Neutral Citation Number: [2022] EWHC 961 (Admin)

Case No: CO/2446/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 April 2022

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimant**
on the application of	
PENELOPE JAMES	
- and -	
DOVER DISTRICT COUNCIL	**Defendant**
LYDDEN HILL RACE CIRCUIT	**Interested Party**

- -
- -

Estelle Dehon (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Richard Banwell (instructed by **Legal Services**) for the **Defendant**
Kevin Leigh (instructed by **Direct Access**) for the **Interested Party**

Hearing date: 15 February 2022

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Approved Judgment

Mrs Justice Lang :

1. The Claimant seeks judicial review of the Decision by the Defendant ("the Council"), dated 29 May 2020, to grant planning permission for development at Lydden Hill Race Circuit, Wootton, Kent CT4 6ET ("the Race Circuit").

2. The Race Circuit is a motor sports venue, operated by the Interested Party ("IP"). It is located approximately one kilometre north-east of Wootton Village, in the Kent Downs Area of Outstanding Natural Beauty ("AONB"). The Claimant resides in Wootton Village, and she and other local residents are adversely affected by noise from the Race Circuit. The Council is the local planning authority for the area.

3. The Claimant submits that the Council erred in law in reaching its Decision on the following grounds:

   i) Error of law in regarding the existing level of noise, which was a statutory nuisance and/or causing noise at a Significant Observed Adverse Effect Level ("SOAEL"), as a fallback position against which to judge the IP's application for planning permission to develop the Race Circuit;

   ii) Error of law in its approach to the effect of the proposed development on the Kent Downs AONB;

   iii) Failure to give adequate reasons for the decision;

   iv) Failure to have regard to Article 8 of the European Convention on Human Rights ("ECHR"), and/or a breach of Article 8, contrary to the Human Rights Act 1998 ("HRA 1998").

4. Permission was initially refused on the papers, but subsequently granted by Timothy Corner QC, sitting as a Deputy Judge of the High Court, at an oral renewal hearing on 19 November 2020.

History

5. The Race Circuit has been in operation for over 50 years. There is a lengthy history of planning permissions at the site, and concerns about noise.

6. The AONB Management Plan provides that the Race Circuit and the surrounding area has a tranquillity index rating of medium to medium/low.

7. Permanent planning permission was first granted in 1986. Prior to the Decision, the Race Circuit operated under the limitations and conditions of planning permission DOV/14/00415, dated 11 July 2014. It maintained conditions which had previously been included in planning permission DOV/12/00589, but varied the earlier permission so as to allow several one-off events to take place in 2014.

8. The relevant conditions of planning permission DOV/14/00415 were as follows:

> "1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any

order revoking and re-enacting that Order with or without modification), the site shall not be used for any purpose other than motor car, motor cycle and kart racing (including practice for those purposes).
Reason: To prevent an over-intensive development and in the interests of visual and residential amenity and preserving the character of the AONB.

2. The following one-off events are permitted to be carried out on the land in 2014:

- One additional hour of racing on Sunday 25th May 2014, between 4pm and 5pm (for the World Rallycross Championships);

- Three consecutive weekends of two-day racing events in May 2014 (10th-11th May, 17th-18th May and 24th-25th May);

- Three consecutive weekends of two-day racing events in June-July 2014 (21st-22nd June, 28th-29th June and 5th-6th July 2014).

Reason: To ensure that the event days comply with those permitted under this application and in the interests of sustainability and residential amenity.

3. Except for those events specifically set out in condition 2, the permitted uses shall not be carried out on the land on:

(a) More than 52 days in any calendar year;
(b) Consecutive days in excess of 12 occasions in any calendar year;
(c) More than 2 consecutive days;
(d) Two consecutive days at intervals of less than 10 clear days;
(e) Except between the hours of 9am and 6pm on weekdays and 10.30am and 4pm on Sundays.

For the purposes of this condition and condition 3, the term 'calendar year' means a period commencing on 1 April in one year and ending on 31 March in the succeeding year….
Reason: In the interests of residential and visual amenity.

4. A schedule of the days in which the use of the track is anticipated in the succeeding calendar year shall be submitted to the Local Planning Authority no later than 31st March each year. The Local Planning Authority shall be notified of any change in the submitted schedule prior to any change to the agreed schedule.
Reason: In the interests of residential amenity and to ensure that the track is being used in accordance with approved details.

> 5. The public shall not be admitted to the site other than on days when public race meetings take place.
> Reason: In the interests of visual and residential amenity and preserving the character of the AONB.
>
> 6. Noise emitted from public address system on the site shall not exceed 40dB LAeq (5 minutes) at any time as measured at map grid reference points 230.465, 232.468, 240.464 and 245.466.The public address system shall, on request, be available for measuring and testing purposes by the Local Planning Authority at any reasonable time.
> Reason: In the interest of residential amenity.
>
> 7. The public address system shall be used only on days on which spectators are admitted to the site, between the hours of 9am and 6pm on weekdays and 10.30am and 4pm on Sundays. Its use, except in the event of an emergency, shall be limited to the purposes of commentary on racing and race practising.
>
> The public address system may be additionally used on the aforementioned days between the hours of 8am to 9am on weekdays and 9.30am to 10.30am on Sundays for the purpose of pre-race testing and the making of announcements to competitors.
> Reason: In the interest of residential amenity and preserving the character of the AONB.
>
> 8. All vehicles operating on the track shall be fitted with noise emission control equipment in accordance with the current Technical Regulations of the RAC Motor Sports Association or, as may be appropriate, the Auto Cycle Union. For track events regulated by the RAC, MSA vehicles shall not be admitted to the track if they exceed the maximum noise limit for that class of vehicles, as set out by that organisation. Vehicles not complying with those regulations shall not be admitted to the track without the prior written consent of the Local Planning Authority.
> Reason: In the interest of residential amenity and preserving the character of the AONB."

9. There is a history of the Council addressing noise complaints concerning the Race Circuit from 1982. From 2011 onwards, the Council's Environmental Protection Team ("EPT") investigated whether noise from the Race Circuit was causing a statutory noise nuisance. Following a number of visits to three different residential properties, carried out in 2014, and analysis of noise recorded at those properties, the Council's Environmental Protection Officers recommended that a noise abatement notice be served under the Environmental Protection Act 1990, because noise levels from the track constituted a statutory nuisance at residential properties.

10. On 29 April 2015, the Council served an abatement notice on the Race Circuit, on the basis that it was satisfied that a statutory nuisance under section 79(1)(g) of the Environmental Protection Act 1990 "exists and is likely to recur". The cause of the

nuisance was "the emissions from noise from motor vehicle activities, motorsports events and associated activities on site".

11. The abatement notice required the noise to be restricted by controlling the number of days on which events were allowed to take place, and stipulating a decibel level (measured at specific points) which should not be exceeded, apart from when certain exemptions applied. The Council's Head of Legal Services later described these in an email to the IP's legal representative as "the minimum that would provide the community with some relief".

12. On 19 May 2015, the Race Circuit appealed against the abatement notice. At the same time, it sought to regularise the position by making a planning application to develop the Race Circuit and increase the number of days upon which it could operate.

13. Twenty one residents affected by the noise, including the Claimant, provided witness statements for the appeal in support of the Council. As part of the appeal process, the Council obtained an independent expert report from an acoustician and former environmental health officer, of MAS Environmental Ltd ("MAS"), dated 23 November 2015. This considered both the abatement notice appeal, and the proposed planning application and Noise Management Plan. As to the latter, the expert criticised the proposed increase in the number of days of impact from 52 to 156, stating that whilst "the maximum static noise emission level of vehicles on these extra days is lower than proposed for 52 of the days it does not equate to any meaningful known reduction in community levels as there are too many variables." (paragraph 2.25).

14. The expert concluded that the Race Circuit caused substantial adverse noise, amounting to a statutory nuisance. He supported the approach adopted in the abatement notice of restricting the noise, but observed that "it may allow an excessive number of highly noisy days" and that, as "the noise intrusion is substantial, adverse impact on the use of dwellings will remain during event days even with the decibel limits set" by the abatement notice (paragraphs 2.35-2.36). The expert concluded:

> "In my experience a community facing 52 days of disruption of motor sport noise at these levels around their home in any one year and with limited periods of respite will continue to experience material interference arguably higher than should be tolerated" (paragraph 5.67).

15. In November and December 2015, the Council and the Race Circuit came to an agreement, as a result of which the Race Circuit undertook to withdraw the appeal and the Council undertook to withdraw the abatement notice and serve a revised abatement notice.

16. The Council also undertook to withdraw the revised abatement notice once planning application DOV/15/00827 (or any amended or resubmitted application for similar development) had been determined and any appeal concluded.

