

Appeal Decisions

Inquiry held on 3-5 and 30 November 2015

Site visit made on 30 November 2015

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 March 2016

Appeal Ref: APP/H1033/X/14/3000341

Buxton Raceway, Dale Head Lane, Brandside, Buxton SK17 0RR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ian Matthew Watson against the decision of High Peak Borough Council.
 - The application, dated 30 October 2013, was refused by notice dated 9 May 2014.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is breach of condition in relation to application HPK/0002/8002.
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Appeal Refs: APP/H1033/C/14/3000606, 608 and 612

Buxton Raceway, Dale Head Lane, Brandside, Buxton SK17 0RR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Buxton Raceway Limited, Mr Richard Moss and Summerville Limited against an enforcement notice issued by High Peak Borough Council.
 - The notice was issued on 20 October 2014.
 - The breach of planning control as alleged in the notice is:
 - 3.1 The previous use of the land, to use a circuit racing track on 40 days a year and a speedway track for speedway racing, has materially changed and the land is now used without planning permission for a mixed and intensified 'Motor Sports' use (where the term 'Motor Sport' shall be defined as the use of any motor cycle or motor vehicle for the purposes of either racing, competition, jumping or negotiating obstacles, a display for entertainment, leisure/recreation, trials of speed, or the testing, practice or training for any of these activities);
 - 3.2 The new mixed or intensified 'Motor Sports' use takes place on wider areas of land, beyond and as well the circuit racing and speedway tracks, which includes the part of the land that has been outlined in blue on the attached plan numbered BR1 (the Blue Area);
 - 3.3 To support the 'Motor Sports' use now taking place in breach of planning control the following have been introduced onto the land:
 - (a) Purpose built dirt tracks which, for identification purposes only, are shown outlined and hatched over in orange on the attached aerial photograph numbered BR2 (the Dirt Tracks);
 - (b) A number of moveable freight containers that are used for storage (the Freight Containers).
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- The requirements of the notice are:
 - 5.1(i) Cease using the Blue Area, referred to at 3.2 above, for 'Motor Sports';
 - 5.1(ii) Cease using the land, outside of the Blue Area, permitting the use of, arranging, allowing or otherwise failing to prevent its use, for 'Motor Sports' on more than a maximum of 40 days per calendar year;
 - 5.1(iii) Cease keeping and using freight containers on the land for storage;
 - 5.2(i) Remove from the land all of the dirt tracks, referred to at 3.3(a) above, and restore the grassed surface of the land by reducing, spreading and levelling high ground, where piles and mounds of earth have been created, and filling in areas of dug out or excavated ruts, troughs or low ground to create a regular and even ground surface. Sow grass seed across the ground surface.
 - 5.2(ii) Remove from the land all moveable freight containers that are used for storage.
 - The period for compliance with the requirements is 7 days for 5.1(i) and 5.1(ii), 14 days for 5.1(iii) and 5.2(ii), and 28 days for 5.2(i).
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered.
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Decisions

Appeal Ref: APP/H1033/X/14/3000341

1. The appeal is dismissed.

Appeal Refs: APP/H1033/C/14/3000606, 608 and 612

2. The enforcement notice is corrected by:
 1. the deletion of 'and a speedway track for speedway racing,' in section 3.1 of the notice;
 2. the deletion of 'beyond and as well the circuit racing and speedway tracks,' in section 3.2 of the notice;
 3. the deletion of '(b) A number of movable freight containers that are used for storage (the Freight Containers)' in section 3.3 of the notice;
 4. the deletion of text after '40 days per year' in section 4.1 of the notice;
 5. the deletion of 'either' and 'or speedway track' in section 4.2 of the notice;
 6. the deletion 'and the Freight Containers' in section 4.3 of the notice;
 7. the deletion of item (iii) in section 5.1 of the notice;
 8. the deletion of item (ii) in section 5.2 of the notice;
 9. the deletion of '5.1(iii) & 5.2(ii) 14 days after this notice takes effect' in section 6 of the notice;
 10. the substitution of Plan BR 1 attached to the notice by the Plan attached to this decision.
 3. The enforcement notice is varied by:
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1. the deletion of text after 'and restore the' in section 5.2(i) of the notice and the substitution instead of 'land to its former condition';
 2. The deletion of '28 days' in section 6 of the notice and the substitution instead of '9 months'.
4. Subject to the corrections and the variations the appeals are dismissed and the enforcement notice is upheld.

