



Doncaster Metropolitan Borough Council Planning Enforcement Quarterly Report July 2019

1.0 Introduction

- 1.1 This report provides Doncaster Metropolitan Borough Council's Planning Enforcement performance in the First Quarter 2019/20.
- 1.2 The months since the beginning of the new financial year have been relatively busy. Unfortunately, at present due to absent leave the team is operating with only two full time officers. We are currently in the process of interviewing applicants to fill a six months secondment opportunity, to assist with the backlog of outstanding cases, whilst also looking to employ and train an apprentice.

<u>Case Updates</u>	
Total Cases Still Under Investigation as at end of June 2019.	77
Total Cases Recorded in the First Quarter (1 st April – 30 th June 2019).	104
Total Cases Closed Down in the First Quarter (1 st April – 30 th June 2019)	63

2.0 Court Action

2.1 DMBC v Wheatley Hall Properties: Breach of TCPA Enforcement Notice – 1-3 Silver Street, Doncaster Town Centre (16/00195/M) - External Window Shutters In A Conservation Area.

The case was due to be heard in the Magistrates' Court on the 5th June 2019 however, Wheatley Hall Properties agreed that they would accept a simple caution and provide an acceptable scheme that must be approved and implemented within 3 months so, the prosecution is held in abeyance. Failure to achieve the required works will result in continuation of the prosecution.



2.2 DMBC v Millard: Breach of TCPA Condition Notice – Mallor, Moss Road, Askern.

The LPA granted permission for the erection of a detached bungalow known as 'Mallor' on the corner of Newmarche Drive in Askern.

The Planning Permission contained a condition that the development must be carried out in accordance with the approved plans.

The development was not carried out in accordance with the planning condition and was instead built with a glass door at the garages first floor level.

The owner sought to retain the unauthorised elements, and the LPA chose to serve a Breach of Condition Notice and then proceeded with a prosecution in Court.



The case was proven in absence in the Magistrates' Court on the 10th April 2019.

Sentence:

£660 fine, £1,327.74 costs, £66 Victim Support, 28 days to pay, collection order made.

Current Update:

The owner is still failing to comply with the required works and as such, a second prosecution is being considered by the LPA.

2.3 DMBC v Southall: Breach of Condition (14/00027/N) – 3 Alverley View, Springwell Lane, Balby.

The site lies within the Green Belt and has been subject to a planning application for the change of use of domestic garage to car minor repair and servicing operation. The planning application was refused and an enforcement notice was issued.

A trial was listed for the 29th May 2019 (four breaches of the enforcement notice (1) 15/12/17-28/3/18; (2) 8/12/18; (3) 11/12/18 and (4) 13/12/18. Mr Southall pleaded guilty to the three most recent breaches of the notice (8/12/18, 11/12/18. DMBC offered no evidence on the 15/12/17 - 28/3/18 charge and accepted guilty pleas to the recent three.

The notice has been complied with for several months.



Sentence: £270 fine for the 8/12/18 breach.

No separate penalty for the other two convictions.

Costs: £1,393.56. plus a £30 victim surcharge.

