

**Item No. 6****TO FOLLOW****Enforcement No:** E/03/0047

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<b>Type:</b>	Change of use	<b>Date of Complaint:</b>	23 April 2003
<b>Developer:</b>	Prestwold 1966 Settlement and Everyman Tangerine		
<b>Breach:</b>	Use of airfield and recreational vehicle driving facilities for product training and demonstration by vehicle manufacturers.		
<b>Location:</b>	Wymeswold Airfield, Wymeswold Road, Hoton, Loughborough, Leicestershire, LE12 5SA		
<b>Parish:</b>	Hoton/Prestwold	<b>Ward:</b>	The Wolds
<b>Case Officer:</b>	Mrs H Robinson	<b>Extension:</b>	4743

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Members will be aware of the history of the site and of previous decisions that have been taken in relation to both development control and enforcement issues relating to its current use.

On 15<sup>th</sup> July 2004 a report was considered by this Committee who resolved that enforcement action should be taken to require the use for training and vehicle demonstrations for customers and staff of vehicle manufacturers and distributors to cease within one month of the notice coming into effect.

On 6<sup>th</sup> January 2005 the progress of enforcement action was reviewed following the submission of an application for planning permission. (This application was the subject of the previous report to this Committee). The Committee endorsed the recommendation that, in accordance with Government Guidance in PPG 18 and the 1997 Good Practice Guide, enforcement action should not be pursued in advance of consideration being given to the outstanding application, particularly if it transpired that any unauthorised development could be made acceptable with the imposition of conditions.

On 17<sup>th</sup> February 2005, this Committee however resolved to refuse planning permission, contrary to Officers recommendation. However, in accordance with the Responsibility for Council Functions, the Committee's decision was referred as a recommendation to Regulatory Committee on the confirmation by the Head of Planning Services and the Assistant Chief Executive (Risk Management) that the resolution fell within paragraph 1.(i)(b) since it sought to oppose an application in the absence of sound and clear cut reasons.

On 7<sup>th</sup> March, the Regulatory Committee resolved to refuse the application for the following reasons;

- I. The local planning authority is of the opinion that the construction of the noise attenuation bund would cause significant noise and disturbance

which would be an unwarranted intrusion on the amenities of residents living in villages near to the site as, in its completed form, it would have only a marginal effect in attenuating the noise generated by the use to be retained at the site. As such its construction would be contrary to aspects of the provisions of Policies CT/2, CT/10 and EV/39 of the adopted Borough of Charnwood Local Plan.

2. The local planning authority considers that, with or without the noise attenuation bund proposed in the application, the use sought to be retained would be likely to continue to cause an unacceptable degree of noise and disturbance for residents in the local area, in particular noise generated by motor vehicles used in the activities of the use and by tyre squeal caused by cornering vehicles. The local planning authority is of the view that the days that are, and would be, taken up by the proposed use would not otherwise be used for the currently permitted purposes and that, therefore, noise and disturbance would not arise on those days, thereby reducing the harm to nearby residential amenity. On the basis of the evidence before it and, in particular, the experience of nearby residents, the local planning authority does not consider that the harm to residential amenity over a greater number of days could be satisfactorily dealt with by the imposition of the conditions that would meet the requirements of Circular 11/95. Therefore, the continuation of the use would be contrary to aspects of the provisions of Policies CT/2, CT/10 and EV/39 of the adopted Borough of Charnwood Local Plan.
3. The local planning authority considers that the traffic associated with the proposed construction of the noise attenuation bund would cause an unwarranted reduction in the safety of the operation of the public highway, particularly in terms of the limitations of visibility at the junction of Wymeswold Lane and Melton Road and the suitability of other junctions in the vicinity of the site to cater for increased goods vehicle traffic. It considers that the benefits to residential amenity that would accrue as a result of the construction of the bund do not warrant the reduction in the level of safety on the public highway that would be caused. As such the proposal would be contrary to the provisions of Policies TR/6 and TR/17 of the adopted Borough of Charnwood Local Plan.

In light of the above refusal this report gives further consideration to the proposal to take enforcement action.

### **Consideration of the issue to enforce**

The postponement of enforcement action has given time for further investigations to be carried out into the actual activities taking place on the site and the effect of those activities on neighbouring amenity. The following report gives full consideration to the issue of formal enforcement action.

Section 172(1) of the Town and Country Planning Act 1990 provides:

Where—

- (a) it appears to the local planning authority that there has been a breach of planning control after the end of 1963; and
- (b) the authority consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, they may issue a[n enforcement] notice requiring the breach to be remedied.

There are several issues for consideration before making a decision regarding the expediency of enforcement action:

- i) Firstly, whether or not the activities of commercial training and demonstration are in fact taking place;
- ii) Secondly, whether the activities taking place are in fact in breach of planning control and;
- iii) Thirdly, whether planning permission could be granted to authorise the activities?

