

WHIMPLE  
(Whimple) 11/00285  
(ENFORCEMENT)

Location: Land at Strete Farm, Rockbeare  
(Grid Ref: 0402 9460)

Planning Breach: Change of use from agricultural land to motor cycle circuit for family and friends' use.

### **Planning History**

App. No.	Year	Proposal	Date and Decision
2095/COU	2006	Change of Use from agricultural land to motor cycle circuit for family and friends' use.	Refused by Delegated Authority. 3 Oct 06

### **Representations**

29 letters of objection have been received.

### **Summary of Objections**

All objections referred to the noise nuisance in addition to the dust created during the summer months and many also complained about poor traffic access to the site.

11 letters of support has been received.

Letters stated that there was a need to provide such facility for young people in the vicinity.

### **Parish/Town Council**

Rockbeare Parish Council recommended approval of the application with conditions that the track is not used before 10 am.

### **Ward Members**

Councillors D G Button and Mrs R E Burrow both recommended refusal of the application.

### **Location**

The site referred to is a triangular plot of agricultural land north of the A30 and extends to approximately 7 acres and accessed by an unmade track off Turkey Lane. The site is some 250 – 300 metres away from the nearest residential property. (See attached plan)

### **Background**

The purpose of this report is to seek the Committee's approval for the taking of legal action to remedy the breach of planning control following a refusal of application 06/2095/COU by Delegated Authority. The application sought to regularise the use of a section of agricultural land adjacent to the main A30 dual carriageway for the purpose of a motor cycle track for use by the family and friends of the applicant. The application was refused on 3 October 2006 on the following grounds:-

- a) Unacceptable levels of noise and disturbance to neighbouring residents
- b) The potential hazard to motorists on the A30 by virtue of headlights causing distraction.

However, enforcement action cannot be authorised by Delegated Authority where either the Parish Council or Ward Member are not in agreement with the recommendation of the Authority.

As will be seen above, the application attracted a large number of objections on the grounds of environmental impact and in particular to the noise nuisance caused as well as its accessibility. In addition, a number of letters of support were received, not only from users of the motor cycle

track but from those who considered that such a facility should be provided in the locality and in that particular position.

### **Planning Viewpoint**

Although the application stated that the use would be for family and friends only, in reality restricting the use of the site to this would be very difficult to assess and/or enforce if more intensive use were to take place. The parish council considered that the proposal provided a valuable facility for local children and subject to conditions restricting the times of use and no. of riders were in support of the application. The adjoining parish council (Whimble) initially raised no objections to the proposal but subsequently did raise objections and suggested that people were paying to use the track and therefore effectively it was in commercial use. The facilities provided (portaloo and covered area), together with signage seen on the site would also suggest more than just occasional use.

The site itself is not part of a designated landscape and is close to the main A30. In terms of the groundworks that have been constructed these are considered to have minimal visual impact on the surrounding area.

If the use were limited/restricted the access is likely to be acceptable and there were no adverse comments/objections from the Highways Authority. However, a more intense/commercial use would have poor access from the narrow poorly aligned approach roads and access track.

The site directly adjoins the north side of the A30 several concerns have been raised relating to dust, created by the use of the track in dry weather, blowing onto the A30 and causing a hazard to motorists, although this was not a concern raised by the Highways Agency. However, the Highways Agency did voice concerns regarding the potential confusion that could arise at night time or in bad weather between drivers travelling in an opposite direction to motor cyclists using the track.

With the low level of usage proposed and the screening level of the site at present the primary amenity issue is considered to be noise. However, were fence screening to be required along the length of the track, to screen it from the A30 and or to provide noise attenuation, then this would be more visible and visually intrusive and would itself require further tree screening to ameliorate its appearance. Although the site is adjacent to the A30, which itself creates a high level of background noise, the noise of the motorbikes at a higher pitch may be heard at some distance over the top of the traffic noise. Indeed the application drew a large number of complaints from residents, mainly living to the south of the A30 relating to the noise intrusion and the affect of this on their residential amenity. The advice of the Environmental Health Officer was sought and an officer visited the site whilst it was in use and suggested the following conditions; erection of 3 metre high fence along entire length of track closest to the nearest village; restriction on hours to Saturday and Sunday use between hours of 10 a.m and 6 p.m. and no more than 6 motorbikes to use the course at any one time. These measures were suggested to provide noise attenuation to protect the amenities of nearby residents.

A number of local residents as well as other members of the public wrote in support of the application. The parish council felt that the proposal provides a valuable facility for local children to ride their motorbikes in relative safety. Indeed for those wishing to ride motorbikes the available options are likely to be limited. However, the use applied for is for family and friends only and is therefore a private use, the applicant would therefore be in control of who was able to make use of it or not and therefore the facility provided would be of limited public benefit. On the other hand if the track was open to members of the public such a use is likely to create problems due to the intensity of the use, access to the site and other related issues.

The Environmental Health Officer's suggested condition relating to the fencing required to provide adequate noise attenuation would in itself be likely to raise objection due to its

appearance. Screening was also required by direction of the Highways Agency to prevent confusion for motorists on the A30. The effect of the screening required would be visually detrimental and would require further landscape screening to ameliorate against this. These requirements would place an onerous burden on the applicant for a use that is likely to be restricted in terms of numbers and hours of operation anyway. There were also concerns that restricting the use of the track and the enforcement of this would be very difficult and that a more intensive, commercial use of the track would be clearly inappropriate given the location of and access to the site. It has been suggested that the track is already being used on a commercial basis, although there is no evidence to support this claim aside from the signage and facilities available on site. On balance, it is considered that the continuation of the use without the proposed mitigation measures (which in themselves would raise objection in terms of visual impact) would be detrimental to the residential amenity of the surrounding area.

### **Recommendation**

In the light of the refusal of application 06/2095/COU it is recommended that authority be granted to the Head of Legal and Member Services to take such legal action as is necessary to ensure the cessation of the land for the purposes of motor cycle use and to remove the temporary structures from the site.

### **Human Rights Act 1998**

Article 8 of the Human Rights Act 1998 confirms that everyone has the right to respect for private and family life and there can be little doubt that the taking of enforcement action to cease the use of this agricultural land for motor cycle purposes is an infringement of those basic human rights. Nevertheless, in the light of the objections received and the ultimate refusal of planning permission, it is felt that the action being recommended is proportionate to the breach and therefore there is no violation of human rights considerations.

### **List of Background Papers**

The file containing all letters, consultations, and documents referred to in the report.