



Appeal Decision

Inquiry Held on 15 February and 21,22 & 23 June 2022

Site visit made on 22 June 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Appeal Ref: APP/M9496/C/20/3257888

Land at the former Whitelow Mines to the south of the junction of Blakemere Lane and Leys Lane, Bonsall, Derbyshire.

- 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 Robert Spencer against an enforcement notice issued by Peak District National Park Authority.
 - The enforcement notice was issued on 29 June 2020.
 - The breach of planning control as alleged in the notice is: Material change of use of the Land to use for motocross scrambling, where scrambling is use of any motorcycle or motor vehicle for the purposes of either racing, competition, jumping or negotiating obstacles, a display for entertainment, leisure or recreation, trials of speed, or the testing, practice or training for any of these activities.
 - The requirements of the notice are:
 - a) Cease the use of the Land for motocross scrambling as defined in Paragraph 3 of this notice
 - b) Remove from the Land all items and debris associated with the use, including but not limited to advertisements, plant and machinery, caravans, porta-loos, fuel and water bowers.
 - The period for compliance with the requirements in step (a) is one day and for step (b) 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Application for costs

1. At the Inquiry an application for costs was made by the Peak District National Park Authority against Mr Robert Spencer. This application is the subject of a separate Decision.

Decision

2. It is directed that the enforcement notice be corrected by deleting all the wording in paragraph 3. 1) and substituting "Material change of use of the Land to use for motocross scrambling, where scrambling is use of any motorcycle or motor vehicle for the purposes of either practising, training, jumping or negotiating obstacles." Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Evidence at the Inquiry was taken under solemn affirmation.

4. The appeal was initially made on grounds (d) and (f). However, in opening on the first day of the Inquiry the Appellant advanced that he did not claim lawful use for racing or trials of speed, nor practice for such uses, as those uses had not taken place as a matter of fact. This is a ground (b) point and the Inquiry was adjourned to allow for new grounds of appeal to be put forward and submissions from all parties made. The Inquiry resumed and proceeded on grounds (b), (d) and (f). It is on those grounds that I have made my decision.
5. It was agreed at the Inquiry that the enforcement notice and plan correctly identified the area of Land relating to the alleged unauthorised use and I am satisfied that the Land is the planning unit.

Appeal on ground (b)

6. The issue is whether as a matter of fact the matters alleged were being carried out on the Land. It is the Appellant's case that the notice should allege only those uses which have actually taken place on the Land, rather than alleging a range of uses "including" the actual use. In amended grounds of appeal the Appellant states that the following alleged uses of the Land have not occurred: for racing; for competition; as a display for entertainment; for trials of speed; nor for the testing, practice, or training for any of those uses.
7. The National Park Authority (NPA) and Bonsall Moor Action Group (BMAG) accept that they have no specific evidence that the appeal site has been used for racing, competition, as a display for entertainment or for trials of speed. However, considering the evidence supporting the Appellant's case they submit that the site has been used for practising. That is, practising to improve performance in the recreational use of motocross bikes, but they also contend that the site has been used by professional riders to practice for events.
8. In particular, a previous user of the site claims that he used the site with a number of other top-level competitors (and coaches) who "*were making use of a fantastic track to train to top-level competition standard.*"¹ When asked about such use in cross examination, the Appellant stated that he did not know what Mr Hunt was training for when he was using the track, and thus could not give direct evidence.
9. Article 3, Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order, 2015 grants planning permission for the temporary use of land. It provides for "*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 (a) the holding of a market; (b) motor car and motorcycle racing including trials of speed, and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use.*"
10. I have had regard to relevant case law² and recognise that there is a clear distinction between racing and trials of speed, practice for such activities, and non-competitive motoring activities. These separate uses are subject to different limitations for permitted temporary use as set out in my paragraph above. Although evidence was heard at the Inquiry that the appeal site had on occasion been used by 'racing lads', it was common ground that there was no substantive evidence that the Land had been used for formal racing or trials of

¹ Statutory Declaration, Mr I Hunt, dated 16 February 2022.

