

SECTION 191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AS AMENDED AND TOWN AND
COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR AN EXISTING USE OR
DEVELOPMENT

Applicant: Mrs Sandra Kerwood

Wroxton Motocross Track
Land at Manor Farm
Balscote
Banbury

Date: 4 August 2020

SUPPORTING STATEMENT ON BEHALF OF THE APPLICANT

THRINGS
SOLICITORS

Paragon
Counterslip
Bristol
BS1 6BX

Ref: FMQ/K2423-1

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1. Introduction

- 1.1 Thrings LLP are instructed by Mrs Sandra Kerwood (“the Applicant”) to submit an application for a lawful development certificate for an existing use or development (“CLEUD”) pursuant to Section 191 of the Town and Country Planning Act 1990 (“the Application”), relating to land known as Wroxton Motocross Track at Manor Farm, Manor Farm, Balscote, Banbury (“the Site”).

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2. Background

- 2.1 The Applicant is the registered owner of Manor Farm, Balscote, which includes the Site.
- 2.2 The Site is primarily agricultural land used for grazing of livestock. However, it has been used for regular Motocross events since at least 1981. During this time, the use has occurred under a number of operators, however for in excess of 12 years (since 2007) the Site has been operated by Mr Brian Pounder as “Banbury Motocross Club”.
- 2.3 It is common ground that the use of the Site in relation to motocross is a potential breach of planning control. In 2018 Cherwell District Council (“the Council”) undertook enforcement investigations in to the use of the Site. These investigations left the Council satisfied that no enforcement action against the use of the Site could be taken. The Council have invited a formal application to regularise the use of the Site in planning terms.
- 2.4 The only means of formally determining the lawfulness of the use of the Site is by way of an application for a certificate of lawfulness of an existing use or development under section 191 of the Town and Country Planning Act 1990. This provides that (by section 191(6)) “*[t]he lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed*”. Therefore, this application has been prepared in response to the Council’s invitation

3. Statutory Framework

3.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides for lawful temporary use of land, subject to conditions and restrictions as set out in the Order. Specifically, Class B of Part 4 to Schedule 2 states that the following is Permitted Development:

“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 -

(a) The holding of a market;

(b) Motor car or motorcycle racing including trials of speed, and the practicing for these activities,

And the provision on the land of any movable structure for the purposes of the permitted use”

3.2 Section 171B of the Town and Country Planning Act 1990 (“the Act”) states as follows:

“(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach...

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach

3.3 Finally, S191 of the Act confirms that if:

“(1) any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

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he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if–

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

...

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

3.4 Applying the time limits in s171B of the Act and the provisions of the GDPO, where more than 14 days of motorcycle racing and/or practicing (including and site set-up and clearance as per the reference to the provision of movable structures) have occurred on the Site for more than 10 years no enforcement action may be taken.

3.5 Under s191, it is clear that there is no discretion for the Council. It is a pure question of fact. If, on the facts assessed on the balance of probabilities, they are, then the Council must issue a CLEUD.

3.6 The only question in front of the Council, therefore, is whether any enforcement action can be taken by them in relation to the use of the Site as a Motocross track.

4. Case Law

4.1 In order to establish that the Site is in mixed use, it is necessary to consider what the correct “planning unit” is. The question of when a planning site should be broken down into smaller units was dealt with in *Burdle v SoS for the Environment* [1972] WLR 1207 which sets out three broad categories of distinction to help to determine the planning unit.

(a) Where the occupier pursues a single main purpose to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered to be the planning unit.

(b) Where there are a variety of activities none of which are incidental or ancillary to another and which are not confined within separate and physically distinct areas of land, again the whole unit of occupation should normally be the planning unit. (This is usually said to be a composite use.)

(c) Where within a single unit of occupation there are two or more physically separate and distinct areas occupied for substantially different and unrelated purposes, each area (together with its incidental and ancillary activities) should be a separate planning unit.

4.2 In relation to the use itself, it is set out in statute that the ten-year time limit for immunity under a change of use begins to run from the first date of breach. Further, it is apparent from the GDPO that the date of breach is the date on which the relevant use exceeded any permitted development right (i.e. the 14 or 28 days).

4.3 According to the Courts in *Thurrock BC v Secretary of State for the Environment* [2001] EWHC Admin 128 the only effective test is to compare the current use with the previous use and assess whether there has been any material change of use.

4.4 When that case was taken to the Court of Appeal (*Thurrock BC v Secretary of State for the Environment* [2002] EWCA Civ 226) the Courts confirmed that the period of a breach includes times when the activity is not currently going on provided it has not ceased, confirming that

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the land can properly be described as being used for the objectionable activity even when not in active use.

- 4.5 Further, the Court of Appeal in *Ramsay v Secretary of State* [2002] EWCA Civ 118 confirmed that it is appropriate to consider the land retained physical features of the land where they referable to its “temporary” use. It is legitimate to look not only at the duration of the use but at its character, including any physical changes made to the land, and so conclude that there has been a permanent change in use rather than merely the occasional introduction of a temporary use.

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5. Evidence

5.1 This supporting statement refers to the following exhibits:

- (a) Letter from Thrings dated 27 November 2018 (“Exhibit A”);
- (b) Statutory Declaration of Mr Brian Pounder and exhibits (“Exhibit B”).
- (c) Statutory Declaration of Mrs Sandra Kerwood and exhibits (“Exhibit C”)
- (d) Email from Amrik Bilkhu of the Council dated 14 December 2018 (“Exhibit D”);
- (e) Attendance Note of Telephone Call dated 11 December 2018 (“Exhibit E”);
- (f) Correspondence from the Council on Business Rates dated 24 April 2020 (“Exhibit F”)

6. Submissions

6.1 As is clear from *Burdle* the starting point must be that the appropriate planning unit. In this case, the Site is part of a wider site owned by the Application. However, the Site is occupied by both the Applicant and the Banbury Motocross Club. This forms a separate unit of occupation, and consequently forms a separate planning unit. The question then turns to what the use on that unit is. *Burdle* expressly confirms that composite uses will be appropriate:

“in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land”

6.2 From this, it is apparent that the Site is in a composite use. Whilst it might be possible to establish separate planning units if distinct uses were confined to separate areas of the Site this is simply not the case.

6.3 As a result, provided the motocross use is established to be lawful through the passage of time then the sui generis mixed use for agriculture and motocross will be established

6.4 Whilst some limited motocross use of the Site would benefit from planning permission by virtue of the GDPO the clear evidence of both the Applicant (in Exhibit C) and Banbury Motocross Club (in Exhibit B) demonstrate that there is a sustained history of more than 14 days of motocross use on the Site. Further, it is apparent from the aerial photographs submitted by the Applicant that the motocross use relies on significant and permanent changes to the Site.

