

Our Ref.: JPP.HPC.724

11th July 2023

Mr. Paul Seckington
Senior Manager
Development Management
Cherwell District Council
Bodicote House
Bodicote
Banbury, OX15 4AA



By email (paul.seckington@[cherwell-dc.gov.uk](mailto:paul.seckington@cherwell-dc.gov.uk))

Dear Mr. Seckington,

Planning application: 21/00517/F
Land Used For Motocross Stratford Road A422 Wroxton OX15 6HX

Creation of a motocross track and soft landscaping scheme and the change of use of agricultural land to hold moto-cross events including set-up, take down and private practice sessions, with associated camping site, for up to 65 days per year and agricultural grazing (retrospective)

Further to the above planning application I am instructed by Hornton Parish Council (HPC) to review the application and provide a narrative on its respective merits; review the various committee reports of officers that have led to this point (notably that of 21st June 2021), and review the proposed draft planning conditions as set out in the current committee report of officers for the 13th July 2023 meeting of Planning Committee.

I have reviewed the online submission, plus consultation responses (statutory and otherwise), have visited the site's vehicular entrance and walked the Public Right of Way immediately adjacent to the site's western boundary. I am familiar with the site and wider locality, having been a resident of Shenington with Alkerton for c. 17 years until 2017, and recently attended an open public meeting in Hornton where the Parish Council provided an update to the community and questions were fielded by the Parish Council and Ward Councillors Chapman and Reynolds.

The review includes the commissioning of a separate Transport Review undertaken by Motion (Transport and Infrastructure Planning). Motion's report of May 2023 is **attached** for your attention, and the County Council as Local Highway Authority, an important consultee. The County have seen an advance earlier version of Motion's report, but it is superseded by this later version, and is accompanied by Dashcam footage showing highway safety conflicts on a previous race day at the track (October 2020). This is attached by way of a digital file link.

Further, HPC have commissioned a review of the Great Crested Newt (GCN) position on site, and to that end the report of CGO Ecology Ltd is **attached** for your attention, prepared by a consultant pre-eminent in the field.

Following my review, and that of Motion, CGO Ecology Ltd and Hornton Parish Council (HPC) it is necessary to lodge a continued **STRONG OBJECTION** on behalf of my client,



HPC. In the short term, though, the reasonable position is that the following must properly occur—

1. **The application be deferred from the Planning Committee meeting of 13th July 2023, and**
2. **further information, as outlined, be requested from the applicant, and following that,**
3. **a FULL review and revised assessment of the application be undertaken, superseding that of the June 2021 report of officers, naturally including a consultation exercise, and finally,**
4. **the application be determined in light of the new information and with a new committee report. With this there is a clear and justifiable case for refusal.**

What is the position on the ground today, and what is established in law?

The site does not benefit from planning permission for Motocross use.

The applicant has not established a level of lawful Motocross operation at the site, as there is no Certificate of Lawful Use for Existing Development (CLUED) in place. The applicant's 2020 application to attempt to do this was withdrawn.

Local communities are well aware that from 2017 onwards the Motocross operation at the site clearly intensified markedly towards December 2020 when the last Motocross activity took place at the site. That intensification would likely have triggered a change of use had a previous level of (lesser) operation been established in law, as the scale and character of the operation had altered. As I say though, no level of operation has been established as lawful.

There is some confusion as to what is possible in terms of 'permitted development' use of the site for Motocross purposes. The General Permitted Development Order 2015, as amended (GPDO), states at Schedule 2 Part 4 Class B that -

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 and motorcycle racing including 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.

Development not permitted (by Class B)

B.1 Development is not permitted by Class B if—

(a) it would consist of development of a kind described in Class E of this Part (temporary use of land for film-making);

(b) the land in question is a building or is within the curtilage of a building;

(c) the use of the land is for a caravan site;



Whilst the use of the site for 14 days in any calendar year for motorcycle racing is permissible, this would not include –

- Any fixed structures or buildings including lighting.
- Operational development in the form of creating a track, bunds, embankments or berms, and
- The use of the land as a caravan site*

*The definition of a caravan includes motorhomes or recreational vehicles (RVs) (definition from Caravan Sites and Control of Development Act 1960)

So, whilst permitted development rights may exist for 14 days use in any calendar year, any of those days would in no way approximate the level of Motocross operation that subsisted before December 2020 at the site, would look wholly different on the ground, have significantly different impacts and consequently cannot be afforded significant weight as a fall-back position in decision-making.

CDC have not as yet determined application 21/00517/F. Being undetermined it can still lawfully be refused or approved by CDC, or indeed withdrawn by the applicant. It should be noted that the Senior Manager of Development Management advised by email dated 24th January 2022 that, 'if the application is refused we could then (potentially) serve an enforcement notice'. Refusal is still an option.