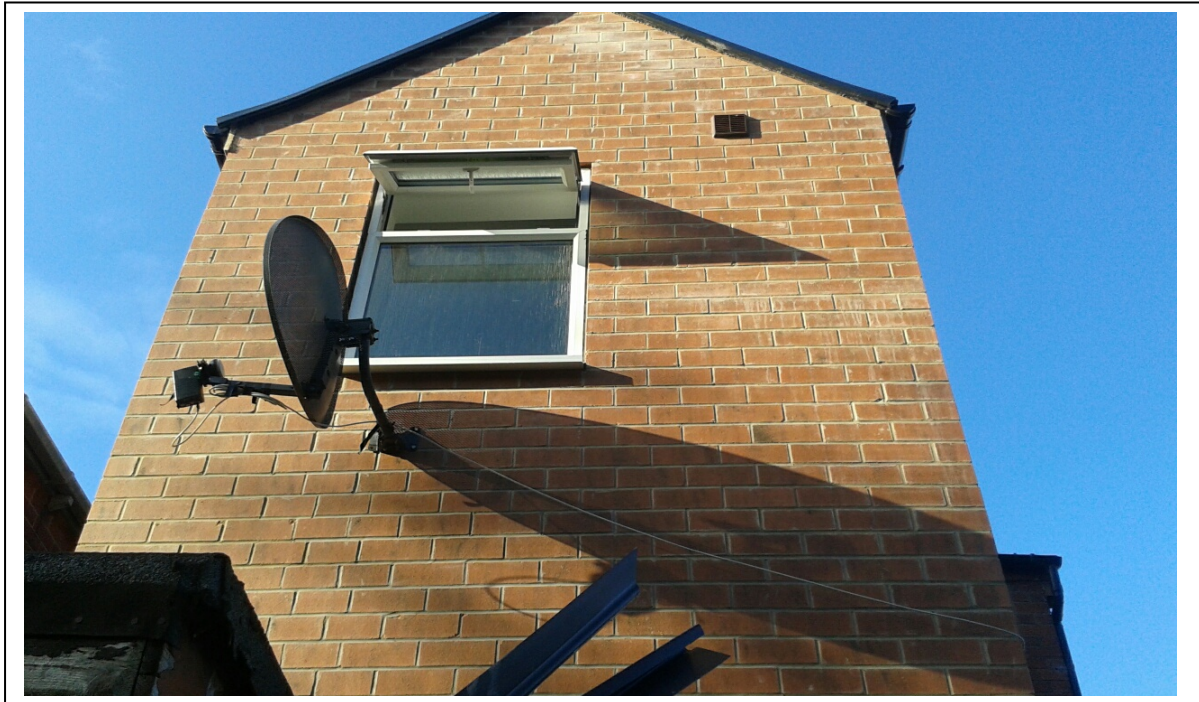
2.4 DMBC v Bloor: Breach of Enforcement Notice - 22 Kirk Street, Hexthorpe (16/00079/M).

The council received a complaint regarding a first floor rear extension and enforcement officers visited the property in November 2016 and found the extension had been built without planning permission.

The property owner, was served with an enforcement notice in April 2017, requiring the removal of the first floor extension and to return the remaining building back to its former condition by 2nd September 2017.

At Sheffield Crown Court on June 26, the owner admitted to breaching the enforcement notice served under section 179 Town and Country Planning Act 1990 for not having planning permission for the erection of a first floor extension to the rear of a property on Kirk Street, Hexthorpe.

Failure to comply with the enforcement notice to remove the unlawful extension continued for almost for one year, 7 months and 30 days.



Sentence: £15,000 fine (reduced from £20,000 due to the guilty plea) as a result of the “significant planning harm” and harm to neighbours as evidenced in the Planning Inspectorate’s Appeal Decision and £3,199.60 costs.

3.0 **Direct Action**

3.1 During the first quarter a large amount of proactive work dealing with posters and banners has been undertaken. Relevant letters have been sent warning that repeat offending will result in fines and may result in prosecution action.

4.0 Pending Court Action

4.1 18 Radiance Road, Wheatley – Enforcement Notice issued on the 4th March 2019.



5.0 General Cases

The following are a few examples of cases currently under investigation by the Planning Enforcement Team:

5.1 Blaxton Quarry – Nottingham Place Investments.

Currently one of the largest cases planning enforcement have investigated, this is in relation to the use of an abandoned quarry that is being used for off-road motorbike and quad activities.

This has been a protracted case resulting in a lengthy planning investigation. Historic evidence suggests that advertisement of events had been taking place on social media with bookings taken via social media “messenger”. It was reported that over 100 riders were attending at a weekend, when the site was in full operation.

In addition, a JCB was used to form tracks and areas for off-road activities through the recorded sites of protected species (including great crested newts and reptiles) and wooded landscape. This resulted in a large amount of the woodland areas being damaged.

The great crested newt records are recent and suggest that there is a large population. As it is a criminal offence to kill or injure a newt or destroy its habitat, no earth movements, tree removal or construction activities should take place on the

site until ecological surveys have informed the scope of necessary protection measures, and a license has been obtained from Natural England.

Furthermore, there is the potential that nightjar forage on the site. The impacts on these species need to be avoided so that the interests of Thorne and Hatfield Moors Special Protection Area are not compromised.



Despite assurances that this was either not happening or not sanctioned by the owning company, unfortunately activity on site appeared to have continued such that the LPA served a Temporary Stop Notice (TSN) and an enforcement notice to 'kick in' when the TSN lapsed. An appeal made against the notice.