6.5 Previous correspondence with the Council (see Exhibit A) has set out the proper basis for assessment of whether this level of use results in a material change for planning purposes. The *Thurrock Borough Council* alone provides that that evidence of a continuing annual cycle of events for over ten years will be enough to establish the ongoing breach which would prevent enforcement action. The *Ramsey* case only adds to this by allowing that the physical changes to the Site should be taken in to account. Simply put, at any point during the first ten years, the combination of the physical condition of the Site and the ongoing active uses

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(both agricultural and motor racing), would have allowed the Council to take enforcement action. The Council cannot take such action after 10 years following the first occurrence of this combination.

- 6.6 Indeed, the response to our previous correspondence demonstrates that the Council have previously accepted this position (see Exhibits D and E). It is also relevant that the Council now attaches a rateable value to the Site (see Exhibit F). It seems from the PCN response (see Exhibit G) and the Council's invitation to submit this application that the immunity of this mixed use is accepted.
- 6.7 Taking all this in to account, and given that the track has been on the Site since at least 1999 and the use of the Site has occurred since the early 1980's the opportunity for enforcement action in relation to any motocross use has long since passed. However, the relevant date for this application is the ten years leading up to the date of the application consequently the evidence provided focuses on those dates alone.
- 6.8 Whilst the current global pandemic has led to a reduction in race meetings during the first half of 2020, there remains a firm intention to use the Site as soon as the "lockdown" release allows. Further, the track remains in permanent situ on the Site and private motocross use has continued throughout. The permanent change of use of the Site remains established notwithstanding the lower level of activity so far this calendar year.
- 6.9 It is submitted that any rational assessment of the evidence provided shows that, on the balance of probabilities, the CLEUD should be granted.

7. Conclusion

7.1 It is apparent that the Site is a separate planning unit.

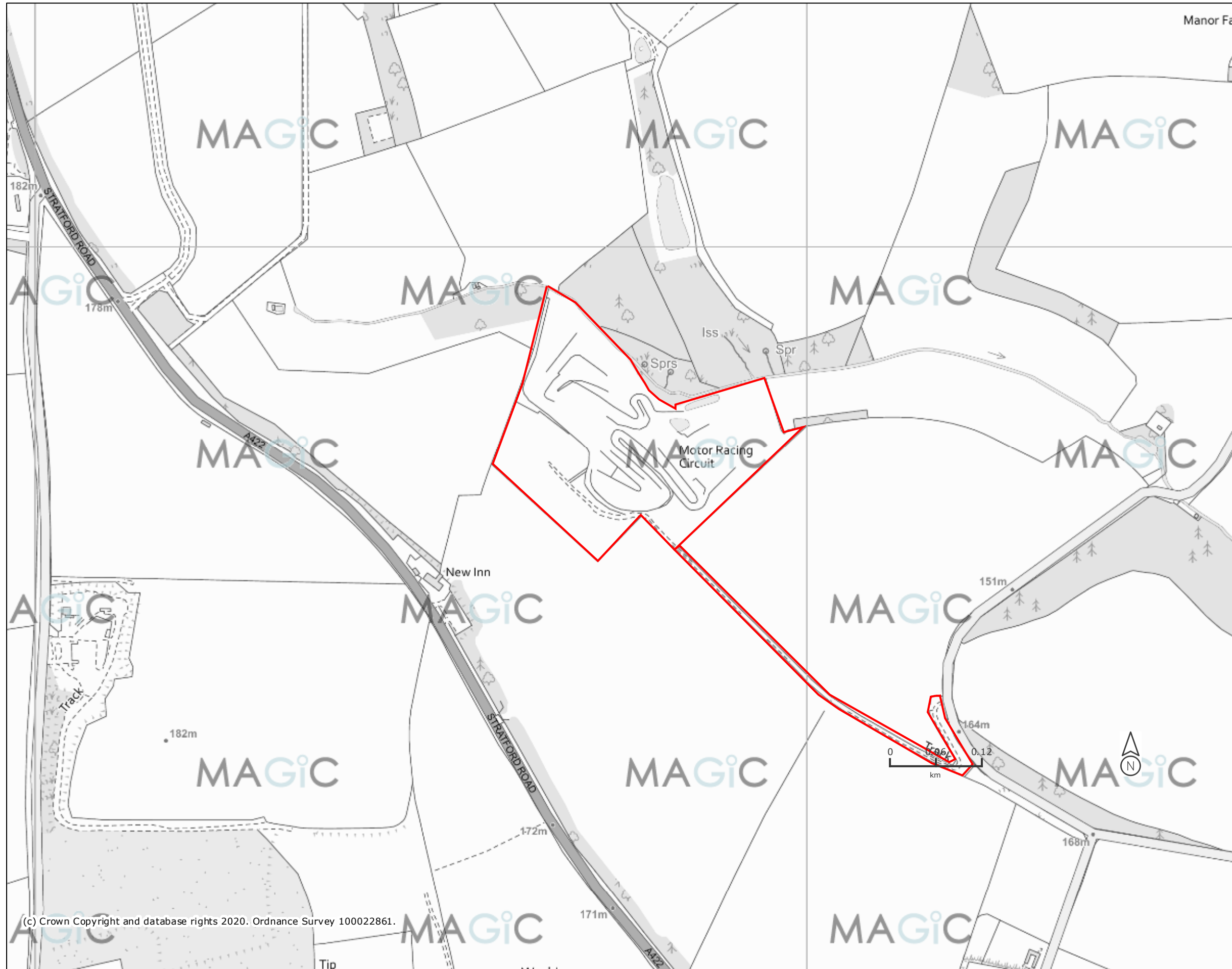
7.2 We have provided evidence that the use of the Site for motocross activity has exceeded 14 days in each of the past 10 years (and indeed, beyond that). Further, once preparation and practice days are included it is evident that the use represents a substantial part of the activity on the Site.

7.3 Further we have shown that the track is permanently laid out and has been for in excess of 20 years. This demonstrates that the character of the land is fundamentally affected by the use in a permanent way such that the use must be considered a permanent element of the Composite Use of the Site.

7.4 As a result, the Applicant has discharged the burden of proof and met the relevant tests on the balance of probability as required by common law and the Act. We therefore respectfully request that this CLEUD is granted in the terms requested.


Thrings LLP

4 August 2020



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ymax = 244100



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Mr Amrik Bilkhu
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

27 November 2018

By email to:

amrik.bilkhu@cherwellandsouthnorthants.gov.uk

Your Reference:

Our Reference: FQ/K2423-1

Direct Line: 0117 9309572

Direct Fax: 0117 9293369

Email: fquartermain@thrings.com

Dear Mr Bilkhu

Manor Farm, Balscote - Motocross Use

We are instructed by Mrs Sandra Kerwood of Manor Farm, Balscote, Banbury (Our Client). Our Client owns land outside Balscote including an area known as Wroxton Motocross Track (the Site). We understand that Cherwell District Council (the Council) has been investigating the use of the Site from a planning enforcement perspective and we have been instructed to write to confirm the current position.