² *Miles v National Assembly for Wales* [2007] JPL 1235 & *Hart DC v Benford* [2006] JPL 1318.

speed. Mr Hunt's evidence does however suggest that he and his colleagues had utilised the site to practice for such events, albeit not in an organised or formal practice race format. Furthermore, a letter from M Andrews dated 19 August 2020 states that he is a World, British, European Trials Champion and confirms that he utilised the track whilst preparing for motorcycle competitions. In addition, the Appellant's Statutory Declaration (SD) states that he used the track to practice for competitions, whilst he also declares that he did not organise racing at the Track between 2015 and 2016. There is therefore evidence that the site has been used to practice for competitions, which includes practice for racing.

11. The NPA invited me to amend the description of the breach of control in paragraph 3 of the Enforcement Notice so that it reads as follows: "*Material change of use of the Land to use for motocross scrambling, where scrambling is use of any motorcycle or motor vehicle for the purposes of either practising, training, jumping or negotiating obstacles.*" The revised description does not distinguish between the recreational practice of scrambling and practising of scrambling for race events. It encompasses all forms of practice.
12. From the evidence before me, including what I heard at the Inquiry, the practising and training for motocross scrambling at all levels has occurred on the Land. Given that there is no dispute between the parties that jumping and negotiating obstacles has also occurred, I am satisfied that the revised description would accurately describe the use which has been taking place on the Land.
13. I shall therefore correct the notice and amend the description of the breach as set out in paragraph 10 above. I am satisfied that this correction would not cause any injustice to the Appellant or the NPA. To the extent that the breach no longer refers to racing, competition, a display for entertainment, or trials of speed, the appeal on ground (b) succeeds.

Appeal on ground (d)

14. In relation to a breach of planning control consisting of a material change of use of land, the relevant time period is ten years beginning with the date of the breach (s171B (3)).
15. The main issue is whether the material change of use took place before the 29 June 2010 with the alleged use continuing substantially uninterrupted for at least 10 years thereafter. The onus of proof is on the Appellant and the test is on the balance of probability.
16. In summary, the Appellant maintains that the Land has been in use for motocross scrambling (MX) since the mid-1980s, subsequent to its previous use as mineral workings. No specific date has been advanced as to when the material change of use took place, however, it is the Appellant's case that the use as a scrambling track commenced in the 1980s and has continued without a break since then. Furthermore, in case any gap is found after the use commenced, five 10 year immunity periods are put forward for consideration: 1989 to 1999, and/or; 1993 to 2003, and/or; 1999 to 2009, and/or; 2001 to 2011, and/or; 2005 to 2015. For the avoidance of doubt, it is necessary only for the Appellant to demonstrate a single 10 year period of continuous use prior to the service of the enforcement notice, and providing the use had not been

abandoned thereafter.³ Furthermore, given the existence of the 14 and 28 day permitted development rights for the alleged use, it is for the Appellant to demonstrate a continuous 10 year unlawful use going beyond the permitted development threshold.

17. The Appellant relies primarily on his own recollection of the activities that have taken place on the Land. His evidence is supported by Statutory Declarations (SD) from Mr Ian Hunt (IH), Daniel Stone (DS) and Andrew Gregory (AG). In addition, a significant number of letters of support, which include points of recollection, as well as proforma letters detailing levels of activity over the 10 year period prior to the notice being served. It was only the Appellant who gave evidence at the Inquiry in support of his case.
18. There does not appear to be any dispute that since the use of the Land for mining activities ceased in the early 1980s it has not been used for any purpose other than MX. Furthermore, the satellite images (SI)⁴ confirm the existence of a track in some form on the Land since 1999. Its rough terrain clearly made the site suitable for MX and given that the Appellant had an interest in this sport, it would have been in his father's interest to allow him and his friends to utilise the appeal site recreationally for MX.
19. The SI indicate that although tracks had been established by MX and other vehicle activity and use during the 1990's early 2000, it was not until 2008 when MR and JR leased the site that it was laid out as a more formal track. This is evidenced on the 2010 SI and confirmed by AG in his SD where he states that JR had created a more professional track which he took over in 2009. During the period 2015/16 when the Appellant's father was in hospital, the track was utilised less and became less visually distinct (SI 2016). When DS secured a lease in 2017/18 the site was cleared of tipping, re-modelled/engineered and improved. A smaller track was added, and DS has subsequently operated the site on a commercial basis.
20. I have taken into consideration the Appellant's submissions that the track is a permanent fixture, and as there have never been any intervening uses, MX was not a temporary use of the Land. I also accept that if the Council had deemed engineering works to have been undertaken to establish the track, it would have been open to them to have enforced against those works. To that end, I note that the Council did agree with the Appellant's father, in 2008, that earth mounds created by his son would be removed.⁵ However, in this case the Council are concerned with the use of the Land and do not require any restoration works to the site. Considering the nature of MX, it is not surprising that the track has become a permanent feature, especially as there have been no intervening uses. However, the formation of a track would not necessarily have led to a material change in use of the Land; evidence of a material change of use must first be demonstrated, and if demonstrated, it is then necessary to consider whether the use has become lawful through the passage of time.
21. Each of the 10 year periods where immunity is sought are considered in turn.

