

30th September 2020

Our Ref: MJL/MLA394/sjc

G Smith Esq
Senior Planning Officer
Cherwell District Council
Bodicote House
Bodicote
Banbury OX15 4AA

By email: george.smith@cherwell-dc.gov.uk

Dear Mr Smith,

Banbury MX Club and Motocross Scrambling Site at Wroxton, Oxfordshire: Application by Mrs S Kerwood for a Lawful Certificate for an Existing Use, Cherwell District Council Ref 20/02126/CLUE: for a mixed use of agriculture and as a motocross track with race meetings for up to 24 days a year (excluding set up, preparation, clear up and private practice sessions)

OBJECTION RESPONSE ON BEHALF OF HORNTON PARISH COUNCIL (HPC)

Please find attached the HPC Objection Response to the submitted application – together with Appendices A-H which are submitted within an accompanying Transfer. For the Objection Statement, all legal advice has been provided by Hugh Richards, Specialist Planning Counsel of No5 Chambers, Fountain Court.

The Appendices comprise:

- A) HPC Research Finding for the number of Race Meets at Wroxton
- B) Air Photo Services Ltd Report by Christine Cox (please note that this is a slightly modified/updated report to that accompanying the 23/09/20 letter to Ms A Sedman)
- C) Media Evidence of Track Intensification of Use
- D) Tabular Summary of 35 Objection Letters which reference intensification of use in recent years
- E) Analysis by Roger Corke of Air Photos and Track Measurements
- F) Site Photographs, including drone images to show extent of track and camping/visitor facility areas
- G) Compendium of Hornton Parish Council documents “Comments and Concerns” related to Wroxton Motocross Track
- H) Appeal decision letter APP/G3110/C/19/3239740 dated 10 July 2020, Land at 45 William Street, Oxford OX3 0ES

A Summary is included at the front of the Objection Response and which concludes:

- **The Applicant’s submission is insufficiently detailed or precise in key areas**, with much of the application based on unsubstantiated assertion and without sufficient credibility for the grant of a Certificate on the balance of probability.
- **The claimed number of race meets over the last ten years is not accompanied by any supporting information** and nor does the claim accord with the experience of the local community in terms of race events over the last 2-3 years, when there has been a significant increase in noise disturbance affecting Hornton residents. **The claim for “practice” days is also unspecified in number and not related specifically to the Banbury MX Club.** The application has also stated that the MX Club is the **only** site user or the **main** site user but in reality in the last few years “hire-out” days have expanded and are understood to have been the sole use of the track for events to date in 2020. HPC has therefore carried out exhaustive research from websites and social media platforms to obtain contemporaneous accounts of meetings at the track with **a schedule attached at Appendix A.** The Parish Council assessment of the number of race meets is summarised in the table at paragraph 13 of the Objection.
- **A material change of use has taken place at the MX track; such change has been facilitated by both the expansion of the site area in use by spectators or for overnight camping as well as expansion of the racing track itself in terms of length, width, vertical profile and the addition of structures/boundary features**, together with the installation of drainage. **At paragraph 39** of the HPC objection a summary is provided of such changes taken from the very detailed and thoroughly researched report produced by **Christine Cox of Air Photo Services Ltd. (Full report at Appendix B.) Appendix E** provides evidence of further area and width measurement increases.
- **Period of Continuous Use – the requirement to be immune from enforcement requires a ten year continuous use period.** HPC contend that, due to the Covid-19 lockdown, there has been a cessation of actual use; such interruption has been sufficient to break the required period of continuous use of the land, in that between March 2020 and July 2020 no race meetings have taken place.
- **From the expansion and intensification of the race track and camping land, HPC consider the whole character of the land use has changed significantly, as have the character of the events held at the track.** **Appendix F photographs** show the increased and expanded use of the site for events in 2020. Specifically in recent years, the events have grown in type and scale; this is demonstrated by the bundle of **Media Evidence included at Appendix C.** It is also known that the site operator has extended the track distance and lap time, through the addition of loops and jumps, so as to attract far larger scale outside events and top riders to a track with an international lap duration. Bigger and noisier four-stroke bikes have also become more prevalent than the use of bikes with two-stroke engines – all part of the commercialisation and intensification of track use.
- **HPC provide evidence to demonstrate that the character of the use and its offsite effects changed between 2017-2019, as a result of track “upgrade” and expansion.** Both intensification of use and the radically increased impacts of noise and disturbance on residential amenity, are evidenced by the 2019 increase of complaints to CDC. **Appendix D sets out a tabular summary of 35 objections** already submitted to the LDC application – in which

