



Appeal Decisions

Inquiry held on 17-20 January 2012

Site visit made on 17 January 2012

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 February 2012

Appeal A Ref: APP/E2734/C/11/2153008

Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Moore against an enforcement notice issued by Harrogate Borough Council.
 - The Council's reference is 05/00354/PR15.
 - The notice was issued on 12 April 2011.
 - The breach of planning control as alleged in the notice is the material change of use of the land to use for the storage of barriers mainly located on the part of the land shown coloured orange on the attached plan.
 - The requirements of the notice are (i) Cease the use of the land for the storage of barriers; (ii) Remove all the barriers from the land; (iii) Make good any damage done to the land as a consequence of the unauthorised storage of barriers.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid so the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal B Ref: APP/E2734/C/11/2153013

Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Moore against an enforcement notice issued by Harrogate Borough Council.
 - The Council's reference is 05/00354/PR15.
 - The notice was issued on 12 April 2011.
 - The breach of planning control as alleged in the notice is the material change of use of the land to use for the storage/parking of scrap/unroadworthy motor vehicles mainly located on the part of the land shown coloured brown on the attached plan.
 - The requirements of the notice are (i) Cease the use of the land for the storage/parking of scrap/unroadworthy motor vehicles; (ii) Remove all the scrap/unroadworthy motor vehicles from the land; (iii) Remove from the land the barrier wall made of tyres shown for the purposes of identification coloured blue on the attached plan; (iv) Make good any damage done to the land as a consequence of the unauthorised storage/dumping of motor vehicle tyres.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid so the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal C Ref: APP/E2734/C/11/2153016

Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Moore against an enforcement notice issued by Harrogate Borough Council.
 - The Council's reference is 05/00354/PR15.
 - The notice was issued on 12 April 2011.
 - The breach of planning control as alleged in the notice is the material change of use of the land to the use for the driving, racing and testing of motor vehicles including Ginetta cars.
 - The requirements of the notice are (i) Cease the use of the land for the driving, racing and testing of motor vehicles including Ginetta cars; (ii) Remove the tarmac track surface from the land; (iii) Remove all the motor vehicle track barriers from the land; (iv) Remove any motor cars from the land; (v) Make good any damage done to the land as a consequence of carrying out the requirements of paragraphs 5 (ii) and (iii).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid so the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal D Ref: APP/E2734/C/11/2153034

Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Moore against an enforcement notice issued by Harrogate Borough Council.
 - The Council's reference is 05/00354/PR15.
 - The notice was issued on 12 April 2011.
 - The breach of planning control as alleged in the notice is the material change of use of the land to the use for the driving, racing and testing of motor vehicles including go carts.
 - The requirements of the notice are (i) Cease the use of the land for the driving, racing and testing of go carts; (ii) Remove all the motor vehicle track barriers from the land; (iii) Remove any go carts from the land; (iv) Remove from the land any portakabins, containers and other artefacts associated with the use described in paragraph 5 (i); (v) Make good any damage done to the land as a consequence of carrying out the requirements of paragraph 5 (ii).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid so the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal E Ref: APP/E2734/C/11/2153035

Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Simon Moore against an enforcement notice issued by Harrogate Borough Council.
- The Council's reference is 05/00354/PR15.
- The notice was issued on 12 April 2011.
- The breach of planning control as alleged in the notice is the material change of use of the land to use for the storage/dumping of motor vehicle tyres mainly located on the

- part of the land shown coloured dark blue on the attached plan.
 - The requirements of the notice are (i) Cease the use of the land for the storage/dumping of motor vehicle tyres; (ii) Remove all the motor vehicle tyres from the land; (iii) Make good any damage done to the land as a consequence of the unauthorised storage/dumping of motor vehicle tyres.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid so the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal F Ref: APP/E2734/C/11/2153036

Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Moore against an enforcement notice issued by Harrogate Borough Council.
 - The Council's reference is 05/00354/PR15.
 - The notice was issued on 12 April 2011.
 - The breach of planning control as alleged in the notice is the material change of use of the land to use for the storage/parking of buses and or the use of the site as a bus depot together with various ancillary uses and development connected therewith mainly located on the part of the land shown coloured yellow on the attached plan.
 - The requirements of the notice are (i) Cease the use of the land for storage/parking of buses and or the use of the land as a bus depot together with various ancillary uses and development connected therewith; (ii) Remove all the buses from the land; (iii) Without prejudice to the generality of paragraph 5 (i) above, (a) remove the water bowsers used for washing the buses and all other equipment or materials kept on the land in connection with the use, (b) remove the caravans stored/kept on the land in association with the use, (c) remove from the land the barrier wall made of tyres shown for the purposes of identification coloured blue on the attached plan; (iii) Make good any damage done to the land as a consequence of the unauthorised storage/dumping of motor vehicle tyres.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid so the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decisions

Appeal A Ref: APP/E2734/C/11/2153008

1. The enforcement notice is corrected by:
 - a. The deletion of 'barriers' in section 3 of the notice and the substitution instead of 'polymer water filled barriers';
 - b. The deletion of the text in requirement (i) in section 5 of the notice and the substitution instead of 'Cease the use of the land for the storage of polymer water filled barriers, save for those stored for future use in connection with a lawful use of the land';
 - c. The deletion of the text in requirement (ii) in section 5 of the notice and the substitution instead of 'Remove all the polymer water filled barriers

from the land, save for those stored for future use in connection with a lawful use of the land’;

d. The deletion of ‘barriers’ in the third requirement in section 5 of the notice and the substitution instead of ‘polymer water filled barriers’.

