



Appeal Decision

Inquiry held on 27, 28 January 2026, and 5 February 2026 (virtual session)

Site visit made on 28 January 2026

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2026

Appeal Ref: APP/W1850/C/23/3327265

Land at Riley Hill Farm, Cradley, Malvern WR13 5JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Richard Hyett against an enforcement notice issued by Herefordshire Council.
 - The notice was issued on 14 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission the creation of a motocross track with jumps within the area of land outlined in red on the accompanying plan.
 - The requirements of the notice are:
 1. Level the land used to create the jumps.
 2. Re seed the track with grass seed.
 - The periods for compliance with the requirements are:
 1. 6 months.
 2. 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by:
 - In section 5 the deletion of “2. Re seed the track with grass seed”.
 - In section 6 the deletion of “2. 9 months”.
2. Subject to the above variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. A Case Management Conference (CMC) was held online on 26 November 2025 with representatives of the appellant and the Council. The CMC was held to discuss the arrangements for the Inquiry and not the merits of the appeal.
4. The appeal was originally made on ground (d) only. However, it was clear from the written submissions that the appellant also considered that the requirements of the notice were excessive. The appellant subsequently confirmed at the CMC that an appeal under ground (f) was also made, and the Inquiry proceeded on that basis.
5. The Inquiry commenced on 27 January 2026 and was programmed to sit for 2 days. However, an additional sitting day was required to hear closing submissions. This was held virtually on 5 February 2026. All oral evidence to the Inquiry was given by sworn affirmation.

6. In addition to the enforcement notice out of which this appeal arises, a second enforcement notice (“the 2025 notice”) dated 5 September 2025 was also issued in relation to the appeal site. The 2025 notice alleged “*the unauthorised material change of use of land for the purposes of motorcycle racing including trials of speed and practising for these activities*”. An appeal¹ was made against the 2025 notice and initially both appeals were due to be heard at the Inquiry, however the 2025 notice was formally withdrawn by the Council on 5 November 2025.
7. As a result, the only matter before the Inquiry was the alleged operational development as set out in the banner header above. As the notice does not allege a material change of use of the land, whether the use of the land for motorcycle racing was lawful could not be addressed within the confines of the Inquiry. Similarly, in the absence of an appeal under ground (a), the planning merits of the operational development attacked by the notice did not fall to be considered.

The Notice

8. The appellant claims that the notice is a nullity or invalid as there has been a fundamental misstatement of the alleged breach of planning control. Section 173 of the Town and Country Planning Act 1990, as amended, (“the Act”) states what an enforcement notice shall include². The Act does not specify the consequences of failing to comply with section 173, but section 176(1) provides a power to correct defects, errors or misdescriptions, provided no injustice to the appellant or local planning authority would be caused.
9. An enforcement notice is a nullity if it is so defective on its face that it is without legal effect. A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead*³ and *Oates*⁴.
10. The allegation is stated as “*the creation of a motocross track with jumps within the area of land outlined in red on the accompanying plan*”. It is clear that a single motocross track (with jumps) has been created on the land identified by the enforcement notice. The notice clearly identifies the alleged breach of planning control, and a correction to the allegation is not necessary.
11. Whether the motocross track has been in situ for such a period of time that it is now immune from enforcement action, including whether the works undertaken in September 2019 amounted to the creation of a new motocross track or the modification of an existing track, is a matter more appropriately dealt with under ground (d) below. Similarly, the appellant’s argument that the requirements of the notice are excessive as they fail to acknowledge that a fall-back position is available that would allow the reversion to a previous track layout, is better dealt with under ground (f).
12. To conclude on this matter, the notice complies with the statutory requirements under section 173 of the Act, and I find that it tells the recipient fairly, what he has done wrong and what he must do to remedy it. It is not hopelessly ambiguous or uncertain, and I do not consider it to be a nullity or otherwise invalid.

¹ APP/W1850/C/25/3373624

² Section 173(1) says that an enforcement notice shall state (a) the matters which appear to the local planning authority to constitute a breach of planning control. Section 173(2) says that a notice complies with section 173(1)(a) if it enables any person on whom a copy of it is served to know what those matters are.

