



Appeal Decision

Site visit made on 14 April 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 03 May 2022

Appeal Ref: APP/F0114/C/22/3290711

The Land at Fry's Bottom Wood, Chelwood, Bristol, BS39 5QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Wilcox against an enforcement notice issued by Bath and North East Somerset Council.
 - The notice was issued on 15 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of "the Land" from woodland site (sui generis) to a use for motorcycle trials (practice, recreation and events) and camping (sui generis).
 - The requirements of the notice are: Requirement 1: Cease the use of "the Land" for motorcycle trials (practice, recreation and events) and camping. Requirement 2: Cease the advertising and promotion of "the Land" for motorcycle trials (practice, recreation and events) and camping, including online advertising and through social media.
 - The period for compliance with the requirements is: 7 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) 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 have lapsed.
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Decision

1. It is directed that the enforcement notice is varied by deleting the compliance period and replacing it with "*The period for compliance with Requirement 1 is 1 month and for Requirement 2 is 7 days*". Subject to that variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. This appeal has generated considerable interest, both for and against the continuing use of the woods for trial bike riding and events. I have received a lot of evidence as to the impacts on noise and on the flora and fauna at the site, as well as the advantages and benefits of trial biking for those who take part. However, the appeal has been made only on grounds (d) and (g). My consideration of the appeal is thus limited to the specific questions of whether the use has been going on for 10 years or more and if it has not whether 7 days is a sufficiently reasonable time to cease the trial bike activities. The question of the merits of the use of the land, whether it is harmful or acceptable, are not before me and I make no comment on them. It is still open to the appellant to make a planning application for the use of all or some of the land for trial bike riding where these issues can be aired.

The Appeal on Ground (d)

3. This ground is that the use of the site for motorcycle trials, in this case specifically trial bike riding, has been going on for 10 years or more before the notice was issued. The appellant needs to show that the use has been going on continuously since at least December 2011. It is important to be clear what 'continuously' means. The usual test is that if at any time the Council could have issued an enforcement notice then the use has been continuous. In this case it is obviously not reasonable to require trial bike riding to have taken place on every single day for 10 years, but there has to be evidence of sustained use throughout the period.
4. Matters are complicated somewhat by the rights granted by the GPDO¹, where Class B of Part 4 of Schedule 2 allows motor bike riding² for 14 days a year without needing to obtain planning permission. Consequently, the woodland could be used for 14 days, or 7 weekends, every year for trial events and practicing and if the use was restricted to those times an enforcement notice could not be issued. Casual or intermittent breaches of the 14 day rule would also be insufficient, and a certain amount of private, or hobby, riding would also be acceptable, but a sustained breach of the 14 day limit every year, with no significant cessation, or other uses intervening, would establish the breach.
5. A mass of detailed evidence has been provided and there is no doubt that the site has been used for riding of trial bikes for many years. There is evidence of an event back in 1978 many years before the appellant bought the woodland in 1995. Many people have written in to say they have ridden bikes there for 10, 15 and 20 years. It is not clear but it seems the appellant allowed a low level of use from 1995 onwards, but he is clear that from 2007 he was interested in trial bikes using the woods. In 2010 he says use had increased and several events had been held. In 2013 he decided to allow riders to book themselves in and out and it was open from 8am to sunset all year round.
6. This is more or less born out by the written evidence. There were two events (4 days) in 2008 and 2009. Three events (5 days) in 2010, four events (6 days) in 2011. Then in 2012 it becomes busier with nine events (11 days). In 2013 there were four events (4 days) and from 2014 to 2019 two events a year. However, from April 2013 onwards there is evidence from the signing-in books of regular use by hundreds of people every year.
7. A large number of local residents have also written in objecting and their evidence, much of it sworn statements is that there was sporadic or occasional use up to 2012, but in 2013 it began to get noticeably busier and from 2014 onwards has been consistently noisy. One person noted woodland works took place in 2012, presumably in anticipation of an increase in demand.
8. The Council's evidence also paints a similar picture. In September 2012 an officer wrote to the appellant concerning woodland clearance that was to enable motor bike riding to commence. The appellant replied that there had been 5 events and they were within the permitted development rights. Some people had been accessing the woodland from the disused railway, but that was the Council's fault for not maintaining proper fencing.

¹ General Permitted Development (England) Order 2015

² Specifically "B(b) motor car and motorcycle racing including trials of speed, and practising for these Activities..."

9. This is corroborated by a letter sent from the appellant to a neighbour in May 2014, presumably in response to a complaint. The appellant says in the letter he has so far restricted the use of the woodland but now he *"will be pursuing the other activities that people have been asking to undertake in the wood for the past 19 years that I have owned them"*. He is going to allow people in and make a charge. The appellant argues that the *"other activities"* referred to meant non-bike riding such as zip wires, archery, paintballing etc, nevertheless, the letter is indicative of a step change in the use of the land particularly as the appellant says *"the woods are of great value to me, I have restricted and not allowed others to enjoy them, my thoughts are now to allow others in, this would be a financial incentives to me by allowing others to use them"*.
10. All of this makes it clear to me that while there undoubtedly has been riding of motor bikes in the woodland for many years it was not of such an intensity or duration as to either exceed the permitted development rights or amount to a material change of use until, at the earliest 2013, when large scale use by the newly formed club began to take place. I have no doubt that, as recorded in their correspondence, people occasionally practised at the site and that some events were held there, but as explained above, that is insufficient to amount to a material change of use. Consequently, the ground (d) appeal fails.

The Appeal on Ground (g)

11. The notice provides a period of 7 days to cease the use. I agree that it should be simple to cease using the land as no works are required. Any future events beyond those allowed under the provisions of the GPDO can be cancelled, but I also agree that this might take more than 7 days to organise and I shall extend the period for the first requirement to 1 month.

Simon Hand

INSPECTOR