

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 143**

Appeal by Mr Keith McAdoo

**against an enforcement notice concerning an alleged breach of planning control
involving the unauthorised material change of use of land from an agricultural use to
use for motorised sport activities
at land approximately 600 metres northwest of No. 54 Drumearn Road, Cluntyganny,
Cookstown.**

**Report
by**

Commissioner Jacqueline McParland

Planning Authority References: LA09/2019/0061/CA & EN/2021/0208

Procedure: Informal Hearing on 9th March 2022.

Report Date: 12th September 2022.

1.0 BACKGROUND

- 1.1 The Enforcement Notice (the Notice) was issued on 13th August 2021. The Commission received an appeal against the Notice on grounds (c), (f) and (g) on 10th September 2021.
- 1.2 The Commission notified Mid Ulster District Council of the appeal by letter dated 17th September 2021. The appeal was advertised in the local press on 29th September 2021 and 14 responses were received from nine properties.

2.0 SITE AND SURROUNDINGS

- 2.1 The appeal site is located within the countryside, approximately 3km to the northwest of Cookstown. It is accessed via a lane which is served by Drumearn Road.
- 2.2 It comprises ramps, hills and a compacted sand track. Post and wire fencing, tyres and metal barriers are present throughout the site.
- 2.3 A Portacabin is located on the land immediately north of the appeal site, and this land is laid out in a track. The surrounding area is mainly agricultural in nature.

3.0 Preliminary Matters

The Planning Authority's Case

- 3.1 The breach of planning control relates to an unauthorised material change of use of the land to motorised sport activities. However, the map which accompanied the Notice contained an error as it did not include all the land which is in use for these activities. An area of land immediately to the north of that identified on the Notice map should have been included. This is not fatal to the appeal proceedings. Section 138 of the Planning Act (Northern Ireland) 2011 does not require a map to be issued with the Notice. It is considered that the Commission can amend the Notice map to include this land.
- 3.2 A portacabin was and remains located on the land to the north of the site identified on the Notice map. This is a temporary building used in connection with the motorised sport activity. The remedy to remove all equipment and materials associated with the motorised sport activities would include the portacabin. The portacabin is therefore within the scope of the Notice. Given this the appellant would not suffer an injustice if the Commission were to consider the site identified in the Notice plus the land to the north as that used for motorised sport activities. However, if the Commission is of the opinion that this is not feasible, the Council are content to proceed on the basis of the Notice as it was issued.

The Third Parties' Case

- 3.3 The appellant is aware of the extent of land used for motorised sport activities at this location. A portacabin is used for the motorised sport activities and it is located on land which is to the north of the Notice site. No prejudice would occur if the appeal site was extended as suggested by the Council.

Consideration

- 3.4 Section 144 (2) of the Planning Act allows the Commission to correct any misdescription, defect or error in an enforcement notice, or vary its terms if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Council.
- 3.5 At the hearing the Council requested that the Commission correct the map which accompanied the Notice to include a larger site on which they allege a breach of planning control to have occurred. Although the legislation does not require a map to be attached to the Notice, when one is attached it should be correct. The Council have erred in the administrative preparation of the map. In addition, the appellant was not represented at the hearing and did not have the opportunity to comment on the Council's request. I consider an increase in the appeal site area may come as a surprise to the appellant and may prejudice any future action by the Council. Consequently, I consider that both parties may suffer an injustice if I were to correct the map. Therefore, for the reasons given, the appeal will be considered based on the original map.

Legal Ground

4.0 **GROUND (C): - that those matters (if they occurred) do not constitute a breach of planning control**

The Appellant's Case

- 4.1 The track was initially built for the enjoyment of the appellant and his son. Following requests from racing clubs the appellant began organising full track days and overnight camping events.
- 4.2 On receiving the Notice all activities on the track ceased. However, the appellant wishes to retain the track for his own enjoyment. The Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO), Part 5, Class B permits the use of any land for not more than 14 days in total in any calendar year, for the purposes of motorsport racing, trials of speed and practising for these activities and the provision on the land of any moveable structure for the purposes of the permitted use.

Planning Authority's Case

- 4.3 The Notice relates to the use of the appeal site for unauthorised motorised sports activities. It is considered that this use does not constitute permitted development in accordance with Part 5, Class B of the GPDO. This allows for the use of any land for motor car and motorcycle racing, including trials of speed, and practising for these activities for a maximum of 14 days in any calendar year. Movable structures used in connection with the permitted use are also allowed. However, as they are used in conjunction with a motorsport activity, they are also only allowed on the land for a maximum of 14 days in any calendar year. From the evidence gathered it is clear that the racetrack was in operation for more than the permitted 14 days per calendar year.
- 4.4 The Environmental Health Department of Mid-Ulster District Council had their own enforcement case relating to noise complaints regarding the use of the racetrack. Environmental Health's investigation found that the racetrack was used in excess of

the permitted 14 days in the calendar year of 2021, when the Notice was issued. They noted use of the racetrack on the following dates: April 3rd, 4th, 9th, 10th, 14th, 16th, 17th, 24th, 28th and 30th; May 1st, 5th, 22nd and 25th; June 5th, 8th, 9th, 12th, 19th, and 26th; and July 7th.