Procedural matter

5. All evidence at the Inquiry was given under oath.

Background information

6. Buxton Raceway, the land that is the subject of the appeals, is in a remote countryside location on high ground above Buxton. It is on the north side of, and is accessed from, Dale Head Lane. At the north end of the land is a speedway track that has its own ancillary facilities. Between the speedway track and Dale Head Lane, and occupying roughly the east half of the land, is an oval circuit racing track with ancillary facilities, buildings and pit area. The western half of the land, the Blue Area, is the location of two motor sport uses, a 4x4 driving track and a motorcross track, that were introduced onto the land in the years immediately prior to issue of the enforcement notice

Matters accepted by and agreed between the main parties

7. The Appellants in the enforcement appeals accept that the 4x4 driving and motorcross uses of the land are, in themselves, breaches of planning control. They accept that the uses must cease and that the land must be restored, where the motorcross track has been created, to its previous condition.
8. The Council accepts that the freight containers on the land used for storage should not have been mentioned in the enforcement notice. The notice has therefore been corrected by the deletion of references to the freight containers.
9. The Council accepts that the speedway circuit use, which is self-contained and an independent operation, is immune from enforcement action. It was therefore agreed at the Inquiry that the speedway use of the land should be deleted from being included in the breach of planning control alleged in the enforcement notice, that all other references to the speedway use should be deleted from the notice, and that Plan BR1 should be replaced by a plan that excludes the speedway track and ancillary areas from within the red line that identifies the land to which the notice relates.
10. Neither main party nor the operators of the speedway circuit are prejudiced by the consequences of the accepted and agreed matters or by the necessary corrections to the enforcement notice.

Reasons

Appeal Refs: APP/H1033/C/14/3000606, 608 and 612

The ground (b) appeals

11. Taking the agreed and accepted matters mentioned above into account the ground (b) appeals relate to the circuit racing track. The first reason for issue of the enforcement notice refers to planning permission 028002, which was granted

in 1989 for the use of the circuit racing track subject to conditions. Condition 7 of the permission states that 'The site shall be used for motor sports on a maximum of 40 days per year'. The operators of the circuit racing track have always assumed that condition 7 relates to competitive events and excludes use of the track for practicing and training and all other non-competitive activities. The Appellants thus assert that the number of competitive events has not exceeded 40 in any year and that, therefore, there has been no breach of condition 7.

12. The circuit racing track has been used throughout the ten year period for, mainly, stock car, hot rod, banger and junior ministox racing. Some of the racing involves contact between cars whilst others are non-contact races. Many of the racing events are qualifying rounds in regional, national, British or world championships and occur at weekends and on Bank Holiday Mondays. The track has been used throughout the ten year period for mid-week practice and running-in sessions but the starting point to assess the number of days on which the circuit racing track has been used in each year of the ten year period are the events programmes (EP) for the ten years from 2005 to 2014.

13. Each EP lists scheduled events, which generally start around midday and last for about 4-5 hours, and pre-season practice days in each season, which runs from early March to late November. For the ten years there were the following number of advertised events and practice days:

	Events	Practice Days
2005	21	1
2006	20	1
2007	21	2
2008	25	2
2009	27	2
2010	23	2
2011	24	2
2012	28	2
2013	27	3
2014	29	

Note : The EP for 2014 did not indicate any early season practice days.

14. The EPs indicate a generally consistent, though gradually rising, use of the circuit racing track for scheduled events during each season for stock car, hot rod, banger and junior ministox racing. But in 2010 these types of motor racing were supplemented by a form of motor racing known as 'drifting'. Drifting is the same as other types of racing at the track in that the races use the same oval track, start and finish at specified points, and involve driving around the track for a specified number of laps as quickly as possible. Drifting differs from other types of racing only in the types of cars used and, principally, in the method employed by drivers to turn through the 180 degree bends at each end of the oval track; the cars skid round the bends. However, there is no material difference between drifting and other types of motor racing at Buxton Raceway.

15. In 2010 the EP indicates that there were 7 drifting events during the season, all on Sundays and all starting at 0900 hours. This was repeated in 2011, though one of the events was on a Saturday. In 2012 the EP indicates that there were 18 drifting events on Saturdays and Sundays over nine weekends during the season. This was repeated in 2013. Throughout 2010-2013 each drifting day comprised practice in the morning, starting at 0900 or 1000 hours, with races in the afternoon. In 2014 there were 8 drifting weekends featuring 'practise on Saturdays with a competition on Sunday'.

16. The drifting events in each of the five years from 2010 to 2014 were in addition to the other events listed above. In 2012 there were a total of 46 events and in 2013 there were 45 events. Condition 7 was therefore breached in these two years and was not, technically, breached in 2014 only because practice and competition were on separate days over the 8 weekends. However, even accepting the Appellants' assertion, the condition has been breached.

