

Item No. 8

APPLICATION NUMBER	CB/17/02729/VOC
LOCATION	Motorcycle Track south of, Stanbridge Road, Great Billington
PROPOSAL	Variation of condition 4 -The proposal is for the hours of operation to be changed to Wednesday, Friday & Saturday 10am till 3pm and Sunday 10am till 2pm. Org app SB/95/00176/Full
PARISH	Stanbridge
WARD	Heath & Reach
WARD COUNCILLORS	Cllr Versallion
CASE OFFICER	Debbie Willcox
DATE REGISTERED	10 July 2017
EXPIRY DATE	04 September 2017
APPLICANT	AG Bunker & Sons
AGENT	AW Architectural Design Ltd
REASON FOR COMMITTEE TO DETERMINE	Called-in by Councillor Versallion for the following reason: Extended noise nuisance in breach of conditions causing residents additional disturbance. The operation has in fact been unreasonably and substantially interfering with the use and enjoyment of homes and other premises as protected by the Environmental Protection Act 1990.
RECOMMENDED DECISION	Variation of Condition - Recommended for Approval

Summary of Recommendation:

The temporary amendment to condition 4 is recommended for approval as it is considered that the impact of this alteration to the extant planning permission would not give rise to an unacceptably harmful impact on the amenity of neighbouring occupiers. The application is therefore considered to accord with Sections 8 and 11 of the National Planning Policy Framework and Policy BE8 of the South Bedfordshire Local Plan Review.

Site Location:

The application site comprises a 0.65 Ha parcel of land located on the south side of Billington Road, which branches south off the A505. The land is in use as a motorcycle training and practice facility. The site has been laid out with a motorcycle track incorporating jumps and banked corners. The track is surrounded on all four sides by earth bunding of varying heights. The area at the northern end of the site is laid out as an informal parking area. The site is flanked by open fields to the east and west, and beyond Billington Road to the north. The land is bordered by a watercourse, known as Ouzel Brook, and a wooded area to the rear. The site lies to the north of Eaton Bray and to the east of Billington village. The village of Stanbridge lies to the north. There are also a number of commercial and residential properties grouped around Billington Road to the west. The site falls within the South Bedfordshire Green Belt as defined on the proposals map of the South

Bedfordshire Local Plan Review 2004. The rear part of the site falls within Flood Zones 1 and 2.

The Application:

Planning permission was granted for the change of use of the site to a motorcycle track in 1995 under planning permission reference no. SB/95/00176/FULL, subject to various conditions, including condition 4 which controls the permitted hours of use. Condition 4 currently restricts the operating hours to Mondays - Saturdays 10am - 12.30pm and 2.30pm until 5pm and Sundays and Public Holidays 10am - 2pm. A separate condition restricts use of the track to the period between 1st March and 30th September.

This application seeks to vary condition 4 on a temporary basis until 30 September 2017 to allow the track to function only on Wednesdays, Fridays and Saturdays 10am - 3pm and on Sundays 10am - 2pm. The application was originally submitted to allow Sunday usage between 10am - 3pm but has been modified during the application process in response to consultation responses.

In 2015 a variation of condition (CB/14/03678/VOC) application was approved to allow operation only during the winter months (01 October - 30th April) only Fridays, Saturdays and Sundays (excluding public holidays) 10am - 1pm and 1.30pm until 4pm and an increase in the maximum number of bikes on the track from 7 to 18. This application was granted subject to an increase in the height of the bunding around the track, which in itself required planning permission. An application for the increased bunding has been submitted and is under consideration, but as yet, permission CB/14/03678/VOC has not been implemented.

RELEVANT POLICIES:

National Planning Policy Framework (2012)

South Bedfordshire Local Plan Review Policies

The NPPF advises of the weight to be attached to existing local plans for plans adopted prior to the 2004 Planning and Compulsory Purchase Act, as in the case of the Bedfordshire Structure Plan and the South Bedfordshire Local Plan Review, due weight can be given to relevant policies in existing plans according to their degree of consistency with the framework. It is considered that Policies BE8 and R16 are broadly consistent with the Framework and carry significant weight.