17. On 3 December 2015 the Council withdrew the first abatement notice and served the revised abatement notice on the Race Circuit. The revised abatement notice stated that the Council was satisfied that a statutory nuisance under section 79(1)(g) of the Environmental Protection Act 1990 "exists and is likely to recur". The cause of the

nuisance was "the emissions from noise from motor vehicle activities, motorsports events and associated activities on site".

18. The revised abatement notice restricted the recurrence of the noise nuisance by requiring that specified noise limits were not exceeded for the 52 events which were allowed each calendar year. This was expressed by allowing two event days per calendar year with unrestricted noise levels and noise limits for the remaining events being restricted to 24 events no greater than 55 dB LAeq 1hour and 26 events no greater than 50 dB LAeq 1hour as measured at specified locations. Compliance with the revised abatement notice is monitored in accordance with the Council's monitoring Guidance Note.

19. The Council commissioned a further report from MAS in 2017 on the IP's application for planning permission. The application was refused by the Council, for non noise-related reasons, on 6 June 2018.

20. On 25 May 2019, the IP again applied for planning permission to develop the Race Circuit and to increase the days of operation.

21. The Non-Technical Summary of the IP's Environmental Statement in support of the application described the increase in days of operation as follows:

> "Operational Phase
>
> 8.4.5 In relation to additional activity, the proposed development would allow for 52 days where noise levels would be limited to 45 dB LAeq (Category 4) and 52 days where noise levels would be limited to 40 dB LAeq (Category 5), with the remaining days of "other activity" not expected to produce noise of any note. These sound levels are all below the LOAEL threshold, such that impacts are assessed to be Negligible or None.
>
> 8.4.6 At present permitted track operating hours on Sundays are 10.30am - 4pm. The proposed track operating hours for two Sundays per year are 9am - 5pm (i.e. a total of 2.5 additional operating hours on no more than 2 Sundays per year). These impacts are to be offset by the removal of one operating day from Category 1, 2 or 3, i.e. removing an entire day of minor, moderate or major adverse impact from the annual calendar to offset 2.5 hours of additional activity on a Sunday. The impact of the proposed additional hours on 2 Sundays per year is therefore assessed as Negligible at worst.
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> …
>
> Conclusions
>
> 8.4.10 In conclusion, the proposals will result in impacts of Negligible significance."

22. Data from Three Spires Acoustics, in a report commissioned by concerned residents, was provided to the Council indicating numerous breaches of the revised abatement notice. These were included as appendices to representations objecting to the application for planning permission.

23. The Officer's Report ("OR") recommended that permission be granted, subject to conditions, for the reasons summarised in the "Overall Conclusions" which were as follows (so far as material):

> "3. Overall Conclusions
>
> 3.1 In June 2018 planning permission was refused for a comparable application for two reasons. The first reason related to the proposed erection of engineering units (Use Classes B1 and B2). In the absence of evidence to justify a functional need for the units to be located at the site or an overriding public benefit, the units were considered to be unsustainable. The second reason for refusal related to harm caused to the scenic beauty of the AONB, by virtue of the location, scale, height, design and use of materials of the buildings on site and the location and scale of the camping area. Following the refusal, the applicant has significantly amended the scheme in response to these reasons for refusal, omitting the engineering units (therefore addressing the first reason for refusal) and omitting the camping area which was cited in the second reason for refusal. The second reason for refusal also relied upon the visual impact caused by the buildings on site. These buildings have been rationalized into one building which is significantly smaller than the previously proposed building and would be positioned in a relatively concealed location. The previous application was considered acceptable in all other material respects (including noise and transportation), subject to conditions. This decision is material to the assessment of the current application.
>
> 3.2 Whilst the development accords with most relevant policies in the development plan, the location of the site conflicts with the blanket presumption against development which would generate travel outside of the settlement confines found within policy DM11. The increased use of the site is also contrary to Policy AS13, which states that proposals to expand the use of Lydden Circuit for motor sports or intensify its frequency will be refused, albeit many of the proposed additional uses are not motor sports. Notwithstanding the judgement that these policies carry reduced weight, it is therefore necessary to consider whether there are material considerations which indicate that permission should be granted.
>
> 3.3 The site lies within the Kent Downs Area of Outstanding Natural Beauty for which there is statutory protection and, as such, the development is considered to be in a sensitive location. The proposed Pavilion has been substantially reduced in size

since the 2015 application was refused and would be located in a relatively discreet position on the site, where its visual impact would be limited. Where views would be possible, the building would be seen within the context of the existing features of the race circuit which already give the site an appearance which is distinct from the surrounding countryside. A landscaping scheme has also been proposed to provide further mitigation. Given the scale of the development and its location in the AONB, members may wish to undertake a Site Visit, to enable them to reach their own views on the landscape impacts of the development; however, this report concludes that the impact on the character of the landscape would be minor (albeit the sites location within the AONB requires that great weight be given to this harm).

3.4 Noise is an important consideration in the assessment of the development, with the existing site causing a managed (through a Noise Abatement Notice) nuisance to neighbouring properties and the majority of objections raising noise as a concern. Regard has been had for the Noise Policy Statement for England and advice has been received from the Councils Environmental Health team. Whilst the use of the circuit would be significantly expanded, it is considered that this would be balanced against the improved management of the circuit and more stringent monitoring (which would be secured by condition). Overall, the development would not exacerbate the impacts of noise and, therefore, no additional planning harm would be caused. The development would not harm the living conditions of neighbours in any other respect, subject to conditions.

……

3.10 The development would draw significant investment into the District and provide significant employment benefits, gaining the support of the Councils Strategic Tourism Manager, Tourism Manager Head of Inward Investment. Given the demography of the District and the unemployment rate, this benefit must be attributed substantial weight in the planning balance.

3.11 As the development is contrary to the development plan, it is necessary to considered whether the material considerations indicate that the development plan should be set aside and permission be granted. The National Planning Policy Framework has been assessed, being and important material consideration. It is acknowledged that this is a balanced case, which largely turns on whether the economic benefits are sufficient to provide an exceptional circumstance, and public interest, to set aside the conflict with parts of the development and to warrant major development within the AONB. Whilst the development would cause some harm to the character of the area, it is concluded that

> the economic benefits of this application, when weighed against the level of harm caused, are compelling.
>
> 3.12 Overall, it is considered that the application has overcome the concerns which led to the 2015 application being refused for two reasons (the principle of the engineering units and visual harm). The proposed development would cause a minor adverse impact on the character and beauty of the area, albeit within the context of the site which is already visually distinct from the agrarian countryside beyond. However, the development would provide significant benefits, most notably in terms of its potential contribution to the local economy. The application will also provide a more appropriate access onto the A2 and greater controls of noise. Whilst it is acknowledged that the application conflicts with policies DM11 and AS13, it is considered that the benefits of the application, in particular the economic benefit, indicate that these conflicts should be set aside and planning permission be granted."

24. At a meeting of the Planning Committee on 30 January 2020, the application for planning permission was approved, subject to conditions. On 29 May 2020, planning permission was granted.

Legal principles and policy/guidance

Judicial review

25. In a claim for judicial review, the Claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. A legal challenge is not an opportunity for a review of the planning merits: *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin).

The development plan and material considerations

26. Section 70(2) of the Town and Country Planning Act 1990 ("TCPA 1990") provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Planning officers' reports

27. The principles to be applied when considering a challenge to a planning officer's report were summarised by the Court of Appeal in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452, per Lindblom LJ, at [42]:

> "42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:
>
> (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin), at paragraph 15).
>
> (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's

> decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.
>
> (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

Noise and nuisance

28. Sections 79 to 82 of the Environmental Protection Act 1990 ("EPA 1990") deal with control of statutory nuisances.

29. Section 80 makes provision for the service of an abatement notice by a local authority, as follows:

> "80.(1) Subject to subsection (2A) where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—
>
> (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
>
> (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes, and the notice shall specify the time or times within which the requirements of the notice are to be complied with.
>
> ….

> (2A) Where a local authority is satisfied that a statutory nuisance falling within paragraph (g) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—
>
> (a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2) above; or
>
> (b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.
>
> (2B) If a local authority has taken steps under subsection (2A)(b) above and either of the conditions in subsection (2C) below is satisfied, the authority shall serve an abatement notice in respect of the nuisance.
>
> (2C) The conditions are—
>
> (a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;
>
> (b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority."

30. Section 82 makes provision for summary proceedings in the Magistrates Court by persons aggrieved by statutory nuisances.