2. Subject to the corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/E2734/C/11/2153013

3. The enforcement notice is corrected by:

a. The deletion of the text in requirement (i) in section 5 of the notice and the substitution instead of ‘Cease the use of the land for the storage/parking of scrap/unroadworthy motor vehicles, save for such vehicles used in connection with a lawful use of the land’;

b. The deletion of the text in requirement (ii) in section 5 of the notice and the substitution instead of ‘Remove all the scrap/unroadworthy motor vehicles from the land, save for such vehicles used in connection with a lawful use of the land’.

4. The appeal on ground (c) succeeds and the enforcement notice as corrected is quashed.

Appeal C Ref: APP/E2734/C/11/2153016

5. The enforcement notice is varied by:

a. The deletion of requirement (ii) in section 5 of the notice;

b. The deletion of ‘(ii) and’ in requirement (v) of the notice.

6. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.

Appeal D Ref: APP/E2734/C/11/2153034

7. The enforcement notice is corrected by:

a. The substitution of the Plan attached to this decision for Plan 1 attached to the notice;

b. The deletion of ‘and “Owner driver” go cart tracks’ from section 2 of the notice and the substitution instead of ‘go cart track’;

c. The deletion of ‘shown edged red’ from the text in section 2 of the notice and the substitution instead of ‘shown edged black’.

8. The enforcement notice is varied by the deletion ‘3 months’ as the time for compliance in section 5 of the notice and the substitution instead of ‘6 months’.

9. Subject to the corrections and the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal E Ref: APP/E2734/C/11/2153035

10. The enforcement notice is corrected by:
- a. The deletion of the text in requirement (i) in section 5 of the notice and the substitution instead of 'Cease the use of the land for the storage/dumping of motor vehicle tyres, save for those tyres stored for the purposes of creating crash barriers in connection with a lawful use of the land';
 - b. The deletion of the text in requirement (ii) in section 5 of the notice and the substitution instead of 'Remove all the motor vehicle tyres from the land, save for those used or stored for the purposes of creating crash barriers in connection with a lawful use of the land'.
11. The enforcement notice is varied by the deletion '3 months' as the time for compliance in section 5 of the notice and the substitution instead of 'one year'.
12. Subject to the corrections and the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal F Ref: APP/E2734/C/11/2153036

13. The enforcement notice is corrected by:
- a. The deletion of 'shown for the purposes of identification coloured blue on the attached plan' in requirement (iii)(c) in section 5 of the notice and the substitution instead of 'around the land shown coloured yellow on the attached plan';
 - b. The deletion of 'storage/dumping of motor vehicle tyres' in requirement (iii) in section 5 of the notice and the substitution instead of 'storage/parking of buses';
 - c. The deletion of the text in requirement (i) in section 5 of the notice and the substitution instead of 'Cease the use of the land for the storage/parking of buses, save for those buses used in connection with the lawful driver training use of the land, and or cease the use of the land as a bus depot, together with various ancillary uses and development connected therewith';
 - d. The deletion of the text in requirement (ii) in section 5 of the notice and the substitution instead of 'Remove all the buses from the land, save for those used in connection with the lawful driver training use of the land'.
14. The appeal on ground (d) succeeds and the enforcement notice as corrected is quashed.

The Enforcement Notices

15. The main parties agreed during the Inquiry that Plan 1 attached to the Appeal D enforcement notice should be amended to exclude from the land that is the subject of the notice (shown edged red on the plan) land that is used in connection with the use of adjoining land that the Council accepts is in lawful use. The adjoining land is an 'owner driver go cart track', which is referred to in section 2 of the notice. Section 2 has therefore been corrected by the deletion of reference to the owner driver go cart track and the notice has otherwise been

corrected by the substitution of the plan attached to this decision for Plan 1 attached to the notice.

16. With regard to requirement (iii)(c) of Appeal F there is some doubt about what is coloured blue on the attached plan. The Council confirmed at the Inquiry that, on the plan attached to the notice, it is a blue line around the 'land shown coloured yellow' as referred to in the allegation. For the avoidance of doubt the requirement has been corrected by the deletion of 'shown for the purposes of identification coloured blue on the attached plan' and the substitution instead of 'around the land shown coloured yellow on the attached plan'.

