



Appeal Decision

Inquiry held on 24 September 2024 and 2 October 2024

Site visit made on 2 October 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2024

Appeal Ref: APP/A0665/C/23/3315161

Tile Farm, Wicker Lane, Guilden Sutton, Chester, Cheshire CH3 7EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Tile Farm Off Road Limited against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 13 December 2022.
- The breach of planning control as alleged in the notice is without planning permission a material change of use of the Land from agriculture, haulage operation with associated vehicle parking, residential, livery stables, the keeping/exercising of horses to a mixed use of agriculture, haulage operation with associated vehicle parking, residential, livery stables, the keeping/exercising of horses and MX quad bike/off road bike riding, motocross track and clay pigeon shooting use ["the unauthorised development"].
- The requirements of the notice are to: (i) Cease the use of Quad Bike/Off Road bike riding, Motocross Track and Clay Pigeon Shooting use of the Land, within the area outlined in red on the attached map.
- The period for compliance with the requirements is: One calendar month.
- 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.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Applications for costs

2. At the Inquiry, an application for costs was made by the appellant against Cheshire West and Chester Council. This application is the subject of a separate decision.

Preliminary Matters

3. An enforcement notice has previously been issued by the Council on 27 April 2022 in relation to 'mixed use of land at Tile Farm for agriculture and quads/off road bikes and Clay Pigeon Shooting' (the April 2022 EN). This notice was appealed and quashed in September 2022, ref: APP/A0665/C/22/3299455. The notice was quashed because it did not describe all of the components of the mixed use taking place on the site.
4. The Inspector also considered an appeal against the refusal of an application for a certificate of lawful use or development, ref: APP/A0665/X/22/3295583. While that appeal did not succeed, this was on the basis that the uses applied for, which was for a mixed use for agriculture and quads/off-road bikes, did not reflect the true nature of the existing mixed use. The implication of this is that, while there are appeal decisions regarding the site, the lawfulness of the mixed use before me has not been determined at appeal to date.

5. A further application for a lawful development certificate (LDC) was submitted and refused in November 2022, however, this decision has not been appealed and is therefore not before me.
6. I note that a number of interested parties have raised concerns such as the effect of the appeal scheme on living conditions, the environment and highways. However, since the appellant has appealed under grounds (d) and (g), I am unable to consider the planning merits of the appeal scheme.
7. As set out above, an enforcement notice has previously been issued in respect of the site. Where an enforcement notice is issued under S171B(4) of the Act, the appeal under ground (d) must be considered on the basis of whether the development was lawful on the date of the first notice, or when the LPA first purported to take action. However, although an enforcement notice has previously been issued in respect of the site, the second bite provisions do not apply where the second enforcement notice encompasses a wider range of components than the aggregate of the components covered by the earlier enforcement notice. I do not consider the enforcement notice to be a second bite notice and so the relevant date is the date the enforcement notice was issued, namely 13 December 2022.
8. The Council advised during a Case Management Conference (CMC)¹ that it did not intend to test the appellant's evidence under oath or affirmation. It was therefore suggested by the parties that the evidence was given in a round table format. However, given the nature of the ground of appeal (ground d) and the submissions made by interested parties, I felt it necessary that factual evidence should be given under affirmation. The practical implication of this was that, while I did not cross examine the different witnesses, I was able to ask questions of each of the witnesses while they were under affirmation, which increases the weight I am able to give to that evidence.
9. Throughout the Inquiry, I gave both the Council and interested parties the opportunity to ask questions of the witnesses. Following the first day, a number of interested parties raised concern regarding the Council's decision not to cross examine and requested they be allowed to speak when the Inquiry resumed. I agreed to this and a number of interested parties spoke when the Inquiry resumed. In the interests of fairness, I allowed the appellant to recall one of its witnesses.
10. Significantly, during the Inquiry, the Council's planning witness gave their view that there was now sufficient evidence to show the material change of use had occurred as claimed, and as such, the breach was immune from enforcement. The Council has not sought to resile from the professional opinion given by its expert witness and confirmed in its closing submissions that it considers, overall, the standard has now been met. Despite this acceptance, the Council has not withdrawn the enforcement notice but rather it leaves the decision with me. There are numerous interested parties who have submitted representations in respect of the appeal and who participated during the Inquiry. Notwithstanding the Council's current position, I shall therefore go on to consider the appeal under ground (d).
11. The Council has provided me with copies of its letters of notification for the appeal and the hearing and a list of people notified of the appeal. A significant

¹ Held on 19 August 2024

number of interested parties has written in, in response to the appeal and a number of individuals attended the Inquiry. I therefore have no reason to doubt the Council's notification did not meet the statutory requirements.

