



Appeal Decision

Site visit made on 12 December 2022

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal Ref: APP/F2415/C/22/3295174

Land at Sutton Circuits, Sutton Lane, Sutton in the Elms, Broughton Astley, Leicestershire, LE9 6QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Geoffrey Deacon against an enforcement notice issued by Harborough District Council.
 - The notice was issued on 11 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission the use of the Land, as an all-weather karting track with associated use of a building as a reception and pit area.
 - The requirements of the notice are: a. Cease the use of the land and associated reception building and pit area for use as an all-weather karting track; b. dismantle the all-weather karting track and remove resulting debris from the land to a licenced waste site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by replacing any reference to 09/00153/OUT with 11/00806/ETO. Subject to this correction, I allow the appeal and quash the enforcement notice.

Preliminary matters

2. The appellant submits that the notice is invalid because the Council's reliance on outline planning permission ref: 09/00153/OUT in its reasons for issuing the notice is, as a matter of fact, incorrect. The relevant permission is ref: 11/00806/ETO, which purported to extend the implementation period of the previous permission but was, in fact, a stand-alone permission. Whilst the appellant appears to be correct on this matter, I feel able to correct this reference without injustice to the parties as the two permissions are, in substance the same and raise similar issues in relation to my determination of the appeal.
3. The appellant also submits that, as the alleged development comprises both a material change of use and operational development, the notice should have referred to the breach as having taken place within the last four years. Whilst again this appears to be correct, it appears to have little bearing on either party's case. It does not appear to be in dispute that the present karting development has been operational since 1996 and therefore I see no purpose in correcting this aspect of the notice.

Appeal on ground (b)

4. This ground is that the alleged breach has not occurred as a matter of fact. However, I saw at my site visit a fully operational track, with karts and all associated equipment present in the reception building to make the use operational. There has plainly been use for karting and the appeal on ground (b) fails.

Appeal on ground (c)

5. As to whether the use is a breach of planning control, planning permission was granted in February 1996 for *the formation of all-weather karting track with associated earth works and erection of portal framed building for use as a reception area and pit area* (ref: 95/02058/3P). I understand the present track and reception building are as authorised by this permission and that the use has continued on site since 1996 without a material break.
6. In June 2011, outline planning permission was granted on the appeal site for *Erection of holiday lodges, creation of lake and erection of shop/office and other ancillary structures in relation to adjacent golf club (access, siting and scale to be considered)* (ref:11/00806/ETO). This was, in effect, to achieve an extension of time for a similar permission granted in May 2009 (ref: 09/00153/OUT), albeit that it was a stand-alone permission. A reserved matters application was approved in September 2014 for the development exactly as worded above (ref: 14/00495/REM).
7. A number of planning conditions on the June 2011 outline permission have been discharged but the Council has indicated that many remain outstanding. On the application form to vary conditions nos.10 and 18 of the outline permission (ref: 21/00089/VAC), the applicant indicated that the development had started on 25 August 2016. The Council's officer report indicated that this entailed the digging of a drainage trench. I was shown the location of this drain and an associated manhole cover during my site visit. Although there is no Lawful Development Certificate in place, the Council appears to accept that this operation was a material operation in the implementation of the 2011 permission for the purpose of S56(4) of the Act; its entire case is based on this assertion.
8. It is plain that it is physically impossible for both the 1996 karting permission and that of 2011 for the holiday lodges, lake etc to co-exist. However, even though the works to form the drainage trench might be deemed by the Council to be material in comprising the commencement of the 2011 planning permission, as a matter of fact and degree they are insignificant in the context of the continuing operation of the karting use. The works are beyond the operational area of the track and its associated facilities, and the only above-ground feature, the manhole cover, is barely visible in an otherwise large, grassed area beyond the periphery of the track.
9. I note that the Council has alleged recent non-compliance with conditions attached to the 1996 karting permission. However, that would not of itself render the present use unlawful; it is within the Council's power to address any breach of condition separately.

10. I conclude that, on the particular facts of this case, the continuing use of the site for karting does not amount to a breach of planning control and that the appeal on ground (c) should succeed.

Appeal on ground (d)

11. As indicated above, it is common ground that the track and associated building were constructed in 1996 and that their use for karting has continued, unbroken, to this day. Therefore, even if my analysis of the appeal on ground (c) is flawed, the appeal on ground (d) would have succeeded. It appears to me that there has never been any material departure from the karting use.

Appeal on grounds (f) & (g)

12. Having regard to the above conclusions, there is no need for me to go on to consider these grounds.

B S Rogers

INSPECTOR