The Local Planning Authority (LPA) attended the site with the Planning Inspectorate on the 3rd July 2019 as part of the appeal process. The Inspector decision followed shortly after the site visit and confirmed that the enforcement notice was properly served. He further stated that the use of the appeal site for motocross and fishing activities and the associated facilitating operational development went well beyond that which would have been permitted (i.e. 14 days in any calendar year as specified in The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), Part 4 at Class B. The appeal was dismissed and the enforcement notice was upheld.

For a copy of the full appeal decision please refer to Appendix 1: **Appeal ref: APP/F4410/C/19/3222999** - Blaxton Quarry, Land off Thorne Road, Blaxton, Doncaster, South Yorkshire DN9 3AX

5.2 Stockbridge Lane, Arksey – Traveller Sites.

A large quantity of work has already been undertaken on Stockbridge Lane, including the removal of unauthorised hardstanding/driveways, boundary walls and

levelling/reseeding with grass at Stockbridge Farm in 2017 (DMBC cost £40,000+ which is registered as a land charge).

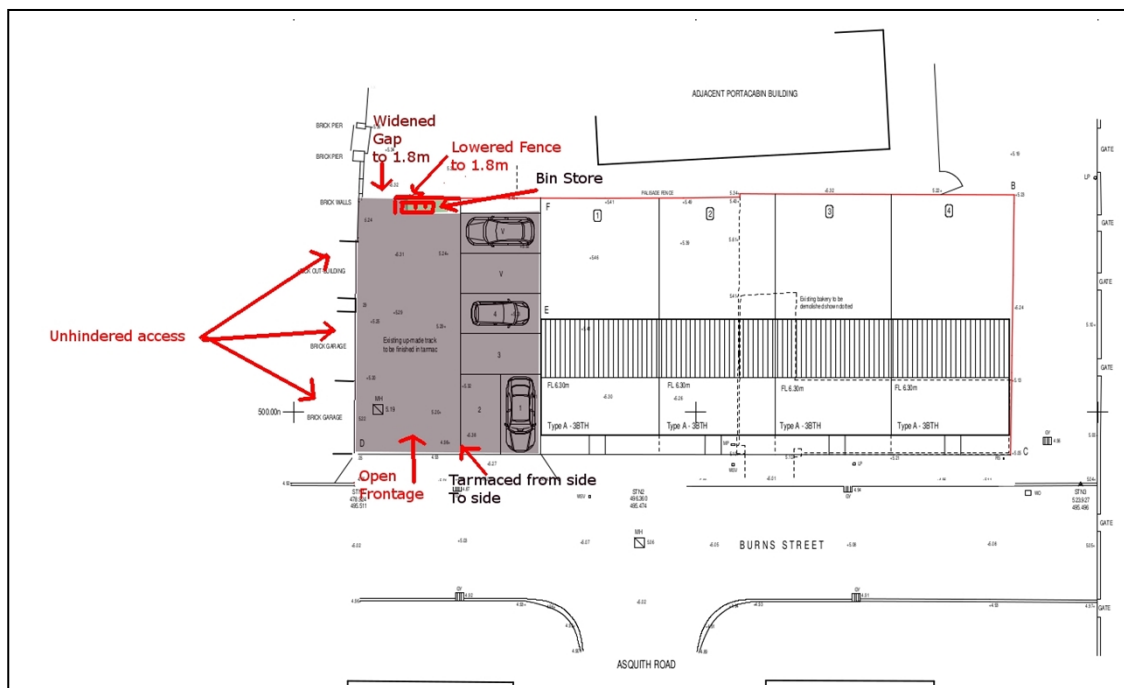
The LPA is constantly monitoring whether further enforcement work is necessary within the Stockbridge Lane area.

5.3 Hall Villa Lane, Toll Bar – Pony Paddocks (19/00165/M & 19/00225/H)

A complaint has been received that unauthorised development is taking place within and adjacent to an existing gypsy and traveller site. A site visit is planned to seek access the site and ascertain the nature of the development taking place and an update can be provided to planning committee on request.

5.4 Burns Street, Bentley – New Development

This case refers to the erection of an unauthorised fence, and a fence being erected higher than previously agreed by condition. The following compromise outcome was agreed (please refer to the sketch below).