Background

The Site has been used for regular Motocross events since at least 1981. During this time, the use has occurred under a number of operators, however for in excess of 10 years (since 2007) the Site has been operated by Mr Brian Pounder as "Banbury Motocross Club".

It should be uncontentious that, absent any planning history that indicates otherwise, the Site is primarily in agricultural use. As a result, it is accepted that the holding of motocross races is, ostensibly, a material change of use and therefore a breach of planning control. However, for the reasons set out below it is apparent that the Council is unable to take any enforcement action against the current use of the land.

Legislation

As you are aware, the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides for lawful temporary use of land, subject to conditions and restrictions as set out in the Order. Specifically, Class B of Part 4 to Schedule 2 states that the following is Permitted Development:

The Paragon • Counterslip • Bristol • BS1 6BX • Tel: 0117 930 9500 • Fax: 0117 929 3369 • DX: 7895 Bristol
Email: solicitors@thrings.com • www.thrings.com Also in Bath, London, Romsey and Swindon

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“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 -

(a) The holding of a market;

(b) Motor car or motorcycle racing including trials of speed, and the practicing for these activities,

And the provision on the land of any movable structure for the purposes of the permitted use”

In addition, the provisions of s171B of the Town and Country Planning Act 1990 are relevant here as this sets out that:

“(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach...

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”

Potential Enforcement

Our instructions indicate that it is unlikely that the motocross use of the Site has ever been limited to 14 days in a calendar year. Indeed, reliable reports from current users suggests that the Site was historically used throughout the year on an adhoc basis. This means that the Site does not seek to rely on the Permitted Development rights to defend against suggestions of a breach of planning control. However, given the length of time that the motocross use has occurred unchecked on the Site the time limits in s171B of the 1990 act are engaged.

It is well established that the ten year time limit begins to run from the date of breach. Further, it is established law that the date of breach is the date on which the relevant use exceeded any permitted development right (i.e. the 14 or 28 days). In *Thurrock BC v SOSE [2001] EWCA Civ 226* the Courts confirmed that the period of a breach includes times when the activity is not currently going on provided it has not ceased. This means that evidence of a continuing annual cycle of events for over ten years will be enough to establish the ongoing breach and that enforcement action cannot be taken after 10 years following the first occurrence of this date.

That said, it is perhaps more helpful to reflect on the last 10 years rather than focus on earlier dates which are less easy to evidence. For in excess of the last 10 years Banbury Motocross Club have operated from the Site and so they are able to provide conclusive evidence about its use.

Our instructions indicate that in each of the last 10 years the use of the Site has exceeded the limits in the GPDO. There has been an average of 20 days of motocross riding per year (ranging from 17 days per year on one occasion up to 23 days per year). This primarily involves race ‘meets’, but also includes track testing and other practice days. In preparation for each meet there has also been between 2 and 5 “set-up” days and 1 clear up day. This means an average of between 35 and 90 set up days and 20 clear up days. This totals between 75 and 125 days of temporary use in any given year. This range is usually dictated by the number of “weather appropriate” days in any year that the Site can be used.

Banbury Motocross Club is able to evidence the number of formal meeting in each year and if so required by the Council would be happy to provide sworn evidence as to the total number of days per year in which the use occurred.

Certificate of Lawfulness

It is accepted that the only way to formalise the position on the Site would be through the submission of an application for a Certificate of Lawfulness for an Existing Use or Development (CLEUD). However, as the use has been occurring on the Site for nearly 40 years without the need to formalise the position our Client would rather avoid the unnecessary costs involved in submitting such an application.

It is worth noting that given the long standing nature of the use, and the content of this letter, there must be significant questions about the expediency of any enforcement action on behalf of the Council.

Conclusion

It is apparent that the current use of the Site for motocross races constitutes a breach of planning control. However, the use has been ongoing for nearly 40 years and as such has accrued immunity from enforcement action.

I would be grateful if you could confirm to me by return that the Council will not be seeking to take any further action in relation to the motocross use on the Site and that its enforcement file in relation to the Site will be closed.

In the meantime, please let me know if you have any queries.

Yours sincerely



Fred Quartermain

Solicitor

Thrings LLP

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR DEVELOPMENT FOR
LAND AT MANOR FARM, BALSCOTE, BANBURY OX15 6JJ
Pursuant to Section 191 of the Town & Country Planning Act 1990 as amended

MRS SANDRA KERWOOD

Applicant

-and-

CHERWELL DISTRICT COUNCIL

Local Planning
Authority

STATUTORY DECLARATION OF MR BRIAN POUNDER

I, BRIAN POUNDER, of 29 Oxford Road, Kidlington date of birth 29 August 1966, DO SOLEMNLY AND SINCERELY DECLARE as follows:-

1. I make this Statutory Declaration in support of an application to Cherwell District Council ("the Council") for a Certificate of Lawfulness for an Existing Use Or Development pursuant to Section 191 of the Town and Country Planning Act 1990, relating to land known as Wroxton Motocross Track at Manor Farm, Manor Farm, Balscote, Banbury ("the Site").
2. I run Banbury Motocross Club and have done since its creation
3. We have raced at the Site for many years and since 2007 we have been the only operator using the Site.
4. Throughout the year we hold a number of race meetings. I have set out the number of dates in each of the last 12 years in Exhibit BP1. Each race meeting takes a number of days to set up in preparation and at least one day to clear up after. In addition, the Site is used for a number of days in any given year for practicing.
5. Since 2007 we have made a small number of changes and improvements to the track that exists at the Site. The track was created before we started operating at the Site.

