



Report Reference Number 2018/0631/COU

To: Planning Committee
Date: 20 March 2019
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APPLICATION NUMBER:	2018/0631/COU	PARISH:	Whitley Parish Council
APPLICANT:	Mr S Crampton	VALID DATE:	11th June 2018
		EXPIRY DATE:	6th August 2018
PROPOSAL:	Section 73A application to vary conditions 01 (approved plans), 02 (approved plans), 03 (approved plans), 05 (approved plans), 13 (operating times), 14 (operating times) and 15 (operating times) of application 2011/0751/COU – ('Section 73 application for the retrospective change of use of land from agricultural to motocross use (D2)')		
LOCATION:	Gale Common Moto Park Whitefield Lane Whitley Goole North Yorkshire		
RECOMMENDATION:	<ol style="list-style-type: none"> 1. Refuse this s.73A application 2. Committee authorise the taking of Enforcement action to ensure compliance with the existing consent/cease the unauthorised use 		

The Scheme of Delegation states that where ten or more letters raise material planning considerations and where officers would otherwise determine the application contrary to the representations, the application should be determined by Committee.

This application has attracted a large number of representations from members of the public both for (50) and against (47) the application and the proposals are thus presented to Committee for determination.

In view of the breaches of planning control it is also considered that Committee be aware of and authorise the taking of enforcement action to remedy the breaches.

1. Introduction and background

The Site

- 1.1 The application site is the existing Gale Common Moto Park which is used for outdoor motocross (off-road motorcycle racing on enclosed off-road circuits) on two tracks which are described as a Junior Track up to 85cc and an Adult track.
- 1.2 The site is west of Whitley off Whitfield Lane where the Lane runs parallel with and to within 200m of the M62 adjacent to the north. The Gale Common Ash Disposal site is adjacent to the site to the west, with Cridling Stubbs beyond. The nearest residential properties are on the outskirts of Whitley to the east, some 950m away. Whitfield Lane is a single carriageway road subject to the national speed limit without, in the vicinity of the site, footways or street lighting.
- 1.3 The land is in the Green Belt and there are no heritage assets in the vicinity of, or affected by the application and there are no other local or national landscape or ecological designations.
- 1.4 The larger ~13.4 ha site has a use authorised for motocross by a permission from 2009 and the courses were originally confined to the south east side of the site, linear in form along the south eastern boundary on ~7.5ha of land. Recently the agricultural land to the north west has also been incorporated into the use and the current s.73 application proposes a realignment of all tracks, including the provision of a third track and the formation of 400 car parking spaces across the full 13.4ha. In support of the application it is stated that there has been heavy investment by the applicant and more flexibility is required in order to ensure the operations can remain viable and to meet the market demand.
- 1.5 The current scale and frequency of activities on the site has been the subject of complaint and this s.73 application was submitted in June 2018 to seek to regularise the scale of the use.

S.73 applications

- 1.6 A s.73 application is an application to vary or remove conditions associated with a planning permission. However since development has already commenced, the proposal is being treated as a s.73A application (planning permission for development already carried out).
- 1.7 The Courts have determined that an application under s73A is a conventional planning application in all respects, other than the development will have already been commenced. It is not the same as an application under s73 so the Council is not required to confine its attention to the appropriateness of conditions.
- 1.8 The application was submitted to vary conditions attached to a 2011 consent and the applicant has specifically identified conditions relating to materials in the bunds, timescale for bund implementation, landscaping of bunds, compliance with the approved plans, increase in numbers of formal events, increase in numbers of practice events and, increase in numbers of 'kick start' events. The proposals would expand into the entire 2009 red line area.

2. Planning History

2.1 The parent application to this s.73A is an approval granted in October 2011 (2011/0751), **(the Existing Permission)** itself granted by a s.73A application which sought to vary conditions from the 2009 approval. That approval granted on 16 December 2009 (2009/0828) was a retrospective application for the change of use of agriculture to a motocross use.