Recent chronology: how did we reach this point?

2019 Following a number of third-party complaints about the Motocross use of the site Cherwell District Council carried out an Enforcement Investigation in 2019. I understand that this included the issuing of a Planning Contravention Notice (PCN).

2020 Following the investigation the applicant submitted a Certificate of Lawful Use for Existing Development (CLUED) in August 2020. The applicant sought to establish that the use of the land 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) was lawful. The applicant withdrew that application in October 2020, and one would reasonably assume that was because CDC advised that they could not support the certificate application. I am aware that HPC and the wider community provided evidence that challenged the submission and assertions of the applicant.

December 2020 Motocross racing ceased at the site and has not recommenced since.

February 2021 The current application is submitted by the applicant with follow-up reports and information submitted subsequently.

June 2021 The current application is reported to Planning Committee and, Committee resolved to grant planning permission subject to the imposition of planning conditions, and the resolution of objections from the Lead Local Flood Authority (LLFA), CDC's Ecology Officer, and BBOWT (Berks, Bucks and Oxon Wildlife Trust).

July 2023 The site has rewilded in the intervening period since racing ceased (December 2020), a period of 2 years 7 months. Further, certain reports, notably Ecology, are now out of date and in light of rewilding and passage of time should be repeated BEFORE a decision is made on the application. Any report findings should properly form part of the assessment and decision-making process for the application, and not left for post-determination assessment.



Report of Officers to Planning Committee, June 2021 and the planning submission before Committee

Regarding this report of June 2021 and the resolution that flowed from it I would raise the following points, in no particular order -

1. The application is 'retrospective'. The June 2021 report of officers failed to mention a key paragraph of National Planning Policy Guidance (NPPG), namely that although a local planning authority may invite a (retrospective) application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way, on its merits. This was not mentioned within the report of officers of June 2021, and therefore Planning Committee were not properly advised on the position before making their resolution on this retrospective application (Paragraph: 012 Reference ID: 17b-012-20140306 refers).
2. The June 2021 report of officers, and indeed the March 2021 Consultation response of Oxfordshire County Council (OCC) as Local Highway Authority (LHA) failed to mention or have regard to key locational/sustainability paragraphs of the National Planning Policy Framework (NPPF) namely paragraphs 105, 110, 111 and 112. This is a fundamental omission from the report, assessment and decision-making.
3. The site is located within a quiet, 'dark sky' environment, within the Ironstone Downs landscape, and is completely inappropriate in that context. The site is also within 1000m and the setting of the Cotswold Area of Outstanding Natural Beauty (AONB) designation, a national designation of over 50 years standing (since 1966). This matter is not addressed within the June 2021 report.
4. The red line site area should include the means of access to the public highway^{1 2} and any required visibility splays. Therefore, in this case the red line as drawn is incorrect. It should extend to include proposed vision splays, which it does not. The red line location plan also omits a sizeable section where motorhomes and caravans have been regularly parked: an area to the southeast of the main body of the site. To take the current application through to determination could well put the Local Planning Authority at risk of legal challenge. The current application is invalid and should be returned to the applicants. Due to the errors with the submitted application the correct statutory consultations have also failed to take place.
5. Flowing from this, nowhere within the submission are the proposed visibility splays demonstrated. They are not on submitted drawings nor are they depicted on a plan within the submitted Transportation Assessment of February 2021. This application should be determined on its merits, irrespective of whether it is retrospective, or not, and regard had to the site's access onto a narrow, rural lane which is subject to both vertical and horizontal alignment changes in proximity to the access. Plus, the nature of the vehicles accessing and egressing the site is material.
6. On a related matter, the blue line depicting other land outside of the application site within the applicant's control was evidently incorrect at submission, as an area to the northeast of the application site has been added. IF that area is required for mitigation, it should properly be included within the red line area.