17. Requirement (iii) of Appeal F refers to the 'storage/dumping of motor vehicle tyres' but this is the subject of Appeal E whereas the subject of Appeal F is the 'storage/parking of buses'. This is clearly a drafting error and requirement (iii) of Appeal F has been corrected by the deletion of 'storage/dumping of motor vehicle tyres' and the substitution instead of 'storage/parking of buses'.

18. The Appellant has argued that the enforcement notices are poorly drafted and that they are incapable of correction, under section 176(1) of the Town and Country Planning Act 1990 as amended (the Act), without injustice being caused to him. He therefore maintains that they are invalid. Each enforcement notice will be considered individually for its validity.

Appeal A – Barriers

19. The Appellant sought clarification from the Council on the type of barrier to which the notice relates, because there are several types of barriers on the appeal site. The Council confirmed that the notice relates to 'polymer water filled barriers' and the Appellant prepared his case on this basis. This type of barrier is easily identifiable from other types of barriers and no injustice would be caused to the Appellant by correcting the notice to refer solely to this type of barrier. The use of 'mainly' in the alleged breach of planning control is not vague and merely identifies the area on the extensive appeal site where most of the barriers are located. The notice has been corrected accordingly. Where a 'barrier' is referred to in this Decision it relates to a 'polymer water filled barrier'.

20. The enforcement notice alleges the "...change of use of the land to use for the storage of barriers..." not to the use of barriers, so barriers that are in use on the land are therefore not subjects of the notice. Some barriers on the land may not be in current use but are stored for future use in connection with a lawful use of the land. The Council has suggested that the first two requirements of the notice be corrected by the addition of "...save for those used in connection with a lawful use of the land". But this would account for those in current use and would not exempt those stored for lawful future use. The suggested correction has thus been altered to "...save for those stored for future use in connection with a lawful use of the land". This correction narrows the extent of the requirements and would not cause the Appellant any injustice. The notice has been corrected accordingly. If the notice is upheld the number of barriers stored on the land for future use in connection with a lawful use of the land would be a matter for discussion and agreement between the Council and the Appellant.

21. The enforcement notice has been corrected in Appeal A and, for this and other reasons, is not invalid.

Appeal B – Scrap vehicles

22. The Council has accepted that scrap/unroadworthy vehicles are used in connection with a lawful use of the land and has suggested that the first two requirements of the enforcement notice be corrected by the addition of "...save for such vehicles used in connection with a lawful use of the land". The Appellant has accepted that unroadworthy vehicles that become unusable are stored on the land before removal to an 'end of life' facility. The suggested correction narrows the extent of the requirements and would not cause the Appellant any injustice. The notice has been corrected accordingly. If the notice is upheld the number of scrap/unroadworthy vehicles stored or parked on the land would be a matter for discussion and agreement between the Council and the Appellant.

23. The enforcement notice has been corrected in Appeal B and, for this and other reasons, is not invalid.

Appeal C – Ginetta track

24. The enforcement notice relates to land "...edged red on the attached plan 1...", which is the Ginetta track. The notice therefore clearly identifies the land to which it relates. The second requirement of the notice requires the removal of the track surface but the alleged breach of planning control does not specify this to be unauthorised operational development. The Appellant also maintains that the notice over-enforces against lawful uses. Both these matters are for consideration under ground (f) and do not render the notice invalid.

25. The enforcement notice in Appeal C is not invalid.

Appeal D – Pro-am go cart track

26. The land to which the enforcement notice relates has been clarified by the correction to the notice detailed in paragraph 15. The land shown on the substituted plan is smaller than the land shown on Plan 1 attached to the notice and no injustice has therefore been caused to the Appellant.

27. The enforcement notice in Appeal D is not invalid.

Appeal E – Tyres

28. The use of 'mainly' in the alleged breach of planning control is not vague and merely identifies the area on the extensive appeal site where most of the tyres on the land are located. The Council has accepted that tyres are used and stored in connection with a lawful use of the land and has suggested that the first two requirements of the enforcement notice be corrected by the addition of "...save for those used or stored for the purposes of creating crash barriers in connection with a lawful use of the land". The Appellant has accepted that tyres not for use in connection with a lawful use of the land are stored on the land. The suggested corrections clarify and narrow the extent of the requirements and would not cause the Appellant any injustice. The notice has been corrected accordingly. If the notice is upheld the number of tyres stored or dumped on the land would be a matter for discussion and agreement between the Council and the Appellant.