Matters concerning the notice

12. I raised with the parties whether it was necessary to correct the allegation to refer to the different types of motorised vehicles using the track, rather than just 'motocross track' use. The appellant raised concern regarding the danger of being too specific. The Council suggested it did not object to a correction, so long as 'motorised vehicles' is kept. Having carefully considered the points raised by both parties, I consider it is unnecessary to correct the notice in this case.
13. I also raised with the parties whether, rather than requiring the quad bike/off road bike riding, motocross track and clay pigeon shooting use to cease, whether the notice should require the mixed use to cease. Section 57(4) of the Act would then enable the appellant to revert to the last lawful use and so there would be no injustice to either party. The appellant raised objection with this approach, since it would be left with uncertainty and concerns that long established uses could then be left vulnerable. It would also remove the appellant's ability to rely on under enforcement and would therefore cause the appellant injustice. Since the Council does not suggest that those other components of the mixed use are unlawful, I consider there no need to correct the notice in this regard.

Ground (d)

14. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
15. The main thrust of the appellant's case is that the material change of use to the alleged mixed use occurred before 13 December 2012 and continued, without significant interruption, for 10 years thereafter. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The materiality of change should be assessed in terms of the whole site concerned.
16. In *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Three broad categories of distinction have been suggested when considering the planning unit:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and

- The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
17. The Inspector, in respect of APP/A0665/C/22/3299455, found that the land to which the enforcement notice relates is a single planning unit which is within mixed use. The appellant occupies the entire site and there is little physical delineation between the different activities. Although some of the activities are weather dependent, as held in *Webber v Minister of Housing and Local Government* [1968] 1 WLR 29², intermittent or seasonal use for different purposes may amount to a mixed use. From the evidence before me and from my inspection of the site, I concur with the previous Inspector's conclusion that the appeal site comprises a single planning unit that is in a mixed use.
18. In a mixed use case, the use is a single mixed use with all its component activities. Where an additional primary use is added to an existing mixed use, the comparison is to be made between the previous mixed use and the mixed use with the additional primary use/s. If they are materially different, there would be a material change of use of the whole planning unit to a different mixed use. For an appellant to demonstrate that a mixed use is immune from enforcement action on the balance of probabilities under ground (d), they will need to show that the whole mixed use has taken place for ten years.
19. The Council does not dispute that the appeal site was previously in mixed use, nor does it suggest that the agriculture, haulage, residential, livery stables and the keeping/exercising of horses uses are unlawful. While some concern has been raised by interested parties regarding some of those uses, in particular granting an unfettered permission, where a lawful activity is referred to in an allegation, for example, as part of a mixed use, the enforcement notice cannot require it to cease, and so section 173(11) of the Act has no bearing upon it.
20. As established in *Swale BC v First Secretary of State* [2005] EWCA Civ 1568, a lawful use must be 'affirmatively established'. A use can only become lawful if it continues throughout the ten³ year period, to the extent that the Local Planning Authority could have taken enforcement action at any time⁴.
21. The appeal site is a substantial site, comprising around 250 acres of farmland, a farmhouse along with a complex of buildings and a moto-cross track. During my visit, I saw the track where the practice days take place. The track appeared well established, with permanent features, such as mounds, fencing and pallets. Within the Cherry Field, I saw safety cages, which are fixed into the ground and a number of traps, including traps which are substantial in size and weight. Tracks, which appear to have been created by vehicles travelling over them, were visible around the periphery of a number of the fields I visited.
22. Since the main areas of dispute are the quad bike/off-road bike riding, motocross track and clay pigeon shooting uses, I shall focus my attention on these activities.