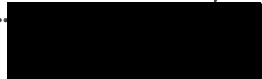
I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared at Ash Farm, Balscote)
in the County of Oxfordshire)
this 23rd day of July 2020)
Before me

NIGEL YEADON
Solicitor, Banbury

Exhibit BP1

Declared at Ash Farm, Balscote ,
in the County of Oxfordshire)
this 23rd day of July 2020)
Before me



NIKE YEADON

Barbury, Solicitor

Wroxton Motorcross Track - Number of track meets per annum

Year	Track meets	Average set up and clear down days	Total
2009	14	42	56
2010	19	57	76
2011	21	63	84
2012	20	60	80
2013	14	42	56
2014	15	45	61
2015	16	48	64
2016	17	51	68
2017	21	63	84
2018	22	66	88
2019	20	60	80
2020	26	unknown	unknown

Notes:

- Set up days can be anything from 2 - 5 days depending how much the track might be changed and clear up is usually 1 day an average of 3 days per meeting has been applied
- This is a list of events actually held in each year, with the exception of 2020 which is prospective. Total events planned in any year exceeded the number actually held but a number of events each year are lost due to adverse weather conditions and in 2020 the impact of the Covid-19 pandemic
- Track testing and personal use is not included in the above

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE OR DEVELOPMENT FOR
LAND AT MANOR FARM, BALSCOTE, BANBURY OX15 6JJ
Pursuant to Section 191 of the Town & Country Planning Act 1990 as amended**

MRS SANDRA KERWOOD

Applicant

-and-

CHERWELL DISTRICT COUNCIL

**Local Planning
Authority**

STATUTORY DECLARATION OF MRS SANDRA KERWOOD

I, **SANDRA KERWOOD**, of Manor Farm, Balscote, Banbury OX15 6JJ, date of birth 7 April 1962,
DO SOLEMNLY AND SINCERELY DECLARE as follows:-

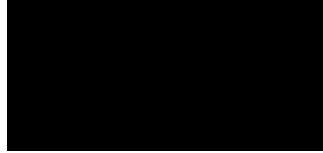
1. I make this Statutory Declaration in support of an application to Cherwell District Council ("the Council") for a Certificate of Lawfulness for an Existing Use Or Development pursuant to Section 191 of the Town and Country Planning Act 1990, relating to land known as Wroxton Motocross Track at Manor Farm, Manor Farm, Balscote, Banbury ("the Site").
2. I am the registered owner of the Site and have been since I inherited it from my father in ~~2011~~ ²⁰⁰⁸. The Site is registered at the Land Registry under title number ON178669. A plan showing the Site and a copy of the title documents is included at Exhibit SK1.

The Site has been regularly used for motocross events since at least 1981. These events have occurred under a number of operators. Since 2007 the primary operator has been Banbury Motocross Club. This is an organisation run by Mr Brian Pounder. Banbury Motocross Club do not hold a formal interest in the land but occupy the Site with my full consent.

4. The current motocross use of the Site makes use of an existing permanent track. This has been in place for over 20 years. Aerial photographs showing the Site from 1999 onwards are included at Exhibit SK2. A small number of changes and improvements are made to the track each year but the basic construction remains the same. When the Site is not in use as for motor racing the track remains in place, however the Site is used for the grazing of sheep.
5. Banbury Motocross Club have consistently held race meeting on the Site for around 20 dates in any year. Each race meeting takes a number of days to set up in preparation and at least one day to clear up after. In addition, the Site is used for a number of days in any given year for practicing which can occur at any time when livestock are not present because of the permanent nature of the course itself. When there is no motocross use, the Site is used for the grazing of sheep.

I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared at Ash Fam, Balocote)
in the County of Oxfordshire)
this 27th day of July 2020)
Before me



NIGEL YEADON
Banbury, Solicitor.

Exhibit SK1

Declared at *Ash Farm, Babcocke*)
in the County of *Oxfordshire*)
this *23rd* day of *July* 2020)
Before me



Barbury, Solicitor.

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 06 July 2020 shows the state of this title plan on 06 July 2020 at 10:04:24. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Gloucester Office .