> "82. (1) A magistrates' court may act under this section on a complaint … made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.
>
> (2) If the magistrates' court … is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises …, the court shall make an order for either or both of the following purposes—
>
> (a) requiring the defendant … to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
>
> (b) prohibiting a recurrence of the nuisance, and requiring the defendant …, within a time specified in the order, to execute any works necessary to prevent the recurrence."

31. Paragraph 183 of the National Planning Policy Framework ("the Framework") provides:

> "183. The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made

> on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities."

32. The existence of other pollution control regimes, such as under the EPA 1990, are material planning considerations and planning decision makers should take those regimes into account in their decision-making and assume that they will operate effectively: *Gateshead MBC v Secretary of State for the Environment* [1995] Env LR 37 (CA), per Glidewell LJ, at [44]; *R (Frack Free Balcombe Residents Association) v West Sussex CC* [2014] EWHC 4108 (Admin), per Gilbart J., at [26] – [28]. The Court has emphasised that planning decision-makers "must not simply rely on the earlier grant of the environmental permit and abdicate responsibility for [their] decision making": *Norman v Secretary of State for Housing, Communities and Local Government* [2018] EWHC 2910 (Admin), per Justine Thornton QC, sitting as a Deputy High Court Judge, at [52].

33. The Planning Practice Guidance provides material guidance on noise, as follows:

> "**How can noise impacts be determined**?
>
> Plan-making and decision making need to take account of the acoustic environment and in doing so consider:
>
> - whether or not a significant adverse effect is occurring or likely to occur;
>
> - whether or not an adverse effect is occurring or likely to occur; and
>
> - whether or not a good standard of amenity can be achieved.
>
> In line with the Explanatory note of the noise policy statement for England, this would include identifying whether the overall effect of the noise exposure (including the impact during the construction phase wherever applicable) is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation. As noise is a complex technical issue, it may be appropriate to seek experienced specialist assistance when applying this policy.
>
> Paragraph: 003 Reference ID: 30-003-20190722
>
> Revision date: 22 07 2019
>
> **What are the observed effect levels?**
>
> - Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.

- Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.

- No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.

Although the word 'level' is used here, this does not mean that the effects can only be defined in terms of a single value of noise exposure. In some circumstances adverse effects are defined in terms of a combination of more than one factor such as noise exposure, the number of occurrences of the noise in a given time period, the duration of the noise and the time of day the noise occurs.

See the noise policy statement for England for further information.

Paragraph: 004 Reference ID: 30-004-20190722

Revision date: 22 07 2019

How can it be established whether noise is likely to be a concern?

At the lowest extreme, when noise is not perceived to be present, there is by definition no effect. As the noise exposure increases, it will cross the 'no observed effect' level. However, the noise has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses of those affected by it. The noise may slightly affect the acoustic character of an area but not to the extent there is a change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.

As the exposure increases further, it crosses the 'lowest observed adverse effect' level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).

Increasing noise exposure will at some point cause the 'significant observed adverse effect' level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is

> present. If the exposure is predicted to be above this level the planning process should be used to avoid this effect occurring, for example through the choice of sites at the plan-making stage, or by use of appropriate mitigation such as by altering the design and layout. While such decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, it is undesirable for such exposure to be caused.
>
> At the highest extreme, noise exposure would cause extensive and sustained adverse changes in behaviour and / or health without an ability to mitigate the effect of the noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be avoided.
>
> This table summarises the noise exposure hierarchy, based on the likely average response of those affected. [*The PPG provides a link to the Noise Exposure Hierarchy Table*]
>
> Paragraph: 005 Reference ID: 30-0055-20190722
>
> Revision date: 22 27 2019"

Local Policies

34. The relevant policies in the Core Strategy were set out in the OR, at internal pages 3 to 4. Policy AS13 is a site-specific policy for the Race Circuit, saved in the Dover District Local Plan, which provides:

> "AS13 - Proposals to expand the use of Lydden Circuit for motor sports or intensify its frequency will be refused. Only development ancillary to its existing use will be permitted."

Areas of Outstanding Natural Beauty

35. Section 85 of the Countryside and Rights of Way Act 2000 provides that public bodies have a general duty "in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty" to "have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty".

36. Paragraph 172 of the Framework affords protection to AONBs as follows:

> "172. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be

> given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development [FN55 For the purposes of paragraphs 172 and 173, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.] other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:
>
> a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
>
> b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
>
> c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

37. Paragraph 180 of the Framework provides:

> "180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
>
> a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life [FN60 See Explanatory Note to the *Noise Policy Statement for England* (Department for Environment, Food & Rural Affairs, 2010).];
>
> b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
>
> c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation."

38. These policies were considered by the Court of Appeal in *Monkhill Ltd v Secretary of State for Housing Communities and Local Government* [2021] EWCA Civ 74, per Sir Keith Lindblom SPT, at [32] – [34]:

"32. I agree. The most important point here, however, as Holgate J. recognised (in paragraph 53 of his judgment), is that the requirement in the policy in the first part of paragraph 172 for "great weight" be given to the conservation and enhancement of landscape and scenic beauty in an AONB does not prevent its application providing a clear reason for the refusal of planning permission.

33. That it can be so applied is plain from the policy's context and purpose. Its context is a chapter of the NPPF whose objectives, as stated in the chapter heading, are "Conserving and enhancing the natural environment". The central aim of the policies in that chapter, stated in paragraph 170, is "protecting and enhancing valued landscapes", including those in AONBs. This is consistent with the statutory obligation in section 85(1) of the Countryside and Rights of Way Act to "have regard to the purpose of conserving and enhancing the natural beauty of the [AONB]". Paragraph 172 itself is in terms that stress the imperative of protection. Emphasis is placed on "conserving", as well as "enhancing", an AONB's landscape and scenic beauty. AONBs are described there as having "the highest status of protection in relation to these issues", and the "scale and extent of development" within them and the other designated areas, the policy says, "should be limited".

34. I accept Mr Moules' submission that the language of the first part of paragraph 172, read in that context and in the light of that purpose, can perfectly well found a "clear reason for [refusal]", in accordance with paragraph 11d)i. It embodies the principle that decisions on applications for planning permission, as well as policies in development plans, should work to "[conserve and enhance] landscape and scenic beauty" in AONBs, so that in a relevant case, when the policy is applied, a balance will be struck in which appropriate weight is given to any conflict with that objective, and in striking the balance the decision-maker will have in mind the need to protect the AONB and to limit the scale and extent of development within it. In doing this, the decision-maker will have to exercise planning judgment. The application of the policy necessarily involves a balancing exercise in which any harmful effects of the proposed development on the AONB are given due weight, having regard to what the policy says, and any benefits of the proposal are set against them, leading to a conclusion, as a matter of planning judgment, on whether there is a "clear reason for refusing the development proposed". If there are no benefits to set against the harm to the AONB, or if there are benefits but they are insufficient to outweigh the harm, the decision-maker might properly conclude that the "application" of the policy does indeed provide "a clear reason for refusing the development proposed"."

39. A number of Local Plan policies reflect the Framework policies, as do the specific policies of the Kent Downs AONB Management Plan (2014-2019).

Ground 1

Submissions

40. The Claimant submitted that the Defendant erred in regarding the existing level of noise, which was a statutory nuisance and/or causing noise at a SOAEL, as a fallback position against which to judge the application for planning permission to develop the Race Circuit.

41. The proceedings under the EPA 1990 and the abatement notices were a material planning consideration. Applying paragraph 183 of the Framework, the Council should have assumed that the pollution control regime would operate properly to control the nuisance, and if the current revised abatement notice was not doing so, that a further abatement notice would be served (see *Frack Free Balcombe Residents Association* at [100] – [101]; *Norman* at [52]-[53]). On that assumption, the Council should have considered what was required in order to control the nuisance, whether by way of a further abatement notice or otherwise, and take that into account as the correct fallback position. The OR should have advised Members accordingly. Instead the Council erroneously adopted the approach of regarding the fallback position as the existing planning permission and the existing revised abatement notice, although the Council was aware that they did not adequately control the noise or abate the nuisance.

42. Further, the OR failed to inform Members of important matters, in particular, the history of the abatement notices (including the undertaking to withdraw the revised abatement notice once the planning application was concluded); the views of MAS, acting as an independent expert engaged by the Council; and that the revised abatement notice represented what the Council viewed as the "minimum that would provide the community with some relief" (referred to in paragraph 11 above).

43. In the alternative, the Claimant submitted that it was irrational for the Council to regard the maintenance of a nuisance to be a fallback position. The Claimant further submitted that it was irrational for the Council to consent to an intensification of the use, leading to noise on more days in the year, when it knew that the current use was giving rise to a SOAEL.