2.2 This 2009 consent was granted with eighteen conditions relating to, of relevance here:

- Details of the nature of the bund material (Condition 1)
- A work programme for the bund completion to be submitted within one month of the consent (Condition 2)
- Bunds to be thereafter completed within 9 months of the approval of the work programme (2)
- Details of landscaping of the bunds to be submitted within three months of the consent; bunds to be landscaped within the first growing season following bund completion (3)
- Details of all boundary treatments to be submitted within three months of the consent (4)
- A scheme to control noise submitted within one month of the consent and thereafter employed at each event (6)
- Details of loudspeaker installation and use (7)
- The noise barrier scheme set out and used at each event (8)
- Records to be kept to show that noise tests are carried out on participating bikes, in accordance with Autocycle Union requirements (9)
- Setting out of access and visibility splays within three months of the consent (10 & 11)
- Method statement for use of water bowser to control dust within one month of consent (12)
- No more than 12 formal motocross events per year; no more than one per month and limited to Wednesday or Sunday 0700 hrs to 1800hrs (13)
- No more than 12 practise events per year 1000 hrs to 1600hrs (14)
- No more than 2 kick start club practise sessions per month 0930hrs to 1430hrs (15)
- Details of events for the forthcoming year to be submitted each November (17)

2009/0828

2.3 The subsequent history of relevant applications will assist to explain the sequence of events at Gale Common and by reference to the list of original conditions at para 2.2 above.

2010/0083/DPC Application to provide the details to discharge conditions was approved in respect of Conditions 2 (Feb 2010) and 3 and 4 (March 2010). The approved timetable for the bund construction and completion was approved as 'between 3 to 5 years'.

2010/0846/FUL An application made in August 2010 to further vary the time period for bund construction – (Condition 2) to five years - was refused in November 2010.

2011/0751/COU A further application made in July 2011 to vary the time period for bund construction – (Condition 2) was approved by Committee in October 2011.

- 2.4 The approved solution for the purposes of this application (2011/0751) was a phased implementation across the site such that the north east bund would be installed within 0-8 months, the south east bund within 9 – 30 months; the north west bund within 31 to 47 months and the final leg of the north east margin by 48 – 60 months. These periods started from the date of the decision -13 October 2011.
- 2.5 Thus the four areas of phased bunding were required to have been completed by no later than June 2012, April 2014, August 2015 and September 2016 respectively.
- 2.6 In addition conditions were recast in the 2011 consent from the 2009 consent such that:
- Details of the nature of the bund material (Condition 1)
 - Revised programme for the phased bund completion as per para 2.4 above, (completions variously by June 2012 to Sept 16)(2)
 - Bunds to be landscaped during the first growing season after the completion of each respective bund (3)
 - Scheme of frontage boundary treatment as previously (4)
 - Operated in accordance with the approved noise control scheme (6)
 - Operated in accordance with approved public address system scheme (7)
 - The noise barrier scheme set out and used at each event (8)
 - Records to be kept to show that noise tests are carried out on participating bikes, in accordance with Autocycle Union requirements (9)
 - Setting out of access and visibility splays within three months of the consent (10 & 11)
 - Operation in accordance with the approved dust suppression statement for use of water bowser (12)
 - No more than 12 formal motocross events per year; no more than one per month and limited to Wednesday or Sunday 0700 hrs to 1800hrs (13)(same as previously)
 - No more than 12 practise events per year 1000 hrs to 1600hrs (14)(same as previously)
 - No more than 2 kick start club practise sessions per month 0930hrs to 1430hrs (15)(same as previously)
 - Details of events for the forthcoming year to be submitted each November (17)

2011/0751

- 2.7 A further application in 2011 to discharge conditions relating to noise control (6), loud speakers (7) & dust (12) was approved in October 2011 (2011/0864). The scheme for the control of noise as originally required through Condition 6 above relied upon the applicant's case that the original consent (2009) had stated on the decision notice that:

“It is considered that the proposed development would not have adverse impact on the nearest residential dwelling in terms of noise as the noise generated from the activities would not cause statutory nuisance. The noise from the site is not audible at the nearest dwelling and the levels of noise would be 45-46dB LAeq.”

and that since the events could only take place under the auspices of the relevant governing body the applicants asserted, and the planning authority agreed that no

further information was required since the governing rules are enforced by the Club and monitored by the national body.

- 2.8 It is important to advise Committee that the bunds were not intended to act as noise attenuation or mitigation measures and submitted Noise Impact Assessments confirm that their role or ability to mitigate noise would be very limited. The bunds were regarded as features in the landscape to be planted to help to screen the uses and it was the affiliated Codes of Practice and the ways in which the site is operated that were intended to control against noise.
- 2.9 The original application documentation advises that the Kickstart club was set up in 2008 as a result of a successful Youth Opportunity Fund grant from Wakefield MDC and is targeted at giving safe and legal off road participation for 12 to 18 years olds.