29. The enforcement notice has been corrected in Appeal E and, for this and other reasons, is not invalid.

Appeal F – Buses

30. The use of 'mainly' in the alleged breach of planning control is not vague and merely identifies the area on the extensive appeal site where buses parked on the land are predominantly located. The Council has accepted that part of the northern runway is in lawful use for driver training activities, that this could include bus driver training, and that the parking of buses on the land in connection with this lawful use is also therefore lawful. They have therefore proposed that the first two requirements of the notice be corrected by the insertion of the proviso "...save for those buses used in connection with the lawful driver training use of the land...". The suggested corrections clarify and narrow the extent of the requirements and would not cause the Appellant any injustice. The notice has been corrected accordingly. If the notice is upheld the number of buses stored on the land would be a matter for discussion and agreement between the Council and the Appellant.

31. The enforcement notice has been corrected in Appeal F and, for this and other reasons, is not invalid.

Procedural matters

32. The part of Tockwith Airfield that is the subject of Appeal C is known as the 'Ginetta track'. Ginetta is the maker's name of cars that have been driven on the track after it was resurfaced in about 2009 though the alleged breach of planning control is not specific to the driving of such vehicles. The land that is the subject of Appeal C shall be referred to as the Ginetta track in this Decision.

33. Tockwith Airfield was originally named as such but was renamed Marston Moor Airfield, to avoid being confused with nearby Tockcliffe Airfield, and is now generally known by this name. However, it is referred to as Tockwith Airfield in the six enforcement notices and the land that is the subject of the notices shall therefore be referred to as Tockwith Airfield for the purposes of this Decision.

34. At the Inquiry the Appellant stated that he did not wish to pursue grounds of appeal in some Appeals if the Council's suggested corrections are adopted, and for other reasons. The suggested corrections have been adopted and the grounds of appeal not being pursued are ground (f) in Appeal A, ground (f) in Appeal B, ground (c) in Appeal C, and ground (c) in Appeal D.

35. All oral evidence at the inquiry was given under oath.

Tockwith Airfield and its planning history

36. Tockwith Airfield was developed during the Second World War but its use as an airfield ceased in 1949. The airfield was sold by the Ministry of Defence in 1968. The airfield is bounded to the north-east by a residential area of the village of Tockwith and to the north-west by an industrial estate. The airfield is mainly farmland but is subdivided by hard surfaced former runways and other areas. It is these hard surfaced areas that are leased by the Appellant from two landowners and that are the land that is the subject of Appeals A, B, E and F. Land that is the subjects of Appeals C and D are parts of the hard surfaced areas of the airfield. For the purposes of this decision the hard surfaced areas shall be 'the airfield'. The airfield, since 1970, has been leased except for a period of about four years around 1990 when it was owned by the Appellant.

37. There are two former runways at Tockwith Airfield; an east/west runway and a north-east/south-west runway. For the purposes of this Decision, and from the

intersection of the two former runways, the west leg of the east/west runway will be known as the 'west runway', the east leg of the east/west runway as the 'east runway', the north-east leg of the north-east/south-west runway as the 'north runway', and the south-west leg of the north-east/south-west runway as the 'south runway'. A hard surfaced perimeter road connects the ends of the west and south runways, a track leads to the former control tower that is now used as offices from the north runway, and at the north end of the north runway are two areas of hard surfacing that lead to a workshop and a vehicle parking area that are close to the boundary to the industrial estate. There are two accesses into the airfield; one off Fleet Lane to the north runway and one off Rudgate to the south runway.

38. In 1962 the predecessor of the Council for the Tockwith area, Wetherby Rural District Council (WRDC) granted planning permission for 'Development of a road safety and skilled driving centre...' on part of the airfield; the north part of the north runway and part of a perimeter road that was built over with houses in the 1970's. Whether this permission was implemented is academic because the north part of the north runway is outside the parts of the airfield that are the subjects of the enforcement notices. In 1970 WRDC granted planning permission for a 'Driver Training School Centre and Road Safety Display Area' on the middle section of the north runway, subject to a condition that approval of reserved matters shall be made within three years. There is no evidence to indicate that an application for approval of reserved matters was submitted and the permission therefore lapsed. The two permissions do not assist in determination of the appeals.

39. The Appellant's father, Mr Reginald Moore, set up a driver training centre on the airfield in 1970. When his father died in 1986 the Appellant assumed control and ownership of the business, Tockwith Multi-Drive Centre (Tockwith MDC). The business is now controlled through Circuit Ventures Limited and the day to day activities are overseen by the Appellant's son Mr Nigel Moore. The Statement of Common Ground (SoCG) sets out common ground between the main parties on activities on the airfield that are considered to be lawful by being immune from enforcement action. These are driver training activities on the northern half of the north runway, an 'owner driver' go cart track on the south part of the north runway and on the north half of the east end of the west runway (this part of the cart track is the land that has been excluded from land that is the subject of Appeal D), and use of a hard surfaced area off the north runway as a skid pan. The last of these uses is associated with driver training activities.