³ *Miller-Mead v Minister of Housing and Local Government* [1963] 2 WLR 225

⁴ *Oates v SSCLG & Canterbury CC* [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251

Ground (d)

13. For the appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late to take enforcement action. The burden of proof is on the appellant, and the relevant test is on the balance of probability. My consideration of this ground (d) appeal is confined to the matter of operational development to create a motocross track with jumps.
14. It is not disputed that the operational development attacked by the enforcement notice was substantially completed prior to 25 April 2024, before the legislative changes to time limits came into effect. Therefore, no enforcement action can be taken after a period of four years beginning with the date on which the operations were substantially completed. As the notice was issued on 14 July 2023, the appellants need to demonstrate, on the balance of probabilities, that the development had been substantially completed on or before 14 July 2019.
15. There is unequivocal evidence, not least from the various Aerial images produced⁵, to demonstrate that there has been a motorcross track with jumps at the appeal site since at least 2010. It is also not disputed that works were carried out at the appeal site in September 2019.
16. The key matter in this ground of appeal is whether the works carried out in September 2019 resulted in the creation of a new motocross track (with jumps) or were the “modification” of an existing motocross track. If, as is the Council’s case, those works amount to the creation of a new motocross track then the development would not be immune from enforcement action. However, should I find that those works were simply the “modification” of an existing track then, taking the enforcement notice at its most benevolent, the only works which would not be immune would be those that took place in September 2019.
17. To assess the extent of the works that took place in September 2019, and consequently whether they amounted to the creation of a new motocross track, I must first assess what existed on site prior to those works taking place. The first sign of a motocross track with jumps at the appeal site can be seen in an aerial image dated December 2009 produced in Appendix 2 of the Proof of Evidence (PoE) of Mr Tansley (MT). At that time a small number of jumps are visible on the land and although there is little evidence of a “formal” track having been created, a faint outline of a track or route around the field can be seen.
18. By the time of the aerial image dated 30 August 2010 produced in Appendix A of Dr Chris Jones (CJ) representation, a clearly formed motocross track is visible at the appeal site. Save for a relatively minor change to one bend towards the southern end of the track, the aerial images dated July 2013, May 2017, July 2017, June 2018, September 2018 and October 2018 produced in Appendix 2 of MT PoE all show the same track. Put simply, between July 2013 and October 2018 there appears to have been very little, if any, changes to the size or route of the motocross track.
19. In terms of jumps created around the motocross track, it is difficult to gauge the exact number of jumps or their size and height from the various aerial imagery. I am satisfied though that there are jumps visible on the aerial images produced by MT. This is further evidenced by the photographs from 2011 submitted by the

⁵ Including Appendix 2 of Mr Tansley Proof of Evidence, and Appendix A of Mr C Jones representation dated 19 October 2025

appellant Richard Hyett (RH) on the first morning of the Inquiry and the video taken from a drone in April 2019 that was produced by CJ. Both of these clearly showed the existence of jumps on the track.