- 4.5 Evidence from the appellant's Facebook page (Clunty Cookstown MX Track) demonstrates use of the site for motorised sport activities in excess of 14 days. In addition to the dates set out above, posts on the Facebook page refer to events on the 3rd, 14th and 15th of May. As a result of this evidence, it is clear that a breach of planning control has taken place and that the service of the Notice was an appropriate action.
- 4.6 The appellant has stated in the "Statement of Facts" section of the planning appeal form that commercial use of the land has now stopped and the land will be solely used by the appellant's family for their enjoyment. It is therefore acknowledged that the racetrack was in use for commercial purposes. The level of work involved in the creation of the racetrack would also demonstrate the intention to use it for commercial purposes. Notes on the information attached to the Notice makes it clear that permitted development rights regarding use of the site for motorsports activities are unaffected. However, as the permitted 14 days for 2021 have already been expended the appellant cannot use the racetrack any more in 2021 even for personal use. Given this, it is clear that a breach of planning control has occurred.
- 4.7 The Environmental Health Department of Mid Ulster District Council served a Notice under Article 65 of the Clean Neighbourhoods and Environment (NI) Act 2011 on 25th May 2021 relating to the appeal site. It required abatement of the noise nuisance and a prohibition of its recurrence. An appeal was lodged but later withdrawn by the appellant. To this end, the Noise Abatement Notice is still valid. It requires the abatement of noise from the activity, practice and racing of motorised bikes and vehicles at the appeal site.

Third Parties' Case

- 4.8 Local residents were not consulted or engaged with prior to the construction of the track and its operation as a business. The track is an eyesore and has destroyed the natural aesthetic of the area. Around 3 hectares of agricultural land have been stripped of all-natural vegetation and animal habitats to facilitate its construction. The land had been used for cutting silage and grazing animals for over 30 years until the track was developed. The noise generated by the activities at the track is unbearable and intrudes into all homes, outdoor spaces, working and living areas so much so that Mid Ulster District Council's Environmental Health department successfully served a Noise Abatement Order on the appeal site, and this came into force in September 2021.
- 4.9 In addition to the destruction of the natural area, tonnes of soil, stones and hard-fill materials have been imported to the site by the applicant as part of the construction and maintenance of the track.
- 4.10 Clunty MX Track began operating without planning permission in May 2019 and the formerly peaceful, quiet area was destroyed by the intrusive noise, disruption, and detrimental impact caused by the operation of this motor-cross track business. Since then, local residents have endured almost 100 sessions at the track. These take

place on mornings, afternoons and evenings and have included large-scale Championship events complete with overnight camping, caterers and more than 100 competitors, not to mention spectators.

- 4.11 In July 2021, a championship event attracted over 150 vehicles to the site and exposed the inadequacies of the infrastructure within the immediate area to accommodate such large numbers. Vehicles blocked the only entrance and exit to the track, parking over essential access gates to fields and in passing areas along the Drumearn Road. In August 2021, Mid Ulster District Council's Planning Committee voted, without opposition, to refuse retrospective planning permission for the track. The residents are in complete support of this decision and fully endorse it.
- 4.12 Given the distinct lack of consideration by the appellant for the impact the track has had on the area and its residents, while disappointed, local residents are not at all surprised to find the matter has been appealed. However, local residents would once again implore decision makers to listen to the local and wider community and uphold planning regulations to stop unauthorised development. While it is recognised that certain activities can benefit from permitted development rights, the active Nuisance Abatement Notice on the appeal site means that motor racing activities cannot take place, even if they are limited to 14 days per calendar year.

Consideration

- 4.13 The description of the alleged breach of planning control relates only to the use of the land for motorised sport activities. The appellant's arguments within his ground (c) of appeal mainly relate to the future use of the appeal site for motorised sport activities. These arguments are best suited for consideration within ground (f) of appeal which I will come to later.
- 4.14 Even if the appellant were to have argued that the use of the appeal site for motorised sport activities constituted permitted development, evidence from the Clunty MX Facebook page and from the Council demonstrates that the appeal site had been used on 24 days in the calendar year up until the date the Notice was issued on 13th August 2021. This is in excess of the 14 days use permitted under Part 5, Class B of the GDPO. As such, at the time the Notice was issued the use of the appeal site for motorised sport activities did not constitute permitted development. A material change of use had therefore occurred and this represents a breach of planning control. For these reasons, the ground (c) of appeal fails.