- The fence running parallel to the existing garages will be removed in its entirety.
- The rear fence will be reduced to 1.8m and the gap for foot travellers be widened to 1.8m.
- The area in front of the garages will be open for the garage and shop users to gain entry and unload.
- The area from the garage doors across the site will be tarmacked.
- A bin store will be erected to the north east corner of the site adjacent to the back fence.

Pedestrians will be able to pass through the 1.8m gap which has been widened at the rear fence which has also been dropped in height to 1.8m.

5.5 Old Road, Conisbrough.

This is a case of derelict building that has been abandoned for a significant period of time. The site contains external walls just a few feet above ground level.

Recent works have taken place and a large metal clad steel frame building has been erected on top of the existing stone walls. Furthermore, a roller shutter and metal door has been installed to the front elevation.

The LPA are working with the developer to reach a resolution.

5.6 22 & 29 Swanland Court, Thorne – Front boundary fences on an open planned estate (19/00197/M)



Fence over 1 metre high located at the front of the property next to a highway, used by vehicles. An open plan condition exists on the original planning permission meaning that the estate should remain open. The LPA advised that the fencing needs to be removed.

The fences remain in situ and consequently the LPA served Breach of Condition Notices, due to expire at the end of July 2019.

5.7 5 Swan Syke Drive, Norton – Erection of a 2 metre high boundary fence.

This case involves the erection of a two metre high fence on land surrounding the rear garden of a bungalow. An Enforcement Notice was served requiring:

(i) Remove the fencing and posts from the Land;

OR

(ii) Reduce the height all fencing which is located within 2 metres of the highway boundary (measured from your inside edge of the footpath / boundary edge of the Land) to a height of not greater than one metre.

OR

(iii) Relocate the fence so that it is set back 2 metres from the boundary of the Land and to a height of not greater than 2 metres above ground level.



Following on from a site visit on the 9th July 2019, it was agreed that the fence would be reduced to 3'9" (1.1m) and the posts lowered accordingly. Due to the construction of the posts a time period of two months has been allowed. On completion of the works, the LPA will to withdraw the enforcement notice.

5.8 Development of land by Burgar Road, Tudworth Road Junction in Thorne

The LPA received a complaint that the site was being developed for residential purposes and that a static caravan had been brought onto the land together with steel shipping containers and portable cabins.

Historic aerial photographs indicate that the land originally had a single field shelter for ponies and was predominantly laid to grass. However, more recently a statutory undertaker undertook repairs to the canal bridge using their statutory powers. The LPA agreed the use of the field on the understanding that the portable cabins, service road and hardstanding were removed on completion of the remedial works. The statutory undertaker agreed with the appellant to leave the and hardstanding in place on completion, however the LPA were not aware of this.

The LPA were subsequently notified that the sub-contractors had left the site and that the owners had brought onto the land a static caravan, containers and other impedimenta.

The owner was advised to remove from the land the caravan, containers and portable cabin and internal road/hardcore compound however, despite trying to work with the owner, the aforementioned remained on the site resulting in the an enforcement notice being served. An appeal was made against the enforcement notice and the LPA attended site with the planning inspectorate on the 3rd July 2019. The Inspector upheld the Enforcement Notice with a few minor variations.

For a copy of the full appeal decision please refer to Appendix 2: **Appeal ref: APP/F4410/C/18/3207741** - Land adjacent to Burgar Road/Tudworth Road, Thorne, Doncaster DN8 5RB



Quarterly Enforcement Cases

Quarter 1	
Received Enforcement Cases	104
Total Cases Pending	77
Closed Enforcement Cases	63

Case Breakdown	
Unlawful Advertisements	12
Breach of Conditions	16
Unauthorised Change of Use	27
Unauthorised Works to Listed Building	0
Unauthorised Operational Development	44
Unauthorised Works to Protected Trees	5

Areas Where Breaches Take Place	
Adwick and Carcroft	4
Armthorpe	1
Balby South	0
Bentley	11
Bessacarr	2
Conisbrough	5
Edenthorpe and Kirk Sandall	9
Edlington and Warmsworth	3
Finningley	9
Hatfield	5
Hexthorpe and Balby North	1
Mexborough	4
Norton and Askern	11
Roman Ridge	4
Rossington and Bawtry	6
Sprotbrough	2
Stainforth and Barnby Dun	2
Thorne and Moorends	6
Tickhill and Wadworth	8
Town	7
Wheatley Hills and Intake	4

Formal Enforcement Action	
Notices Issued	3
Prosecutions	4 with outcomes this month

Report Prepared By:
 Scott Forbes
 Environmental Protection Manager.
 The Enforcement Team.