17. The Appellants case includes the assertion that practicing and the running-in of cars are essential elements of participation in motor sport activities. If these activities are essential to the motor sport use of the circuit racing track, and the motor sport competitive events cannot be carried out without prior practicing and running-in, then the days on which they occurred must be counted as days on which the motor sport use of the track occurred. The Appellants' Agent has stated in this regard that "...the 40 days restriction has never been complied with" and, summarising the evidence of the Appellants' witnesses, "This adds up to a minimum number of days/occasions of 124 per racing season" that the circuit racing track is in motor sport use. On the Appellants own evidence condition 7 of planning permission 028002 has been breached.

18. The breach of planning control has therefore occurred and the ground (b) appeals thus fail.

The ground (d) appeals

19. For the ground (d) appeals to be successful the Appellants must demonstrate that the breach of planning control has subsisted for in excess of a ten year period and that, during the ten year period and in this case, there was no material change in the use of the circuit racing track. The burden of proof falls on the Appellants though the conclusion may be reached on the balance of probability. The relevant ten year period is 20 October 2004 to 20 October 2014, the date of issue of the enforcement notice.

20. Intensification of a use of land can result in a material change of use and it is this factor that is clearly and properly stated in the alleged breach of planning control as being relevant in this case; "...the land is now used without planning permission for a mixed and intensified 'Motor Sport' use...". The reference to 'mixed' in the allegation is not relevant for the purposes of the ground (d) appeals because the 4x4 driving and motorcross uses of the land have been set aside.

21. The drifting events in each of the five years from 2010 to 2014 were in addition to the other events listed above and it is informative to compare activity in two of the years of the ten year period; one before and one after drifting was introduced. In 2007 there were 23 events and in 2012 there were, in total, 48 events. So a gradual increase in traditional events and the introduction of drifting resulted in there being 25 more events in 2012 than there were in 2007. The number of events more than doubled in number from 2007 to 2012.

22. In the months of March to November there are 39 weekends; some followed by Bank Holiday Mondays. In 2007 there was an event at Buxton Raceway on each of 21 of the 39 weekends and on no weekend, including Bank Holiday weekends, was there more than one event. In 2012 there was an event on each of 33 of the 39 weekends and on 12 of the 33 weekends there was an event on both days of the weekend or on two of three days of a Bank Holiday weekend. One or more of the scheduled events in any of the ten years might have been cancelled due to inclement weather conditions but these would have been re-scheduled to fulfil obligations to competition organisers. The number of scheduled events in each of the ten years can therefore be accepted as being accurate.

23. The Appellants and their witnesses have all given evidence on practicing at Buxton Raceway. In short, every scheduled weekend event or events is preceded by a practice day and practice takes place during the week mainly on Thursday evenings but also on an *ad hoc* basis. Mr Pierce, who was Director and Events Promoter of Buxton Raceway from September 1999 to May 2010, has stated that there were during that period two weekday practices in addition to a regular three hour Thursday evening session. Mr I Watson replaced Mr Pierce as Events Promoter and remains in this role to the current day. He has detailed a similar pattern of practicing though he has indicated that the Thursday evening sessions occurred only during the 17 weeks from May until the end of August.

24. Practicing, as asserted by the Appellants, is essential for all forms of motor sport, as it is for all forms of competitive sport. There can therefore be no doubt that midweek practicing has been a constant feature of motor sport activity at Buxton Raceway. Though the pattern of practicing throughout the ten year period is likely to have remained relatively constant there is virtually no documentary evidence to corroborate the verbal and written evidence given by the Appellants, their witnesses, and their supporters, on this matter. This is surprising. The only evidence, in fact, is the scheduled pre-season practice days detailed on the EPs.

25. There is no documentary evidence of the claimed booking procedure for mid-week practice sessions. There is also no documentary evidence of the practice sessions themselves, of advertising for the practice sessions, of wages paid to employees, of PAYE tax payments, of insurance certification, of health and safety records, of invoices paid for equipment and services, of income and expenditure, or of any other aspect of the motor sport use of the land and the business operation at Buxton Raceway. It is surprising that there is no substantive evidence but it is especially surprising that there is no evidence at all, other than the EPs; not even one document.

26. The Appellants' evidence on practice sessions at Buxton Raceway is their sworn written and verbal evidence and the same of their witnesses. They paint a similar picture but the picture is imprecise. For instance, referring back to a previous paragraph, Mr Pierce and Mr I Watson refer to Thursday evening practice sessions but the latter states that these were on 17 weeks in the year whilst the former states that these are during summer months on lighter evenings. This discrepancy in evidence is mentioned because, potentially, it makes a difference to the number of days in the year that there has been use of the circuit. Evidence on other mid-week practice sessions is more imprecise.