Administrative Grounds

- 5.0 **GROUND (F): - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach**

The Appellant's Case

- 5.1 The appellant is agreeable to permanently removing all equipment and materials associated with motorised sport activities. However, the remainder of the steps of the Notice exceed what is necessary given the permitted development rights available at Part 5, Class B of the GPDO. This also permits the provision on the land of any

moveable structure for the purposes of the temporary use. All safety barriers (e.g. tyres on stakes; or pallets) will be removed when the track is not in use.

Planning Authority's Case

- 5.2 The Notice outlines that the breach of planning control consists of the unauthorised material change of use of land from an agricultural use to a use for motorsports activities. It requires that the unauthorised use of the land for motorsports activities should permanently cease and that the materials and equipment which facilitate this use such as tyres and fences should be permanently removed. The unauthorised material change of use of the land has occurred as the motorised sport activities have clearly taken place on more than the 14 days permitted under Part 5, Class B of the GPDO. Use of the land for motorised sport activities for up to a maximum of 14 days would constitute a permitted temporary use of the land. Any use of the land for this purpose beyond 14 days constitutes an unauthorised material change of use of the land. The Notice is clear in that it seeks permanent cessation of the unauthorised use on the land. The use of the land has resulted in adverse impacts to the amenity of neighbours. The Environmental Health Department of Mid Ulster District Council served a Notice under Article 65 of the Clean Neighbourhoods and Environment (NI) Act 2011 on 25th May 2021 relating to the appeal site. It required abatement of the noise nuisance and a prohibition of its recurrence. The noise resulting from this unauthorised use would therefore result in injury to amenity of nearby residents.

- 5.3 The Notice requires that the land edged in red on the accompanying map be restored to agricultural land. It also requires the permanent removal of all equipment and materials associated with the unauthorised use and the restoration of the land by replacing or returning the topsoil and re-seeding it in grass. In the Planning Contravention Notice (PCN) the appellant stated that the previous use of the land ceased in March 2019, with the motorised sport activities commencing on 25th May 2019. Therefore, at the time the Notice was served, the appeal site was not in use for agriculture. The breach consists of the material change of use of land from agricultural use to a use for motorised sports activities. This use has resulted in associated equipment and materials being brought to the site to facilitate the unauthorised use. A track has also been created to facilitate the unauthorised use. This was done by the importation of sand to create ramps and hills to form a track. The Notice does not require the removal of the sand. Rather, it requires the areas which have been stripped of topsoil and grass to have the topsoil returned and re-seeded in grass, in order to ensure that the agricultural use becomes the primary use. The requirements of the Notice are therefore not excessive and relate directly to the breach of planning control. If the land is not returned to agriculture, then the track will become a permanent feature, which will mean that it will fail to be classed as a temporary use in compliance with Part 5, Class B of the GPDO.

The Third Parties' Case

- 5.4 The track is an eyesore and has destroyed the natural aesthetic of the area. Around three hectares of agricultural land have been stripped of all-natural vegetation and animal habitats to facilitate its construction. The land had been used for cutting silage and grazing animals for over 30 years until the track was developed. However, since it's been developed the land has not been used for agriculture. The track remains a permanent feature together with the materials and equipment which facilitate its use for motorised sport activities.

- 5.5 The noise generated by the activities at the track is unbearable and intrudes into all homes, outdoor spaces, working and living areas so much so that Mid Ulster District Council's Environmental Health department successfully served a Noise Abatement Order on the appeal site, and this came into force in September 2021.

Consideration

- 5.6 The appellant argued that the steps set out within the Notice would prevent him from exercising his permitted development rights under Part 5, Class B of the GPDO to use the appeal site for motorised sport activities for up to 14 days in a calendar year.
- 5.7 Steps 4 (a) and (b) (ii) of the Notice require the appellant to permanently cease the unauthorised use of the land for motorised sport activities and to permanently remove all equipment and materials associated with motorised sports activities. However, the steps required by the Notice cannot remove development rights permitted by the GPDO. The Council have confirmed at the hearing that the Notice does not affect the appellant's permitted development rights in future calendar years. The appellant is clearly aware of this as it is referred to in his evidence. The requirements of the Notice do not extinguish his permitted development rights.
- 5.8 Given that the use of the land for motorsport activities was a noise nuisance requiring an abatement order and that it adversely impacts on the visual amenity of the area, the cessation of the use of the site beyond the 14 day period is necessary to remedy the injury to the amenity of nearby residents. The removal of equipment and materials associated with that use is also necessary to remedy the injury to amenity. It is of note that the Council did not request the removal of the sand and soil from the appeal site. Given this, it is necessary to amend the Notice at Part 4 (b) (ii) to include the words "other than the sand and soil" before the word "permanently".
- 5.9 On the areas where grass and topsoil have been stripped away to create the track, the Notice requires the soil to be returned or replaced and those areas re-seeded with grass. It also seeks that the appeal site is restored to an agricultural use. The appellant argued that this exceeds what is necessary to remedy the breach of planning control, as he has permitted development rights to use the land on a temporary basis for up to 14 days in a calendar year. However, to comply with Part 5, Class B of the GPDO, the use of the appeal site for motorised sport activities must be temporary. As the requirement is to remedy the injury to amenity, it is only appropriate that the area of the site where grass and topsoil have been stripped away is reinstated and all equipment and materials (with the exception of the sand and soil) associated with the activity are permanently removed save for permitted development allowances. That is sufficient remedy. Accordingly, the requirement to restore the land to agricultural use is not necessary to remedy the injury to amenity. Part 4 (b) (i) of the Notice should therefore be deleted. The appeal on ground (f) succeeds in part to reflect this. The remainder of the appeal on ground (f) fails.