7. Since the June 2021 Planning Committee meeting the County Council have adopted a new Local Transport and Connectivity Plan (July 2022). The proposals should be assessed in light of that up-to-date County policy.
8. A Landscape Visual Impact Assessment (LVIA) was submitted by the applicant in April 2021, following the application's submission in the February. Given the timing of the assessment and report no evidence was examined by the author on the historic impact of ostensibly 'white' coloured caravans and motorhomes in the landscape, though such evidence would no doubt have been available from the landowner or track users. At paragraph 4.3 of the LVIA the author refers to there being c. 250 camper vans on the site at any one time. I have seen aerial images (October 2020) where one can see more than 300 caravans/campervans over a broad area, and an area extending beyond the red line to the current application site. Assessment in this regard has been very light touch in my view, as these vehicles individually can be prominent in such a rural landscape, but particularly so when in such numbers. Further, a public right of way (PROW) runs for over 230m along the northwestern boundary of the site providing immediate views over the entire site. Impact and assessment in this regard has been under-stated in my view.
9. Further, I can see no assessment within the June 2021 report of officers as to the impact on the enjoyment of that PROW, and the potential for noise, air and visual impacts upon users. Unless I have missed it, I could not see any assessment by the County Council in this regard, and their Countryside Team. There are also serious safety issues that would need attention.
10. The Indian Queen restaurant (less than 200m from the track) has residential accommodation on site (for staff). I cannot see any assessment of this within the June 2021 report of officers.
11. For a full and proper assessment in June 2021 the following should properly have been before officers in drafting their Planning Committee report. This is particularly important as the proposal is retrospective in the first instance, and Government Planning Policy and Guidance advocates limiting the number of planning conditions (used in this case to seek such information post-decision) –

- a. Lighting details and assessment, including any fixed lighting and the impact of lighting from vehicles and overnight camping/stays. Lighting has several important ramifications – on landscape impact and impact on dark skies (the AONB designation is reasonably close, and this site is within its setting), and lighting also has ecological impacts on species and their habitats.

This detail should be available and consulted upon before a decision is made.

- b. Great Crested Newt population survey. As per the attached report of CGO Ecology Ltd, this should be in place before a decision is made.
- c. Flowing from this, the further Ecological Walkover Survey now required (given the passage of time and rewilding of the site) should be submitted now and before a decision is made so that the results and recommendations can be assessed and reported upon to Members. It should not be an afterthought and left for another day.

CIEEM advice from 2021 states that, 'Decisions need to be informed by ecological assessments based on sufficient and appropriate data'. And, that



'the presence or likely absence of protected species, and the extent to which they could be affected by a proposed development, is a material consideration in determining a planning application and should be established **before planning permission is granted**. Planning conditions should only be used to secure ecological surveys after planning permission has been granted in exceptional circumstances'. Those circumstances do not apply here. And again, this application is retrospective to begin with.

Government Guidance on Protected Species and Development confirms that one should not usually attach planning conditions that ask for surveys. This is because you need to consider the full impact of the proposal on protected species before you can grant planning permission.

- d. Details of actual and proposed visibility splays should be assessed by the LHA and LPA now, and not left for a post-permission condition. What happens if they are simply not achievable? At present visibility splays are not shown on any submitted drawing or plan.
- e. To allow a proper and robust assessment of the impact on local communities the proposed schedule of events should be before officers now and form part of any assessment and recommendation, and similarly any Noise Management Plan. These go to the heart of the application and must not be pushed back for 'assessment' post decision.
- f. Any detailed landscaping scheme should be before officers now, to allow CDC's landscape officer and indeed planning officers to make an informed assessment and recommendation having regard to it.

Proposed Draft Planning Conditions

A number of important issues arise from the proposed planning conditions.

The advice within the NPPG is that for non-outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted. That has not occurred here.

1. Firstly, as the proposed development is retrospective, albeit that use of the site for motocross purposes ceased in December 2020, the motocross site has been in previous use. Thus, conditions worded, 'Prior to the first use of the motocross site hereby approved....'. should be avoided as the first use of the site has passed. If approved that condition would need rewording.
2. The vast majority of draft conditions require the submission of further details. This is relevant to proposed draft conditions 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13. Condition 16 even requires details on the back of another condition (condition 8) regarding vision splays. The vast majority of this detail should be before officers and Members BEFORE a decision is made on the application. Much of the information has ramifications on several areas of assessment and would be material in forming a recommendation and then decision.
3. Condition 5 is considered to not meet the '6 tests' in that it is not precise and from that not enforceable. It is not clear what the 20- or 65-day references truly mean (see



the fifth paragraph to that condition). To the reader the condition is not clear and is ambiguous in meaning. What, for example, are Motocross purposes? As opposed to practice or race days? It is considered imprecise and open to interpretation.

Local Refusal of Planning Permission of Note

I would draw the reader's attention to a recent planning decision made for a site but 850m northwest of the Motocross site. Application 20/02453/F for a proposed Fuel Depot at Hornton Grounds Quarry was not supported by officers, who recommended refusal, and planning permission was refused unanimously by Planning Committee at its December 2020 meeting. It was refused for five (5) reasons, the first three of which (reproduced below in full), with tweaking, could readily apply to the current Motocross application. The Motocross site is equally poorly located, a visual intrusion into the open countryside and has a poor access for which vision splays have not been demonstrated.