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H.M. LAND REGISTRY

TITLE NUMBER

ON 178669

ORDNANCE SURVEY
PLAN REFERENCE

SP3842 SP3843 SP3942 SP3943

Scale
1/2500

COUNTY

OXFORDSHIRE

DISTRICT

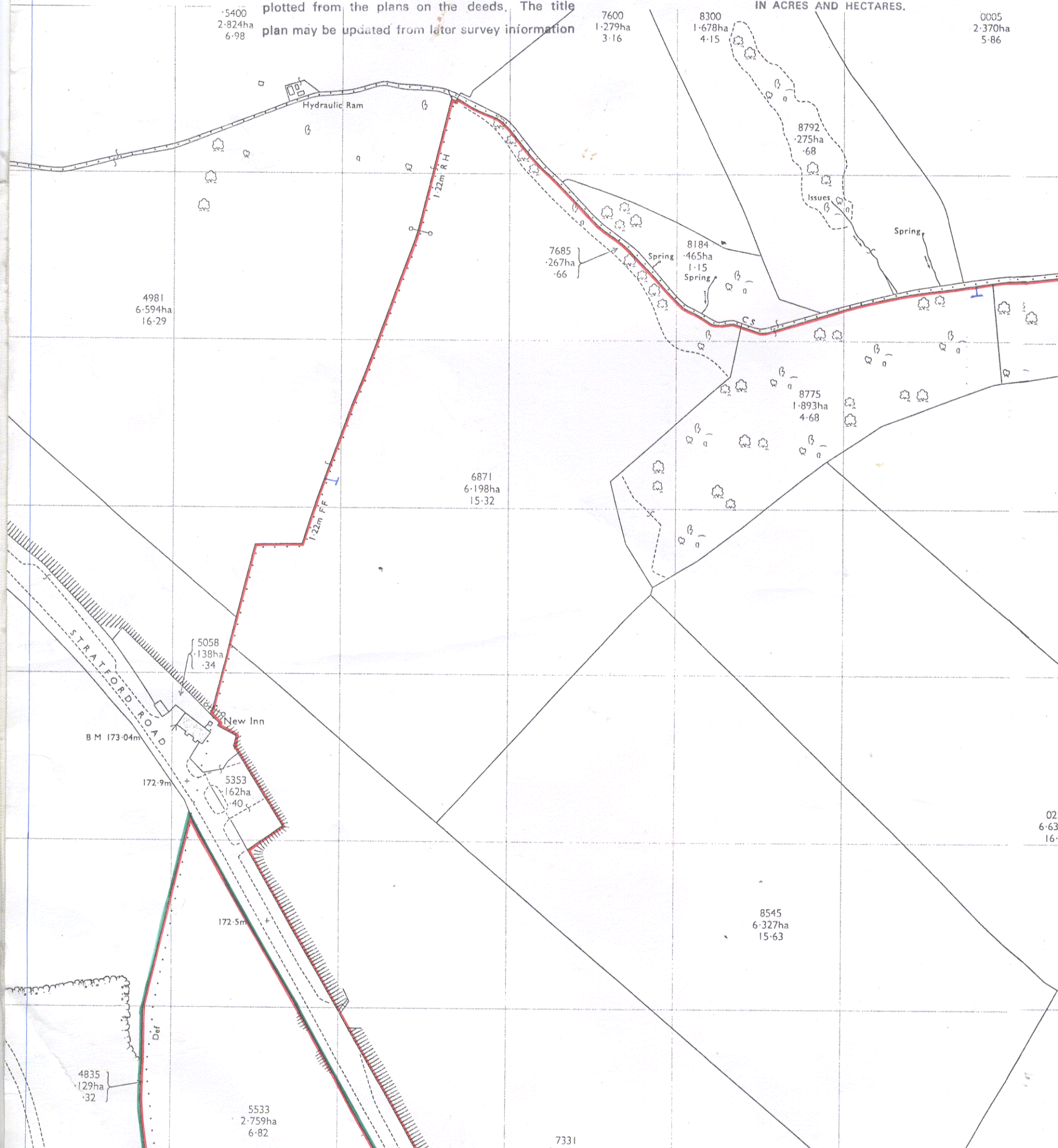
CHERWELL

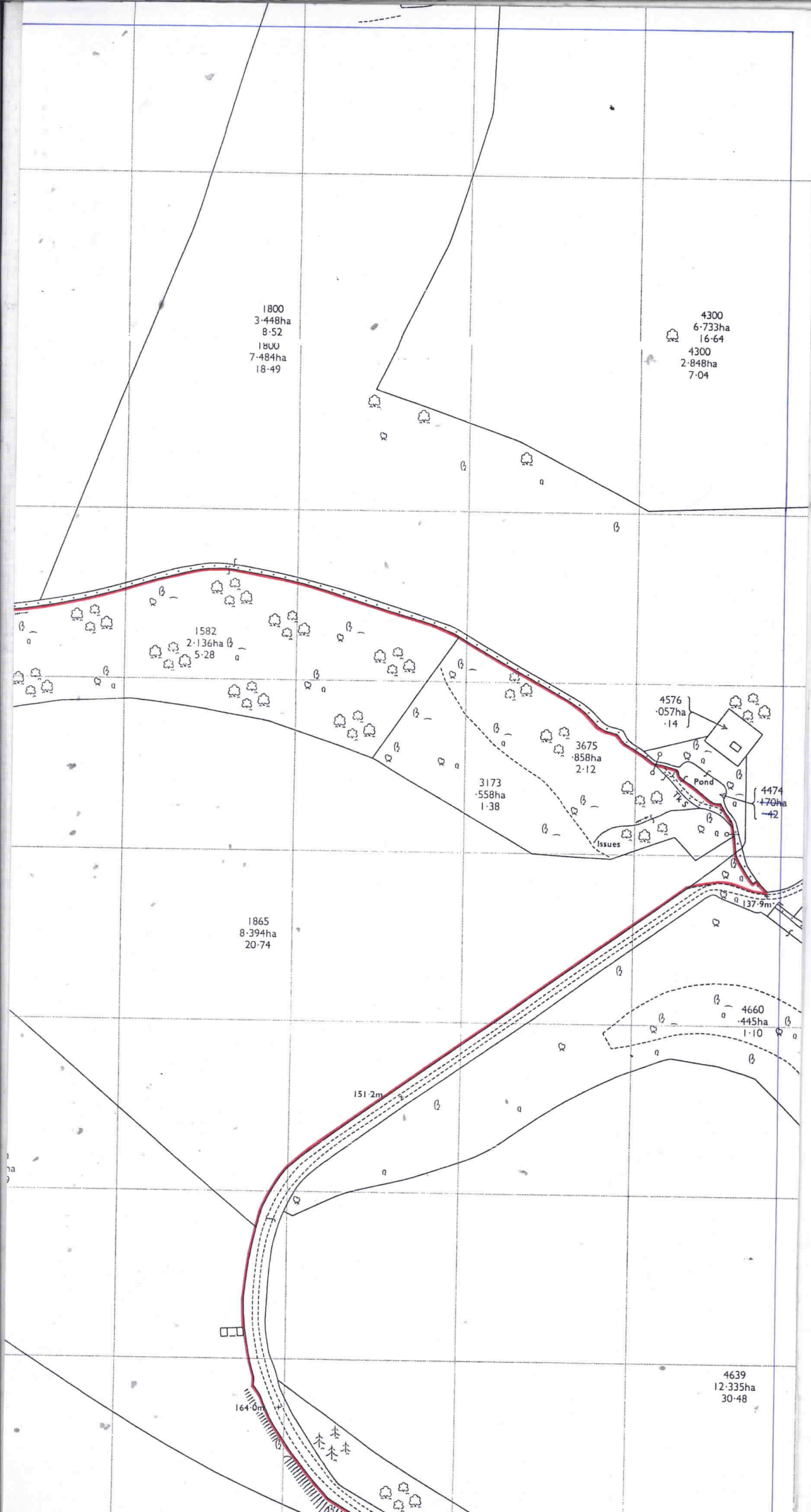
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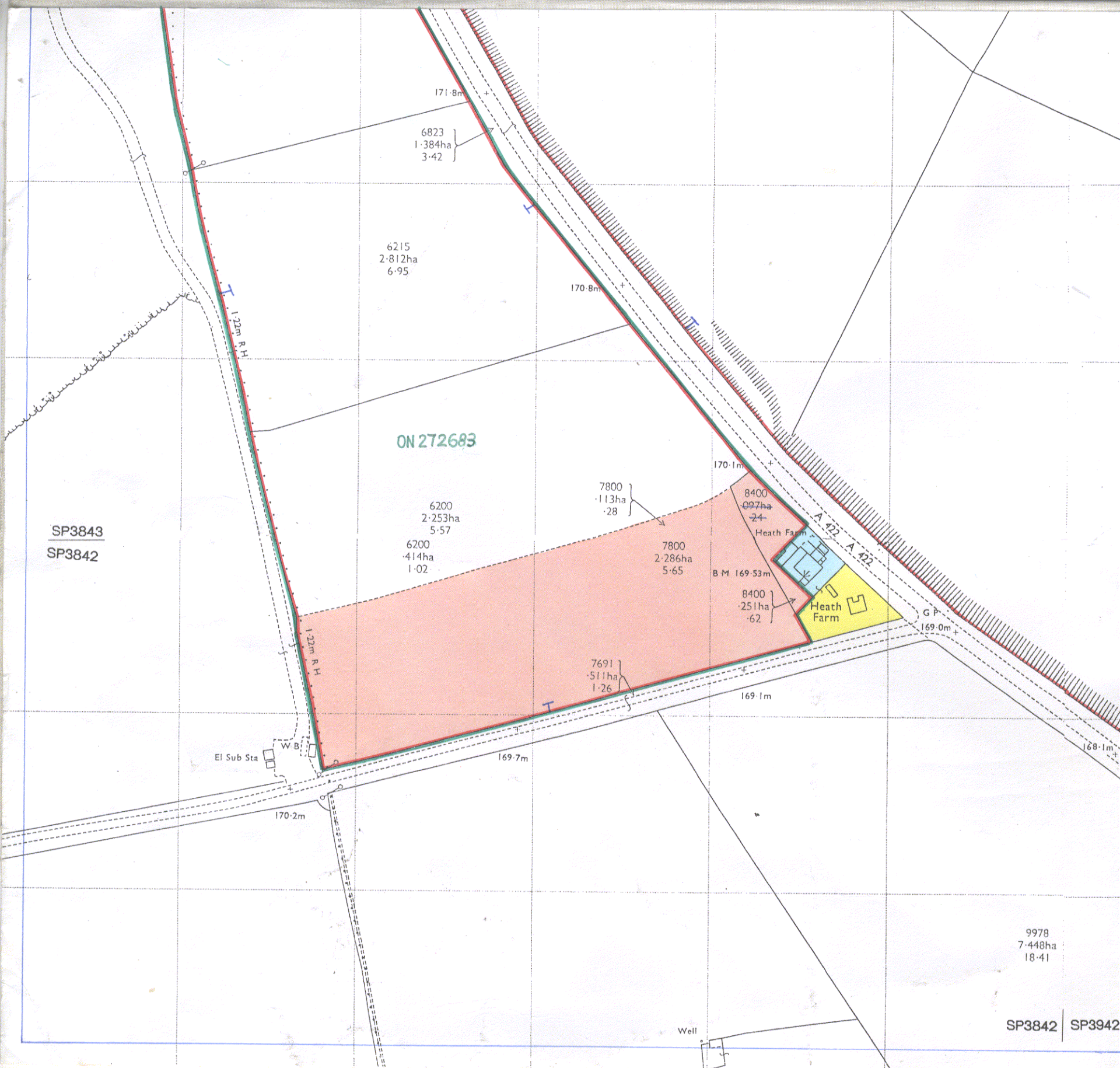


