states records noise levels of a typical practice session that the club intend to use during the proposed extended hours. The revised noise assessment shows a Rating Level 4.1dB above the background noise level (including a +5dB penalty), and this is reduced to 1.6dB above background noise level where a 3.5 metres tall bund or acoustic screen is included. In both scenarios the revised noise assessment rates the impact as No Observed Effect Level (NOEL), which is the level of noise exposure below which no effect at all on health or quality of life can be detected. Consequently, the revised noise assessment states that a bund/acoustic screen is not necessary to make the proposed changes to the kart club's operations satisfactory in noise terms.
13. The Planning Practice Guidance on Noise (the PPG) and Noise Policy Statement for England 2010 (NPSE) refer to observed noise effect levels, including the Significant Observed Adverse Effect Level (SOAEL) above which significant adverse effects on health and quality of life occur, and the Lowest Observed Adverse Effect Level (LOAEL) above which adverse effects on health and quality of life can be detected. There are no defined dB thresholds for LOAEL and SOAEL. The NPSE aims to ensure the significant adverse impacts on health and quality of life are avoided and that adverse impacts are mitigated and minimised.

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<sup>1</sup> Environmental Noise Impact Assessment reference SA – 5100 / V.01 dated December 2017 prepared by Sound Advice Acoustics Ltd

<sup>2</sup> Environmental Noise Impact Assessment reference SA – 5100 / V.02 dated April 2020 prepared by Sound Advice Acoustics Ltd

14. Furthermore, the PPG highlights<sup>3</sup> that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected, and it cites various factors which might combine in any particular situation to affect the impact of noise. Amongst other things, this includes the spectral content of the noise (i.e. whether or not the noise contains particular high or low frequency content) and the general character of the noise (i.e. whether or not the noise contains particular tonal characteristics or other particular features).
15. In this case, there does not appear to be any objective measurable standards directly related to the effect of noise from motor sport on sensitive recipients. This is reflected in paragraph 1.3.3 of the revised noise assessment, which acknowledges that motorsport falls outside the scope of British Standard BS 4142.
16. Whilst the revised noise assessment comments that the karts with louder exhausts could be excluded from the requested extended practice days but remain in place on the existing permitted days, the proposals lack clarity regarding precisely when the noisier karts would be used, and the specification and sound performance of the karts that would be used on other days. Consequently, there is potential that the noisier karts could be primarily used in the summer months when neighbouring occupiers would be more exposed to noise from the karting club. The revised noise assessment does not contain details of the specification and sound performance of the karts that were in use on 14 March 2020. Furthermore, I find that the gathering of sound measurements for a single day does not provide a sufficient sample to draw any firm conclusions regarding the Rating Level at the nearest residential properties.
17. Due to the absence of information and precision, a planning condition limiting the use of the noisier karts would not meet the test of enforceability. Therefore, this limits the weight that I can give to the Rating Level shown in the revised noise assessment. As such, I prefer the Rating Level shown in the original noise assessment, which shows that the noise from the kart track is 6.5dB over the background noise level at the nearest noise sensitive property and is therefore perceptible.
18. Furthermore, whilst I acknowledge the suggested installation of a bund/acoustic screen, there are few details before me of this proposed attenuation measure and so the proposals contain limited information regarding the environmental and visual impacts of such a feature. I therefore give this consideration minimal weight.
19. An objective analysis of noise should not be relied upon on its own, particularly given the absence of a directly applicable measurement standard relating to motorsport. The revised noise assessment states that the club has not received any noise complaints from any of the residents nearby and has successfully operated since 1994 within their stipulated planning conditions. It states that if the local residents are not complaining about noise levels from the venue at present, then by adding more dates, the appellant is not increasing the operational noise levels, but just additional days by which they can operate.

