

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**APPEAL BY ANDREW WALSH AND LEE MCGARRY AGAINST  
ENFORCEMENT NOTICES RELATING TO LAND AT  
CHISNALL HOUSE FARM, CROSTON LANE, CHARNOCK  
RICHARD, CHORLEY, PR7 5HJ**

**SERVED ON 21 JUNE 2021**

**PL. INSP. REF: APP/D2320/C/21/3279304&3279305**

**LPA REF: 20/00358/COUDWL**

**APPELLANT'S REF: BL/CHARNOCK**

**NAME OF LPA:** Chorley Borough Council.

**APPELLANTS' ADDRESS:** Andrew Walsh, Chisnall House Farm, Croston Lane,  
Charnock Richard, Chorley, PR7 5HJ.

Lee McGarry c/o Chisnall House Farm, Croston Lane, Charnock Richard, Chorley,  
PR7 5HJ.

**SITE ADDRESS:** Chisnall House Farm, Croston Lane, Charnock Richard, Chorley,  
PR7 5HL.

**EFFECTIVE DATE OF THE ENFORCEMENT NOTICES** 22 July 2021.

**APPELLANT'S RESPONSE TO LPA's STATEMENT OF CASE**

**27 DECEMBER 2021**

1 The most important point to resolve is whether these Enforcement Notices are valid. As the appellant said in his Statement of Case Enforcement Notices cannot apply to lawful development but there are several instances where these notices do apply to lawful development, viz:

(a). The LPA issued a CLEUD on 17 November 2017 which stated that engineering operations to create a motocross track were lawful (copy at ANNEX A15 to appellant's Statement of Case). In doing so they stated that the track was complete as shown on the aerial photograph dated 3 August 2006 (copy at ANNEX A5 to the appellants statement) and being ridden by motorcyclists from that date.

(b). The erection of a means of enclosure is a stand alone class which in this instance can only be removed by use of an Article 4 Direction. The LPA acknowledge at paragraph 10.3 of their statement that there will be no purpose other than to compliment the development that's taken place and as such it should be removed under the terms of the Enforcement Notice to complete the restoration of the land. It appears from this statement that the track will disappear which is something the enforcement notice cannot achieve. The appellant intends to make full use of his permitted development rights which allow motorcycling on the land. That being the case he will require fencing so that it can operate safely. Permitted development rights can only be taken away by Article 4 Direction.

(c). The mounds which form jumps are formed from soil from the appeal sited and were not pre-designed. They are therefore a use of land which is displaced at every race meeting and put back into place with the use of a bulldozer.

(d). Hardcore was applied to the surfaces of the access and carpark prior to 2010. It is an engineering operation and as such was exempt from enforcement action four years after being applied.

2 Some objectors refer to the site being used for agriculture or agriculture being the primary use of the site. In the appellant's statement it was made clear that the site was not and had not been used for agriculture since 2006. The appellant is not and has never been a farmer. The enforcement notice requires that all elements of the use of the site for the riding of motorcycles be removed, and that the site be restored to a condition fit for agricultural use. In order to raise dairy cattle on the land substantial amounts of money would have to be spent, including a building erected for winter quarters, storage of agriculture machinery, storage of winter food stuffs etc. and a milking parlour. There is a requirement that anyone responsible for farm animals should be within sight and sound of them in case they need veterinary attention. This would require someone living on the appeal site. In comparison when the appellant bought the site it had already been leased out to AMCA at an annual rate of £4500 for a period of five years starting in 2007 with the possibility of an extension. The lease was extended and in total AMCA leased it for seven years with a total payment to the appellant of £29,500. The AMCA were also regular

users of the site outside these lease periods. The appellant was able to continue working in his full time job throughout this period.

### **USE OF THE APPEAL SITE OTHER THAN USE BY AMCA**

Outside the periods of AMCA use the site is used regularly by individuals or small groups riding the site for enjoyment, honing their skills, safety lessons, and for the tuition of young riders to get them up to licence test standards. There is a number of motocross clubs in the northwest and the intention is to encourage them to use the appeal site whenever they wish. In some cases their sites can only be used up to the GPDO limits. The LPA had granted a CLEUD for the track which they described as an engineering operation. This clearly has a knock on effect for what the appellant can do on the site with or without planning permission. The appellant's view is that the formation of the track is a material change of use not engineering development. Part of the reason for this is that GPDO powers are restricted to use only with no operational development yet virtually all PD sites have a track which remains in situ between events. If this track were an engineering operation it could not be carried out under the provisions of the GPDO and it seems highly unlikely that the Government would ignore a breach of the permitted development on this scale.