The boundaries shown by dotted lines have been plotted from the plans on the deeds. The title plan may be updated from later survey information

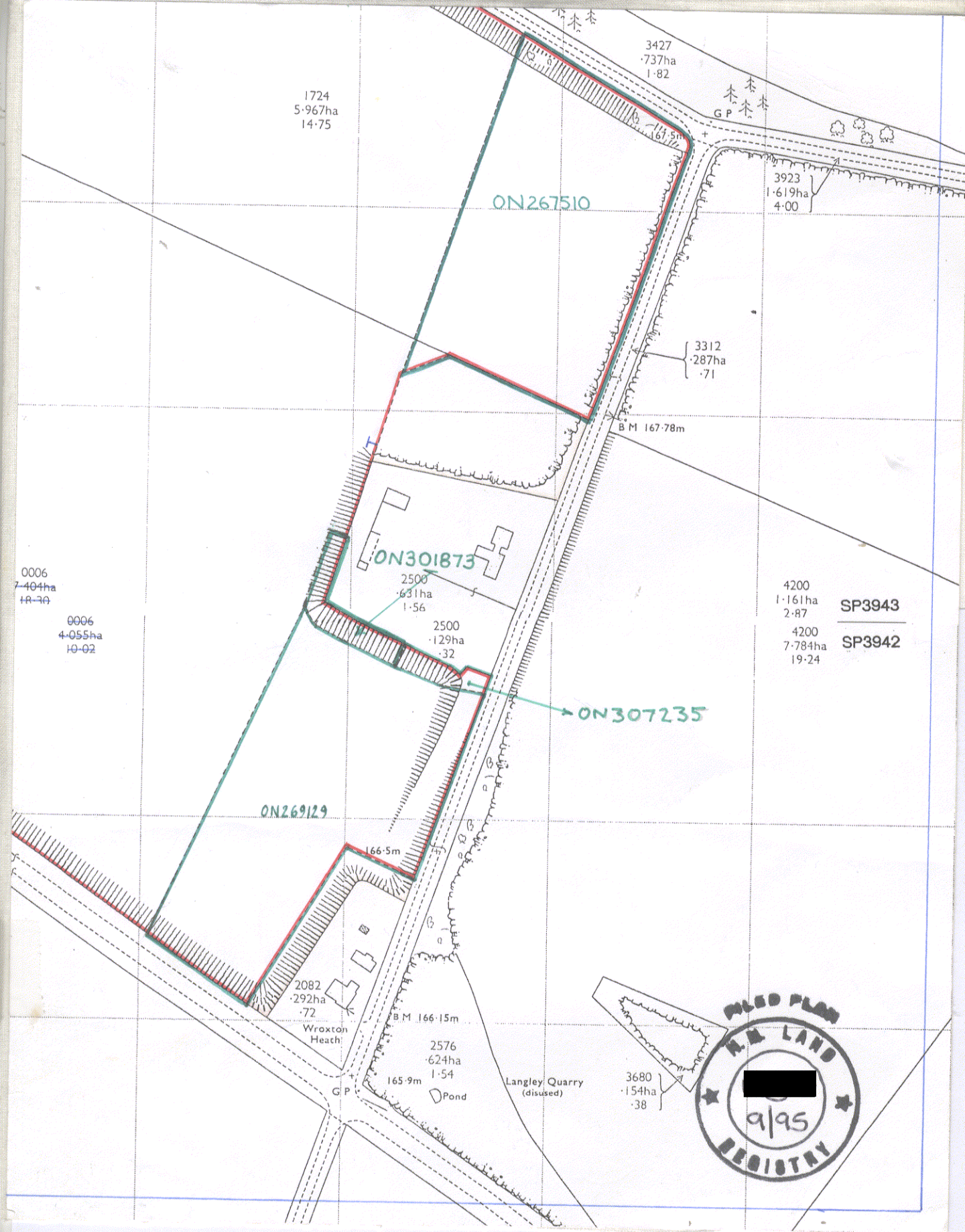
NOTE. AREAS ON THIS PLAN ARE EXPRESSED IN ACRES AND HECTARES.







ON 178669
CHAMBERLAIN



The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



Official copy of register of title

Title number ON178669

Edition date 18.04.2012

- This official copy shows the entries on the register of title on 06 JUL 2020 at 10:04:23.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 06 Jul 2020.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Gloucester Office.

A: Property Register

This register describes the land and estate comprised in the title.