44. In response, the Defendant submitted that the OR correctly identified the fallback position as the existing planning permission and revised abatement notice. This could not be characterised as irrational. There was no requirement to consider or advise Members as to what further abatement notices might be served in the future.

45. The Defendant submitted that the OR was a detailed and accurate document which provided sufficient information to Members to enable them to decide the relevant issues. The planning officer was not required to provide Members with the further material listed by the Claimant, or advise them upon it.

46. The OR and the Planning Committee were entitled to come to the conclusion that, although the Race Circuit would be in use on more days of the year, the quieter nature

of the activities on those days, combined with the noise limits imposed, and improved controls, meant that there would not be any increase in impact on local residents.

Conclusions

47. In my judgment, the purpose of paragraph 183 of the Framework is to avoid needless duplication between the two schemes of statutory control where the pollution control regimes operate parallel to the planning regime. Whether or not there have been any proceedings under the pollution control regime, the planning decision-maker should assume that the regime will operate effectively in the future. However, where there have been such proceedings, they will be a material consideration which the planning decision-maker must consider and take into account.

48. In this case, the Council correctly took the view that the proceedings under the EPA 1990 and the abatement notices were a material planning consideration which the Council had to consider.

49. In my judgment, the OR gave a detailed and balanced account of the issues on noise which Members had to consider, and gave appropriate advice.

50. First, the OR recorded the comments of the EPT, as follows:

> "DDC Environmental Health – It has already been established, through the service of a noise abatement notice (NAB) under the Environmental Protection Act 1990 on Lydden Circuit on 03rd December 2015 that noise levels from the circuit have an adverse impact on residents. Whilst it is accepted that the areas of planning and nuisance cover separate strands of law, reference to the abatement notice is pertinent when assessing residential amenity via planning applications.
>
> The abatement notice accepts nuisance exists and seeks to restrict it by limiting noise levels and how often the circuit is used. It may therefore be argued that any increase in noise levels would represent a Significant Observed Adverse Effect Level (SOAEL) and therefore be detrimental to the residential amenity of those living around the circuit. SOAEL is described under 2014 planning guidance as triggered when the impact of noise can be described as causing:
>
> > 'material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion … having to keep windows closed most of the time because of the noise. Quality of life diminished due to change in acoustic character of the area'
>
> On that basis, it may be considered there are no grounds for increased activity. This need not be the case. Activity increase does not necessarily equate to impact increase. Activity that is inaudible or not discernible from the ambient sound environment

would not add adverse impact from noise and can be permitted. It is also the case that sound which is infrequently heard, benign in character and occurs at times of reduced amenity value is unlikely to add to intrusion and thus there are clearly forms of activity that can be permitted.

Changes have been made in the Noise Management Plan (NMP) that address concerns previously raised regarding the potential of adverse impact from the development. In particular it is noted that tests were conducted to establish trackside drive-by LAmax decibel limit levels. This is, in part, intended to address tyre squeal, backfire, etc. There is also a clause whereby track officials have discretion to remove vehicles generating excessive levels of noise from e.g. turbo-chatter, tyre squeal etc. The NMP, and hence the noise limits specified within it, will form part of the operating procedures that will be submitted for approval by the Local Planning Authority prior to use under this application, should permission be granted.

The NMP also provides detail on the category of events proposed to be held on the site. This breaks events down into 5 categories with varying noise levels and permitted uses. The abatement notice referred to above requires certain noise limits measured over the period of an hour to be met. Under the current [NMP] there are in effect 3 categories:

- 2 event days with unrestricted noise levels
- 24 event days where the noise level must not exceed 55db LAeq (1hr) at specified monitoring points
- 26 event days where the noise level must not exceed 50db LAeq (1hr) at specified monitoring points

The application seeks to add an additional 313 (314 on a leap year) days, 104 of which fall into a fourth and fifth category as detailed below:

- Category 1 - 2 event days with unrestricted noise levels
- Category 2 - 24 event days where the noise level must not exceed 55db LAeq (30mins) at specified monitoring points
- Category 3 - 26 event days where the noise level must not exceed 50db LAeq (30mins) at specified monitoring points.

The reduced measurement period from 1 hour to 30 minutes for Category 2 and 3 events provides an increased level of control regarding noise emission from the site. The noise levels for Category 4 and 5 events are further reduced and the measurement period drops to 15 minutes. Noise surveys at nearby noise sensitive properties, taken when there was no activity from the circuit, indicate residual levels are around 45dB LAeq(t).

These controls along with those in the draft NMP, whilst not guaranteeing inaudibility, will aid in preventing adverse impact for the additional 104 days proposed under categories 4 and 5.

The proposal also seeks an additional 2.5 hours on two Sundays. This amounts to an additional 5 hours per year. It is felt that increased activity on a Sunday will have a negative effect on the community. Accordingly, any additional Sunday hours would be above the SOAEL thereby creating a limited adverse impact. However, we note the circuit propose that if a period of additional 2.5 hours of time takes place on a Sunday in association with an event falling within Categories 1 and 2 the number of days permitted to be used by a Category 2 event within that same calendar period will be reduced by 1 day. If the additional 2.5 hours were to take place within Categories 3, 4 or 5 the number of days permitted to be used by a Category 3 event within that same calendar period will be reduced by 1 day. We therefore suggest this is conditioned.

The NMP also refers to 'Other Activity' and states the site and circuit may be used on other days for activities not falling into Category 1 to 5. We note media activities are included in both Category 5 and 'other activities. We feel media activities should come under Category 5. There is no limit specified on the amount of other activities or potential noise levels and controls. It is therefore possible the site could be in continuous use without any respite to the surrounding area. We therefore feel other activities should have a limit on the number of days and should only cover events where vehicle use is ancillary to the event e.g. back up vehicles for non-motorised bicycle racing events. The only situations where this would not apply is in emergencies or for road driving lessons by an instructor approved by the DVLA.

Regarding respite to the surrounding area, we feel it is important to have days where no motor vehicles use the site. This could be achieved by taking a similar approach to Goodwood Motor Circuit where a total of 49 silent days are specified. These days include Good Friday, Xmas Day, Boxing Day and New Years Day. We also suggest this includes Armistice Day.

The Goodwood silent days mean that no motor vehicles may use the site….

We suggest that these 49 days include 10 weekends, and this is a requirement under condition.

….

The NMP should be reviewed every 6 months for the first two years after approval and then annually thereafter. The review will be conducted between Lydden Hill Race Circuit, Dover

> District Council and those living and working in the area. This would necessitate the setting up of a consultative committee. The setup of such a committee should be a requirement under the NMP and be required by condition. The Local Planning Authority would subsequently decide if changes are needed.
>
> …..
>
> To Conclude, whilst the current use of the circuit does impact on the locality through the current 52-day use, it is felt the altered NMP addresses some of the issues previously raised and sets out greater controls on the proposed increased use of the site. In order to ensure these controls are implemented we suggest conditions be included should permission be granted.
>
> A series of 14 conditions are recommended which include: submission and approval of a final Noise Management Plan; limiting the use of the circuit to the activities proposed, defining the activities and confirming which activities fall into each category; submission and approval of details for the noise monitoring system and its maintenance, including details for the retention of noise data; limiting the number of days usage and hours of operation, including breaking the use down into categories; allowing additional use of Sundays, subject to the loss of a full days use as compensation; limiting noise from the circuit in accordance with the categories and setting out how monitoring shall take place; limiting noise from loudspeakers; restricting use of the circuit on two consecutive days more than 12 times a year, restricting use on more than two consecutive days; and requiring intervals between pairs of consecutive days use, in respect of Category 1-3 days; publication of a calendar of events and requiring advance notice of any changes; submission and approval of a Construction Management Plan; requiring recording of any breaches in maximum noise levels and the action taken to remedy it; provision of a publicly accessible website as a source of information on the circuit and its activities; and reporting of any contamination which has not previously been identified."

51. The OR went on to summarise the objections from members of the public, including local residents. Objectors also sent their representations directly to members of the Planning Committee.

52. The OR addressed the issue of noise at length, in paragraphs 2.51 to 2.82, covering relevant policy on noise, the current planning permission, the revised abatement notice and the application.