³ *R (Ocado Retail Ltd) v LB of Islington* [2021] PTSR 1833; [2021] EWHC 1509 (Admin)

⁴ Document 2 submitted at the Inquiry.

⁵ Email dated 9 January 2008 to Mick Biggen. Appendices, LPA Proof of Evidence.

1989 - 1999

22. The appellant stated in cross examination that this period was chosen because the NPA had records of the site from 1989. However, the Appellant acknowledged that as he was only a small child during this period his memories were the recollections of a child, albeit they were the best days of his life. He could not, however, provide any direct evidence whereby it would be possible to establish how many days a year the Land was in use for MX during this period.
23. Internal memorandums found within file records belonging to the NPA indicate that an MX track had been developed on the restored mineral working by 1989. However, those memos in 1989/1990 do not provide any specific evidence which would demonstrate how or when the track was utilised during that period.
24. The SD of IH is the most relevant to this period. He claims to have paid the landowner money to utilise the track with a bunch of friends, some of whom were top level competitors and coaches, between 1990 and 2000. He stated that the group, usually around 20 of them, would meet on at least 3 days a week, unless the weather was bad in the winter. There is no documented evidence to corroborate this claim, for example, a lease or dates of the agreement/termination, receipt of payments, and IH did not appear at the Inquiry to give evidence on oath.
25. On the other hand, we heard from Mr P. Brown (PB), the occupier of Moor Farm, at the Inquiry. Moor Farm has land adjoining the appeal site and his farmhouse is situated on Bonsall Moor Lane to the North. I noted on my site visit that from his farmhouse there is a clear line of sight to the appeal site and thus the activities on the Land are readily visible to the occupiers of this farm both when they are occupying the house or tending their adjoining farmland.
26. In his proof of evidence PB describes the appeal site during the 1990's as unrestricted, partly vegetated and part track. The track was not maintained and deeply rutted with the appearance of wasteland. He states that he is acquainted with IH and IH's brother, and recalls the brother riding a motorbike on the appeal site from time to time. He recalls the use of the site in the 1990's by them and others, a maximum of six bikes at any one time, with the use being what he describes as occasional and messing around. The riding would be on the occasional weekend but then there would often be months when no riding took place, and certainly not 3 days per week with any consistency. Furthermore, other than occasional trespass the use ceased by IH after a couple of years.
27. We heard at the Inquiry that there was some tension between the Appellant and PB as adjoining landowners. However, the evidence of PB was tested at the Inquiry and I have no reason to believe that he was not a reliable witness. PB resides close to the appeal site and his evidence should be given significant weight.
28. In addition, evidence in the form of SD from four other local residents⁶ cast doubt on IH's evidence. JC, although the same age as the Appellant, recalls

⁶ SD of JC, dated 6 May 2022; SD of DC, dated 5 May 2022; SD of MS, dated 25 April 2022; and SD of BW, dated 28 April 2022.

regularly riding his mountain bike on the Land during the 1990's as the appeal site was not enclosed nor access restricted. He recalls a rough and rutted track with no clear route. It was unmaintained and his memories are more of 4 x 4's and modified Land Rovers rather than it being used by motorcycles. His SD is supported by photographs of him during this period riding his mountain bike on the appeal site. The photographs show rough ground with some deeply rutted areas, a rough track and a fairly well vegetated area. JC did make acquaintance with IH during this period, however, he disputes that IH used the track to the intensity or for the length of time he maintains. His memories of the track are that it was generally in a poor condition and not maintained. He rarely encountered motorcycles utilising it and considered it to be unsuitable for use by professional riders.