OXFORDSHIRE : CHERWELL

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Land lying to the East of Stratford Road, Wroxton Heath, Banbury.
- 2 (14.07.1995) The mines and minerals together with ancillary powers of working are excepted.
- 3 (14.07.1995) The land tinted pink on the filed plan has the benefit of the following rights reserved by a Transfer of the land tinted yellow on the filed plan dated 26 February 1988 made between (1) The Dean and Chapter of The Cathedral Church of Christ in Oxford of The Foundation of King Henry The Eighth and (2) Ronald Gilkes:-

"EXCEPT AND RESERVED to the Transferors and their successors in title the owners and occupiers of the remainder of the land comprised in Title Number ON28768 (hereinafter called "the retained property") the right to the running and passing of foul and surface water drainage from the retained property through the drains or sewers now or within the period of eighty years hereafter lying in or over the property hereby transferred together with a right exercisable by appointment only (save in case of emergency) to enter upon the property transferred for the purposes of laying connecting to inspecting testing cleansing maintaining repairing and renewing any of the said drains and sewers provided that in the exercise of these rights hereinbefore reserved no avoidable damage shall be done to the property hereby transferred or to any chattels or buildings thereon and all damage done shall be promptly repaired or the Transferee or his successor in title properly compensated therefore"
- 4 (04.12.2006) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title number ON178669

Title absolute

- 1 (25.03.2011) PROPRIETOR: SANDRA ANN KERWOOD of Manor Farm, Hampton Poyle, Kidlington, Oxfordshire OX5 2QF.
- 2 (25.03.2011) The price stated to have been paid on 21 March 2011 for the land in this title and other property was £3,369,146.
- 3 (25.03.2011) The Assent to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (14.07.1995) The land tinted pink on the filed plan is subject to the following rights granted by a Transfer of the land tinted blue on the filed plan dated 22 April 1991 made between (1) The Dean and Chapter of the Cathedral Church of Christ in Oxford of the Foundation of King Henry the Eighth (Transferors) and (2) Ronald Gilkes (Transferee):-

"The said land is transferred together with a right of access at all reasonable times over the land shown edged blue on the said plan for the purpose of the repair and maintenance of any walls and buildings on the land hereby transferred the Transferee making good at his own expense as soon as possible all damage caused to the said land edged blue in the exercise of such right"

NOTE: The land tinted pink on the filed plan forms part of the land edged blue referred to above.

- 2 (14.07.1995) A Transfer of the land in this title dated 4 April 1995 made between (1) The Dean and Chapter of the Cathedral Church of Christ in Oxford of the Foundation of King Henry the Eighth (Transferor) and (2) John William Hedges and Nellie Ann Hedges (Transferee) contains the following covenants:-

"So as to bind the Property hereby transferred into whosoever hands the same may come the Transferees covenant with the Transferor as follows:-

(i) forever after to maintain in stockproof condition the boundaries marked with inwards "T" marks on the plan annexed hereto

(ii) not to use the Property other than as agricultural property."

NOTE: The 'T' marks referred to above have been reproduced on the filed plan.

- 3 (04.12.2006) The land is subject to the rights granted by a Transfer of the land edged and numbered ON267510 in green on the title plan dated 31 October 2006 made between (1) John William Hedges and (2) Royston Green and Karen Ann Green.

NOTE: Copy filed under ON267510

End of register

Exhibit SK2

Declared at *Ash Farm, Babute*)

in the County of *Oxfordshire*)

this *23rd* day of *July* 2020)

Before me 

NIGEL YEADON
Barbury, Solicitor.

Aerial Photos - Extracted from www.getmapping.com

1999



2004



2009



2013



2014



2016



2019



Fred Quartermain

From: Fred Quartermain
Sent: 14 December 2018 13:06
To: 'Sandra Kerwood'
Cc: Alex Madden
Subject: FW: Manor Farm, Balscote - Motocross use
Attachments: TC with AB of CDC - 12214412.docx

Dear Sandra,

Please see below an email from the Council confirming no open enforcement investigations. I have also attached an attendance note that sets out my conversation with the Council officer.

Thanks

Fred

Fred Quartermain
Solicitor

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Mobile: 07387 024 067

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From: Amrik Bilkhu [mailto:Amrik.Bilkhu@cherwellandsouthnorthants.gov.uk]
Sent: 14 December 2018 12:07
To: Fred Quartermain
Subject: RE: Manor Farm, Balscote - Motocross use

Dear Mr Quartermain, further to our telephone discussion on 11.12.2018 in reference to your letter - FQ/K2423-1 – please see details as discussed:-

As discussed I can confirm there is currently no open cases on "Banbury Motocross Club" by the Planning Enforcement Team or the Environmental Health & Licensing Team.

During the course of my last investigation concerning noise from the above site, I met with Mr Brian Pounder and following discussions on the telephone he was sent various literature on code of Practice on Noise from organised Motor Cycle Sport.

This literature was sent to Mr Pounder to ensure, whilst events are taking place at the site he considers the code of Practice on noise from organised off- road Motor Cycle Sport and deploys (BPM) Best Practicable Means to minimise the impact of noise on the local community.

If there are further complaints in the future made by members of the public we have a duty to investigate these. If it is established that a statutory nuisance exists under the Environmental Protection Act 1990 then we may have to serve an abatement notice to abate the noise activity

If there are any further queries, please contact me on the number detailed below.

Regards

Amrik Bilkhu
Environmental Protection Officer



Environmental Health and Licensing
Cherwell District Council and South Northamptonshire Council
Direct Dial 01295 221625
Email: amrik.bilkhu@cherwellandsouthnorthants.gov.uk

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From: Fred Quartermain [REDACTED]
Sent: 11 December 2018 11:41
To: Amrik Bilkhu
Subject: RE: Manor Farm, Balscote - Motocross use

Hi Amrik,

That would be fine, I will speak to you then.

Kind regards

Fred

Fred Quartermain
Solicitor

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Mobile: 07387 024 067

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From: Amrik Bilkhu [mailto:Amrik.Bilkhu@cherwellandsouthnorthants.gov.uk]
Sent: 11 December 2018 11:35
To: Fred Quartermain
Subject: RE: Manor Farm, Balscote - Motocross use

Good Morning Fred,

Thank you for your email, I am feeling better and back at work.

Are you available to talk this afternoon between 3 – 4 pm?

Regards

Amrik Bilkhu

Environmental Protection Officer
Environmental Health and Licensing
Cherwell District Council and South Northamptonshire Council
Direct Dial 01295 221625
Email: amrik.bilkhu@cherwellandsouthnorthants.gov.uk

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From: Fred Quartermain [REDACTED]
Sent: 11 December 2018 10:56
To: Amrik Bilkhu
Subject: RE: Manor Farm, Balscote - Motocross use

Dear Amrik,

I trust you are feeling better, please do let me know when might be a good time to talk.

Kind regards

Fred

Fred Quartermain
Solicitor

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Mobile: 07387 024 067

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From: Amrik Bilkhu [mailto:Amrik.Bilkhu@cherwellandsouthnorthants.gov.uk]
Sent: 03 December 2018 13:31
To: Fred Quartermain
Subject: RE: Manor Farm, Balscote - Motocross use

Dear Mr Quartermain,

Thank you for your email, will hopefully speak to you tomorrow.

Regards

Amrik Bilkhu

Environmental Protection Officer
Environmental Health and Licensing
Cherwell District Council and South Northamptonshire Council
Direct Dial 01295 221625
Email: amrik.bilkhu@cherwellandsouthnorthants.gov.uk

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From: Fred Quartermain [REDACTED]
Sent: 30 November 2018 17:53
To: Amrik Bilkhu
Subject: Re: Manor Farm, Balscote - Motocross use

Amrik,

Thanks for your email. I'm out of the office on Monday, but will call you on Tuesday to discuss.