6.0 GROUND (G) that any period specified in the notice falls short of what should reasonably be allowed

The Appellant's Case

- 6.1 The Notice requires topsoil to be replaced or returned and the appeal site re-seeded with grass within 60 days of the Notice coming into effect. In the event that the

ground (f) appeal fails, the appellant requests that the period for compliance to re-seed the appeal site with grass should be extended to 6 months as re-seeding should only be carried out in spring or autumn.

Planning Authority's Case

- 6.2 Re-seeding land with grass can occur at any time from summer through to mid-autumn. 60 days would provide sufficient time to carry out the re-seeding of the appeal site.

The Third Parties' Case

- 6.3 60 days provides an adequate timeframe to carry out the steps required to remedy the breach of planning control.

Consideration

- 6.4 The re-seeding of grass can occur at various stages of the year. However, given the time of year at present, I consider a period of six months to comply with these specific requirements of the Notice is reasonable. Accordingly, the appeal on ground (g) succeeds in respect of this discrete issue and the Notice is varied to reflect this.

7.0 RECOMMENDATION

- 7.1 I recommend to the Commission as follows: -

- The appeal on ground (c) fails.
- The appeal on ground (f) succeeds in part in relation to the requirement to restore the area to agricultural land.
- The Notice is varied to delete the requirement to restore the area to agricultural land specified in (i) of Part 4 (b) and at Part 4 (b) (ii) to insert the words "*other than the sand and soil*" before the word "*permanently*".
- The appeal on ground (g) succeeds in part in respect of one discrete time period and the Notice is amended at Part 4 (b) (iii) to insert the words "*within six months from the date this Notice takes effect*" before the words "*where grass and topsoil has been stripped away...*".
- The notice, as so varied, is upheld.

List of Appearances

Planning Authority:- Mr Paul McClean, Mid Ulster District Council
Mr David Stewart, Mid Ulster District Council
Mr Graham Evans, Mid Ulster District Council (Environmental Health)
Ms Bronagh Carney, Mid Ulster District Council (Environmental Health)

Third Parties:- Johnathan Walmsley (Stop Clunty MX Group)
Andrew Clarke (Stop Clunty MX Group)

List of Documents

Planning Authority:- "A1" Statement of Case, Mid Ulster District Council.

Appellant:- "B1" Statement of Case, CMI Ltd, on behalf of Mr Keith McAdoo.

Third Parties:- "C1" Statement of Case, Stop Clunty MX Group.

"D1" Letter, 51A Drumearn Road, Cookstown - Mr Knox Patrick.

"E1" Letter, 51A Drumearn Road, Cookstown – Mrs Hazel Patrick.

"F1" Letter, 51B Drumearn Road, Cookstown – Johnathan Walmsley.

"G1" Letter, 51B Drumearn Road, Cookstown – Janet Walmsley.

"H1" Letter, 51 Drumearn Road, Cookstown - Godfrey Walmsley.

"I1" Letter, 53 Drumearn Road, Cookstown - Raymond & Nicola Lees.

"J1" Letter, 51C Drumearn Road, Cookstown - Philip Patrick.

"K1" Letter, 51C Drumearn Road, Cookstown - Claire Patrick.

"L1" Letter, 41 Craigs Road, Cookstown - Arlene Ferson.

"M1" Letter, 50 Lough Fea Road, Cookstown - Gillian Harkness.

"N1" Letter, 41 Feegarron Road, Cookstown -Kyle Clarke.

"O1" Letter, 41 Feegarron Road, Cookstown - Wilma Clarke.

"P1" Letter, 43 Feegarron Road, Cookstown - Gillian Clarke.

"Q1" Letter, 43 Feegarron Road, Cookstown - Andrew Clarke