29. MC endorses his son's recollections and in addition states that he passed the site regularly to go to work, shop and cycle during this period. During the evenings when he passed by the site returning from work between 7pm and 8pm, he only saw occasional activity on the Land. Any activity was not in any organised manner, and he did not consider the track to be suitable for professional practicing due to its nature and condition. During the late 1990's he recalls 4 x 4's using the site.
30. MS also recalls visiting the track from time to time in the late 1990's to drive his 4 x 4 off road. During this time, he states that access was unrestricted and the site looked to be little used by anyone at that time. On all occasions when he visited there was no bike activity.
31. Finally, BW recalls that during this period only a small section of what now constitutes the MX track was used and then only on an occasional and ad hoc basis by local boys riding their motor bikes. She understood the riders were family members and friends of the landowner. The number of bikes at any time she recalls being low, in single figures, and the frequency of use was sporadic, with lengthy periods of inactivity between usage.

Conclusion, 1989 -1999

32. There is no dispute that during this period the appeal site was used for MX. Furthermore, it is evident that IH used the track during this 10 year period. However, the evidence from PB at the Inquiry and the evidence submitted by local residents' casts doubt on the accuracy of IH's evidence. In particular, it is difficult to reconcile the claim that for the whole of this 10 year period the site was used on average 3 days a week and with approximately 20 riders each time. None of the evidence from the adjoining landowner or residents cite any more than six riders at any one time, and then only very occasionally with periods where there was no activity and certainly not the intensity and continuity set out in IH's SD.
33. Although the Appellant recalls going to the site to collect money from riders with his sister, those memories do not provide a precise account of the levels of use, and no evidence has been provided by his elder sisters which would support those memories. Furthermore, whilst he had his own bike in 1998 and says he rode the track regularly, that is not sufficient to show continuity through the whole of this 10 year period. Thus, the evidence provided by the Appellant and IH is not sufficiently precise and unambiguous, and it is

contradicted by evidence produced by BMAG. Consequently, on the balance of probability the Land has not been in use for MX for more than 28 days in each year during this 10 year period. Immunity for this period has not therefore been demonstrated.

1993 - 2003

34. There is a six year overlap between the immunity claimed for this period and the period I have considered in the paragraphs above. Given that I have not been able to find any period of use of the MX track during the 1990's where there is clear and undisputed evidence to support continual use for more than 28 days in any one year, or for a sustained period, then it must be that immunity for the 1993 -2003 can also not be demonstrated.
35. DS states that he has been using the track since 1999.⁷ He suggests his use was about twice a month usually with 20 other riders. He doesn't say, however, how long this use continued. Moreover, this information does not provide evidence of use during the years between 1993 and 1998.
36. For some of this period, 2001-2002, there is clear evidence of concern from the Parish Council, including objections from local residents, which resulted in letters to the NPA and a local MP complaining that the use of Bonsall Moor by motorcycles had intensified. This activity appeared to relate not only to the appeal site, but also Blakemere Pit and the 'green lanes' between the two sites. The NPA were assessing levels of activity during this time but there was no suggestion that there was any previous lawful use.⁸ In any event, those complaints relate only to the 2 year period leading up to 2003 and do not demonstrate immunity over the 10year period required.

Conclusion, 1993 - 2003

37. For the reasons set out above, there is no precise or unambiguous evidence that would demonstrate that the material change of use of the Land to MX had become lawful during this period. Furthermore, it can be seen that for the period of 1993-1999, BMAG has produced evidence to contradict and make the Appellant's version of events less than probable. I therefore conclude that, on the balance of probability, the use has not become lawful through the 10 year period between 1993 and 2003.

1999 - 2009

38. The evidence produced by the Appellant in relation to this period is his own and includes reference to documents made available from historic files held by the NPA.
39. The Appellant's proof of evidence states that from 1998 he had his own bike, and up until 2003 he practised at the track with his mates most weekends. He recalls that one of his father's tenants had a sign up saying how much they were charging for use of the site, but as his father owned the track he and his mates were not charged. He states that there were always other riders at the track on weekends and usually one or two weeknights as well. However, in cross examination he could not recall if there were any tenants before the two

⁷ SD of Mr Stone, dated 27 April 2021.

⁸ Document 14, Appendix 1 NPA Proof of Evidence.

Chesterfield lads (Mr Ramsey and Jordan Rose), who became involved in the site from approximately 2007.