BE8 Design Considerations

R16 Control of Sport and Formal Recreational Facilities in the Countryside

Local Plan

The Council is currently consulting on its Draft Local Plan (Regulation 18). The Plan outlines the overarching strategy for growth and also sets out more detailed policies which will be used to determine planning applications. A substantial volume of evidence gathered over a number of years supports this document. These technical papers are consistent with the aspirations of the National Planning Policy Framework and therefore will remain on the Council's website as material considerations, which will, along with the direction of travel of the Local Plan, inform development management decisions.

Supplementary Planning Guidance

Central Bedfordshire Design Guide: A Guide for Development (2014)

Relevant Planning History:

- SB/95/00176/FULL Change of use of land for motorcycle training and practice. Permission.
- CB/12/03419/VOC Variation of Conditions 2, 3, 4, 5, & 6 of planning permission SB/95/00176 so as to allow the use of the track for motocross/quad practice only; the use of the track all year round; the use of the track between the hours of 10am and 4pm on Saturdays, Sundays and Wednesdays; the use of the track for "training and corporate days" with a maximum of 15 riders per day on Mondays, Tuesdays, Thursdays and Fridays; a maximum of 30 bikes on the track at any time; and a 1 metre increase in the height of the existing earth bunding. Refused: Would have an unacceptable adverse effect upon the amenity of neighbouring residents.
- CB/13/00620/LDCE Certificate of Existing Lawful Development: Land use as Motorcycle track. Refused: Use of site in breach of Condition 3 of planning permission SB/95/00176/FULL not shown to be lawful on the basis of the submitted evidence. A subsequent appeal was lodged in respect of this decision. As there was an effective Breach of Conditions Notice in place at the site a Certificate of Lawfulness could not be issued in respect of the use of the site. The Planning Inspectorate therefore determined that no further action should be taken in respect of the appeal.
- CB/13/02819/VOC Refused. Variation of conditions 3, 4 and 5 of planning permission SB/95/00176 the use of the track all year round; hours of use, amount of bikes on the track at anyone time.
- CB/ENC/12/0641 Non compliance with Condition 3 of permission SB/TP/95/00176 which states that :*This permission shall only extend to the use of the site for the purpose of motor cycle training and practice between the 1st April and 30th September in any calendar year.*
- REASON: To enable the District Planning Authority to exercise proper control over the development in the interests of general amenity.*
- Breach of Condition Notice issued 02 January 2013.
- 12 September 2013 Non compliance with Condition 4 of permission SB/TP/95/00176 which states that :*The site shall be used for the purpose hereby permitted only between the hours of 10.00am to 12.30pm and 2.30pm to 5.00pm Mondays to Saturdays and between the hours of 10.00am to 2.00pm on Sundays or Public Holidays.*

REASON: To enable the District Planning Authority to exercise proper control over the development in the interests of general amenity.

Breach of Condition Notice issued on 12 September 2013

CB/14/03678/VOC

Application to vary conditions 3, 4 & 5 of permission reference SB/TP/95/0176 to allow operation of the site during the following periods:

1st October to 30th April (winter months)

Fridays, Saturdays and Sundays from 10am till 1pm and 1.30pm till 4pm (3 days per week) excluding Bank Holiday use and the increase in the number of bikes on site at any given time from 7 to a maximum of 18.

Granted 02/02/2015 - not yet implemented but still extant.

CB/15/01784/MW

Raising of existing bunding to motorcycle track to a minimum of 2.0m above the highest part of the existing track level as required by condition 7 of planning permission reference CB/14/03678/VOC - Pending

CB/ENC/17/0157

Alleged Non-Compliance with Conditions SB/95/00176

Consultees:

Stanbridge Parish
Council

Final response to be reported on the Late Sheet.
Synopsis of preliminary response:

- The address of the site is Billington Road, Stanbridge, not Stanbridge Road, Billington;
- Our main complaint will be focused on noise pollution and we believe the site causes a statutory nuisance contrary to the Environmental Protection Act 1990 as the motocross operation "unreasonably and substantially interferes with the use or enjoyment of a home or other premises"
- To now increase use of the track to a solid 5 hours a day may also be considered as an infringement under the Human Rights Act 1998
- A public authority may need to take positive steps so you can peacefully enjoy your home - for example, by reducing aircraft noise or protecting your home from serious pollution.
- Evidence is provided that despite an enforcement against the track already, they continue to breach the current planing and are advertising the site as open till 3pm on a Sunday due to new planning permission. On one website it is stated as being open till 4pm. This is even before the Council have made a decision so they seem to be taking no notice and assume they will get the permission.