1. The proposed development represents an unjustified and unsustainable form of development in a rural location, which lack opportunities for sustainable travel to and from the site and would in significant adverse impacts on the character of the surrounding environment, for which it has not been demonstrated that exceptional circumstances exist for such development in this unsustainable location. The proposals are therefore contrary to the provisions and aims of Policies SLE1, SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
2. By virtue of its siting, scale and form and associated lighting and significant HGV vehicle movements the proposed development would appear as an alien feature within the rural landscape, intruding into the open countryside. The proposals would have a detrimental visual impact on the rural character and appearance of the locality, causing significant and demonstrable harm to the character and appearance of the area and open rural landscape. The proposals are therefore contrary to Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
3. The proposals have failed to demonstrate that safe and suitable access with appropriate vision splays can be achieved at the site, to accommodate the proposed significant intensification of the use of the site and associated vehicular movements. The proposals are therefore contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Summary

In short, the proposal represents an unsustainable and inappropriate form of development in a rural location, completely inaccessible by sustainable forms of transport and wholly out of character with its surroundings and context and has close parallels to the comprehensively refused application for the Fuel Depot proposal at Hornton Grounds Quarry (LPA reference 20/02453/F) in terms of the issues and significant harm that results.

The application has attracted unprecedented objections from 4no. Parish Councils and 100's of third parties, with none of the letters being of a pro forma type. For a remote, rural location this is noteworthy of itself.



The development, by virtue of its physical elements; general activity; lighting (from the site and overnight vehicles), noise, dust/air pollution will introduce an alien form into the landscape: a dark-sky and ostensibly 'quiet' landscape and context, causing significant harm to the valued landscape and the setting of the AONB.

In simple terms, this application is the wrong development, at the wrong time in the wrong place. Such a motocross track should properly be located so as to be closer to the strategic road network, away from quiet rural locations and ideally in a location with already higher ambient noise levels. A location near the M40 would likely be suitable, as per the Motocross site at Upper Arncott (within CDC's District Area) which is adjacent to the M40 where ambient noise levels are already high, and it avoids impacts on residential amenity and landscape harm (being in a less-sensitive location). This is true for the Motocross site to the east of Rugby (Daventry District area), where the VIP Motocross site at Crick Cross Farm is immediately adjacent to the M1, away from residential property and opposite a significant logistics park. Its impact, in that location, is therefore minimal, as per Upper Arncott. And both can be accessed fairly readily from the strategic road network without, as is the case with Wroxton Heath/Hornton MX, needing to travel some distance through Banbury, Drayton, Wroxton and then narrow country lanes.

These conditions do not replicate at Wroxton Heath/Hornton for the current application and site, which really could not have been in much worse a location.

In summary – regrettably this application is currently 'invalid' and lacking in much detail, which is required for this application to meet the national information requirements and allow for proper assessment.

A full assessment is made difficult through the lack of information available, but there is sufficient to highlight that there are several key areas of concern and identifiable harm such that we feel the application should be refused, if it is not returned as invalid first.

For a host of reasons my client and I consider that the application should be deferred from tomorrow's Planning Committee meeting; that significant further information be requested of the applicant, and when received and following consultation, the application be taken back before Planning Committee for re-assessment in lieu of that undertaken in June 2021.

My client has striven to work with CDC on this application which has serious implications not just for the Parish of Hornton, but 5 or 6 other Parishes too. If the matter is approved at tomorrow's Planning Committee meeting my client, with the support of wealthy benefactors, will consider a challenge through the Courts such is their concern and resolve. As it stands there would be a number of obvious points of challenge. That said, if in the fullness of time, the application is refused my client would continue to work with CDC and likely adopt a Rule 6 position at any subsequent planning appeal should the applicant appeal against any refusal of planning permission.

Please would you kindly confirm receipt of this letter.

Yours sincerely

Julian Philcox

Julian Philcox
Director



Mobile 07986 350974

cc. Client, Hornton Parish Council (via email)
Cllr Phil Chapman, Ward Councillor (via email)
Cllr George Reynolds, Ward Councillor and Chair of Planning Committee (via email)
Cllr Douglas Webb, Ward Councillor (via email)
Cherwell Registration Team (via email)
Gemma Magnusson, Planning Case officer, Cherwell District Council (via email)
Yvonne Rees, Chief Executive, Cherwell District Council (via email)
Democratic Services, Cherwell District Council (via email)
Joy White, Oxfordshire County Council (via email)
Roger Plater, Oxfordshire County Council (via email)

Enc. Report of Motion, May 2023
Report of CGO Ecology Ltd, July 2023
Dashcam footage digital file (via WeTransfer link)

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1 National Planning Practice Guidance

2 Local Validation Checklist