This report will now address each of these issues in turn:

(i) As regards whether or not the activities of training and vehicle demonstration for customers and staff of vehicle manufacturer and distributors are taking place, as a matter of fact, this fact has been established. Officers have visited the site unannounced on a number of occasions and witnessed commercial activities at the site. The fact that the activities are taking place is not disputed.

(ii) In determining whether or not the activities amount to a breach of planning control, consideration needs to be given to the purpose; the characteristics/nature of the use/any intensification; the impact of the activities that are taking place at the site and whether the activities associated with the commercial days are in breach of the extant planning permission. These issues are considered in detail below:

### **The Purpose:**

The key to defining the use would be to establish what is the primary purpose of the activity taking place at the time, for demonstration and training purposes or purely for recreation. In this case the purpose of the training and demonstration use is to demonstrate vehicles and to train individuals who are involved in promoting the particular vehicles being used. This takes place on the rally and road training areas

The question to be addressed is how this differs tangibly from the activities authorised under the extant planning permission. This involves the driving of various vehicles on the above areas for recreation purposes.

In respect of the Permitted use the Planning Permission describes this as being for the 'purpose' of recreational activities. Since similar activities for commercial purposes do not fall within the scope of 'recreational' there is a difference in purpose between the two uses. This difference means that the commercial use is not covered by the Planning Permission and to that extent is unauthorised.

## **The Characteristics of the Use**

In order to substantiate that a breach of planning control has occurred there would need to be a clear distinction in the characteristics of recreational activity on the one hand and demonstration or training day activities on the other.

Given that the recreational use that has been granted permission refers to a training use and despite the fact that it specifically refers to particular vehicles, this does not alter the fact that the characteristics of the training and demonstration use are not considered to be materially different to that of the recreational activities. Whilst the planning permission refers specifically to particular types of vehicles, 4x4, quads, carts etc. it does not specifically exclude other vehicles either in the description of the development or within the conditions attached to the planning permission.

The training and demonstration days have many of the characteristics of the permitted recreational use, including external impacts. Apart from the promotional material displayed within the site, the activities themselves would not appear to be materially different in terms of their impact in any other respect. The different purpose behind the use is not apparent to the independent observer.

The permitted use also involves vehicles driving around the tracks albeit with a primary purpose for recreation. The description of the permitted planning use does however, also include road and rally training, and as a matter of law, this must be given its normal meaning.

In these circumstances it is difficult to identify any material distinction between the permitted recreational use and the training and demonstration. Indeed on the evidence gathered by the case officer of the activities taking place together with the evidence supplied by the Head of Environmental Services, if anything the impact of the recreational use is more harmful in terms of noise and disturbance to residents than the training and demonstration use.

Both activities involve driving vehicles on the same parts of the airfield. They involve small groups of people taking part. They do not involve public events or spectators. They both involve a range of driving activities, although speed is more a feature of the recreational use. Access for both uses is the same. Both use mainly cars and vans, although recreational days tend to be solely cars, and there are differences in the types of cars used. Both activities generate noise the impact of which is dealt with below.

The case officer has witnessed the activities taking place at the site and is of the opinion that the activities, whilst different in purpose, (i.e. for training and demonstration rather than recreation), do not materially alter the character of the use. A change in the purpose behind a use does not in itself result in a material change of use unless there is also a change in the character of the use reflected e.g. in the impact on amenity. In this case, your officers cannot see a clear distinction between the character of the recreational use, which is permitted, and the training and demonstration use.

## **The Impact of the Use**

In visual terms, officers have inspected the site whilst recreation and commercial events are in progress and confirm that, apart from promotional advertising, there is no perceivable difference in impact. Both uses involve the driving of motor vehicles on the same parts of the airfield.

The objections to the retention of the commercial use centre more on the noise impact of the use, particularly tyre squeal, rather than the use itself. Monitoring of the current permitted use has shown that the conditions on the present permission have generally been complied with. Furthermore, the Head of Environmental Services has been satisfied that the noise produced including tyre squeal does not at the present time amount to a statutory nuisance.

Planning Policy Guidance Note 24 (PPG24) relates to planning and noise. It says that the character of noise should be taken into account as well as the level. Sudden impulses, irregular noise or noise which contains distinguishable continuous tone requires special consideration.

PPG 24 also requires consideration to be given to the expectation of a reasonable degree of peaceful enjoyment of gardens and amenity areas. It requires the consideration of different background noise levels in urban and rural areas and that the introduction of noisy activities in areas of low background levels may be especially intrusive.

In witnessing activities at the site on both commercial and recreational days, the experience of case officers is that there is less noise on commercial days than on recreation days and that both engine noise and tyre squeal are more noticeable during the latter events. Whilst the exercise at the airfield conducted on a commercial day - 4<sup>th</sup> February 2005, at the request of Planning Officers to produce deliberate tyre squeal, did provide evidence of the tyre squeal being audible, it must also be recognised that this was an exercise created to produce tyre squeal and that under the usual controlled situations of the commercial days such noise complaints are not generally reported.