40. In the late 1980's the east runway was re-opened for the take-off and landing of light aircraft and helicopters. Evidence indicates that the runway was resurfaced at about this time. A planning application for the 'reinstatement of flying activity and new hanger' was refused in February 1990 and a planning application for 'continued use of existing runway for flying activities and erection of aircraft hanger and control room' was refused in July 1991. The latter refusal and enforcement action against the flying activities were appealed and were the subjects of an Inquiry. The appeals failed, the enforcement notice was upheld, and the flying activities at the airfield subsequently ceased.

41. In March 2003 a planning application for 'the construction of a waste recycling facility specifically for materials associated with civil engineering' on part of the airfield was refused by North Yorkshire County Council. A subsequent similar application was also refused in January 2004. The application sites differed slightly but in both cases the recycling facility was proposed to be on land between the west runway and the industrial estate, access to the facility was along the

perimeter road from the Rudgate entrance, and the site included part of the west runway. In both applications the present use of the site was declared to be 'unused' and in the second application the last previous use of the site was declared to be 'agriculture – World War II airfield'.

42. Other applications have been submitted for development on parts of the airfield but these are not relevant to the current appeals.

The Lands that are the subjects of the Enforcement Notices

43. Setting aside the 'mainly' proviso in Appeals A, B and E, none of the land that is in lawful use is within the parts of the airfield that are the subjects of the enforcement notices. The barriers, scrap vehicles and buses that are the subjects of, respectively, Appeals A, B and F, are on adjoining parts of the north runway between the owner-driver go-cart track and the driver training activities. An area of hard standing close to the industrial estate is also part of the land that is the subject of Appeal B. A narrow section of the middle part of the north runway is not included within the appeal land for access between the go-cart track and the driver training activities.

44. The triangular Ginetta track, the subject of Appeal C, is the south runway, one half of the perimeter road that connects the south and west runways, and the south half of the west runway. The Pro-am go-cart track, the subject of Appeal D, is on the western two-thirds of the east runway. There is a dedicated access track to the Pro-am track that runs parallel with the south runway from the Rudgate entrance. The tyres that are the subject of Appeal E are between the Ginetta track and farmland on the western half of the west runway.

Reasons

The ground (b) appeal in Appeal B – Scrap vehicles

45. The Appellant has accepted that unroadworthy vehicles that become unusable, and are therefore scrap vehicles, are stored on the land before removal to an 'end of life' facility. He was not clear at the Inquiry about how long the scrap vehicles are kept on the land but this probably depends on the availability of suitable transport and the economy gained by removing more than one scrap vehicle at a time. Nevertheless, scrap vehicles are, as a matter of fact, stored on the land and the ground (b) appeal thus fails.

The ground (b) appeal in Appeal E – Tyres

46. The storage of tyres for crash barriers on the land is an ancillary use to the main historical use of the airfield for driver training. In about 2006, however, the Appellant granted a licence to Eco-Terra Tyres Limited, a firm then involved in the recycling of tyres, for the storage of tyres on the west runway of the airfield. Subsequently, a large number of tyres were brought to the airfield and the Appellant accepted at the Inquiry that two-thirds of the many thousands of tyres stored on the west runway were imported by Eco-Terra Tyres. The Environment Agency has successfully prosecuted the firm for the illegal storage of tyres but they remain on the west runway and the firm no longer exists.

47. The Appellant has accepted responsibility for the tyres and he maintains that all of the tyres could be compressed into bundles for use as crash barriers. This factor notwithstanding, though it is unlikely that such a large number of tyres could be used for such a purpose in the near future, part of the west runway was in use

for the storage of tyres not in connection with a lawful use of the land at the date of issue of the enforcement notice. The alleged breach of planning control has occurred as a matter of fact and the ground (b) appeal thus fails.

The ground (c) appeal in Appeal A - Barriers

48. The use and storage of barriers is ancillary to the lawful use of the airfield for driver training activities. In 1970 barriers were straw bales but the nature and type of barriers has changed since then. Barriers are necessary to mark out and secure areas of the site to protect the safety of drivers, staff and spectators. The polymer barriers on the airfield are the same as those commonly seen on the highway network where road works are ongoing. Between 2006 and 2009 a company called Barrier Systems Limited operated a barrier rental business from the site. Though their main customer was Tockwith MDC the Appellant accepts that barriers were rented to other driver related operations elsewhere.

49. The company ceased to trade in 2009 and the Appellant accepts that the number of polymer barriers on the airfield has not changed since then. It is likely therefore that some of the barriers on the airfield are those that were rented for use off site and were not stored in connection with a lawful use of the land at the date of issue of the enforcement notice. The storage of barriers on the airfield for use elsewhere is not permitted development and planning permission has not been granted for such a use of the land. The ground (c) appeal thus fails.

The ground (c) appeal in Appeal B – Scrap vehicles

50. Three large earth moving plant vehicles are stored on the area of hard standing close to the industrial estate. The Appellant maintains that these plant vehicles are not scrap, are simply not currently in use, and are awaiting a possible future contract for their hire. There is no reason to doubt the Appellant and the Council could, at any time, ask to see that they can be operated and are therefore not scrap. The plant vehicles fall outside the scope of the enforcement notice.