² And confirmed in *Westminster City Council v SSCLG* [2015] EWCA Civ 482

³ The relevant immunity period

⁴ *Thurrock BC v SSETR* [2002] EWCA Civ 226 and *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886

Quad bike/off-road bike riding

23. Although the fields and the routes that have been used for a trek will have varied throughout the 10 year period, the appellant does not need to show that every corner of the site has been used for this activity over a 10 year period, rather the appellant must show that the site as a whole has been used over that period.
24. Kathryn Arden (KA) explained during the Inquiry that the off-road trails have been used by motorised vehicles, including quad bikes and 2-wheeled motorised bikes and that it has not been used for non-motorised bikes. In support of its case, the appellant has provided a range of evidence, such as social media posts, photographs, adverts and signage. Facebook posts dating back to 2010 include images of individuals participating in a quad trek. The appellant has also provided quad trekking records between 2011 and 2021.
25. The records detail the names and dates of groups who attended the site for a quad trek. KA confirmed during the Inquiry that the records relate to the appeal site and detail the dates a group participated in a trek. The number of days treks were carried out ranges from around 69⁵ to around 187 and in 2011/2012, was 95. While the number of treks and number of days carried out fluctuates over the period, the number of days this activity was carried out was not, in my view *de minimis*.
26. KA advised that the data provided was produced for the first LDC and that later years were not included because of when it was produced but that the use has continued to this very day and that the track has been used after 2021 in the same way as previously. The appellant's other witnesses also confirmed, under affirmation, that the site has been used for moto-cross/quad biking between 13 December 2012 and 13 December 2022. Indeed, I note that a number of interested parties do not appear to dispute the quad bike use.
27. Considering it in the round, in my view, the evidence shows, on the balance of probabilities, that the quad biking/off-road bike riding had become part of the mixed use by 2011. Although the precise routes the quads followed has varied and the number of days treks took place fluctuated, the evidence points towards the use continuing without significant interruption thereafter.

Motocross track

28. The motocross track is located to the east of the main farm building complex. Stuart Arden (SA) explained to the Inquiry that the area where the track is, was previously used for storing compost. This then evolved and in 2005, the track would have looked similar to how it looks now. SA advises that they allow people to bring their own bikes and quads usually on Wednesday afternoons as conditions allow – generally from March to October/November. This is broadly consistent with the statutory declaration in 2018 submitted by SA, which confirms they have used the land at the farm for motor cycle riding since 2005, as well as the sworn affidavit of Benjamin Arden (BA) and the evidence given by John Benson (JB) to the Inquiry⁶.
29. The appellant has provided a series of aerial images from 2011 to 2021. A track is clearly visible in the May 2011 image and, although aerial images are

⁵ 69 is the figure given for 2019/20, CD4.4.

⁶ Evidence given under affirmation during the Inquiry and a sworn affidavit.

not provided for each year since, a track remains visible in this location in the 2015, 2016, 2018, 2019, 2020 and 2021 images. While aerial images provide a snapshot in time, they are consistent with the appellant's case that the track has been used throughout this period: had the track been lightly or sporadically used, I would not expect it to be so clearly defined in each of the images provided.

30. The appellant has provided lists of people who have attended the site for a practice day on the practice track and dates from 2011 through to the end of 2021. The lists show that money was paid to use the track, suggesting that its users were not limited to family and friends, even in 2011. Although the level of detail varies between the documentation submitted, KA explained during the Inquiry that each entry relates to an individual who has used the practice track with either a motorised bike or a motorised quad bike.
31. Although the number of days the track has been used varies, as well as the precise number of users at any one time, at no point could its use be considered *de minimis*. KA confirmed the use of the track has continued since 2021 in the same way, and has provided bookings which support this suggestion. I have no evidence to show that the track lists are wrong.
32. The appellant has provided a number of insurance documents, which include varying descriptions of the activities insured and do not all include reference to the practice track. KA advised the Inquiry that she doesn't know why the descriptions in the insurance certificates varied, or whether some activities were not insured. However, this did not change the activities taking place within the site. KA gave evidence under affirmation. I found their evidence to be compelling and afford it significant weight.
33. Anthony William Robinson Bayman (AB) provided an affidavit and gave evidence under affirmation to the Inquiry. From 2008 to 2011, AB was involved in the provision of off road courses, as well as motorcycle ride days. From 2012, AB took part in the running of the practice track on a voluntary basis and from 2015 has been employed by the appellant to run practice days, as well as instruct and lead quad bikes and off road motorcycles around the land. I found AB's evidence convincing and consistent with other evidence provided, including photographs⁷ and aerial photography.
34. Geoff Fell (GF) gave evidence to the Inquiry, confirming their written statement to be true and advising that they are aware of and have ridden their off-road bike at the site since 2005. An interested party, Dean White (DW), also gave evidence under affirmation to the Inquiry, advising that they have used the track on Wednesdays from 2015. While GF and DW can only attest to the periods they were present at the site, their evidence is consistent with the appellant's case.
35. Social media posts refer to the track, including advertising its availability for use for both bikes (both enduro and trail bikes). For example, reference is made to a purpose made track within a post dated 27 February 2012. Another post, dated 9 March 2014, refers to the fact that the track will not be available weekends as some machines last year were to [sic] noisy and disturbed local residents.