20. However, following the works carried out in September 2019 the length and route of the motocross track, along with the number and location of the jumps contained along it, changed significantly. MT stated in his PoE that following the works 70% of the track was now in a different location, as well as being noticeably longer and wider. The appellant, including his Planning Consultant Mr Hutchinson (KH), did not dispute the figures produced by the Council. Indeed, it is very clear that much of the track is now located in a different location to what it was pre-September 2019, and that its length and width have increased.
21. The appellant produced a colour coded plan⁶ which sought to identify the jumps on the track both before and after the September 2019 works. The plan identified the location of existing jumps, stipulating whether they were installed in 2019 or were pre-existing, as well as the location of previous jumps which had been removed. During cross examination RH explained that as the plan had been done from memory, he had made a couple of errors in respect of which jumps had been installed in 2019. In the end RH confirmed that he considered there to be six pre-existing jumps, with five new jumps created in September 2019.
22. RH further confirmed that the new September 2019 works were carried out using a six-way bladed bulldozer, which was used to move soil around the site to form the jumps. Although some interested parties disputed the appellant's contention that these works took eight days, it is nevertheless clear that, by virtue of the type of machinery involved, the scale of the works, and the use of an expert to design and form the new track layout, they constituted an engineering operation.
23. In addition to the five new jumps, RH also confirmed that two of the pre-existing jumps were modified including their height being raised. Whilst CJ's opinion that some jumps were now three times higher than they were previously was disputed, RH accepted that their height had been increased. In my view, these modifications constitute operational development and as a result only four of the jumps remain on site as they did prior to the September 2019 works.
24. The Council has no evidence to contradict or otherwise make the appellant's version of events less than probable. Therefore, when taken together along with all other available evidence including the various photographs and aerial images, I am satisfied that this is an accurate reflection of the works undertaken to the eleven jumps (four pre-existing, two modified, and five new) referred to on RH colour coded plan.
25. Nevertheless, I fundamentally disagree with the appellant's view that there are only eleven jumps on site. Following my site visit it is clear that the appellant has only marked the "larger" jumps on the colour coded plan. In addition to those referred to by the appellant there are a significant number of smaller man-made features on the track which are referred to as "rhythm sections" or "rollers". Whilst they are not of the same height as the eleven jumps shown on the appellant's plan, they are a raised section of ground that have clearly been formed using machinery that motocross riders would jump over.

⁶ Appellant's plan RH1

26. CJ stated when giving his evidence that following the September 2019 works there were now twenty-one jumps on the track. I consider this to be a far more accurate reflection of what exists on site. To be blunt, I find the appellant's claim that there are eleven jumps on the track to be wholly inaccurate. Given that the vast majority of the jumps not shown on RH colour coded plan are located on parts of the track that did not exist before the September 2019 works, they were clearly constructed at that time or at some point thereafter.
27. The appellant also sought to distinguish between the creation of the jumps and the forming of the track itself. RH explained that the track was formed by scraping the surface of the ground with a 3-metre-wide power harrow, and that the track needed to be 6 metres wide to meet the necessary racing regulations. KH argued that this did not amount to development for the purposes of section 55 of the Act. However, I do not concur with that view.
28. In my judgement, the forming and alignment of the track route was part of a single operation along with the creation of the jumps themselves. It is highly improbable that one would exist without the other, and the evidence indicates that the works were undertaken at the same time. I acknowledge that it would be possible to alter the layout of parts of the track, although there is no evidence before me to suggest that this has occurred post September 2019. Whilst the width of the track may now be wider than it has been previously to meet regulations, and the power harrow may be taken over the track before races to "prepare" it, none of these matters alter my view that the works are part of a single operation. Similarly, the fact that the track and jumps have grassed over following a period of non-use is not itself indicative of the works not amounting to development.
29. Irrespective of the above, the appellant argues that six of the jumps are immune from enforcement action in any event. This is because they have existed since before the September 2019 works and consequently have been in situ for more than four years prior to the date the notice was issued. For the reasons I have already set out above, given the fact that two of these jumps were modified and raised in height in September 2019, in my judgement there are only four "pre-existing" jumps remaining.
30. The Council has referred to the cases of *Oates* and *Hewlett*⁷ in support of their position that the September 2019 works resulted in the creation of a new motocross track. The Council argue that there is no requirement in law for there to have been the total demolition of the previous track, or for there to be no parts of the old track incorporated into the new one, for it to be considered a new track. The appellant's position is that *Oates* and *Hewlett* are of little assistance to the Council, as they concerned the erection of new buildings and it was emphasised that every case will be fact specific.
31. However, whilst this appeal does not relate to the erection of a building, in my view the principles set out in *Oates* and *Hewlett* are still applicable. For the reasons I have already set out above, I find that the totality of the works undertaken in September 2019 amounted to operational development.
32. Aside from being located within the same field, the current track bears very little resemblance to that which existed previously. Approximately 70% of the track is in a different location on the land, it takes a different route and is significantly longer.