51. The Appellant has accepted that unroadworthy vehicles that become unusable are stored on the land. These are scrap vehicles. It is unlikely that there is more than a small number of scrap vehicles stored on the land at any one time and they are not stored on the land for any great length of time. Furthermore, they become scrap vehicles as a consequence of use for lawful driver training activities and could therefore be regarded to be incidental to the lawful use for the short period of time that they are stored on the land. For all these reasons the storage of scrap vehicles on the land is ancillary to a lawful use and planning permission is not required for such a use of the land. The ground (c) appeal thus succeeds and the enforcement notice has been quashed. The ground (d) and (g) appeals in Appeal B do not therefore need to be considered.

The ground (d) appeals

52. Before considering each ground (d) appeal it is necessary to determine what is the planning unit or planning units. The Appellant maintains that the whole of airfield, the land that is the subject of Appeals A, B, E and F, is one planning unit. The Council, at the beginning of the Inquiry, maintained that the airfield is divided into six planning units; the 'owner driver' go cart track, the Pro-am go cart track, the Ginetta track, the bus depot, the tyre storage on the west runway, and the driver training facility. At the end of the Inquiry Ms Stockley, for the Council, stated "...at the very least...the site comprises three planning units, namely the bus depot, tyre storage area and the remainder of the site which is in a mixed

use". *Burdle and Williams v SSE and New Forest DC*[1972] 1 WLR 1207 is the leading authority on establishing what is a planning unit and the principles set out in that case will be applied in this decision.

53. The Pro-am go cart track has been in place, probably unchanged in layout and extent, since it was established in 2006. It is separately advertised and operated from any other uses on the airfield and has its own access track from the Rudgate entrance. It is self-contained with its own parking area and secure storage, changing and office accommodation. The part of the east runway on which it is located is under licence, rather than leased, from the Appellant though there is no evidence to indicate that he or the land owner exercises any control over the operation of the track. In addition, there is nothing to indicate that the operator of the track has any rights to use any land other than that indicated on the plan attached to this decision, other than use of the track for access from the Rudgate entrance. The Pro-am go cart track is and was on the date of issue of the enforcement notice, as a matter of fact and degree, functionally and physically separate from other uses on other parts of the airfield and is a planning unit.

54. The area used for the parking and storage of buses is licensed to and solely used by Harrogate Coach Travel and has been since 2002. The area used for this purpose is well defined and self-contained and includes ancillary accommodation such as caravans and washing equipment. There is no evidence to indicate that the company use any land outside the defined area other than for access to and from Fleet Lane. Equally, there is no evidence to indicate that the area is used other than for the parking and storage of buses and/or as a bus depot and for ancillary uses to that main use. On the date of issue of the enforcement notice the area used for the parking and storage of buses and/or as a bus depot was functionally and physically separate from other uses on other parts of the airfield and was, as a matter of fact and degree, a planning unit.

55. The Ginetta track, irrespective of the uses to which it has been put and the frequency, intensity and continuity of those uses, has been used by Tockwith MDC for driving activities since the airfield was leased by the Appellant's father in 1970. In this regard it is likely that there has been no restriction on driving activities extending beyond the main area for this activity on the north runway. Similarly, ancillary to the main use for driving activities, the airfield has been used for the storage of tyres and barriers. In the mid-2000's part of the site was dedicated for an increase in tyre storage and part of the site was dedicated for an increase in barrier storage. Both of these areas were licensed for their respective storage uses to companies separate from Tockwith MDC. However, both licences have ceased and both areas are now under the control of Tockwith MDC. This was the situation at the date of issue of enforcement notices. At that time, as a matter of fact and degree, the Ginetta track and the areas primarily used for tyre and barrier storage were not separate planning units.

56. There are two separate planning units within the airfield; the bus depot and the Pro-am go cart track. The remainder of the airfield is in a mixed use. At the Inquiry Mr Gartland, for the Appellant and in relation to the whole of the airfield, was asked what he considered to be the mixed use of the airfield as a single planning unit. He suggested that it could be described as 'road safety, driver training and vehicle testing centre, bus depot and ancillary offices and storage including storage of motor vehicles, barriers and tyres'. This could be a description, with 'bus depot' deleted, of the mixed use of the airfield outside the two separate planning units.

57. To be immune from enforcement action the material uses that are the subjects of the enforcement notices must have remained without significant interruption for the 10 year period prior to issue of the notices on 12 April 2011, or the uses had gained immunity before and had not subsequently been abandoned. The onus of proof in a ground (d) appeal is on the Appellant.