Appeal Decision

Site visit made on 3 July 2019

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal ref: APP/F4410/C/19/3222999

Blaxton Quarry, Land off Thorne Road, Blaxton, Doncaster, South Yorkshire DN9 3AX

- The appeal is made by Mr Nadeem Shah under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The notice was issued on 21 January 2019; reference No. 19/00001/ENFNOT.
- The breach of planning control was: Without planning permission, change of use of the Land from countryside/disused quarry to a motocross and outdoor activity site including the development and formation of fishing 'piers or pegs' along with engineering works the creation, alteration and removal of earthen 'bunds' of various sizes and the setting out of both formal and off-road motocross/motor sport race tracks, together with its associated activities of the siting/use of a residential caravan and hot/cold food sales and HGV container storage, all as part of the material change of use.
- The requirements of the notice are to:
 - (1) Permanently cease the use of the Land for the riding of motorcycles or motor sports activities (i.e. bike, quad or other vehicle) other than for non-leisure use of security/site inspection on the OS defined and marked trackways of Levels Lane/Nan-Sampson Bank)
 - (2) Permanently cease any further engineering operations on the Land for the alteration, creation or removal of earthen (or other materials) bunds/embankments
 - (3) Permanently remove all HGVs, storage containers and caravans from the Land
 - (4) Permanently remove from the Land any track markers, bollards, traffic cones or other implements used to define motocross/motor sports tracks
 - (5) Cease the use of the Land for fishing, boat use activities and for hot and cold food sales
- The period for compliance with the requirements is 28 days.
- The appeal was made on grounds (c) and (e) as set out in the amended Act.

Summary of decision: The enforcement notice is upheld

Appeal site

1. The appeal site is an extensive 123.5ha area of mostly overgrown former quarry and arable land just to the north-east of the small settlement of Blaxton. Access is obtained from Kettering Road to the west along a roadway, Levels Lane, that is normally gated and locked. There are several large lakes at the

northern end of the land. Apart from a level area of hardstanding near the access at the western side, much of the site has an undulating predominantly sandy surface that has been crossed by numerous off-road motorcycle tracks. Earth bunds have been built, particularly on the southern side of the lakes. Other earthworks have been carried out, seemingly in part to provide tracks suitable for motocross activities. An arable field at the western side of the site is let to another party.

Enforcement notice – validity

2. The Appellant, Mr Nadeem Shah, said the enforcement notice plan's red line showed a vast area of land. There was no specific reference to exactly where the alleged motocross activities were taking place. The red line covered areas where no breach as stated in the notice had ever taken place. The notice was defective. It was invalid.
3. The Courts use the concept of the planning unit to determine the area of land to be considered when identifying the primary use of land, (and its ancillary uses), and whether any material change of use has occurred. In the case of *William Newland v SSCLG and Waverley BC QBD 22 December 2008*, HHJ Hickinbottom said the identification of the relevant planning unit was quintessentially a matter of fact and degree for the primary decision maker, (also see *Johnstone v Secretary of State for the Environment (1974) 28 P&CR 424* and *Church Commissioners for England v Secretary of State for the Environment [1995] 2 PLR 99*).
4. In the case of *Burdle v SSE [1972] 1 WLR 1207*, Bridge J. determined that there were three criteria to determine the planning unit:
 1. When occupier uses for single main purpose to which secondary activities are incidental, the unit of occupation to be taken as the planning unit.
 2. When a variety of activities none incidental or ancillary to the other, again consider the entire unit.
 3. When two or more areas occupied for substantially different purposes. Each area so used is a separate planning unit.

Bridge J. said: "*It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*"

5. In the case of *Thomas David (Porthcawl) Ltd and others v Penybont Rural District Council and others [1972] 3 All ER 1092 5 Oct 1972*, the Appellants had complained that an enforcement notice had been served on an entire plot of land when the activities complained of, sand and gravel extraction, had occurred on only two smaller parts. There it was held that the site should be looked at as a whole.
6. It is clear from the above decisions that, where there is no evident demarcation between activities or works, the unit of occupation is generally to be taken as the planning unit, even where there may be a nil use on part of the land. But particularly where access roads and paths are shared and there is some flexibility in the location of activities, there cannot be a sensible separation of the site into different planning units. In my view, it was entirely appropriate for

the Council to have identified the entire enforcement notice red line site as the planning unit where a mixture of activities and engineering operations have taken place.