27. Sworn verbal and written evidence provided by residents of the area who live within 2 kms of Buxton Raceway paint a different picture though, between them, a similar picture. There is no reason to doubt, as a generality, that the

sound of motor sport activity at the circuit will be audible, at least on occasions, at their dwellings. Dr Marriott moved to the area in 2008 and was aware of motor sport activity during that and the following year but did not find it unduly disturbing; in this regard he has stated that "...I am confident that in 2009 use of the site...did not exceed 40 days a year...". He went on to state that "...in 2010 I noticed a significant increase in the frequency of days on which I could hear noise...". Mr Meerbeek, who also moved to the area in 2008, has similarly stated that "In 2010 the pattern of use changed noticeably...both the level and frequency of noise increased as well as the type of noise...".

28. In 2010 drifting events were added to traditional motor racing events and it was in this year that local residents noticed an increase in the frequency of activity at Buxton Raceway. In 2012 the number of scheduled events had increased to 48; an increase of 25 events over the number held in 2007 and more than double those held only five years previously. Furthermore, the number of weekends on which there was activity during the 39 week season increased from 21 to 33 and on 12 of those 33 weekends there were events on two consecutive days. Irrespective of practicing and ancillary motor racing activity, for which there is no documentary evidence, and irrespective of any change in the character of the use of the land, and given that the only documentary evidence is of scheduled events, a more than doubling of scheduled events and a significant increase in the number of weekends that there were events during the season constitutes a demonstrable and documented intensification of motor sport activity at the circuit racing track.

29. The Appellants' case is that there has been no intensification of the use of the circuit racing track. This has been addressed but intensification does not amount to a material change unless and until the fundamental character of the use changes. This principle was reaffirmed in the case of *Hertfordshire County Council v SSCLG and Metal and Waste Recycling Ltd [2012] EWCA Civ 1473*. The principle established in this case is that, in assessing whether there has been a change of character of the use, the impact of the use on other premises is a relevant factor. It is necessary, on the facts of the case, to consider both what is happening on the land and its impact off the land when deciding whether the character of the use has changed. Thus, off-site effects are a material factor.

30. A vehicle cannot be driven without sound being generated and the faster the vehicle goes the louder the sound. The sound of vehicle engines, either individually or collectively when practicing or competing, is part of the experience for those participating in motor racing. The generation of sound is an on-site product of the motor sport use. But sound for motor sport participants can be noise for others because noise, by definition, is sound that is especially loud or unpleasant or disturbing. Some residents of the area are likely to have chosen to live in the locality because of its remoteness and quietness. So they could regard the sound of the motor sport use to be noise if it is unpleasant or disturbing.

31. Prior to 2010 local residents, from their evidence, had been aware of the motor sport activity at Buxton Raceway but did not consider it to be disturbing. But in 2010 Dr Marriott, like others, "...noticed a significant increase in the frequency of days on which..." he could hear the noise of motor sport activity. It is certain that the increase in 'frequency' of activity is attributable to the addition of drifting to traditional motor sport at the circuit racing track. By 2012, when the number of events in a season had more than doubled from the number in 2007 and the number of weekends in the 39 week season had increased from 21 to 33, the frequency of activity had increased from what could be considered to be

occasional to often. It is reasonable to conclude that the frequency of audibility of the noise generated on-site had a significant impact off-site. It is also reasonable to conclude that the frequency of motor sport activity at Buxton Raceway from 2010 resulted not only in an intensification of the use of the land but also in a material change in the character of the use.

32. Though practicing and other ancillary motor racing activity will have taken place at Buxton Raceway during the ten year period there is no documentary evidence of this activity. The ancillary activity cannot therefore be counted on to dilute the increase in documented activity. On the documentary evidence available it is my planning judgement that there was a demonstrable intensification of competitive motor sport activity, and a material change in the character of the use, at the circuit racing track between 2007 and 2012. This intensification and change in character constituted a material change in the use of the land and this change of use occurred less than ten years before the date of issue of the enforcement notice. Motor racing activity at Buxton Raceway, at the level reached by 2012, and which continued at the same general level in each season up to the date of issue of the notice, is not therefore immune from enforcement action and is not lawful. The ground (d) appeals thus fail.

The ground (f) appeals

33. The ground (f) appeals relate to the requirement to restore the land previously used for 4x4 driving and motorcross. This requirement was the subject of discussion at the Inquiry and it was accepted, by the Council, that it was overly prescriptive and could be varied to refer to the restoration of the land to its former condition. The ground (f) appeals thus succeed and the enforcement notice has been varied accordingly.