53. At OR 2.64, the planning officer summarised the current position, which he treated as the fallback position:

> "2.64 Regard must be had for the current use of the site, which is lawful and can continue without requiring further permissions (subject to adherence with the planning permission and, under separate legislation, the Noise Abatement Notice). Under its current restrictions, it is acknowledged that the circuit has the potential to create significant level of noise for 52 days per year. Environmental Health, who have been monitoring the circuit for several years (and who served the Noise Abatement Notice), consider that the circuit is causing a statutory nuisance and that, whilst this nuisance is limited by the Noise Abatement Notice, the noise remains at a level considered to represent a Significant Observed Adverse Effect (SOAEL) causing:
>
> > 'material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area'.
>
> Having visited the circuit on numerous occasions over a period of almost five years (both on race days and non-race days), and having regard for third party representations, I concur with this view, although it must be noted that the changed behaviour is less likely to affect sleep due to the time limits applied to the circuit for its events (some disturbance may still occur, for example due to the noise from camping or to those who sleep during the day such as shift workers). Having reached this conclusion, it is considered that this existing level of harm forms the fallback position, against which the current proposals should be assessed."

54. The OR summarised the proposed changes at paragraph 2.65:

> "2.65 At present, having regard for the planning permission for the circuit, together with the restrictions of the Noise Abatement Notice, the circuit can operate for:
>
> - 2 days of unlimited noise ('Category 1')
> - 24 days where noise cannot exceed 55dB LAeq 1 hour 'Category 2') at specified monitoring points
> - 26 days where noise cannot exceed 50dB LAeq 1 hour 'Category 3') at specified monitoring points
>
> The current application seeks to continue operating on these days and increase the current usage through the addition of the following uses:

- 52 days (for demonstration/corporate events, car testing, river experience days, quiet vehicle festivals and shows, use of the site or road speed driving of vehicles at no more than 70mph and ancillary noise) where noise cannot exceed 45dB LAeq 15 minutes. ('Category 4')
- 52 days (for car testing, driver training, driver experience days, slow speed cavalcades, demonstrations, photo shoots and media activities, and use of the site for road speed driving of motor vehicles at no more than 70mph and ancillary noise) where noise cannot exceed 40dB LAeq 15 minutes. ('Category 5')
- An option to extending operating hours by up to two and a half hours on up to two Sundays per year, with one category 2 or 3 day being lost in compensation for each extended Sunday. If a period of up to an additional 2.5 hours of time takes place on a Sunday in association with an event falling within Categories 1 and 2 the number of days permitted to be used by a Category 2 event within that same calendar period will be reduced by 1 day. If the additional 2.5 hours were to take place within Categories 3, 4 or 5 the number of days permitted to be used by a Category 3 event within that same calendar period will be reduced by 1 day.
- Up to 209 (210 in a leap year) for 'other activity', not falling within the above categories. This may include use by conventional road vehicles ancillary to charitable or other events, road driving lessons, emergency incident training, photo shoots, media activities and use by non-motorised bicycles for training during daylight hours, including non-motorised bicycle events. ('Other Activity')."

55. At paragraph 2.67, the OR set out the advice given by the EPT, and correctly advised:

> "Whilst the additional activities could exacerbate the existing SOAEL of noise, it is necessary to consider whether the additional activities would exacerbate the existing SOAEL and if so whether this additional harm can be mitigated."

56. At paragraph 2.69, the OR described how the Noise Management Plan would be "an extra layer of control to detail how the circuit will manage noise so that the noise limits are not exceeded".

57. At paragraph 2.70, the OR set out the proposed categories of activity, their designated noise limits, and the more stringent methods of measuring noise which were proposed. These matters were considered in more detail at paragraphs 2.73 – 2.74. At paragraph 2.71, the OR also reminded Members that the EPT had recommended "silent days" on which no motor vehicles would be permitted to use the site. Noise from the public address system was to be restricted (paragraph 2.75). The calendar of events was to be subject to increased controls (paragraph 2.76).

58. At paragraph 2.77, the OR correctly advised Members on the criteria to be satisfied before conditions could be imposed (paragraph 2.77) and concurred with the EPT's recommendations as to the conditions to be imposed which would "provide significant benefits (reducing the impacts from the existing uses of the site) to off-set the limited impacts from the additional uses of the site".

59. The OR concluded, at paragraph 3.4:

> "3.4 Noise is an important consideration in the assessment of the development, with the existing site causing a managed (through a Noise Abatement Notice) nuisance to neighbouring properties and the majority of objections raising noise as a concern. Regard has been had for the Noise Policy Statement for England and advice has been received from the Councils Environmental Health team. Whilst the use of the circuit would be significantly expanded, it is considered that this would be balanced against the improved management of the circuit and more stringent monitoring (which would be secured by condition). Overall, the development would not exacerbate the impacts of noise and, therefore, no additional planning harm would be caused. The development would not harm the living conditions of neighbours in any other respect, subject to conditions."

60. The minutes of the Planning Committee meeting on 30 January 2020 recorded as follows:

> "Using a map reproduced from the AONB Management Plan, the site currently had a medium to medium-low level of tranquillity. Subject to conditions, and as set out in the report, Members were advised that it was not considered that the level of tranquillity would be significantly diminished as a result of the proposals.
>
> Third parties had raised numerous objections relating to the current levels of noise and the potential for increased levels should the application be granted. Noise levels were currently controlled by conditions attached to planning permission DOV/14/00415. These conditions, which limited the circuit to 52 days' use per year and required the submission of a calendar of events each year, amongst other things, were not considered to be robust and made the identification of breaches difficult. Under separate (non-planning) legislation, the Council's Environmental Health team had served a noise abatement notice which had established that noise from the circuit was causing a statutory nuisance and sought to limit that nuisance. Environmental Health officers visited the site around 12 times a year and had identified no breaches. The current application sought to retain current uses, as specified within the noise abatement notice, but reduced the period over which noise was averaged from one hour to thirty minutes in respect of the 55 decibel and 50 decibel events. This reduction in the time period

> over which noise would be averaged reduced the ability to dilute periods of louder noise with quieter periods, thus reducing the impact of these days on the aural environment. Residents would also be invited to join a new consultative committee.
>
> The application also sought to increase the use of the site for quieter, non-racing events. A full description of the proposed uses was set out at paragraph 2.65 of the report. There would also be 49 silent days with no activities. Whilst the circuit's use would increase significantly, this was considered to be mitigated by the enhanced control of the circuit, including a noise management plan, the provision of a permanent noise monitoring system (with access to readings by the Local Planning Authority and their publication on the circuit's website), a calendar of events, and the reduction from one hour to 30 minutes over which noise would be averaged for category 2 and 3 events. Members had been provided with the draft wording of the proposed noise conditions that would be attached to any permission granted."

61. In my judgment, the planning officer was correct to identify the fallback position as that which currently existed, under the existing planning permission and the existing revised abatement notice. The term fallback has acquired a specific meaning in planning law. The *Encyclopedia of Planning Law and Practice* states at paragraph 1.002.29:

> "Sometimes an applicant can demonstrate that the grant of a permission will be less harmful than a use or development which has previously been permitted; this is known, unsurprisingly, as fall-back"

In *R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314, Lindblom LJ considered the status of a fallback development as a material consideration at [27], confirming that there must be a "real prospect" that it would be reverted to.

62. I do not accept the Claimant's submission that the Council should have considered what was required in order to control the nuisance, whether by way of a further abatement notice or otherwise, and take that into account as the correct fallback position. That would not be a fallback position, as defined above. Nor would it be consistent with the Framework policy in paragraph 183. It follows that the OR was not required to consider or advise Members as to what further abatement notices might be served in the future. It was not their responsibility to make any decision on such matters, and speculation would not have been appropriate. In my view, there is no support for the Claimant's submission in paragraph 183 of the Framework, nor the authorities cited on paragraph 183.

63. At the heart of the Claimant's objection to the fallback position adopted in the OR is that the current level of noise amounts to a statutory nuisance and/or a SOAEL, and therefore it cannot properly be relied upon. There is no legal basis for this submission. The Claimant relies on *Lawrence v Fen Tigers Limited* [2014] 2 WLR 433, but the

issues in that case were quite different and the judgment does not provide any support for the Claimant's submissions.

64. In my view, the Claimant has simply misunderstood the Council's approach. In the view of the OR and the EPT, the revised abatement notice restricted, but did not eliminate, the nuisance. Once satisfied that a statutory nuisance existed, the Council complied with its duty under section 80(2A) EPA 1990 and served an abatement notice which required the nuisance to be restricted in accordance with the schedule to the notice. It was a matter for the Council's discretion whether it chose to impose all or any of the requirements available in section 80(1) EPA 1990. There was no duty to serve a notice that required the statutory nuisance to be abated. The revised abatement notice was lawful and could be relied upon by the Council and the IP as part of the fallback position. For these reasons, it was not irrational for the Council to treat the revised abatement notice as part of the fallback position.