- Local residents are getting very fed up with the constant breaches in conditions and the blatant disrespect to the council, the law and local neighbours. The noise of the bikes can be heard over a mile away and I am told by those that work with engines everyday the bikes sound as if they are exceeding the permitted engine size and noise emissions.

Billington Parish Council Following our meeting last week, Billington Parish Council has asked me to register our objection to the above planning application.

The existing planning permission works well to minimise the noise - subject to the operators keeping to the agreed timings. If the new proposed timings are passed it would mean for those living close by:

- 5 continuous hours of noise;
- Longer Sunday hours for the neighbours to suffer;
- Likely to attract an increased number of uses which would in turn increase the levels of noise. We believe CBC are neither able to monitor or control the number of bikes using the track;
- Altering the hours would remove the Breach of Condition Notice regarding operating hours. This would make it harder to control the operators who have repeatedly breached the hours of operation since taking over in April 2017.

We therefore urge CBC to refuse this application.

Eaton Bray Parish Council

Eaton Bray Parish Council wishes to object to this application on the grounds of increased noise nuisance.

The existing planning permission SB/95/00176 has been effective in limiting the noise nuisance and there seems no reason to alter this. The increased hours on Sunday would result in increased noise for the neighbours and would substantially interfere with the enjoyment of their gardens. The long lunch break has allowed neighbours some respite and has limited the number of bikes visiting the track. Changing this will result in a continuous 5 hours of noise.

Although there seems to be a reduction in the hours of operation, the track has never been used every day and currently is only operating on Wednesdays, Saturdays and Sundays.

We have two major concerns:

(1) If this permission is granted for the short period that remains this year then it would set a precedent. If for any reason the new planning permission CB/14/03678 was not implemented then a further application to make these new hours permanent could be hard to refuse.

(2) The site is subject to a 'Breach of Condition' Notice regarding the hours of operation. This would presumably be no longer applicable if new hours were granted. There have been many reported breaches of the current planning permission since April 2017. Losing this additional protection would make it much harder to control the operators who appear to have scant regard for the planning process.

Pollution Team

Firstly I object to the increase of hours on Sundays and Bank Holidays as this amounts to an increase in the length of time noise can occur with no offer of any mitigation.

The removal of the lunchtime break would contribute no additional noise in terms of hours of use of the track: it removes the 'respite' during the middle of the day but also means the noise finishes earlier in the day. I find it difficult to maintain an argument that removing the lunch break is more disturbing than finishing earlier as the potential noise remains the same (in terms of hours).

Other Representations:

Neighbours and
General Public:

Consultation period still open at time of writing the report.
Additional responses to be reported on the Late Sheet.

Object: (51 Tilsworth
Road, Cherry Trees &
115 Station Road and
37 Orchard Way,
Stanbridge, Ryecote
Farm & 14 The Rye,
and 10 The Nurseries,
Eaton Bray, 42
Middleton Way,
Leighton Buzzard,

- Any increase in Sunday hours is unacceptable;
- The insertion of lunch breaks was to reduce disturbance to neighbours and the hours should remain as they are;
- The site is currently in breach of conditions and allowing these changes would encourage further breaches and CBC enforcement do not have the resources to enforce conditions;
- The activity is noisy and intrusive;
- The maximum usage of the track should remain as it is;
- Removing the lunch break would attract a greater number of bikers and CBC are not monitoring or controlling the number of bikes using the track;
- The track is currently infrequently used during the week;
- Changing the conditions would mean that the current breach of condition notice would no longer be valid.

Support: (112
Meadway, Dunstable
and 35 Golden Dell,
Welwyn Garden City)

- The facilities provide somewhere safe and legal to ride motorcycles off road and should be supported.