Nature of the current application

- 2.10 The current application seeks to vary conditions attached to the **Existing Permission**. It is described as principally seeking to address the breach of the timescale for bund construction and to amend the time restrictions to improve the viability of the facility. In detail the implications of proposed changes affect the following existing conditions:

Current Condition number and nature	Effect of condition	Proposed variation
1. Construct bunds using materials and in accordance with approval	Phased completion no later than – by Sept 2016	Construct bunds within five years of any approval
2. Construct bunds in accordance with the approval	Phased completion no later than – by Sept 2016	Construct bunds within five years of any approval
3. Landscape bunds in accordance with approval	Next growing season after bund completion	Planting within ~six years
5. Strict conformity with plans	Implement existing layout	Seek reconfigurations and extension of existing track to the west
13. Number of formal events	12 per annum (no more than 1 per month)	12 per annum
14. Number of practice sessions	12 per annum	Total 75 per annum
15. Kick Start practice sessions	2 per month	

- 2.11 In addition the new layout relocates the existing event and practice tracks across other parts of the, previously unused parts of the site, adds a Kids Track, a double portacabin, parking area for 400 cars and a formalised second access in the north east corner off Whitfield Lane. New 6m high bunds are proposed along the north (Whitfield Lane edge of the courses) and the south eastern boundary, respectively, 380m and 530m long.

3. Consultation and Publicity

- 3.1 **Eggborough Parish Council** – objects to the application on the grounds of
- Noise pollution and disturbance to residents

- they are contravening the conditions of the original planning application in that there is no bund and they are having excessive meetings

3.2 **Womersley Parish Council** has requested that their comments summarised below are taken into account:

- the increase to 75 events (6 per month) is too many and it should be maximum 1 per month and then only if existing conditions are adhered to
- parking for 400 cars will create a potential highways issue
- flouting of previous conditions put in some ten years ago
- there are large amounts of caravans and vans staying overnight that is not currently allowed
- the reworking of Gale Common to extract waste and remove the noise barriers will mean that the noise will be heard in Womersley and Cridling Stubbs
- the site is in Green Belt and the reasoning behind the 2010 refusal should still stand

3.3 The Council concludes that the current use has some impact; is minimal but the impact after removal of some of Gale Common is unknown given the increase in numbers of events and the numbers of attendees.

3.4 **County Highway Authority** has replied that it has no objections.

3.5 **Environmental Health** – The original response in June 2018 objected on the grounds of the impact on noise from the site on the residential amenity of residents in the area. The officer explains that complaints relating to noise from the site were received in January, February, May, July and August 2017. Following discussions with the site operator and an investigation into the complaints an Abatement Notice for statutory noise nuisance was served in November 2017.

3.6 The Officer advised that investigations for a breach of this notice are currently ongoing and that complaints have been received on weekdays when only one bike is operating on the track demonstrating that the use by only one bike can be audible at residential properties.

3.7 Officers have been working together to seek to find a solution to the activities and the breaches but the concern from the EHO is that no data has been received on the way in which bikes are tested or monitored and requests for sight of the data have not been replied to. The advice is that if it can be demonstrated that the bikes can comply with the standards and that those standards would not result in harm to amenity, it could be possible to condition the control. The objection however remains until this can be established.

Publicity

3.8 The application was advertised by both press and site notice. At the time of writing, ninety-seven representations from members of the public have been received.

3.9 The forty-seven representations objecting to the application have come from Whitley, Cridling Stubbs, Eggborough and Great Heck addresses. The single most repeated issue is that of noise and the objections may be summarised as:

- Levels of unbearable and intolerable noise; meets take place every weekend, bank holidays and some weekdays
- Cannot enjoy gardens or leave windows open, noise ruins quiet family downtime. You can hear noise over the noise from the M62... they may as well be in my back garden. Irritating, constant droning and they sometimes start on a Friday when they are there all weekend. It is significantly louder than previous events and has doubled in size
- Do not object per se and we should support local businesses but noise is becoming totally unacceptable
- Already in breach of conditions designed to control numbers of meetings, ensure implementation of noise mitigation and for the construction of bunds; there is no noise cancelling equipment. If there are controls, they should be complying with them
- Supposed to have no more than 48 meets a year and increases will create more nuisance. Every weekend is far too frequent and feelings are running high in the village
- The proposed bunds would need a huge number of HGV movements to bring the material in. Bunds would have to be at least 4m high to have any affect
- Indiscriminate parking on the lane makes it impassable, effects upon use of footpath, dust causes breathing difficulties and eye irritation, effects upon cyclists
- Visitors come early and for the full weekend and camp over the weekend without a licence
- Loss of agricultural land and conflicts with Green Belt policy
- Effects on wildlife
- There seems an inability to enforce the existing conditions