40. The Appellant also states that in 2004 he started work and used the track mainly at weekends, although sometimes on summer evenings in the week. He estimates that he went up to the track to practice at least three times a week for at least 40 weeks a year right through from the start of his teens in 2000 to well into his 20's (i.e., until at least 2007). However, in cross examination he also advised that he had been working away between 2006 and 2008, in Wales. Although he did return at weekends his level of usage of the site during this period could not have been at the level claimed in his proof.
41. In addition, as set out in my paragraph 35, the use of the site intensified in 2001/2002. However, following investigations by the NPA no complaints were received between 2002 until 2007. BW in her SD states that between 2003 - 2007 there appeared to be no material use of the MX site. MS states that between 2004-2013 there was hardly any bike activity except in late 2007/2008. He passed the site daily taking his children to and from school, which included a school run on Saturdays, returning mid-afternoon.
42. The current occupier of Bottom Leys Farm, which has land adjacent to the appeal site, moved into this property in 2004 and gave evidence at the Inquiry. She states that she was not aware of any activity on the Land until Mr Ramsey visited her in 2008 to ask for her support in setting up an MX track. She refused to give support and recalls that Mr Ramsey then only used the track for a few months before he moved on.
43. Thus, between 2003 and 2006 the only recollection of the site being used on any regular basis at all is by the Appellant. Those recollections vary from practising/riding with his friends in 2003 and then mainly at weekends post 2004 when he started work. Between 2006 -2008 he was working away and only returned at weekends on Saturday afternoons. The absence of any complaints during this period and the evidence from local residents' casts doubt on the Appellant's recollection that the track was being ridden at least 3 days a week for 40 weeks of the year during this period. Indeed, given that he was not around for more than one and a half days a week during some of this period he could not have known that to be true.
44. Between 2003 and 2007 the site was described in the site history section of the Council Officer's Delegated Report, dated 2011, as being used informally by local MX bikes as it is close to an established network of 'green lanes' where MX scrambling is lawful. Evidence available to the NPA at that time was that the use was intermittent. There is no documented record of any use or complaints in relation to such a use during this time, which supports the evidence that the use during this time was sporadic. It seems to me that given the use during this time was primarily by the landowner's son riding his bike on the site with a couple of mates, this would have been unlikely to have resulted in a material change of use of the Land which the NPA would have been able to enforce against. On this basis, and in the absence of any substantive evidence that would demonstrate otherwise, on the balance of probability there was no continuity of the alleged unlawful use between 2003 and 2007.

Conclusion on 1999-2009

45. It is clear that during this 10 year period there were times (2001/2002) when the site was being used on a regular basis, and that use was likely to have been material and in excess of 28 days a year. There is also evidence of regular and intense use during 2008/2009 when Mr Ramsey took a lease on the site. However, for the reasons set out above, the evidence in relation to 2003-2007 is less **than** precise and unambiguous. Although I have no doubt that Mr Spencer continued to ride his bike on the Land during this period, and at times with his mates, I concur with the NPA that the level of use at this time was not material. From the evidence before me, including the significant number of letters from residents who recall only intermittent and sporadic use of the appeal site during this time, I agree that, on the balance of probability, the NPA could not have enforced against the use between 2003 and 2007. I therefore conclude that the use has not become lawful through this 10 year period.

2001 to 2011

46. This 10 year period includes the years of 2003 – 2007 which I covered in the paragraphs above and found no evidence of a continual unauthorised use. On that basis alone immunity has not been demonstrated for this 10 year period (2001-2011).
47. I have had regard to the Enforcement Delegated Report, prepared by NPA, dated 11 May 2011. This report set out the planning history of the site where it is acknowledged that since 1983 the Land has been made available to some degree for use as a MX track. It states that local residents have described the former use as low key and commonly used by individuals or small groups of friends on an ad-hoc basis. The report goes on to describe the level of use between 2008 – 2009 when they undertook extensive monitoring. During that period, which was the period when Mr Ramsey started using the site, the level of use had intensified and was causing complaints. The NPA monitoring showed a level of use during that period which clearly material and exceeded permitted development thresholds.
48. The report states that it is unclear whether the claimed use of the appeal site as a MX track is lawful due to the passage of time under s171B of the Town and Country Planning Act 1990 (as amended). It then goes on to accept that, on the balance of probability, the use of the Land for this purpose at its current level is likely to be immune from enforcement action. The recommendation, based on the evidence available at that time, was that it was not expedient to pursue enforcement action. However, the report states that the situation may be reviewed in the future.
49. I appreciate that this report indicated that the NPA felt there may be a level of use for MX that could be lawful. However, the report was written in May 2011 after Mr Ramsey had left the site, and during 2010 complaints regarding the use of the site ceased. The NPA did not therefore consider it expedient to take enforcement action in 2011. The decision not to take enforcement action at that time does not establish the use as lawful. NPA file notes of meetings with Mr Ramsey in August 2008 make it clear that for a lawful use to be established a formal application for a Certificate of Lawful Use or Development must be