complaints there is reference to the intensification of use and noise impacts between 2017-2019. **The Appendix G document** provides a Compendium of documents compiled by HPC between May – September 2020, setting out Comments and Concerns on behalf of Parishioners.

- **Appendix H** provides the appeal decision related to an enforcement case in Oxfordshire where the character and activities of the occupants of a house became materially different and resulted in a material change of use (summarised at Section 46 of Objection Statement).
- **For all the above stated reasons the HPC consultation response is summarised as follows:**
 - i) **The LDC application is insufficiently detailed or precise for the grant of a Certificate.**
 - ii) **The Applicant’s case is based more on unsubstantiated assertion than factual evidence.**
 - iii) **The HPC objection is substantiated by detailed research and analysis which has confirmed the following points:**
 - No continuous use over the required ten year period
 - No evidence for the claimed number of race meets
 - A material change of use has taken place at the MX track with significant changes both to the track and camping areas, including significant, unauthorised engineering/earthworks within the period 2016-2020. Such unauthorised works have formed a fundamental part of the intensified use of the MX site, resulting in radically increased noise disturbance to the village community of Hornton and other nearby properties.
- **HPC understands that the applicant will be given the opportunity to review and respond to the HPC objection.** It is however the HPC view that the Applicant should be asked by the District Council to provide further contemporaneous and precise information as to the full details of each race meeting in the last 10 years, so as to enable the Council to review the extent to which a material change of use has occurred by intensification – for example:
 - i) Whether it was a day for members of the local Banbury Club, or if not, the name of any other club or organisation organising the meeting or hiring the site.
 - i) Whether it was a race meet for / part of a national or international championship or competition.
 - ii) How many riders took part in racing each day and where they travelled from to be at the event, which clubs were represented.
 - iii) How many different races were held each day and how many riders were entered in each race.
 - iv) The class of motorcycle and engine size used in each race.
 - v) The times of the first and last race on each day of each meeting.
 - vi) How many spectators came to each day.
 - vii) How many persons spent the night before/after each race day.
 - viii) Whether an admission charge was made for either race entrants and/or for spectators and/or for camping and if so in what amount.

ix) Whether bikes in each race were with 2 or 4 stroke engines.

HPC anticipate that your Council will also wish to review the unauthorised physical changes made to the land, in order to facilitate the change in the character of the use. HPC understand from Amy Sedman that the unauthorised earthworks in the last four years are being investigated under a new enforcement case – however, for the reasons set out above, earthworks in the last ten years are clearly of relevance to the change of use application.

If it would assist to discuss any of the points made in this letter, the accompanying Objection Statement or Appendices, then please do not hesitate to contact me.

Yours sincerely,

Martin J Leay

Copy to:

David Peckford Esq, Assistant Director of Planning
Ms Amy Sedman, Team Leader - Enforcement
John Offord Esq, Chair-Hornton Parish Council

Head of Legal Services: Sukdave Ghuman sukdave.ghuman@cherwell-dc.gov.uk
Cabinet Member for Planning: Councillor Colin Clarke colin.clarke@cherwell-dc.gov.uk
Leader of the Council: Councillor Barry Wood barry.wood@cherwell-dc.gov.uk
Cabinet Member for Health & Wellbeing: Councillor Andrew McHugh Andrew.McHugh@cherwell-dc.gov.uk

Ward members for Cropredy, Sibfords & Wroxton:
douglas.webb@cherwell-dc.gov.uk
george.reynolds@cherwell-dc.gov.uk
phil.chapman@cherwell-dc.gov.uk

Enc **Objection Statement on behalf of Hornton Parish Council**
 Appendices A-H (sent via Transfer Big Files)