The ground (d) appeal in Appeal A – Barriers

58. The storage of barriers, separate from the storage of barriers for ancillary use to a lawful use of the airfield, commenced in 2006. The storage of barriers has not therefore been a use of a mixed use of the airfield for the ten year period prior to issue of the enforcement notice. The storage of barriers has therefore not gained immunity from enforcement action and the ground (d) appeal thus fails.

The ground (d) appeal in Appeal C – Ginetta track

59. The essence of the Appellant's ground (d) appeal is that the driving, racing and testing of motor vehicles, the use alleged in the enforcement notice, is the same use as the 'driver training and vehicle testing centre' element of Mr Gartland's suggestion for the mixed use of the whole airfield. This use is claimed to have been continuous on the airfield, including the Ginetta track, since 1970.

60. At the Inquiry the Appellant painted a busy picture of activity at the airfield. He spoke about contracts with a number of companies that have been customers or users of the airfield for vehicle and product testing and driver training. Much was made, for instance, of his relationship with Paul Ripley Motorsport (PRM). Paul Ripley's brochure is impressive. It includes a picture of three drivers standing beside three Ford Escort rally cars that was taken at Tockwith Airfield; there is a water tank in the background of the photograph that remains a feature of the airfield surroundings. Tockwith Airfield is also listed, along with other motorsport venues, in another Paul Ripley document. But there is no evidence of any vehicle or driving activity at the airfield undertaken, supported or organised by PRM.

61. There are no invoices or receipts for any business between Tockwith MDC and PRM and there is no photograph of any vehicle clearly associated with PRM on the Ginetta track before or after it was resurfaced. There are, in fact, very few photographs of vehicles on the Ginetta track. Copies of leaflets for rally driving courses have been submitted but these do not demonstrate any use of the Ginetta track. There are photographs of static cars and other vehicles on the south runway but, again, these do not demonstrate any use of the Ginetta track for driving activities. A photograph of a rally car in motion has been submitted and the car may have been on the track but this photograph is only a snapshot in time and does not demonstrate any continuity of use.

62. No diary of events on the track has been provided, no invoices for any business use of the track have been submitted, and there is no clear and unambiguous evidence that the Ginetta track has been in regular and continuous use, at any time, for driving activities. There is some evidence of use after the track was resurfaced in 2009 but driving activity before then was sporadic at best and probably only occurred on the south runway. In this regard it is worth noting the description of part of the track, the perimeter road connecting the two runways, in the planning applications for a waste recycling facility in 2003 and 2004. The land was described as 'unused' and in the second application the previous use of the land was described as 'agriculture – World War II airfield'.

63. Insufficient clear and unambiguous evidence has been provided to justify a conclusion that the Ginetta track as a whole, as opposed to just the south runway, has been in continuous use for driving, racing and testing of motor vehicles during the ten year period prior to the date of issue of the enforcement notice. The ground (d) appeal thus fails.

The ground (d) appeal in Appeal D – Pro-am go cart track

64. The essence of the Appellant's ground (d) appeal is that the driving, racing and testing of motor vehicles including go karts, the use alleged in the enforcement notice, is the same use as the 'driver training and vehicle testing centre' element of Mr Gartland's suggestion for the lawful mixed use of the whole airfield. This use is claimed to have been continuous on the airfield since 1970. The Appellant maintains that the type of vehicle driven at the airfield is unrestricted and includes go-karts, and that all driving carried out is for training purposes.

65. The Appellant maintains that the east runway, on which the Pro-am go cart track is situated, was the location of a Formula Ford racing circuit. The only documentary evidence of this, and the possible use of the circuit, is a photograph of a diagram of the circuit hanging on the wall of a training room, a receipt for 'use of the Formula Ford circuit', a newspaper article dated 15 June 2001 about the Appellant's purchase of a Formula Zip racing car, and brochures for Tockwith Racing School and Tockwith Advanced/Performance School. The brochures and the diagram of the circuit do not indicate any use of the runway for driver training or as a racing circuit, the invoice does not indicate what was the specific use of the circuit, and the purchase of a racing car does not indicate that it, or any other racing car, was ever used on the east runway.

66. The Appellant has mentioned the use of the east runway for motorcycle training and this was corroborated at the Inquiry by Dr Curran, a local resident, who paid money to the Appellant for the use of the runway and who was partly responsible for the training. There is therefore some history of use of the runway for driver training purposes. The Pro-am go cart track use of the east runway, however, is not a continuation of any driver training use. Go-cart tracks have become popular in recent years mainly because they can be used, and will provide the thrill of open car driving at speed, without any training. Safety equipment is provided and instruction in the safe use of the track is given to all participants but training is not required to drive the go-carts.