3.10 County Councillor John McCartney has written on two occasions to object and that he is being inundated with complaints. He notes that a great many in support are not Selby District residents whilst the communities of Whitley and Eggborough suffer from the noise and consistent breaches of planning conditions. The activity has expanded into a field to the west and this application should be refused and a Stop Notice served.

3.11 The fifty representations in support of the application have come from four Whitley addresses and are then from various parts of the north and north west of England including Hambleton, South Milford, Barton upon Humber, Hull, Harrogate, Bradford, Rotherham, Doncaster, Manchester, Halifax, Liverpool and Ellesmere Port. The comments in support may be summarised as:

- The site and facility is fantastic; is very well run, safely organised and marshalled
- One of the best prepared tracks in the country
- It's out of the way and a good amenity for kids of all ages
- There is minimal noise and it is a great local resource, dispute the argument about noise since we live next to the A19 and the M62
- Much needed local resource, caters for all age groups and helps to keep troublesome off-roaders off the roads
- A vital outdoor pursuit which is a safe professional place for child and youth development
- Support is given to big projects like the Gale Common Extraction Project but why not support small local projects that bring actual benefit

- Creates local employment and aids the local economy where other local facilities have closed

4. Site Constraints and Policy Context

- 4.1 The site is in the open countryside, in Green Belt without allocation.
- 4.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *“where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”*.
- 4.3 The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.
- 4.4 The decision making process when considering proposals for development in the Green Belt is in three stages, and is as follows:
- a. It must be determined whether the development is appropriate development in the Green Belt. The NPPF and Local Plan set out the categories of appropriate development.
 - b. If the development is appropriate, the application should be determined on its own merits unless there is demonstrable harm to interests of acknowledged importance, other than the preservation of the Green Belt itself.
 - c. If the development is inappropriate, the presumption against inappropriate development in the Green Belt applies and the development should not be permitted unless very special circumstances can be demonstrated. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations..
- 4.5 Paragraph 146 of the NPPF sets out exceptions to inappropriate development in the Green Belt. Engineering operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
- 4.6 The construction of the bunds would not conflict with the purposes of including land in the Green Belt. However, the effect of the bunds on the openness of the Green Belt has been reviewed and although they are proposed and required to be planted/landscaped under the **Existing Permission**, officers consider it inconceivable that the construction of two bunds with lengths of 530m and 380m, each 6m high would not have some impact upon openness. Initially and before any planting establishes they would be strong regular, almost alien features in the landscape. In conclusion this would trigger a need for the applicant to make a very special circumstances case.
- 4.7 The fact that the site already has planning permission for this use and has operated for almost ten years is material in considering this current proposal.

- 4.8 Case law establishes that if an applicant can demonstrate a ‘fall-back’ position, this may constitute a material consideration to be taken into account when determining the application.
- 4.9 A ‘fall-back’ is an existing consent which is capable of being implemented regardless of the decision on this application. Under Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314, which concerned the redevelopment of a site of a large barn and a bungalow to provide four dwellings, Lindblom LJ confirmed the legal considerations in determining the materiality of a fall-back position as a planning judgement where: (1) the basic principle is that for a prospect to be a “real prospect”, it does not have to be probable or likely: a possibility will suffice; (2) there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.
- 4.10 In this case, in the event that this application is refused then the applicant will be able to operate the facility in accordance with the **Existing Permission** and this is material to the decision to be made on the current application.

Development Plan

Selby District Core Strategy Local Plan

- 4.11 The relevant Core Strategy Policies are:

- SP1: Presumption in Favour of Sustainable Development
- SP2: Spatial Development Strategy
- SP3: Green Belt
- SP13: Scale and Distribution of Economic Growth
- SP18: Protecting and Enhancing the Environment
- SP19: Design Quality

Selby District Local Plan

- 4.12 Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework. Paragraph 213 provides as follows:-

“213.existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

- 4.13 The relevant Selby District Local Plan Policies are:

- ENV1 - Control of Development. Would permit good quality development subject to normal development management criteria.