### **COMMENTS ON NUMBERED PARAGRAPHS OF LPA'S STATEMENT**

2.3 The unauthorised change of use took place in 2006 and was lawful in 2016.

2.7 No material has ever been imported to, and tipped on the site.

2.8 The site had been lawful for four years at this stage. The water tank was installed to enable the track to be watered and was incidental development. If as the appellant avers the track was a material use of the land alterations to the track do not require planning permission.

2.15 The Temporary Stop Notice expired without an Enforcement Notice being served.

2.16 As stated above the majority of the development was not operational development.

2.17 The Temporary Stop Notice was not complied with in full.

2.18 The use was lawful by 2016.

2.22 Not all the requirement of the Stop Notice were reasonable.

2.23 If the track was formed by way of a material change of use it was lawful by 2016. The porta cabins were not fixed to the ground and did not constitute operational development. If the use of the site for motorcycle riding became lawful in 2016 the siting of porta cabins was also lawful.

2.25 to 2.39 NPPF strongly supports the provision of sporting and recreational facilities in Green Belts in the interests of public health and wellbeing. This is an isolated site and is ideally located for such a facility.

2.30 As stated previously the appellant's view is that the provision of the race track, including widening works and jumps are a material use change that do not impact to a non acceptable level on the openness of the Green Belt.

2.40 The site is ideally suited for the riding of motorcycles.

2.41 If a site is lawful policies and standards do not apply to it.

2.42 If the site became lawful in 2016 porta cabins and container units which are not fixed to the ground do not require planning permission.

4 The item relating to application 17/00580/CLUED describes it as an application for a Certificate of Lawfulness (Existing Use). Application for Lawful Development Certificate for Engineering Operations to create a motocross track.

6.3 The LPA deny that they have imposed a condition or limitation on the use of the site. This is a matter of interpretation.

6.5 This point is dealt with earlier.

6.7 The LPA state that the jumps are engineering operations inter-alia to facilitate the material change of use. They were installed some years after the use for riding

motorcycles began. They state that they cannot be classed as movable structures but there is lots of case law which confirms that piling soil onto land is a use of land.

The appellant has been making the point all along that if the formation of the track is an engineering operation it is excluded from PD rights.

6.9 If the use of land for motorcar and motorcycle racing is not a temporary change of use from one use to another, what is it? The appellant is of the view that the material change of use which took place in 2006 became lawful in 2016 which defines any future extension or alteration to that use. What took place after 2020 did not alter the status of what took place between 2006 and 2020.

7.1 to 7.32 These paragraphs repeat much of what the LPA has said earlier in their statement. They clearly oppose the idea of allowing the Ground (a) appeal.

8.3 The appellant is happy to move the start date of the material change of use from 2005 to 2006 in accordance with the CLEUD.

9.3 The LPA is incorrect in what it states which is that the material change of use began in 2006 and was still ongoing in 2016 at which point the LPA lost its power to serve an enforcement notice.

9.5 to 9.7 The appellant is happy to agree to a start point tied to the dated 2006 aerial photograph.

9.9 When issuing the CLEUD in 2017 the LPA noted that the track was already in use for the riding of motorcycles in 2006 and this was still the case when the CLEUD was issued in 2017.

9.13 The storage areas were not created to facilitate the material change of use of the appeal site to that of a permanent race track.

9.15 to 9.19 There is and always has been confusion in the minds of site users as to precisely what they can and can't do on land. Most site operators interpret the GPDO provisions as applying only to racing events. Use at other times during the calendar year for enjoyment, tuition and safety reasons are not regarded as falling

within the PD definition. At Charnock Richard the involvement of both governing bodies of the sport from 2006 for a period over ten years and their links with local clubs has meant that use of the site for riding motorcycles for these non-competitive uses far exceeds use for competitive racing.

9.24 This point is dealt with elsewhere.

9.28 and 9.29 These points have been dealt with above.

9.34 It is unlikely that local residents will be adversely affected by small groups of riders or individuals that are not competing in a race.

9.40 The use of the word 'events' illustrates the point made above which is that riding by individuals or small groups is not taken account of by site operators responding to questions about the number the events held on their courses.

10.6 to 10.8 In this situation most LPA's, if they genuinely believe that trees bushes and hedges are being removed on a large scale do make blanket TPO's. Brambles are removed on a regular basis but there is no law to prevent this. I do not have Appendix 9 or any of the other Appendices so I cannot comment on this.

10.13 Irrespective of the LPA's protestations the scale of new planting that they are demanding grossly exceeds the scale of any trees, bushes or hedges removed.

11.1 The appellant has over period of more than 15 years avoided the removal of any trees unless it is essential on safety grounds.

11.2 to 11.4 The LPA have avoided making any statement as to how they will terminate erection of fencing, permitted development for motor sports or any other development which the appellant claims is lawful and cannot therefore be eliminated by Enforcement Notices.

End