7. The Appellant's assertion that the enforcement notice here is a nullity is incorrect. A notice is only a nullity if it is invalid on its face, *R v Wicks [1996] JPL (CA)*, that is, for example, if it failed to comply with the requirement in s.173(3) of the Act to specify the steps, or specify a period for compliance, (s.173(9)). Neither is the notice invalid; that is, containing an error that may or may not be correctable. I consider that the notice before me appropriately identifies the planning unit and correctly describes the mixture of uses. It is a valid notice. The notice could have included an agricultural use as part of the mix of uses. But the notice does not attack that lawful use. Its omission from the allegation is not fatal to the notice.

The appeal on ground (e)

8. An appeal on ground (e) asserts that the enforcement notice was not properly served. Pointing out the alleged flaws in the service of the notice, it was said that Mr N Shah was a director of TLB Properties who were managing agents of the site. Mr Imran Shah did not live at Gatewood Farm. The Yorkshire Enduro Company was not registered at Cavendish Court, South Parade, Doncaster. There was no such commercial concern at Cavendish Court. It was also said the access serving the quarry was shared with an adjacent landowner who appeared not to have been served with notice despite having an interest in the land.
9. The Council responded by setting out in considerable detail their efforts to find and serve those with an interest in the land. They said information from the Land Registry showed the land to be owned by a company registered in Jersey. Legislation there had no requirement to list directors and details of ownership. The Appellant, Mr Nadeem Shah, was the only person to have contacted the Council in relation to the enforcement notice. The Council had sent a copy of the enforcement notice to the adjacent landowner for information purposes only. They considered him to be not involved in the breach.
10. In my view, the Council did all that was required of them to find the persons and parties with an interest in the land prior to issuing the enforcement notice. They were entitled to rely upon a Land Registry search to identify all those with an interest. The Appellant produced no evidence of any person or party that had an interest in the land who had not been served with the enforcement notice nor, if so, how they might have been disadvantaged by any omission in service of the notice. Mr Nadeem Shah appealed against the notice, submitting grounds of appeal. He also produced an appeal statement. No evidence was brought forward to show that any injustice had been caused to any person or party by any possible failure to serve the enforcement notice correctly. The appeal on ground (e) fails.

The appeal on ground (c)

11. An appeal on ground (c) asserts that there has not been a breach of planning control. It was Mr Shah's case that the motocross activity had taken place on no more than 14 days each year for the last 4 years. Event paraphernalia were

removed after each event. The occasional motocross activity was therefore permitted development.

12. The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), Part 4 at Class B - temporary use of land, grants planning permission for the use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of – (b) motor car and motorcycle racing including trials of speed, and practising for those activities and the provision on the land of any moveable structure for the purposes of the permitted use.
13. In the case of *Ramsey v SSETR & Suffolk Coastal DC [2002] CA JPL 1123*, it was determined that where agricultural land was used for vehicular leisure purposes, even if permanent physical changes take place on land to facilitate a temporary use, provided that they do not prevent the normal permanent use from continuing for most of the year, and it does so continue, there is no reason why the permitted development rights under the Order at Class B should not be available.
14. In this instance, arguments around the reversion to “the normal permanent use” do little to resolve the question of the lawfulness or otherwise of the claimed temporary use. Most of the land used for motocross activities has taken place on former quarry land, much of which appeared to have little topsoil cover and is now overgrown with trees. That land looked to me to be of little or no use for agricultural purposes, said by the Council to be the lawful use of the land.
15. Any reliance by the Council on the apparent permanence of the engineering works to construct, for example, motorcycle tracks to show an intention to develop a permanent motocross facility, is not necessarily, of itself, decisive as to lawfulness. However, in *Ramsey*, the physical works would only be acceptable to facilitate a temporary use. Mr Imran Shah’s, (Mr Nadeem Shah’s son), own LinkedIn page says that; “*Since early 2016 have been developing a problem site into a purpose built motorbike enduro circuit. We have recently completed the first stage of works to the site and have been operating for almost 2 years.*”. He also said: “*A project I’ve been running over the last year converting a disused quarry into an outdoor pursuits centre... Three lakes enduro, just the start.*”. Also, a Change.org – petition, (now closed), to keep Three Lakes Enduro open, (the name of the appeal site’s motocross facility), had 2,735 signatories, suggesting a permanent, not a temporary, motocross use.
16. The Three Lakes Enduro Facebook page contains reviews of the motocross facility from 47 persons. An entry from the operators in 2017 said: “*We are trialling Wednesday and Thursday afternoon/evenings so which ever day you can make it this week pop down and ride and let us know what you think. This is just a trial we will pick the most suitable day to add to future weeks.*”. That does not suggest a temporary facility available for no more than 14 days in any year.
17. Even if the use of the appeal site for motocross had been limited to the 14 days a year set out in the Order, the physical alterations to the land to provide the various tracks and courses within the land strongly support the Appellant’s stated intention to develop a permanent facility. In *Ramsey*, the Judge said, “*It seems to me that as a matter of law physical changes that have been made to*