- ENV2 – Pollution and Contaminated Land. Would not permit development that could be affected by, of relevance here, levels of noise, unless satisfactory remedial or preventative measures are in place.
- ENV3 – Light Pollution. Would only permit outdoor lighting schemes that represent the minimum necessary for security and operation; designed to minimise pollution, not affect highway safety and not significantly detract from character of the rural area.
- T1: Development in Relation to the Highway Network. Proposals are to be well related to the network and will only be permitted where it has adequate capacity and can safely serve the development, unless appropriate off-site improvements are undertaken.
- T2: Access to Roads. The intensification of the use of an existing access would be permitted provided there is not detriment to highway safety.
- RT3: Formal Sport and Recreational Facilities would be permitted provided criteria relating to not being so intrusive as to seriously detract from character by virtue of appearance or noise; not being prejudicial to highway safety or a significant adverse effect upon local amenity; new buildings or structures are well designed and appropriately landscaped; and designed to give easy access and participation in sport for disabled people are satisfied. Policy RT3 continues that in Green Belt proposals would have to relate to uses of land and essential facilities for outdoor sport which preserve the openness of the green belt and do not conflict with the purposes of including land within it.

National Guidance and Policy – National Planning Policy Framework (NPPF), National Planning Practice Guide (NPPG)

- 4.14 The National Planning Policy Framework (February 2019) replaced the July 2018 NPPF. The Framework does not change the status of an up to date development plan and where an application conflicts with such a plan, permission should not usually be granted (paragraph 12). This application has been considered against the 2019 NPPF and as set out above, the current application is inappropriate development and the application is not accompanied by a case for very special circumstances.

5. Appraisal and Key considerations

- 5.1 The merits of this application and whether a s.73A approval should be issued are separate considerations from how to address the reported or actual breaches of existing conditions. If this application is approved, then the new consent would become immediately effective whereas if it was refused and the operator ‘falls back’ to the **Existing Permission** the expediency of considering action against any breaches of planning control becomes a further/ separate consideration.
- 5.2 The Framework’s six tests for the imposition of conditions (para 55) are that conditions must be:
- Necessary
 - Relevant to planning
 - Relevant to the development to be permitted
 - Precise
 - Enforceable, and
 - Reasonable in all other respects

- 5.3 The Core Strategy has been adopted since both the 2009 and the 2011 consents. In addition, the 2012 NPPF was replaced in 2018 and again in February 2019.
- 5.4 SP Policy SP13 can be seen as supportive in principle of this use subject to normal development management criteria, as may SP18 bearing in mind the use has consent.
- 5.5 The substance of the green belt guidance has not changed from the 2012 version of the Framework. The 2009 consent will have been determined against the former SDLP Policies GB2, GB4 and national policy contained in the former PPG2. At that time it was considered that the proposed use and bunds would not affect openness or the character of the Green Belt. Although the principle is established and may continue under the current consent if the implementation is lawfully complying with conditions, the scale of this proposal is considered to be significantly different to the existing consent and would have a materially greater planning impact.

Key considerations

- 5.6 Therefore the key to the determination of this application is whether a new planning consent for the development including with the proposed variation to conditions would be contrary to the provisions of the development plan or national policy and whether there are reasonable grounds for refusal if the application is not in accordance with the plan and there are no material considerations to indicate otherwise.

1. Bund construction

- 5.7 The extent of the site proposed for tracks and car parking is significantly larger than that which exists (although within the original red line). The bunding although proposed previously and conditioned has not been provided. The previously imposed time scales for implementation have been proposed for variation by application three times and have been approved twice; this is the fourth application to vary the implementation of the bunding condition. This must raise the question of whether the condition(s) are necessary, reasonable, and capable of being complied with or enforceable given the passage of time since their first imposition. The applicant is now requesting a further time period for compliance of five years.
- 5.8 It is agreed between the applicants and Environmental Health that the bunding has very limited sound attenuation properties; they were designed and proposed more for cosmetic visual purposes and to break the line of sight between Whitley and the visible activities. Thus the present objectors' perceptions that installing the bunds would stop the noise are not correct.
- 5.9 The timing of bund construction, the applicant says is reliant upon the buoyancy of the development industry to generate the material (building waste) and five years has been suggested as a reasonable/ realistic timescale.
- 5.10 However, it seems that it has not been possible, with experience, to frame conditions that can be reasonable in terms of time periods for implementation and that have a reasonable prospect of being complied with. Thus the alternative would be to refuse permission if conditions cannot be used to address harm or mitigate impacts. Although it must follow that the present development proposal would be inappropriate since it does not comply with the possible exception at paragraph 146 b) of the 2019 NPPF in view of the impact on openness, this would make the

application contrary to Local Plan Policy SP3 unless a case for very special circumstances is made. Although that case has not been made to date the existence of the fall back is a material consideration to indicate lesser weight to be given to Policy SP3 in this instance.