⁷ For example, CD1.42

36. Various photographs have also been provided showing motorised bikes using the track, going back as far as 2005, which support the appellant's case. Photographs have also been provided showing motorbikes using the practice track and trails, including dated photographs going back to 1 August 2009⁸.
37. A number of interested parties ask me to draw a distinction between 'motocross bikes' and other 'trail type bikes'. During the Inquiry, I sought assistance from Mr Bayman (AB) to help me understand the difference between the different bikes used at the site, including motocross bikes, enduro bikes, trail bikes, trial bikes and buggies. It seems that while the precise design of a bike may vary, with the exception of buggies, they are all vehicles with two wheels and an engine.
38. The off-site impacts are likely to be markedly similar in terms of visual impact, noise generation, dust and so on. Attempting to distinguish between the different types of motorised bikes used on the site is therefore not one I consider should be made. Indeed, I note the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) uses the term 'motorcycle', which to my mind could encompass any one of the bikes referred to by both the appellant and the interested parties.
39. Moreover, AB confirmed that they have seen each of these types of bikes used within the site and has used them within the site on both the trails and track from 2005 until the present. KA also pointed to a number of photographs within the evidence which show motocross bikes being used within the site, dating back to 2006⁹.
40. I note the appellant has provided a poster which specifically states 'Sorry no moto-x or racing'¹⁰. KA advised during the Inquiry that this was intended to deter 'noisy bikes'. KA also advised that, one of the bikes shown in the images was in fact a moto-cross bike. Moreover, the advert is specifically for a 'Practice/training track for quiet quads and trail bikes'. KA advised that street signage did not advertise practice days or use of the site by bikes. While the appellant's advertising may have previously focussed on the quad trekking¹¹, the evidence clearly shows that the track and the trail has been used by bikes.
41. The precise design of the bikes used will, over the course of the years, have changed. Indeed, AB commented during the Inquiry how the design of bikes has changed since the activities first started. However, the way in which the track has been used, i.e., by motorised vehicles, has not.
42. Considering it in the round, in my view, the moto-cross track use became part of the mixed use when the physical changes were made to the land in 2005. While the evidence of use is limited prior to 2011, the evidence points towards the use of the track continuing without significant interruption thereafter.

Clay pigeon shooting

43. Ben Maddock (BM) gave evidence under affirmation at the Inquiry. BM runs a company, Aimforthesky, which runs corporate hospitality events. In 2012 the company was mobile and had a number of sites. BM confirmed that early in

⁸⁸ For example, CD1.43 and CD1.44 of the Appellant's evidence

⁹ For example, CD1.44 of the Appellant's evidence

¹⁰ CD3.46 of the Appellant's evidence

¹¹ For example, Clwyd and Chester MX Race Day programme 28 April 2013

2012 he attended a meeting on 16 February 2012 regarding clay pigeon shooting (CPS) and quad biking at the appeal site.

44. BM advised that safety cages were erected at the site in April 2012¹² and, following this, in June 2012 the local constabulary confirmed shooting could go ahead. Shooting then commenced in the summer of 2012, with the first paid shoot taking place on 14 July 2012. Emails and photographs are provided which support BM's evidence in this regard. This is also consistent with signed statements submitted by Mark Evans and Bruce Thomas (BT), as well as extracts of diary pages from BT's diary.
45. BM confirmed that safety cages have remained at the site since that time, albeit the ones erected in 2012 have since been replaced. Large traps are also stated to be kept at the site because of their size and weight. During my visit, I saw that the cages were firmly placed into the ground, enabling them to remain in place and that a number of large traps were located within the site, which were too heavy for a person to move.
46. The appellant has provided a breakdown of shoots which have been carried out at the site between 16 February 2012 and 13 June 2022. Bookings for Big Shoot customers do not go back to 2012, however, it is stated that bookings were regular and, given its use of the site in subsequent years, I have no reason to doubt this. The number of shoots each year was not, in my view, of a casual intermittent or an insignificant nature. Furthermore, there were physical features continually present at the site.
47. CPS has a different character to the other uses taking place on the site. The noise which is generated from the firing of a gun is very different to that which is generated by other uses taking place within the site. There are also potentially implications for users outside of the site, such as those using a public right of way, in terms of safety. While the site is substantial, I consider introducing the CPS activity, which is a primary use of the land, to the overall mix of uses, would have resulted in a material change of use.
48. Overall, I found BM's evidence to be convincing and consistent with the variety of contemporaneous documents submitted in support of the appeal. Considering it in the round, in my view, the CPS became part of the mixed use when the physical changes were made to the land in April 2012. Although the number of shoots fluctuated each year, the evidence points towards the use continuing without significant interruption thereafter.
49. While I have considered the different uses separately above, given my finding that the CPS became part of the mixed use on 20 April 2012, I find that the material change of use of the land to the alleged mixed use occurred on 20 April 2012.