Determining Issues:

The main considerations of the application are;

1. Principle
2. Neighbouring Amenity
3. Other Considerations

Considerations

1. Principle

- 1.1 The application is made under Section 73 of the Town and Country Planning Act 1990, which provides for applications for planning permission to develop or change the use of land or buildings without complying with conditions previously imposed on a planning permission. In determining such an application under section 73, the decision maker should take into account any changes in circumstances since the parent permission was issued.
- 1.2 Advice within the National Planning Practice Guidance states that the original planning permission will continue to exist whatever the outcome of the application under section 73. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 the Local Planning Authority may also impose new conditions - provided that the conditions do not materially alter the change of use that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.
- 1.3 In deciding an application under section 73, the Local Planning Authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application, (paragraph 031). The Local Planning Authority can grant permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original conditions should continue.
- 1.4 Several of the neighbouring residents who objected have raised the issue of whether the site is a suitable location for a motocross track. However, the principle of a motocross track in this location was established under the grant of planning permission in 1995 and despite the passage of time and any changes in circumstances, the principle of the use of the site as a motocross track is not a matter for consideration as part of this application.
- 1.5 Instead consideration of this application should depend on the examination of the likely impacts on the amenity of neighbouring occupiers of the requested variation of condition 4 of planning permission SB/95/00176.
- 1.6 When considering these matters, attention must be paid to Section 8 of the

National Planning Policy Framework, which addresses sport, recreation and leisure facilities. Paragraph 73 of the NPPF states that access to opportunities for sport and recreation can make an important contribution to the health and well-being of communities.

- 1.7 This must be balanced against the requirements of Section 11 of the NPPF as far as it relates to noise pollution, which will be expanded on below.

2. Neighbouring Amenity

- 2.1 It is acknowledged that residents in the surrounding communities find the noise emanating from the track to be disruptive and intrusive. It is hoped that the bunding which is the subject of pending application CB/15/01784/MW will provide a long-term solution to the problem. However, until these matters are resolved and planning permission CB/14/03678/VOC is implemented, the original planning permission is still valid and the track is operational.
- 2.2 This application seeks to temporarily vary the operating hours of the track until 30th September 2017. As noted above, the application originally included an increase in the operating hours on Sundays by an hour, however, this was the subject of significant objections from local residents, Parish Councils and the Council's Environmental Health Officer and the application has subsequently been modified to retain the existing Sunday hours.
- 2.3 Consideration should therefore be given to the impact on local communities of amending Monday - Saturday hours from 10.30am - 12.30 pm and 2.30pm - 5pm to 10am - 3pm on just Wednesdays, Fridays and Saturdays. This would not see a net increase in the daily amount of hours of use of the track, but would instead consolidate the hours on Wednesdays, Fridays and Saturdays and remove the possibility of the use of the track on Mondays, Tuesdays and Thursdays, representing a net reduction in permitted hours of 15 hours per week.
- 2.4 It is noted that the track is currently not used on Mondays, Tuesdays or Thursdays, however, the permission does provide the ability for the track to be used on these days and it is considered that the reduction in even the theoretical use of the track would provide an additional (albeit temporary) protection for local residents from the potential of it being used on those dates. This is a tangible benefit for the local community, albeit limited, based on the existing pattern of use of the track.
- 2.5 Having regard to the use of the track on Wednesdays, Fridays and Saturdays, if the application were to be approved, the local community would lose the respite they currently enjoy during the lunch time period. However, the use of the track would finish earlier, at 3pm instead of 5pm; and would therefore provide quiet afternoons from 3pm, a benefit which the community do not currently have. It is noted that the Environmental Health Officer has not raised any objection to the variation of the hours on Wednesdays, Fridays and Saturdays, concluding that the level of disturbance to the local community would be the same.
- 2.6 It is noted that some objections received appear to assume that the application would result in a net increase in the operating hours of the track, which is not the case.

- 2.7 Some objectors are concerned that the loss of the lunch break would encourage more bikes to use the track and allow the track to be more commercially viable. However, condition 5 would remain, which limits the maximum number of bikes at any one time on the track to 7 and conditions 1 and 2, which control the activities which take place on the track will also remain. It is considered that these conditions are the most appropriate way to control the number of bikes using the track and the activities that take place on the track. The track is subject to random monitoring checks and the Enforcement Team respond to individual complaints.
- 2.8 Whilst it is noted that the loss of the two hour respite over lunch times is a concern to some members of the local community, it is considered that, on balance, this would be outweighed by the combination of the benefit of the earlier finish times and the removal of the possibility for the track to be operated on Mondays, Tuesdays and Thursdays.
- 2.9 The proposal would result in a net reduction in the possible hours that the track would operate and would not increase the number of operating hours on any one day. The proposal would therefore deliver a net benefit in terms of limiting noise pollution to the local community. As such, the proposal is considered to be in accordance with Section 11 of the NPPF and Policy BE8 of the South Bedfordshire Local Plan Review.