2. Amendment to number of events

- 5.11 The table at para 2.10 above summarises the applicant's proposals as 12 formal race events per year and 75 Kick Start plus practice sessions per year. These totals increase the total permitted number of sessions of any type from 48 to 87 per year. Kick Start would not take place at the same time as formal events or practice sessions.
- 5.12 The applicant opines that the increase in the numbers of events will allow operation at a level that will permit a more viable use of the site yet not have significantly different impacts on the amenity of the closest residents. The use, he continues, is highly weather dependent since bikes cannot use the track if there is too much rain (for compacting, drainage and safety reasons) and the present control of only 12 per year and then only one per month means that if the weather does not allow an event in a particular month, he can never catch up or reschedule that event because of the 'no more than one per month' limit. This affects both the racing calendar and his employees (10 part-time at present but hoping to increase by seven part-time and one full time). Thus the proposal is to retain the restriction to no more than 12 formal events per year but to remove the 'one per month' control so as to give more flexibility within the year on when they are held.
- 5.13 The flexibility sought for 12 events across the year is considered to be acceptable but, if the numbers of formal events is subtracted from the totals, the proposed increase of practice and kick start sessions combined would actually double those numbers across the year (from 36 to 75).
- 5.14 Your officers are of the opinion that based upon the current operation no increase in numbers of events should be permitted until the noise issue has been resolved or is capable of resolution.

3. Noise

- 5.15 The way in which the site was expected or understood to operate in terms of the control of noise and where/when it would be audible has not been born out with operating experience. It is not known if bikes are being sound tested before they compete or practise and the EHO's view is that if they are then that level of noise is unacceptable, born out by the levels of complaints. The Officer has additionally observed that just a single uncompliant bike can cause noise disturbance and complaint.
- 5.16 The Council does not have any SPD or Plan Policy on how to limit noise and the existing condition relies on Codes of Practice from the national governing body. The Noise Policy Statement for England sets out policy and criteria on the basis that 'significant adverse impacts' should be avoided and the lower threshold of 'adverse impacts' should be mitigated and minimised.
- 5.17 The approved scheme (2011/0864) to control noise was based on an expectation that operations would follow the current Autocycle Union requirements. There is no evidence that this is taking place since the EHO has asked for but not received

records of noise monitoring; this would therefore appear to be a breach of the approved scheme which is causing impacts upon the area.

- 5.18 The Autocycle Union (ACU) is the internationally recognised national governing body for motorcycle sport. Gale Common is not currently listed on the ACU site as a promoter or Club affiliated to the ACU but the applicant has confirmed he is quite prepared to apply the ACU code to his site. The ACU's environment code refers to the need for organisers to exclude competitors with broken or noisy silencers and that riders should pass a technical control, including for noise. The Sound Level Control technical information on the ACU site says that all machines should be sound tested and maximum sound levels are specified.
- 5.19 The frequency of events and the noise associated with them is the subject of complaint and it is clear that the site is not operating in a manner which protects neighbour amenity. It can only be concluded that there appears to be a breach of control.
- 5.20 Although the Environmental Health advice would support a new permission if it can be proven that noise emissions controlled by the Code of Practice will not be heard at the nearest residential properties, there is however nothing to enable the local planning authority to conclude that noise can be controlled or that noise within the parameters set by the Code will not be audible or affect amenity.
- 5.21 It does not appear to be sufficient, as before, to suggest that a condition on any approval which ensures compliance with the ACU code will suffice. In the absence of an ability to use planning conditions to mitigate or control the effects of development, the only alternative is to refuse permission.