Whether the material change of use would have been permitted by the GPDO

50. There is some suggestion that activity within the site would have been permitted by the Town and Country Planning (General Permitted Development) Order¹³ relevant at the time. Part 4, Class B of the GPDO permits the use of any land for any purpose for not more than 28 days in total in any calendar

¹² 20 April 2012 when BM attended the site with another instructor, Bruce Thomas.

¹³ Town and Country Planning (General Permitted Development) Order 1995 (as amended) and the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

year, of which not more than 14 days in total may be for the purposes of (b) motor car and motorcycle racing including trials of speed, and practicing for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use. Development is not permitted by Class B if the land in question is a building or is within the curtilage of a building.

51. The temporary permission granted by the GPDO is not a single permission that is granted afresh each calendar year. Its effect is to allow up to 28 (or 14) changes of use on each of the days permitted per year. Thus, there is a grant of as many planning permissions as there are changes of use up to that level. However, the allegation is a mixed use, not a temporary use of land and the land includes buildings, as well as the curtilage of buildings, which are specifically excluded from Class B. In my view, Part 4, Class B rights would not have granted permission for the alleged material change of use.
52. Moreover, while the level of activity within the site has fluctuated over the years, the evidence indicates that the material change of use occurred well in excess of either 14 or 28 days each year. There is also no evidence to show that the land within the motocross track reverted back to its normal permanent use. Consequently, I find that the alleged use is not a temporary use of the land and the use throughout the 10 year period would not have constituted permitted development.

Intensification

53. Much concern has been raised regarding a perceived 'intensification' of the use of the site, mostly in relation to the use of the track, and my attention has been drawn to noise complaints which have been made since April 2021. The intensification of a use may amount to a material change of use if and where that causes the character of the use to change in a fundamental way. It applies when the former and present uses can only be distinguished in terms of scale and effects related to scale.
54. The Council has provided me with an email from Public Protection, which detailed the number of individual complainants between 2021 and 2024, which shows there have been 13 individual complainants, as well as notifications from a Councillor that people have contacted them. Of the complaints submitted, the majority submitted complaints via a Noise App, with the remainder submitting emails. The Council has also issued an Abatement Notice in respect of statutory nuisance, which has since been withdrawn.
55. As pointed out by the appellant, April 2021 coincided with the country coming out of coronavirus lockdowns. The lockdowns placed varying restrictions on non-essential contact and travel, with more people being at home during the day and less activity, resulting in lower ambient noise generally. It is, in my view, a plausible explanation that people were likely to become more aware of noise coming out of lockdown, especially as from then on people were more likely to spend time working from home.
56. Furthermore, while there is limited information regarding noise complaints prior to 2021, it is clear complaints have been made. The appellant, for example, has provided me with a letter, dated 17 November 2006, from the Council, which refers to a complaint alleging that motorcycles and quad bikes are being ridden on the land causing a noise nuisance to nearby residents. Reference is

also made within the 2018 statutory declaration provided by SA to a Senior Planning Enforcement Officer visiting the land as the result of a complaint.