made.⁹ Despite numerous requests over the years no such application has ever been forthcoming.

Conclusion, 2001 to 2011

50. The evidence of use during the period of 2003 -2007 is not sufficiently precise and unambiguous to demonstrate that the use of the site for MX continued substantially uninterrupted throughout this period at a level above 28 days a year. Thus, the 10 year period of immunity claimed has not been demonstrated.

2005 - 2015

51. This 10 year period includes the years of 2005-2007, a period I have previously concluded that there is no substantive evidence of any material or continuous use of the Land for MX. On that basis alone immunity has not been demonstrated for this 10 year period (2005-2015).
52. The Appellant's evidence for 2008 – 2015 is that he used the track twice a month at the weekend for about 10 months a year. He claims that at that time there was always 20 other riders. Bank Holidays were always very busy with far more riders and spectators and people camped there at the weekend.
53. From approximately 2009 AG rented the track and at which time he says it had been laid out as a professional practice track. His SD states that he primarily rented it to encourage his three sons in the sport. He states that the track was used most weekends when the weather was suitable, approximately 120-135 days a year. In addition, he states that they had over 200 paying riders a year. He stored machinery at the site to help him do work on the track and had a welfare cabin on the Land with toilets and a kitchen. The Appellant told the Inquiry that he terminated AG's lease when he caught him fly tipping on the Land in November 2014. A March 2015 satellite image clearly shows areas of the site which have been fly tipped and abandoned vehicles. Evidence from DS confirms that when he took over the site in 2016 it took him 12 months to clear the site of old cars and get rid of all the waste that had been tipped there to make it safe.
54. Evidence of the use of the track during this period is also provided by BMAG. JC recalls AG renting the track for a short time for his son to practice on. He recalls an excavator and a small number of vans and bikes on the site on the odd weekend. He does not remember this activity lasting for very long, maybe 1-2 years.
55. MS recalls little bike activity on the track save the period in 2008. He states that during 2013 he regularly cycled past the site on weekdays and weekends whilst practising for a long-distance cycle ride. He recalls no organised activity at that time. Video evidence shown at the Inquiry dated 2013 showed the track in use by two MX riders, which in cross examination the Appellant suggested were likely to be AG's sons utilising the track.
56. BW recalls activity between 2011-2017 as being informal and ad-hoc. CF states that between 2008 and 2017/18 the site was once again subject to only infrequent, intermittent, and low-level use which went unnoticed.¹⁰

⁹ Documents 20 & 21, Appendix 1, NPA Proof of Evidence.

¹⁰ Proof of Evidence CF, dated 5 May 2022

57. Evidence was also given at the Inquiry by MJE and his partner AL.¹¹ This couple moved to Bonsall in October 2014. As keen walkers the couple began visiting the village and surroundings from March 2014 whilst looking for a suitable house to buy. In addition, AL, a Planning Inspector at that time, undertook some Rights of Way work in April 2014, whereby she parked close to the site and walked a complete circuit of it. Before the couple moved into Bonsall in October 2014 they visited the area at least half a dozen times and undertook dog walks on the moor close to the site. They also carried out extensive research of the area. During those visits they were at no time alerted to any activity of MX on the track, either visually or by way of noise/nuisance. Once they moved in, they walked regularly on the moor and close to the site. It was only in 2015 that they first encountered motorcycles using the site and that was on a weekend very infrequently. When questioning the use with neighbours, they were told that the MX track had been made in the field many years previously for the use of local boys and their friends. AL considered this to be consistent with the low-key use she had witnessed and there was nothing to suggest the use was at a level over and above permitted development tolerances.