6. Conclusions on the key considerations

- 6.1 Despite earlier views expressed, officers take the view that the construction of two bunds, 6m high and respectively 530m and 380m long would be physically incapable of preserving openness. This means that the proposed development is inappropriate and should not be permitted unless a case for very special circumstances (vsc's) which would outweigh the harm from inappropriateness and any other harm has been made.
- 6.2 However, it appears to officers inescapable that this proposal is inappropriate development and the applicant has more recently been requested to provide a case for vsc's.
- 6.3 One of the areas of harm that has been identified is the levels of noise that have been the subject of complaint since January 2017. There is no evidence from the applicant that noise can be mitigated or controlled to within acceptable levels by the use of conditions. Accordingly the application should be refused on the grounds of noise impact.
- 6.4 The proposal to increase the numbers of events has no support from officers until the noise can be controlled. Thus there is no justification to allow the increase in the number of events.
- 6.5 Finally the time periods for the implementation of bunds have been repeatedly varied. Should the current proposal for a further extension of five years for bund

construction be acceptable, the operating site would have been without any of the required bunds for ~ 16 years.

- 6.6 Although a refusal of this application would leave the existing consent in place, in planning terms and having regard to the development plan and the guidance on the imposition of conditions, it is not possible to propose conditions that have any reasonable prospect of being complied with, thus the alternative must be to refuse this application as Committee is now considering a s.73A application.

7. Considerations of Enforcement

- 7.1 The enforcement function is delegated to the Head of Planning, but it is appropriate given the recommendation for refusal to advise Committee that officers will consider appropriate enforcement measures and consider the expediency of enforcement in view of the ongoing breaches if the application is refused.
- 7.2 Planning enforcement is a discretionary function and authorities are requested to act proportionately in responding to breaches of control (NPPF para 58).
- 7.3 A Planning Enforcement Management Plan has been considered in draft by Policy Review Committee and in the meantime Planning Practice Guidance says that there is a clear public interest in enforcing planning law in a proportionate way and effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area. This aids to maintain the integrity of the decision-making process and to help ensure that public acceptance of the decision-making process is maintained.
- 7.4 The failure to provide noise monitoring evidence and the failure to complete or even commence the requisite bunds is an example of a degree of harm that is not a trivial or technical breach but which is having repeated demonstrable effects upon the population. Although it is good practice to defer enforcement until any retrospective application has been determined it is right however that any refusal of this s.73A application is quickly followed by consideration of enforcement.
- 7.5 The request by County Councillor McCartney for a Stop Notice is amongst the many options available to the authority and your officers are also considering the use of Breach of Condition Notices and/or Enforcement Notice to address the breaches. The expansion of the activities onto the larger site, although within the red line, will itself constitute a breach unless the S.73A application showing the remodelling of all of the courses is accepted.
- 7.6 The Committee is requested to agree the recommendation that officers continue to consider the nature and expediency of any action and to continue to seek a solution or serve Notices accordingly to cease the use or secure compliance with existing conditions.

8. Recommendations

A: This application under s.73A is recommended to be refused for the reasons of

1. The application under s.73A to vary the current use is on a significantly larger site and scale than the present use and the applicant has not identified with evidence how the impacts of the additional and increased frequency of activities can be mitigated in order to protect the residential amenities of residents in the vicinity. In the absence of such mitigation there would be harm to the character

and amenities of the area and unacceptable levels of noise contrary to saved Local Plan Policies ENV1, ENV2 and Core Strategy Policies SP2 and SP13.

2. The proposed development is inappropriate development in the Green Belt and a case for very special circumstances to address the harm of inappropriateness and other harm has not been made contrary to the NPPF and Local Plan Policies SP3, ENV2 and RT3.
 3. The local planning authority has specifically considered if conditions may be imposed to address otherwise unacceptable development in line with good practice but the prolonged inability of the site and operations to implement mitigation and monitoring and successive s.73A applications is evidence that conditions are incapable of being proposed to address the harm and thus the application is refused.
- B: If the application is refused in line with the recommendation, Committee agree the need to seek the appropriate enforcement action to remedy the breaches of conditions or to cease the use until such time that the amenities of the area may be protected and that officers should proceed accordingly.

9. Legal Issues

Planning Acts

This application and the expediency of enforcement action have been considered in accordance with the development plan, the relevant planning acts and guidance and other material considerations.

Human Rights Act 1998

The public interest in refusing the current application and enforcing planning control is not outweighed by any impacts on the applicants or visitors to the site. This recommendation for refusal is proportionate and decisions made in accordance with these recommendations would not result in any breach of convention rights.

Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

Financial Issues

There are no financial issues that are material to the determination of this application.

10. Background Documents

Planning Application file reference 2018/0631/COU

Contact Officer: Paul Edwards, Principal Planning Officer

Appendices: None