65. Although the objectors alleged that the IP was operating the Race Circuit in breach of the revised abatement notice, the EPT and the OR did not accept this. The OR advised Members that Environmental Health officers visited the site around 12 times per year and had identified no breaches of the revised abatement notice. It is reasonable to infer that Members accepted the evidence from the EPT, as endorsed by the planning officer, and recorded in the minutes of their meeting on 30 January 2020.

66. In my judgment, Members were correctly advised in the OR to consider whether the proposed planning permission would be more effective in controlling noise levels, because it would include more stringent and more effective conditions than the existing planning permission and revised abatement notice.

67. In my view, it was a matter for the planning officer's discretion to determine how much of the history of the abatement notices – in particular, the Magistrates Courts proceedings, the evidence of the MAS consultants in 2015 and 2017, and the undertaking to withdraw the revised abatement notice – needed to be relayed to Members. I consider that it was background information which was not directly relevant to the issues that Members had to decide. Applying the test in *Mansell*, it cannot be said that Members were seriously misled.

68. The Council submitted at the hearing that it was reasonable for it to decide to address the noise issues at the Race Circuit by way of detailed planning conditions rather than by way of a further abatement notice. Planning conditions are more flexible and can include a wider range of requirements than an abatement notice, which have to be capable of forming the basis of a criminal charge in the Magistrates Court. In my view, that was an exercise of discretionary judgment on the part of the Council.

69. The Claimant's alternative submission was that it was irrational for the Council to consent to an intensification of the use, leading to noise on more days in the year, when it knew that the current use was giving rise to a SOAEL.

70. In my judgment, this issue turned on the evidence. The EPT and the OR advised that, although the Race Circuit would be in use on more days of the year, the quieter nature of the activities on those days, combined with the noise limits imposed, and improved controls and monitoring, meant that there would not be any increase in impact on local residents. The OR set out the basis for this advice in considerable detail.

71. I accept the Council's submission that, in assessing acceptable noise levels in the community, it formed the view that an assessment based solely on BS4142: 2014 or the World Health Organisation ("WHO") Community Noise Guidelines, would not be suitable.

72. At paragraph 2.66, the OR summarised the evidence in regard to the noise level in the area when no events are taking place:

> "Surveys were carried out in 2013 and 2015 as part of the previous application. These were carried out over a three-week period in the summer which indicated that, at the most noise sensitive noise monitoring point, the modal noise level when no events are taking place at the circuit is 51dB LAeq, 1 hour. During visits to the site, it is noted that noise from traffic on the A2 is audible a significant distant away, albeit this noise has a relatively constant, benign character. It is also noted that the areas around the A2, and around the circuit are shown on the Tranquillity Map within the Kent Downs AONB Management Plan as having a medium to medium/low level of tranquillity."

The research surveys referred to here were carried out by Three Spires Acoustics, consultants commissioned by local residents, as part of the Noise Abatement Notice Compliance Survey in 2017.

73. Following receipt of further written submissions by the parties, made at my request, I accepted the Council's submission that the relevant baseline level in the community was 51dB LAeq representing the ambient noise level. That level had first been agreed with the community as the relevant baseline measurement in the context of assessing compliance with the revised abatement notice. 51dB LAeq was a long standing, accepted position. Following misgivings by local residents about how the revised abatement notice was being enforced, a Guidance Note on monitoring noise under its terms was prepared in consultation with local residents and their acoustic consultants. It set out that:

> "After selecting the noisiest monitoring site (of the four shown on the Revised Notice map), an initial 30 minute reading is to be taken and if readings are at or below 51dB LAeq then no further readings would take place that day (para 7). At that level, a statutory nuisance would not be experienced in the community;
>
> If readings are over 51dB LAeq during the first 30 minutes then officers should continue to monitor until at least 2 hours of data is gathered (paras 8 and 9); and
>
> Audio readings should be taken throughout when readings are in excess of 51dB LAeq (para 10)."

74. In my judgment, there was sufficient evidence upon which the planning officer and Members could rationally come to the conclusion that the increased number of days upon which activities were permitted would not increase the impact on local residents.

75. For the reasons set out above, Ground 1 does not succeed.

Ground 2

Submissions

76. The Claimant submitted that the Council erred in law, in two respects, in its approach to the effect of the proposed development on the Kent Downs AONB.

77. First, it was irrational for the OR to conclude, at paragraph 2.82, that the additional use of the site "would not significantly diminish its tranquillity beyond the application site", given that there would be a change from 313 days per year without noise, to 316 days per year with noise (see *Moore v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1194, at [21] – [29]).

78. Second, the OR's starting point was unlawful when it undertook the assessment required by paragraph 172 of the Framework, as it condoned a level of noise which it accepted was a statutory nuisance and/or SOAEL. The current lack of tranquillity was capable of improvement under the statutory nuisance regime and its application should have been assessed in that context.

79. In response, the Council submitted that it was rational to conclude that the additional use of the site would not significantly diminish the tranquillity of the AONB, because of the quieter type of activities that would be permitted on the additional days, and the more effective noise control conditions in place overall.

80. The approach set out in paragraph 172 of the Framework does not require permission to be granted only for development that reduces noise impacts to levels that are not a statutory nuisance, or below SOAELs, still less to zero.

Conclusions

81. In my judgment, the OR gave Members detailed and appropriate advice on the AONB.

82. The OR set out section 85 of the Countryside and Rights of Way Act 2000, the relevant policies from the Framework, and the Kent Downs AONB Management Plan. It summarised the objections from the Kent Downs AONB Unit, dated 7 August 2019, though not the paragraph on tranquillity which stated:

> "**Tranquillity**
>
> In addition to the landscape and visual impacts of the proposal, impacts on tranquillity are also relevant. Tranquillity is identified as one of the special characteristics of the AONB and policy SD7 of the AONB Management Plan advises that new development which impact on tranquillity will be opposed unless they can be satisfactorily mitigated. The AONB Unit has concerns that the proposal will introduce a significant intensification of use of the site, increased from the current 52

> days per year to potential year round daily activity, both in terms of overall visitor numbers as well as in respect of new daily activity, with 104 days to be used for activities including car testing, driver experience days and driver training in addition to 52 days per year for motorsport activities, with the remainder of the year the site permitted to be used for activities including emergency incident training, cycle racing and driving lessons. This extensive increase in intensification of use of the site would result in a deterioration of tranquillity at the site."

I am satisfied that the issues on tranquillity raised here were duly considered in the OR.

83. The OR advised at paragraph 2.82:

> "2.82 Notwithstanding the above, it is also necessary to consider the noise impacts on the tranquillity of this area of countryside, being within the AONB. Paragraph 180 of the NPPF states that planning decisions should "identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason". It is acknowledged that the presence of the A2 and the circuit has already diminished the tranquillity of this part of the AONB, as confirmed by Tranquillity Map included within the Kent Downs AONB Management Plan 2014-2019, which shows the areas around the circuit to have medium or medium to low tranquillity. The assessment of noise above, focuses on noise impacts to residential properties. Whilst distinct from impacts on tranquillity, it is accepted that, without mitigation, the noise impacts of the development would undoubtedly diminish the tranquillity of the area; however, it is considered that, subject to the conditions set out above, the additional use would not significantly diminish tranquillity beyond the application site."

84. Under the heading "Other Material Considerations", the OR gave Members the following advice on the AONB:

> "2.142 Throughout the assessment of this application, regard must be had for the duty contained within Section 85 of the Countryside and Rights of Way Act 2000 which requires that in exercising or performing any functions in relation to, or so as to affect, land in an Area of Outstanding Natural Beauty (AONB), local planning authorities shall have regard to the purpose of conserving or enhancing the natural beauty of the AONB.
>
> 2.143 As set out at paragraph 2.21, paragraph 172 of the NPPF requires that 'major' development within the AONB should be refused unless exceptional circumstances exist, and it can be demonstrated that the development is in the public interest. The NPPF goes on to advise that that these considerations should include an assessment of:

> a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
>
> b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
>
> c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
>
> 2.144 The application relates to an existing racing circuit, which already has a visual and aural character which is distinct from that of the surrounding AONB. The proposed development would have a minor adverse effect on views of the site, albeit this effect relates to views which are already impacted by views of the buildings, structures, track and parked vehicles within the circuit and/or the A2. However, this minor adverse effect must attract great weight.
>
> 2.145 The development would significantly increase the use of the circuit, increasing its utility as a leisure and sporting venue. The provision of additional social and recreational uses and the enhancement of the facilities at the site is considered to carry some weight in favour of the development.
>
> 2.146 Whilst the application proposes significant additional use of the circuit which would generate noise, the noise generated by the additional uses would be limited. Mitigation could be secured by condition to ensure that, overall, the noise generated from the site would be no more disruptive (possibly less disruptive) than the existing use. As such, the impact is considered to be neutral."