the land are capable of being a relevant consideration in the decision-makers assessment of the character of the proposed use. Is not simply limited to looking at duration in every case."

18. In my view, the evidence shows a definite intention to continue to develop the Three Lakes site. Quotes on line from the change.org petition by Imran Shah demonstrate that intention - such as: "... we have managed to create a track so good people from every corner of the country have had to visit us.", and "We will not give up on THREE LAKES ENDURO if you can help us here we promise to provide you the best safest and most diverse place to ride your bikes in the UK."
19. There was little emphasis by either party on the fishing use by members of the public of the large lakes at the northern end of the appeal land. Mr Shah said the lakes had been used for over 30 years for fishing by appointment only. An application for a certificate of lawfulness to that effect was to be made. The Council merely said such an application could be made. However, it would appear that Mr Shah considers the fishing use activity is carried out at a level that could justify issue of a certificate of lawfulness. In the meantime, the fishing use of the land as part of the mix of unlawful uses persists, even though it may be at a low level.
20. I consider that the use of the appeal site for motocross and fishing activities and the associated facilitating operational development went well beyond that which would have been permitted by the Order. The appeal on ground (c) fails.

FORMAL DECISION

21. The enforcement notice is upheld.

John Whalley

INSPECTOR



Appeal Decision

Site visit made on 3 July 2019

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal ref: APP/F4410/C/18/320741

Land adjacent to Burgar Road/Tudworth Road, Thorne, Doncaster DN8 5RB

- The appeal is made by Miss Jodie Martin under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Doncaster Metropolitan Borough Council.
 - The notice was issued on 26 July 2018; reference No. 18/00021/ENFNOT.
 - The breach of planning control was: Without planning permission:
 - (i) the change of use of the Land from countryside to a mixed use of domestic and storage use by the siting of a mobile home, shipping/van bodies, storage containers, storage of vehicles, horse boxes and the siting of a portable office unit.
 - (ii) the unauthorised engineering operations including the formation of an internal roadway and a hardstanding compound area.
 - The requirements of the notice are to:
 - (i) Cease the residential occupancy of the mobile home;
 - (ii) Remove the mobile home;
 - (iii) Remove the office unit, storage containers, vehicle box bodies, vehicles, and horse transporters and all other domestic impedimenta;
 - (iv) Remove the internal roadway and hardcore compound;
 - (v) Restore the area where the internal roadway and hardcore compound was located to countryside by re-seeding with grass or wild meadow seed mix within an appropriate period in the planting season October 2018 - March 2019.
 - (vi) For one year following reseeded date, allow the area to be restored to a semi-natural condition by:
 - a. Not applying any topsoil, non-native wildflower/grass seed or fertilisers;
 - b. Not allowed grazing in the first spring and summer; and
 - c. Control agricultural weeds (creeping thistles, broad-leaved and curled dock and common ragwort) through up-rooting, cutting, or (if required) knapsack spraying or weed-wiping (in accordance with Natural England advice <https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants#spray-plants-with-chemicals>)
 - d. Allowing the regrowth by securing the area from grazing for one year from the date of re-seeding.
 - The periods for compliance with the requirements are:
 - Requirement (i) – within one month of the effective date of the notice.
 - Requirement (ii) – within one month of the effective date of the notice.
 - Requirement (iii) – within 3 months of the effective date of the notice.
 - Requirement (iv) – within 3 months of the effective date of the notice.
 - Requirement (v) – within 9 months of the effective date of the notice.
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- The appeal was made on grounds (a) and (b) as set out in the amended Act. As the fees payable for the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended were not paid, the appeal on ground (a) falls away and the application is not considered.