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<sup>3</sup> Paragraph: 006 Reference ID: 30-006-20190722

20. The Council indicates that the Environmental Health database shows there have been some noise complaints from local residents, however it concedes that these are few in number. The Council comments that where a long-standing use operates in a way that is broadly accepted as respecting a fair compromise of conflicting rights, one would expect it to be largely tolerated. I agree. This is reflected by some representations from local residents, which highlight that whilst noise from the kart track is noticeable and intrusive, its use for 40 days a year is accepted as this is what has been previously permitted. To my mind, the fact that there have been few complaints relating to the current use of the site does not itself support the increased use of the kart track for 60 or 80 days a year or additional use during May to October.
21. The character and tonality of the noise is a relevant consideration and I note the representations from some local residents that refer to the constant drone or buzzing of karts. Whilst I acknowledge the existing noise sources at Blackbushe Airport and the British Car Auction site, I appreciate that the character of the kart noise and its lengthy duration during the day may be intrusive and annoying to some residents even at low sound levels. The previous Inspector attached Conditions 8 and 9 to provide some respite to local residents and strike a balance between the needs of the kart club and those residing nearby. Whilst the proposals would not increase the existing noise levels on practice days, the use of the kart track for either 60 or 80 days per year would intensify the use of the site and lessen the respite for neighbouring occupiers.
22. Furthermore, the respective proposals in Appeals A and B to remove/vary Condition 9 would increase use of the kart track during May to October. During this time of the year, local residents would be more likely to have windows open to provide ventilation and use their gardens for recreation. The increased use of the kart track during these months would be more noticeable and intrusive to local residents.
23. Having regard to the considerations set out above, I regard the noise impact arising from the use of the kart track to exceed the Lowest Observed Adverse Effect Level as defined in the PPG – but not reach the Significant Observed Adverse Effect Level. This means that noise can be heard and is intrusive, causing small changes in behaviour, attitude or other physiological response. Conditions 8 and 9, along with others attached to the original planning permission, provide appropriate safeguards to mitigate and minimise those effects. On the basis of the evidence before me, the proposed variation of the conditions set out in Appeals A and B would cause harm to the living conditions of the occupiers of neighbouring properties.
24. I therefore conclude that the variation of Conditions 8 and 9 proposed in Appeals A and B would be harmful to the living conditions of the occupiers of neighbouring properties in respect of noise. The Conditions are both necessary and reasonable in order to safeguard local residents from unacceptable noise and disturbance. The proposals would therefore be contrary to Policy NBE11 of the Hart Local Plan Strategy and Sites 2032 and saved Policy GEN6 of the Hart Local Plan 1996-2006, which, amongst other things, state that development will be supported provided it does not give rise to unacceptable levels of pollution and it is satisfactorily demonstrated that any adverse impacts of pollution will be adequately mitigated or minimised to an acceptable level; and noisy uses will only be permitted where the site is not located where the

proposal would have a serious adverse effect on the amenities of existing housing, or the proposal incorporates adequate noise abatement measures to alleviate any material loss in amenity.

25. Moreover, the proposal would conflict with paragraphs 170 and 180 of the National Planning Policy Framework, which, amongst other things, seek to prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by unacceptable levels of noise pollution.

### **Other Matters**

26. Paragraph 83 of the Framework states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, and leisure developments which respect the character of the countryside. The proposal would support the growth of an established rural business and enable the increased use of a popular recreation facility, which are benefits that weigh in favour of the proposal.
27. Nevertheless, paragraph 127 of the Framework places importance on ensuring a high standard of amenity for existing users. On the basis of the evidence before me, I am not persuaded that there is sufficient justification for the variation of Conditions 8 and 9. The benefits of the proposals would not outweigh the harm to the living conditions of neighbouring occupiers.
28. The appeal site is within the Castle Bottom to Yateley and Hawley Common Site of Special Scientific Interest, which forms part of the Thames Basin Heaths Special Protection Area (SPA). The SPA is a designated Habitat site which is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Regulation 63(1) of the Habitat Regulations indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As I am dismissing the appeals for other reasons, it has not been necessary for me to consider this matter further.

### **Conclusion**

29. Appeals A and B would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeals are dismissed.

*C Osgathorp*

INSPECTOR