Conclusion, 2005-2015

58. There is no substantive evidence of any material or continuous use of the Land for MX for the period between 2005 - 2007. Whilst Mr Ramsey utilised the track from 2007/8 -2009 and this level of use was recorded by the NPA, the level of use from 2009 to 2014 is less clear. AG claims that during the period of his tenancy he had more than 200 paying riders a year, plus his own family and friends riding at least 120-135 days per annum. However, BMAG have provided evidence that would suggest this level of usage did not continue right through until AG left the site in November 2014. In addition, there is no corroborating evidence in the form of receipt of payments for the track use, insurance, lease agreements. Even if I determined that AG's version of events was sufficiently precise and unambiguous for the length of his tenancy (the exact dates of which are unclear), the failure to establish any material or continuous use between 2005-2007 means that the 10 year immunity period cannot be established and the use is not lawful through this passage of time.

Other Matters

59. I have taken into account the considerable number of letters of support which accompanied the Appellant's statement of case. Some of those letters included details of their author's personal knowledge of the site, and clearly demonstrate that it has been utilised for MX since the mid 1980's. However, none of those letters provide specific or detailed evidence on the level of use for each of the claimed immunity periods. The proforma letters primarily relate to the level of activity in the last few years, and do not provide precise evidence of continual unauthorised use for the claimed immunity periods. The weight that I can attribute to those letters of support is therefore minimal.

Conclusion on ground (d)

60. For the reasons set out above, I conclude, on the balance of probability, that the use has not become lawful due to the passage of time. The appeal on ground (d) fails.

¹¹ Proof of Evidence AL and Statement of MJE.

Appeal on ground (f)

61. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
62. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second is to remedy any injury to amenity which has been caused by the breach. The purpose of the notice in this case is to remedy the breach of planning control.
63. The requirements of the notice are to: a) cease the use of the Land for motocross scrambling as defined in Paragraph 3 of this notice; and b) remove from the Land all items and debris associated with the use, including but not limited to, advertisements, plant and machinery, caravans, porta-loos, fuel and water bowers. The Appellant contends that should his appeal on ground (d) fail, he should be able to continue to utilise the Land in accordance with permitted development rights available under Part 4 of the GPDO.
64. It is established case law that an enforcement notice cannot remove permitted development rights.¹² The purpose of enforcement powers is to confine or cease that activity which constitutes the breach. An enforcement notice cannot therefore be interpreted so as to make an offence out of a lawful activity, such as a temporary GPDO right. It is not therefore necessary for the notice to be varied to take account of those GPDO rights, as they operate as a matter of law within parameters that are certain.
65. The appeal on ground (f) therefore fails.

Overall Conclusion

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

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Tim Jones Of Counsel

He called

Mr Robert Spencer, The Appellant

¹² *Duguid v SSETR & West Lindsey DC* [2001] JPL 323

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover Of Counsel

She called

Mr Andrew Cook
BA(Hons)

Team Manager, Monitoring and Enforcement,
Peak District National Park Authority

FOR BONSALL MOOR ACTION GROUP:

Jonathan Easton of Counsel

He called

Mark Eddowes MA DPhil (Oxon) Local Resident

Paul Brown Local Resident

Alison Lea Local Resident

Catherine Foster Local Resident

DOCUMENTS submitted at the Inquiry

1. *R (Ocado Retail Ltd) v LB of Islington* [2021 PTSR 1833; [2021] EWHC 1509 (Admin)]
2. Satellite Image Bundle
3. *Secretary of State for the Environment, Terry Holding v Thurrock BC* [2002] EWCA Civ.226
4. Statutory Declaration Ian Hunt, dated 20 June 2022.
5. Ordnance Survey Extract of Appeal Site and Surrounding Area
6. Opening Statement on Behalf of the Appellant
7. Opening Submissions on Behalf of PDNPA
8. Opening on Behalf of Bonsall Moor Action Group
9. Closing Points on Behalf of Bonsall Moor Action Group
10. Closing submission on Behalf of PDNPA
11. Closing Statement on Behalf of the Appellant
12. Costs Application on Behalf of the PDNPA
13. Appellant's Submission on Costs

DOCUMENTS submitted after the Inquiry

1. Costs response on Behalf on PDNPA