Summary of decision: The enforcement notice is varied and upheld

Appeal site

1. The appeal site is a 0.62ha narrow strip of land immediately to the south of the railway, a short way west of Thorne South station. Some of the land is covered by a stone hardcore surface and an access track. At the time of the appeal visit, there was a mobile home and storage units on the land.

The appeal on ground (b)

2. An appeal on ground (b) asserts that the alleged breach of planning control has not, as a matter of fact, occurred. In an appeal on legal grounds, as here, the burden of proof to show there has not been a breach of planning control lies with the appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position.
3. The first part of the notice's allegation states: "(i) the change of use to a mixed use of domestic and storage use by the siting of a mobile home, shipping/van bodies, storage containers, storage of vehicles, horse boxes and the siting of a portable office unit.". It is not possible to know whether the stationing of the mobile home amounts to a material change of use without knowing the purpose for which it was used, and whether that purpose fitted in with the existing use of the land, (*Restormel BC v SSE and Rabey [1982] JPL 785*). Here, use of the term "mixed use of domestic and storage use" as applied to the mobile home lacks precision.
4. The notice's first requirement clarifies matters. From that, it may be seen that the Council concluded the mobile home was being used for residential purposes. However, Miss Jodie Martin, the Appellant, said the caravan had not been occupied residentially. No services, such as water or electricity were connected. Nor was the mobile home plumbed in to a drainage system. It was used for storage, not lived in. That would appear to be conceded by a Council Officer's site visit report that said: "*the caravan did not appear to be occupied, no water or gas supply was present and having looked through the windows of the caravan, it did not indicate that the caravan was being used for residential purposes*". The Council produced no evidence of a residential use of the caravan, (described as a mobile home in the notice), on the appeal site. The residential use of the mobile home as part of a mixed storage use of the land was not demonstrated. I will delete requirement 5(i) from the enforcement notice.
5. Miss Martin's said some of the stone and hardcore surfacing had been placed on the site in 2002. That could be part of an implied ground (d) appeal, that in the case of operational development, it would be immune from enforcement action after a period of 4 years following substantial completion of works, (s.171B(i) of the Act). The Council had said aerial photographs taken at intervals over the period 2002 to 2015 showed the site to be undeveloped. But this is not a matter before me and I cannot deal with it in the context of a ground (b)

appeal. If Miss Martin considers there is evidence available to support her view, it could be the subject of an application to the Council for a certificate of lawfulness under section 191(1)(b) of the Act.

6. My conclusion is that no evidence of a residential use of the mobile home was produced. The appeal on ground (b) therefore succeeds for that part of the alleged breach of planning control. But the appeal fails in respect of the storage uses and the engineering operations. The enforcement notice is varied by the deletion of that part of the allegation dealing with the residential use and the deletion of the requirement 5(i). I also delete reference to "countryside" in the first part of the allegation. In my view, "countryside" does not describe a use of land. Also, an enforcement notice does not need to set out a previous lawful use. That variation also helpfully removes the word "domestic". If it had been appropriate, "residential" would better describe such use. Finally, the use of a specified date for compliance is inappropriate, as it may not allow for a suitable period for compliance in the event of an appeal against the notice. I will substitute a period of time, reflecting the Council's intention that re-seeding takes place in the succeeding planting season.

FORMAL DECISION

7. The enforcement notice is varied by the deletion of the words "from countryside to a mixed use of domestic and" in lines 1 and 2 in paragraph 3(i) on page 1 of the notice and the substitution therefor of the words "to a". The enforcement notice is also varied by the deletion of the words "residential occupancy" in line 5(i) on page 2 of the notice and the substitution therefor of the words "the storage use". The enforcement notice is also varied by the deletion of the words "planting season October 2018 – March 2019" in lines 3 and 4 in paragraph 5(v) on page 2 of the notice and the substitution therefor of the words "next planting season following the restoration of the former internal road way and hardcore compound". Subject to the foregoing, the varied enforcement notice is upheld.

John Whalley

INSPECTOR