⁷ *Hewlett v Secretary of State for the Environment v Brentwood DC* [1985] WL 311159

There are now a significant number of jumps on the track, around twenty in total, the majority of which are located on parts of the track that did not exist pre-September 2019. I acknowledge that four jumps have survived unaltered from before the September 2019 works. However, they represent a small percentage of the total number of jumps and of the overall motocross track. When considering the totality of the works undertaken, I find that they go well beyond what could reasonably be described as the “modification” of an existing motocross track.

33. Consequently, as a matter of fact and degree, I find that the works that took place in September 2019 resulted in the creation of a new motocross track. Whilst some elements of the previous track have been retained, the amount of new development that has taken place, including the creation of new jumps and significant changes to its size and layout, mean that those elements have been incorporated into what is physically a new motocross track.
34. I therefore conclude that the original track ceased to exist as a result of the September 2019 works. Those works, which were completed by around late September 2019, resulted in the creation of an entirely new motocross track. Accordingly, the appellant has failed to prove on the balance of probability that, on the date the enforcement notice was issued, no enforcement action could be taken in respect of the operations to create a motocross track with jumps. As a result, the ground (d) appeal fails.

Ground (f)

35. For the appeal to succeed on ground (f), I must be satisfied that the steps required to comply with the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control.
36. The appellant contends that the requirements are excessive as they fail to take into account that several of the jumps have been in situ for more than four years prior to the issue of the notice and therefore are immune from enforcement action. Instead, it is argued that the notice should require the track to be returned to its condition prior to the September 2019 works.
37. As already set out above, I appreciate that there was a pre-existing track at the appeal site. Considering my findings on ground (d), the original pre-September 2019 motocross track no longer exists. Most of that track has been removed and the works carried out in September 2019 resulted in the creation of an entirely new motocross track. Consequently, any lawful rights that may have been attached to the original pre-September 2019 track were lost when it ceased to exist and the “new” motocross track replaced it.
38. The breach of planning control can only be remedied by the removal of the motocross track with jumps. The Council considers that this would be achieved by levelling the land used to create the jumps and by re-seeding the track with grass seed.
39. In view of my finding regarding the jumps which survive from the previous motocross track, the levelling of the land used to create the jumps is not excessive and is necessary to remedy the breach of planning control. No lesser steps have been drawn to my attention by the appellant nor are there any obvious alternatives.

40. The appellant argues that the requirement to re-seed the track with grass seed is excessive, given that the track has already largely re-established itself as grassland during the period of non-use since enforcement proceedings began. I agree. It was clear from my site visit that much of the track has already grassed over following this period of non-use. There is nothing before me to indicate that the same would not occur following the works to level the land used to create the jumps. Whilst the sowing of grass seed would ultimately end in the same result, the returning of the land to its previous condition as grassland will occur naturally and with less cost and disruption to the appellant.
41. I shall therefore delete requirement 2), as well as the reference to requirement 2) in the corresponding time for compliance. To this limited extent, the appeal on ground (f) succeeds and the notice will be varied accordingly.

Conclusion

42. For the reasons given above I conclude that the appeal fails, save for a limited extent under ground (f). I have therefore upheld the enforcement notice as varied.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Lois Lane Counsel, instructed by Amy Richardson of Ashtons Legal LLP

She called:

Richard Hyett Appellant

Keith Hutchinson Hutchinsons, Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Arevik Jackson Counsel, instructed by Herefordshire Council

She called:

Mark Tansley Development Manager, Herefordshire Council

INTERESTED PARTIES:

Mark Molloy Local Resident

Chris Jones Local Resident

David Chadwick Local Resident

Teresa Bishop Local Resident

Alison Walford Local Resident

Jean Emberlin Local Resident

Michael Dunsmore Friend of Community Action Group

Philip Davies Local Resident

David Mason MX Bike Rider

Robert Baker Chairman of Cotswold MX Club

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Three photographs provided by the appellant
2. Written representation from David Chadwick
3. Rebuttal evidence of Herefordshire Council
4. Written representation, two aerial images, and an annotated plan of the motocross track from Michael Dunsmore
5. Letter from Chris Jones
6. Opening submissions on behalf of Herefordshire Council
7. Opening statement on behalf of the appellant
8. Closing submissions on behalf of the appellant
9. Closing submissions on behalf of Herefordshire Council