85. When considering alternative sites, the OR advised:

> "2.152 Returning to the NPPF paragraph 172 test, it is considered that, there is no realistic scope for developing outside of the AONB. The applicant has sought to moderate impacts of the development by significantly amending the scheme following the determination of the previous application. The development relates to an established race circuit within the AONB which provides recreational opportunities to participate or otherwise engage (spectate) in motorsport – the facilities for which are sparse. Despite being within the AONB, and notwithstanding the need to attribute great weight to conserving and enhancing the AONB, the adverse impacts of the development would be minor. The applicant has proposed mitigation in the form of landscaping to moderate these impacts. As such, it is concluded that there are exceptional circumstances in this instance. Furthermore, it is considered that the development would bring substantial economic benefits which

> provide a compelling public interest. As such, it is resolved that the 'paragraph 172 test' has been met."

86. The OR then went on to consider whether the material considerations outweighed the conflict with local policies:

> "2.153 Finally, it is necessary to consider whether the material considerations of this case indicate that the conflict with policies DM11 and AS13 should be set aside and permission be granted.
>
> 2.154 The development would provide a short-term economic benefit, by providing employment during the construction phase. The application advises that the cost of the construction works would be around £5.5 million. In the longer term, the development (provided it is fully built out) would increase visitor numbers and increase the range and quality of facilities and services available on site which would, correspondingly, increase spend and the number of jobs which could be supported, supporting a significant increase in the number of employees both at the site and beyond. It is considered that substantial weight should be attached to this benefit. The development would include the provision of highways and drainage infrastructure to meet the needs of the development without causing harm on-site or elsewhere. Overall, it is considered that the development would provide short term and long term economic benefits which must be attributed substantial weight in favour of the development.
>
> 2.155 The development would provide an enhanced leisure and recreation offer at the site which would help to create and foster recreational communities with shared interests (albeit these communities may be from diverse locations). The proposed Pavilion building is considered to be of a reasonable architectural quality, being reminiscent of other motorsport buildings in the UK whilst also referencing some of the agricultural buildings in the area. Overall, it is considered that the development would have a minor social benefit.
>
> 2.156 Turning to the environmental role, the development would cause harm to the natural environment, comprising major development in the AONB which would cause a minor adverse impact on the character of the landscape, whilst increasing the use of the site significantly. It is acknowledged that the tranquillity of this part of the AONB is already reduced (medium to medium/low) by virtue of the existing use of the circuit and by the busy A2. Subject to conditions, it is not considered that tranquillity would be significantly diminished. Subject to conditions, the development would cause no unacceptable impacts on biodiversity or protected species and would provide some enhancements. The development is not located such that it would promote or facilitate sustainable modes of transport;

> however, it is also acknowledged that race circuits necessarily draw people from a wide area and are not suited to built-up areas. Notwithstanding this, the site is not accessible by more sustainable modes of transport such as public buses or trains, although a shuttle bus service will be secured whilst four electric vehicle charging points will be provided, reducing the harm caused by the unsuitable location of the circuit when balanced against the existing use. The additional uses would generate noise, albeit at significantly lower levels than the existing uses. This would be balanced against the benefits of enhanced controls for the existing (and proposed) uses, to be secured by condition. Overall, attributing great weight to the harm caused to the AONB and having regard for all other environmental factors, it is considered that the development would cause a minor adverse impact.
>
> 2.157 Overall, the development would give rise to substantial economic benefits, minor beneficial social benefits and minor adverse environmental harm. It is concluded, applying a 'flat' balance, that the benefits of the development are compelling and indicate that the developments conflict with policies DM11 and AS13 should be set aside in this instance."

87. Turning to the Claimant's first ground, on the evidence before it, I consider that the Council was rationally entitled to conclude that the noise impacts arising from the additional days of activities would not significantly diminish the level of tranquillity in the AONB, for two main reasons. First, because events would be restricted to quieter uses, at or below the levels of noise in the area when there is no activity at the Race Circuit (the residual level). Second, because of the enhanced controls on noise from all activities (e.g. more frequent, and therefore more effective, noise monitoring and the implementation of a Noise Management Plan).

88. As to the Claimant's second ground, in my judgment, the legal and policy framework on AONBs was correctly set out in the OR, and properly applied by the planning officer and Members to the facts of this application. I consider that the Claimant's interpretation of the legal and policy framework is incorrect insofar as it seeks to import an unspecified obligation to abate a nuisance or to eliminate SOAELs. The approach set out in paragraph 172 of the Framework does not require permission to be granted only for development that reduces noise impacts to levels that are not a statutory nuisance, or below SOAELs, still less to zero.

89. The Council, as decision maker, was required to assess the tranquillity of that part of the AONB that was affected and then consider the likely impacts of the proposal. In this case tranquillity levels in areas around the Race Circuit were shown to be medium to medium to low. Subject to control by conditions, there was sufficient evidence upon which the Council could properly conclude that additional use would not significantly diminish tranquillity beyond the site.

90. For these reasons, Ground 2 does not succeed.

Ground 3

Submissions

91. The Claimant submitted that, in its statement under regulation 30 of Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"), and the OR and Minutes, the Council failed to give adequate reasons for the Decision, and failed to grapple with the issues raised in the light of the detailed letters of representation made by residents and other consultees in opposition to the proposed development. The Claimant further submitted that the Planning Committee was required to give reasons for granting permission at common law, as in the case of *R (CPRE Kent) v Dover District Council* [2017] UKSC 79; [2018] 1 WLR 198.

92. In response, the Council submitted that it discharged its duty under regulation 30 of the EIA Regulations, and the *CPRE Kent* case was distinguishable.

Conclusions

93. Under regulation 30(1)(d) to the EIA Regulations, the Council was obliged to inform the public of its final decisions and make available for inspection a statement, containing: (i) details of the matters referred to in regulation 29(2), and (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public.

94. In considering the adequacy of the reasons given in a statement under the EIA Regulations, the guidance given by Lord Brown in *South Bucks v Porter (No 2)* [2004] 1 WLR 1953 should be applied (*CPRE Kent*, per Lord Carnwath at [39]). Reasons must be adequate and intelligible but may be briefly stated with the "degree of particularity required depending entirely on the nature of the issues falling for decision". The reasons given must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues. Reasons need refer only to the main issues in the dispute and not to every material consideration, and the reasons can be stated.

95. A claimant must show that the reasons advanced (or lack of reasons) leave room for genuine as opposed to forensic doubt as to what was decided and why *(CPRE Kent*, per Lord Carnwath at [42]).

96. In this case, the Council issued the requisite statement. The Planning Committee adopted the reasoning in the OR, and accurately and adequately summarised the reasons for doing so. It referred to the OR and the Minutes, which "set out the main considerations on which the decision is based, including the Environmental Statement and Addendums". It explained that "the mitigation and monitoring requirements are addressed by the conditions attached to the Decision Notice". It informed readers that all these documents were posted on the Council's website.

97. The main reasons for the decision were set out in paragraphs 1.6 to 1.9, including the effects on the AONB and noise generally. The decision to grant permission took into account consultees' views and representations (paragraph 1.9).

98. The representations of Terence O'Rourke consultants were contained in two letters, dated 6 August 2019 and 28 January 2020. The latter was sent directly to Members. The officer's reasoning was formulated taking into account the initial representations that were made in the August 2019 letter, which referred to tranquillity, and the unacceptability of noise impacts, evidenced by the existence of an abatement notice and potential breaches. The officer took into account those representations, summarised them in the report, and advised Members accordingly.

99. The 28 January 2020 letter raised two saved polices that had not been dealt with in the OR. The officer provided an oral update to the Committee at the meeting dealing with those policies. The 28 January 2020 letter also raised the erroneous legal approach to the issues of noise and tranquillity that are included in this claim under Grounds 1 and 2. The correct legal approach to those issues was set out in the OR. Members were entitled to adopt the reasoning in the OR and the oral update at the meeting on the issues raised.

100. Detailed issues of compliance with the revised abatement notice were not a matter for Members to assess or reach a conclusion one way or the other; that is not what is required by under paragraph 183 of the Framework. In so far as the Committee was required to consider evidence alleging non-compliance, the advice from the officer was clear.

101. Where a local planning authority resolves to approve the recommendation of an officers report, it can be assumed that they accepted the reasoning of that report (*R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061; [2017] 1 WLR 411 per Lewison LJ at [7]). There was nothing to displace that assumption in this case.

102. In my judgment, the statement read together with the detailed OR, the Minutes and the Decision Notice, met the standard of reasons required for the statement under the EIA Regulations.