The ground (g) appeals

34. The ground (g) appeals relate to the time period for compliance with the varied requirement to restore the land used for 4x4 driving and motorcross. The compliance period of 42 days as specified in the notice is inadequate, given the extent of the works required, and this was accepted by the Council at the Inquiry. The Council has accepted that a compliance period of nine months is a reasonable period for compliance with the requirement to restore the land. The ground (g) appeals thus succeed and the enforcement notice has been varied accordingly.

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35. The LDC application, though worded slightly differently on the form, is for the breach of condition 7 of planning permission 028002 in relation to use of the circuit racing track for motor sports. As concluded above in the ground (d) enforcement appeals the condition has been breached. In this appeal, however, the Appellant is seeking an LDC for a level of use of the track, in excess of the limit of condition 7, that he asserts has subsisted continuously for the ten year period prior to the date of the application. The burden of proof in a LDC application is on the applicant though there shall be no good reason to refuse the application provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

36. The issues in the LDC appeal are essentially the same as those in the ground (d) enforcement appeals. The Appellant relies, almost wholly, on the written and verbal statements made by himself and his witnesses before and at the Inquiry.

They have each described both competitive and ancillary motor sport activity at the Buxton Raceway in terms of how many days in the season activity took place. Mr I Watson claims an average annual total of 165 days, Mr Pierce claims that the track has been used well over 120 times each season, and Mr Corbett claims that the track was used for practice a minimum of 120 times per season in addition to competitive events. The Appellant's Agent, in his proof of evidence, has stated that use of the circuit racing track is "...accepted for a limit of 120 days".

37. In the closing statement made on behalf of the Appellant at the Inquiry the terms of an appropriate LDC were suggested. The suggested terms are that the use of the land shall be limited to 40 scheduled events, 2 show events, 38 pre-race practice days, one evening practice session per week during May to September, and two daytime practice sessions per week. This limit would permit the use of the land for motor sport for up to 178 days per season – well in excess of the limit of 120 days stated in the Agent's proof of evidence. It would only be possible to establish a level of use of the land if there is documentary evidence to support such a level of use. In this regard the evidence put forward by the Appellant is imprecise and ambiguous.

38. The possible terms of an LDC are, however, academic, because the use of the land must be established to be lawful if an LDC is to be granted. In this regard it has been concluded in the ground (d) enforcement appeals, from the only documentary evidence submitted by the Appellant, that there was a demonstrable intensification of competitive motor sport activity at the circuit racing track between 2007 and 2012 and that a material change in the use of the land occurred at some point during this period, which falls within the ten year period prior to the date of the application. Use of the land for motor sport has not therefore gained immunity from enforcement action and use of the land in excess of the limit imposed by condition 7 of planning permission 028002 is not thus lawful.

39. The only documentary evidence, the EPs, is unambiguous and provides justification for the conclusion reached above. There is no other documentary evidence and the Appellant's case is otherwise imprecise and ambiguous and does not justify, even on the balance of probability, the grant of an LDC.

Other matter

40. It has been claimed that a level of motor sport use of the land has gained immunity from enforcement action by subsisting continuously for a ten year period before the ten year period prior to the date of the application; during the period up to 1999 when Mr J Watson (Mr I Watson's father) was Events Promoter. But there is no precise and unambiguous evidence to support such a claim.

Conclusion

41. For the reasons given above the Council's refusal to grant a certificate of lawful use or development in respect of 'breach of condition in relation to application HPK/0002/8002' was well-founded and the appeal thus fails. The powers transferred under section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

DOCUMENTS

- 1 Council's letter of notification of the Inquiry and list of those notified.
- 2 Appearances on behalf of the Local Planning Authority.
- 3 Opening submissions on behalf of the Local Planning Authority.
- 4 Opening remarks on behalf of the Appellants.
- 5 Mr Gill's schedule of chronological use of the racing circuit by participants.
- 6 Ms Greenwood's written confirmation that a statement in her name is false.
- 7 Statement of Mrs C Copsey.
- 8 Statement of Mr M Copsey.
- 9 Statement of Mrs K Beresford.
- 10 Mrs Copsey's chronology of use of the land.
- 11 Blank plan of the appeal land.
- 12 Plan showing extent of speedway circuit.
- 13 Council's draft text for LDC.
- 14 Closing submissions on behalf of the Local Planning Authority.
- 15 Closing submissions on behalf of the Appellants.

Plan

This is the plan referred to in the Appeal Decision dated: 4 March 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Buxton Raceway, Dale Head Lane, Brandside, Buxton

Reference: APP/H1033/C/14/3000606, 608 and 612

Scale: not to scale