3. Other Considerations

- 3.1 The preliminary comments of Stanbridge Parish Council have been passed to the Enforcement Team and the Environmental Health Team for investigation under the appropriate regulatory frameworks. In respect of the address of the application, it is noted that the previous application had the same address as this application and that the track gives its address as "Stanbridge Road, Billington" on both the application forms and publicity material.
- 3.2 It is noted that the current permission does not restrict the engine size of the bikes or the noise emissions which can result from the track. Conditions restricting these matters are attached to CB/14/03678/VOC, which is yet to be implemented.
- 3.3 Some consultation responses have raised concerns that the existing Breach of Condition Notice issued under CB/ENC/13/0276 would no longer be enforceable. Legal advice has confirmed that this is the case. However, should this application be granted, effective enforcement measures are proposed to ensure equivalent protection for local residents.
- 3.4 Eaton Bray Parish Council has raised concerns that granting a temporary Variation of Condition would set a precedent and would make it difficult to refuse a subsequent application to vary the condition on a permanent basis. It is hoped that following this season, planning permission CB/14/03678/VOC would be implemented, offering greater protection for residents from noise and disturbance emanating from the track. However, should that not be the case, it is considered that the short period until 30/09/2017 would provide a useful trial period for both applicants and the local community. It is considered that the granting of this temporary variation of condition application would not set an

unavoidable precedent for any future applications. Whilst it would be a material consideration in the determination of any future application, that application would have to be determined on its own merits and this decision would not be an overriding consideration.

3.5 The public consultation has raised concerns that the operators of the track have a history of breaching their planning conditions and there is currently an enforcement investigation open into allegations of breaches of condition. However, this is not a material consideration in the determination of this application and cannot be used as a reason for refusal of this application. The Council's Enforcement Team are investigating and monitoring the track separately to the determination of this application.

3.6 Human Rights issues:

The application raises human rights issues in respect of the right of objector's to peaceful enjoyment of their home and the rights of the applicant and the users of the track to the enjoyment of the track. However, the proposal would not result in a net increase in the level of noise and disturbance resulting from the track and the activities that take place on the track. It is therefore considered that a decision to withhold planning permission under the circumstances would materially infringe the applicant's and users' human rights.

3.7 Equality Act 2010:

The application raises no issues under the Equality Act 2010.

Recommendation:

That the Variation of Condition 4 be APPROVED subject to the following:

RECOMMENDED CONDITIONS

- 1 This permission shall only extend to the use of the site for the purpose of motor cycle training and practice until 30th September 2017.

Reason: To allow the Local Planning Authority to review the hours of use when the permission expires.

- 2 This permission shall extend only to the use of the site for the purposes of motor cycle training and practice and the site shall not be used for any other motor vehicle related activity or for any other purpose notwithstanding the provisions of Part 4, Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order).

Reason: To enable the Local Planning Authority to exercise proper control over the development in the interests of general and residential amenity. (Policy BE8, SBLPR and Section 11, NPPF)

- 3 This permission shall extend only to the use of the site for informal motor cycle activity and shall not extend to the holding of organised trials, races, and other similar events.

Reason: To enable the Local Planning Authority to exercise proper control over the development in the interests of general and residential amenity.
(Policy BE8, SBLPR and Section 11, NPPF)

- 4 The site shall only be used for the purpose hereby permitted between the hours of 10am to 3pm on Wednesdays, Fridays and Saturdays and 10am to 2pm on Sundays, and not at all on Mondays, Tuesdays, Thursdays and Bank Holidays.

Reason: To safeguard the residential amenity which the occupiers of neighbouring properties might reasonably expect to enjoy.
(Policy BE8, SBLPR and Section 11, NPPF)

- 5 No more than 7 motor cycles shall use the track at any one time.

Reason: To enable the Local Planning Authority to exercise proper control over the development in the interests of general and residential amenity.
(Policy BE8, SBLPR and Section 11, NPPF)

INFORMATIVE NOTES TO APPLICANT

1. In accordance with Article 35 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the reason for any condition above relates to the Policies as referred to in the South Bedfordshire Local Plan Review (SBLPR) and the National Planning Policy Framework (NPPF).
2. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval which is necessary must be obtained from the appropriate authority.

Statement required by the Town and Country Planning (Development Management Procedure) (England) Order 2015 - Part 6, Article 35

The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

DECISION

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