57. Reference is also made to noise restrictions in various social media posts, with one post requesting that users of the track use 'quiet pipes or keep the gears up and the revs down'. A post dated 9 March 2014, for example, advises that 'the track will not be available weekends as some machines last year were to [sic] noisy and disturbed local residents'.
58. KA explained during the Inquiry that they tend to do sessions on the track on a rolling basis, with bikes going out and then coming back in. The effect of this is that there is a maximum number of bikes which would be on the track at any one time. Consequently, even where the overall numbers of individuals attending the track on a given day is greater, the off-site impacts in terms of noise are likely to be broadly similar.
59. Third party suggestions as to when the activities started or were perceived to have intensified vary considerably and are likely to reflect when a particular individual became aware of the activities at the site. Furthermore, some of the interested parties who have written in, have expressed their support for the appellant's appeal, including a neighbouring landowner and individuals who stable their horses at the appeal site, who do not perceive noise to be a problem. This highlights the difficulty in relying on complaints in determining whether an increase in activity has resulted in a material change of use. Indeed, the Planning Practice Guidance (PPG) advises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected¹⁴.
60. While the number of complaints may have increased since 2021, this is likely to be as a result of a number of factors, including the effect of coming out of lockdowns, increased working from home and the ability to report complaints more easily¹⁵. From the appellant's track records, it does seem that there were a number of days towards the end of March and during April 2021 when track attendance appeared greater than in previous years. Indeed, Mr Bannister's Proof of Evidence makes reference to a visit by enforcement officers on 1 July 2021, during which officers were told there had been a surge in demand for the recreational uses of the land after the end of the Coronavirus lockdown (end of March 2021), but that the overall demand had since returned to normal (i.e., as it was before the lockdown).
61. However, as held in *Lilo Blum v Secretary of State for the Environment and Richmond-upon-Thames LBC* [1987] JPL 278 (QBD), mere intensification, if it fell short of changing the character of the use, would not constitute (a) material change of use. What must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the use that it amounts to a material change of use¹⁶.
62. Even where more riders were using the track or the trails, the character of the use did not, in my view, materially change. Individuals attend and use the

¹⁴ Paragraph: 006 Reference ID: 30-006-20190722

¹⁵ Complainants have been told by the Council to download an app, which allows them to report noise complaints.

¹⁶ *Hertfordshire County Council v Secretary of State for Communities and Local Government & Anor* [2012] EWCA Civ 1473

same track, using the same type of vehicles for the same purpose. The use of the track remained a primary use, which was being carried out at the site alongside the other uses comprised in the mixed use and the character of the overall mixed use did not change. Similarly, while the routes that quad bikes and bikes using the trails will have changed over the years, the character of that use did not materially change, nor has it resulted in a change to the character of the overall mixed use.

63. A number of interested parties have drawn my attention to information on Companies House, which shows that Tile Farm Leisure Limited has only been operating since 2015. KA explained during the Inquiry that they pushed for the off road diversification to become a limited company and used a dormant company their parents had set up to do this. However, KA advised that this had no effect on the day to day activities of the appeal site. The evidence provided and referred to above supports this.
64. During the Inquiry, I heard evidence from a number of different witnesses, which I found to be convincing, particularly when considered alongside the various documentary evidence submitted. Drawing everything together, in my view, the evidence shows, on the balance of probabilities, that the quad biking and the use of the moto-cross track had been added to the overall mix of uses by 2011 and that the clay pigeon shooting use was added to the overall mix of uses by 20 April 2012.
65. The material change of use to a mixed use of agriculture, haulage operation with associated vehicle parking, residential, livery stables, the keeping/exercising of horses and MX quad bike/off road bike riding, motocross track and clay pigeon shooting use therefore occurred on 20 April 2012 and continued without significant interruption thereafter. There has been no significant cessation in the mixed use and no intervening material change of use of the planning unit, including in the composition of the mixed use during the ten year period.
66. The Council could have taken enforcement action at any time within a 10 year period but failed to do so. Consequently, the appeal under ground (d) succeeds.

Conclusion

67. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeal on ground (g) does not fall to be considered.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Piers Riley-Smith of Kings Chambers

They called:

Kathryn Arden

Anthony William Robinson Bayman

Ben Maddock

Stuart Arden

Geoff Fell

John Benson

Pet Twigg of Planning Angel

FOR THE LOCAL PLANNING AUTHORITY

Elana Kaymer of Kings Chambers

Edward Bannister

Catherine Reay

INTERESTED PARTIES

Dean White

Mr Cooper

Clare Mallon

Heather Bennett

William Parker

Nina Houghton

Christine Haslam

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's opening statement
2. Appellant's opening statement
3. Written submission of Mike Cooper
4. Statement on behalf of local residents
5. Council's closing statement
6. Appellant's closing statement
7. Appellant's costs application
8. Council's costs response