Kind regards

Fred

Fred Quartermain
Solicitor

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Mobile: [07387 024 067](tel:07387024067)

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Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Amrik Bilkhu <Amrik.Bilkhu@cherwellandsouthnorthants.gov.uk>
Date: 30/11/2018 16:32 (GMT+00:00)
To: Fred Quartermain [REDACTED]
Subject: RE: Manor Farm, Balscote - Motocross use

Dear Mr Quartermain, thank you for the attached letter.

I tried to call you this afternoon to discuss the above and have left a message on your voicemail.

I will give you a call next week to discuss.

Regards

Amrik Bilkhu

Environmental Protection Officer
Environmental Health and Licensing
Cherwell District Council and South Northamptonshire Council
Direct Dial 01295 221625
Email: amrik.bilkhu@cherwellandsouthnorthants.gov.uk

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From: Fred Quartermain [REDACTED]
Sent: 27 November 2018 11:21
To: Amrik Bilkhu
Cc: 'Sandra Kerwood'
Subject: Manor Farm, Balscote - Motocross use

Dear Mr Bilkhu,

Please find attached a letter in relation to the above, which I understand the Council has been looking in to. A hard copy of the same has been sent in todays post.

Please don't hesitate to contact me if you have any queries.

Kind regards

Fred Quartermain
Solicitor

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attendance note

Client	Kerwood, Sandra	Date	11 December 2018
File	Planning Advice 14/28 Day Rule/K2423-1		
Attending	Amrik Bilkhu	By	FMQ
Meeting / Tel	Tel In		

1. FQ received call from Amrik Bilkhu (AB) of Cherwell District Council in response to letter dated 27/11/18.
 2. AB apologies for delay in responding, but AB has been ill and had to priorities urgent work on his return.
 3. AB confirms that he has received letter, and discussed its content with planning enforcement team at the Council. Currently Planning Enforcement have no open investigation in to the use of the land for moto cross. AB's own file has been closed.
 4. By way of background, AB did not want to be drawn on any position that his predecessor had taken, but he was satisfied that Mr Pounder had engaged with him properly. Investigations had been commenced following neighbour complaints, but following meetings with Mr Pounder all questions were suitably answered and no further enforcement proceedings were ongoing.
 5. AB was keen to stress that documents had been provided to Mr Pounder as guidance only and not as a prescriptive course of action, but emphasised that further complaints (if any made) would lead to further investigations and the re-opening of enforcement files. Guidance offered was designed to assist the use occurring in line with best practice.
 6. FQ and AB had a brief discussion on CLEUD - Council not currently looking to insist on one, but acknowledge that it may be useful in both crystallising the current lawfulness of the use and establishing a backstop for what represents and acceptable noise level - may assist with agent of change arguments in the future.
 7. AB acknowledged that there are separate regulatory regimes, and that currently there are no issues under any, but that the council has a duty to investigate and cannot be held to this position in the event that the situation around the site changes (either through development, or environmental/personality changes). New investigations may lead to new outcomes, especially if use has intensified or changed and so it may ne that a CLEUD fallback is useful for Mr Pounder.
 8. FQ emphasised the statutory defences for environmental protection enforcement and ability of use to rely on those meaning that the duty for the Council to investigate (which is accepted) does not extend to a duty to take enforcement action - must be a separate expediency/public interest stage, and assessment of best practicable means etc.
 9. AB to email FQ confirming no open enforcement files, but urges consideration of best practice and mindfulness in relation to noise and neighbour amenity suggests that a CLEUD application to consolidate position should not be dismissed (although acknowledges that "poking the hornets nest" by submitting might invite further complaints/objections.
-

Time Spent: 7 units on call, 2 on note, total 9 units

THINGS

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National Non-Domestic Rate Demand for the year: 2017/18



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA

Tel: 01295 227000

Email: customer.service@cherwell-dc.gov.uk

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9826 5040 0002 0000 3574 8476

SANDRA KERWOOD
WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Date of Issue: **24.04.2020**

Account Number: **3574847**

Multiplier: **0.479**

Small Business Multiplier: **0.466**

Rateable Value: 

Reason for issue: **Small Business Rate Relief**

Property Details

Address

WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Description **MOTORCROSS TRACK**

Property Reference **NN00848482659998**
Number

Demand Summary

Liability Period: 01.04.2017 to 01.04.2018

Gross Charge (NCA)

Small Business Rate Relief

Total Liability For Period

Total Amount Due

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National Non-Domestic Rate Demand for the year: 2018/19



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Tel: 01295 227000

Email: customer.service@cherwell-dc.gov.uk

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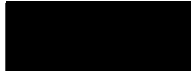
SANDRA KERWOOD
WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Date of Issue: **24.04.2020**

Account Number: **3574847**

Multiplier: **0.493**

Small Business Multiplier: **0.480**

Rateable Value: 

Reason for issue: **Small Business Rate Relief**

Property Details

Address

WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Description **MOTORCROSS TRACK**

Property Reference **NN00848482659998**
Number

Demand Summary

Liability Period: 01.04.2018 to 01.04.2019

Gross Charge (NCA)

Small Business Rate Relief

Total Liability For Period

Total Amount Due

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National Non-Domestic Rate Demand for the year: 2019/20



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SANDRA KERWOOD
WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Date of Issue: **24.04.2020**

Account Number: **3574847**

Multiplier: **0.504**

Small Business Multiplier: **0.491**

Rateable Value: 

Reason for issue: **Small Business Rate Relief**

Property Details

Address

WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Description **MOTORCROSS TRACK**

Property Reference **NN00848482659998**
Number

Demand Summary

Liability Period: 01.04.2019 to 01.04.2020

Gross Charge (NCA)

Small Business Rate Relief

Total Liability For Period

Total Amount Due

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National Non-Domestic Rate Demand for the year: 2020/21



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Email: customer.service@cherwell-dc.gov.uk

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SANDRA KERWOOD
WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Date of Issue: **24.04.2020**

Account Number: **3574847**

Multiplier: **0.512**

Small Business Multiplier: **0.499**

Rateable Value: 

Reason for issue: **Small Business Rate Relief**

Property Details

Address

WROXTON MOTORCROSS TRACK
STRATFORD ROAD
BANBURY
OXON.
OX15 6HH

Description **MOTORCROSS TRACK**

Property Reference **NN00848482659998**
Number

Demand Summary

Liability Period: 01.04.2020 to 01.04.2021

Gross Charge (NCA)

Small Business Rate Relief

Total Liability For Period

Total Amount Due

Privacy Notice (Fair Processing Notice)

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