In the previous reports the Head of Environmental Health Services has confirmed that complaints generated by activities at the airfield have in the past related to recreational events rather than commercial events. The complaints of noise have concentrated on both engine noise and exhaust noise from the higher powered vehicles associated with the recreational use, with just the two exceptions. Tyre squeal complaints have also corresponded to the permitted recreational activities, but for those exceptions.

There must be clear evidence that the training and demonstration use causes demonstrable harm over and above that associated with the recreational activities.

At the present time there is no clear evidence, either in planning terms or with regard to noise impact, that the training and demonstration activities cause demonstrable harm over and above that associated with recreational activities.

## **Intensification**

When making a judgment as to whether there has been a material change of use consideration must also be given to intensification. The current use for recreation is permitted .....“between the hours of 0900 and 1800 hours on Mondays to Saturdays between 1<sup>st</sup> April and 30<sup>th</sup> September and 0900 hours and 1700 hours between 1<sup>st</sup> October and 31<sup>st</sup> March. There shall be no operation on Sundays or recognised Bank Holidays”.

The permitted use takes place on significantly fewer days than have been permitted and, again, this leads to the conclusion that the use of the airfield for training and demonstration purposes is not an intensification of that use.

**(iii)** The issue of whether planning permission could be granted in any event has already been dealt with as the Regulatory Committee has refused the latest planning proposal put forward by the applicant (Ref: P/04/1001/2).

## **Consideration of the issue of Expediency**

As the activities are not covered by the Planning permission as described in (i) above under Purpose, consideration must also be given to the issue of whether it is expedient to enforce. In determining whether it is expedient to enforce regard must be paid to the Development Plan and other material considerations :

## **Development Plan Policies**

Policy CT10 of the adopted Borough of Charnwood Local Plan states: planning permission will be granted for proposals to diversify the rural economy in locations outside the limits to development defined on the proposals map provided all the following criteria are met:

- i) the proposal enables economic activity likely to retain or provide additional jobs in rural areas;
- ii) features of landscape, ecological or historic importance are properly safeguarded;
- iii) the proposal would not generate significant noise or, other nuisance problems;
- iv) levels of traffic generated would not be detrimental to the quality of the rural environment or highway safety;
- v) any new buildings and structures or extensions to existing buildings would be small-scale and essential for the proposed use.

Policy EV39 of the Borough of Charnwood Local Plan states planning permission will not be granted for new development which:

- i) because of its nature or operation, would be likely to result in a serious risk to the health or general amenities of nearby residents, the public generally or the natural environment; or
- ii) involves residential or other development sensitive to pollution which would be likely to suffer poor environmental amenity due to excessive noise, disturbance, dust, smoke or other polluting effects arising from existing development nearby.

Policy CT2 of the adopted Borough of Charnwood Local Plan states in areas defined as countryside, developments acceptable in principle will be permitted where it would not harm the character and appearance of the countryside and provided it could safeguard its historic, nature conservation, amenity, and other local interest.

Planning permission has already been granted for the recreational permission, the recommendations of the planning officer to grant permission are based on the evidence available regarding the activities taking place when considered against the policies outlined above. The commercial activities taking place are not contrary to development plan policy.

- **Other Policies**

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether the breach of control is unacceptably affecting public amenity or the existing use of land or buildings. In this case the noise and disturbance created by the commercial activities is not considered to cause any demonstrable harm over and above that associated with the recreational activities.

- **Other Material Considerations**

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article I of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified” and the statutory considerations involved in determining whether enforcement action is appropriate involve balancing the public interest against private rights of the developer.

### **Conclusions as to Expediency**

The officers conclusions may appear contrary to the previous report submitted and agreed by the Committee on the 15<sup>th</sup> July 2004 but have been made with the benefit of further consideration of the evidence outlined above in relation to the activities actually taking place on the site.

As has been concluded above, the evidence available to the Council shows that whilst the activities taking place are not covered by the recreational permission, they do not result in a material change of use in terms of character or its impact.

The facts of the case must be weighed against the extant recreational use. I am of the opinion that, although there is a breach of planning control, there is no evidence to indicate that it would be expedient to take enforcement action against the commercial use of the site, as no material harm can be demonstrated.

In the absence of credible evidence to support the taking of enforcement action, the Council could lay itself open to an award of costs on an appeal against any enforcement notice it issued. Department of the Environment Circular 8/93 points out that it will generally be regarded as “unreasonable” for the local planning

authority to issue an enforcement notice solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of planning control alleged in any enforcement notice.

Furthermore the Secretary of State, or Planning Inspector, will consider whether the Council has behaved reasonably in exercising its discretion to take enforcement action and the Council will be required to show that it had reasonable grounds. In light of the evidence gathered and the considerations given in this report, the service of an enforcement notice would be unjustified.

### **RECOMMENDATION**

That it is not expedient to pursue enforcement action in respect of the use of the airfield for product training and demonstration by vehicle manufacturers on the basis that they do not result in a material change of use in terms of character or impact which would justify taking enforcement action.