103. Aside from the duty under the EIA Regulations, a planning authority is generally not under a duty to give reasons for the grant of planning permission, following the repeal of the statutory obligation to do so in 2013. However, in *CPRE Kent*, the Supreme Court held that, in certain types of cases, openness and fairness to the objectors required members' reasons to be stated. Lord Carnwath described this category of case at [59]:

> "59. As to the charge of uncertainty, it would be wrong to be over-prescriptive, in a judgment on a single case and a single set of policies. However it should not be difficult for councils and their officers to identify cases which call for a formulated statement of reasons, beyond the statutory requirements. Typically they will be cases where, as in *Oakley* and the present case, permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance (such as the "specific policies" identified in the NPPF - para 22 above). Such decisions call for public explanation, not just because of their immediate impact; but also because, as Lord Bridge pointed out

> (para 45 above), they are likely to have lasting relevance for the application of policy in future cases."

104. In my judgment, this application clearly did not fall within the *CPRE Kent* category of case. It can be assumed that Members accepted their officers' recommendation, which was explained in considerable detail in the OR, and further reasons were given in the Minutes of the meeting. The mitigation and monitoring requirements were set out in the Decision Notice. A statement of reasons was issued pursuant to the duty under the EIA Regulations. In my view, the objectors could not have had any genuine, as opposed to forensic, doubt as to why the Planning Committee granted permission. Members were not required to explain how Members attached different weight to material considerations. There was considerable support for the application, as well as opposition. Whilst there were some 85 letters of objection, as well as the objection from the Kent Downs AONB Unit and two parish councils, there were also 964 letters in support, and support from two other parish councils. The points made for and against the application were summarised in the OR.

105. For these reasons, Ground 3 does not succeed.

Ground 4

Submissions

106. The Claimant submitted that the level of noise, assessed as SOAEL, engaged Article 8 ECHR. Given the positive obligations under Article 8, and the requirement to apply the precautionary principle, the Council was required to take effective measures to secure respect for the rights of other local residents to peaceful enjoyment of their homes. The failure to do so amounted to a violation of Article 8.

107. The Claimant also submitted that the Council failed to consider its human rights obligations adequately or at all in reaching its Decision.

108. The Council submitted that the OR and Members had regard to Article 8, and the decision to grant planning permission was not a violation of Article 8. The precautionary principle was not relevant.

109. In the alternative, section 31(2A) of the Senior Courts Act 1981 applied.

Conclusions

110. Section 6(1) HRA 1998 provides:

> "It is unlawful for a public authority to act in a way which is incompatible with a Convention right."

111. Article 8 ECHR provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

112. The right to respect for the home encompasses the right to enjoyment of a residence free from excessive environmental pollution, including noise nuisance. This may give rise to an obligation on the part of the State to take effective measures against noise. As to positive obligations, in *Botta v Italy* (1998) 26 EHRR 24, at 257-258, the ECtHR held:

> "There may be positive obligations inherent in effective respect for private or family life….However, the concept of respect is not precisely defined. In order to determine whether such obligations exist, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, while the state has, in any event, a margin of appreciation."

113. The precautionary principle is a core principle of EU environmental law, enshrined in Article 191(2) of the Treaty on the Functioning of the EU. The classic definition of 'a precautionary approach' comes from the 1992 Rio Declaration on Environment and Development, which states that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (UNEP 1992). The precautionary principle was applied in *Tatar v Romania* (App No 67021/01, ECtHR 27 January 2009, at paragraph 120), and it was expressed at paragraph 10 of the judgment as follows:

> "According to the case law of the ECJ, when uncertainties remain as to the existence or extent of risks to human health, the institutions may take measures without having to wait for the reality and seriousness of those risks to be fully demonstrated."

114. In *Lough v First Secretary of State* [2004] EWCA Civ 905, Pill LJ reviewed the authorities and concluded:

> "43. It emerges from the authorities:
>
> (a) Article 8 is concerned to prevent intrusions into a person's private life and home and, in particular, arbitrary intrusions and that is the background against which alleged breaches are to be considered.
>
> (b) Respect for the home has an environmental dimension in that the law must offer protection to the environment of the home.

> (c) Not every loss of amenity involves a breach of Article 8(1). The degree of seriousness required to trigger lack of respect for the home will depend on the circumstances but it must be substantial.
>
> (d) The contents of Article 8(2) throw light on the extent of the right in Article 8(1) but infringement of Article 8(1) does not necessarily arise upon a loss of amenity and the reasonableness and appropriateness of measures taken by the public authority are relevant in considering whether the respect required by Article 8(1) has been accorded."

115. In *R (RLT Built Environment Limited) v Cornwall County Council* [2016] EWHC 2817 (Admin), Hickinbottom J. summarised the principles to be applied when considering Article 8 in a planning context, at [81]:

> "81. The relationship between the domestic planning scheme and article 8 has been considered in a number of cases, notably *Chapman v United Kingdom* (2001) 33 EHRR 18, *Lough v First Secretary of State* [2004] EWCA Civ 905 and *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin) at [47] and following (approved in *Collins v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1193). These cases largely concerned planning control, e.g. decisions in respect of planning permission (often, in the cases, sought retrospectively) or enforcement, frequently in the context of caravans which had been sited without any cognisance of the planning regime. With regard to planning control, the following relevant propositions can be drawn from them.
>
> i) Article 8 does not give a right to a home, or to a home in any particular place.
>
> ii) However, where someone has a home in a particular dwelling, it may interfere with the article 8 rights of him and/or his family to require him/them to move.
>
> iii) Whilst those rights demand "respect", they are of course not guaranteed. In this context, as much as any other, the public interest and/or the rights and interests of others may justify interference with an individual's article 8 rights.
>
> iv) Where article 8 rights are in play in a planning control context, they are a material consideration. Any interference in such rights caused by the planning control decision has to be balanced with and against all other material considerations, the issue of justification for interference with article 8 rights effectively being dealt with by way of such a fair balance analysis.

> v) That balancing exercise is one of planning judgment. Consequently, it may be amenable to more than one, perfectly lawful, result; and this court will only interfere if the decision is outside the legitimate range. Indeed, in any challenge, the court will give deference to the decision of the primary decision-maker, because he has been assigned the decision-making task by Parliament, and he will usually have particular expertise and experience in the relevant area. Such a decision-maker will be accorded a substantial margin of discretion. The deference and margin of discretion will be the greater if he has particular expertise and experience in the relevant area, and/or if he is acting in a quasi-judicial capacity (such as an inspector).
>
> vi) If the decision-maker has clearly engaged with the article 8 rights in play, and considered them with care, it is unlikely that the court will interfere with his conclusion. Article 8 rights are, of course, important: but it is not to be assumed that, in an area of social policy such as planning, they will often outweigh the importance of having coherent control over town and country planning, important not only in the public interest but also to protect the rights and freedoms of other individuals. In practice, cases in which this court will interfere are likely to be few."

116. In this case, Members of the Planning Committee had received specific training on human rights in the context of the planning decision-making process. In a standard guidance document accompanying the OR, they were specifically advised of the need to consider the human rights of those affected, and to have regard to Article 8. Therefore, both the officer and Members had Article 8 well in mind.

117. The issue of noise from the Race Circuit, and its impact upon local residents in their homes, was extensively considered in the OR. The planning officer undertook a structured weighing up and balancing of the issues of noise and loss of amenity against the benefits of the development, and the wider community interest, within the relevant statutory and policy framework. It was, in effect, a proportionality assessment, though not expressed to be undertaken pursuant to Article 8.

118. On the facts of this case, the precautionary principle was not relevant. This was not a decision which relied upon an analysis of risk, and where preliminary scientific evidence and evaluation did not allow the risk to be determined with sufficient certainty. It was well known and accepted that noise at a certain level is capable of affecting amenity and/or constituting statutory nuisance. There was no uncertainty concerning the terms of the revised abatement notice. However, the Council did not accept the evidence and submissions by the Claimant and other residents as to non-compliance with the revised abatement notice, preferring to rely on its own evidence of compliance. It was entitled to reach this view.

119. Alternatively, even if Article 8 was not adequately considered in the OR, it is highly likely that the Council's decision would not have been substantially different if it had specifically addressed Article 8 in the OR. Planning permission would still have been granted, for the reasons set out in the OR. Therefore, even if my primary conclusion on

Article 8 is incorrect, and the Council did fail to give sufficient consideration to Article 8, I would refuse relief, applying section 31(2A) of the Senior Courts Act 1981.

120. For these reasons, Ground 4 does not succeed.

Final conclusion

121. The claim for judicial review is dismissed.