67. The website of Proam-karting, the operator of the track on the east runway, is instructive. The first sentence of its home page states that users of the track can "Jump in our 320cc Twin Engined Pro Karts and experience the thrill of Outdoor Karting...". There is no mention, in any part of the website, that drivers of the go-karts require training. The fact that drivers can 'jump-in' and 'experience the thrill' of the facility is its principal selling feature. The track may be used for training purposes on occasions but this will be a minor ancillary use to the main use of the track for a leisure activity. The use of the land for the driving, racing and testing of motor vehicles including go karts, the Pro-am go cart track, is a leisure use that replaced the previous use of the land as a 'driver training and vehicle testing centre' in 2006. The leisure use of the land has not subsisted for the ten year period prior to issue of the enforcement notice and has not therefore gained immunity from enforcement action. The ground (d) appeal thus fails.

The ground (d) appeal in Appeal E – Tyres

68. The storage/dumping of motor vehicle tyres, separate from the storage of motor vehicle tyres for ancillary use to a lawful use of the airfield, commenced in 2006. The storage/dumping of motor vehicle tyres has not therefore been a use of a mixed use of the airfield for the ten year period prior to issue of the enforcement notice. The storage/dumping of motor vehicle tyres has therefore not gained immunity from enforcement action and the ground (d) appeal thus fails.

The ground (d) appeal in Appeal F – Buses

69. The alleged breach of planning control, the material change of use of the land to use for the storage/parking of buses and or the use of the site as a bus depot, includes the word 'or' so the storage/parking of buses is interchangeable with bus depot as a use of the land. Harrogate Coach Travel (HCT) first used the land as a bus depot in 2002. Prior to this there was a history of the storage/parking of buses on the land. The Council has drawn a distinction in land use planning terms between the HCT bus depot and the activity prior to HCT arriving at the airfield. But the wording of the allegation negates any such distinction.

70. Documentary evidence indicates that Ashville Travel rented office accommodation at, and operated coaches from, the airfield from June 1989, and that Expert Travel rented premises at the airfield in late 1998 and in May 2000. Similar evidence indicates that Tockwith Travel was operating from the airfield from June 2000, and that they were contracted by the County Council to provide school bus services from September 2000. Evidence also indicates that Tockwith Travel continued to provide bus services to schools in 2001 and in 2002. Harrogate Coach Travel were authorised in 2003 to operate up to 8 vehicles from the airfield and in 2009 this was increased to 16 vehicles. It is possible, however, that at the date of issue of the notice 18-20 vehicles were kept at the airfield.

71. Photographic evidence indicates that the compound used by Harrogate Coach Travel was established before the very start of 2002. It is likely, in fact, to have been in place and used for the storage/parking of buses for some time before that. There has been, on the balance of probability, continuous storage/parking of buses or a bus depot at the airfield, in its current location, during the ten year period prior to issue of the notice. It is not clear how many buses were stored on the land at the beginning of the ten year period but it is likely that a number were stored on the land to fulfil historical bus driver training that is part of the lawful and consistently advertised driver training use of the land. Tockwith Travel operated at least two coaches at one time and Expert Travel also kept buses at the airfield. Though the number of vehicles stored has increased during the ten year period the character of the use has not materially changed.

72. There is sufficient clear and unambiguous evidence to justify a conclusion that the storage/parking of buses and or the use of the site as a bus depot, a separate planning unit, has been continuous for the ten year period prior to the date of issue of the enforcement notice. The ground (d) appeal thus succeeds.

The ground (f) appeal in Appeal C – Ginetta track

73. Under Class B of Part 4 of The Town and Country Planning (General Permitted Development) Order 1995 the use of land for 'motor car and motorcycle racing including trials of speed, and practicing for these activities' is permitted development for 14 days in total in a calendar year. The Appellant is therefore entitled to use the Ginetta track, for instance, for motor car racing for up to 14

days in a year without planning permission. The Ginetta track, from photographic and other evidence, was capable of use for motor racing but was in very poor condition before it was resurfaced in 2009. The resurfacing works were probably required, on the balance of probability, if the Appellant, as lessee of the land, was to exercise his permitted development rights.

74. The second requirement of the enforcement notice requires the Appellant to 'remove the tarmac track surface from the land'. This requirement offends the "Mansi" principle from the High Court decision of *Mansi v Elstree RDC (1964 16 P and CR 153)* which provides that the requirements of an enforcement notice must not purport to prevent an appellant from doing something which he is entitled to do without planning permission. The requirement would prevent the appellant from using the track for motor racing which he is entitled to do without planning permission. The second requirement of the notice is excessive.

75. The third requirement of the enforcement notice requires the removal of 'motor vehicle track barriers from the land'. These may be put in place on the 14 days in any year when permitted development rights are being exercised but the removal of barriers as permanent features of the airfield is not excessive. Neither this requirement nor any other, except requirement two considered above, is excessive. The ground (f) appeal succeeds in relation to the second requirement of the notice and the notice has been varied by the deletion of this requirement and by the deletion of the reference to it in requirement (v).

The ground (f) appeal in Appeal D – Pro-am go cart track

76. The Pro-am go cart track is an unlawful leisure use of part of the airfield. The requirements of the enforcement notice require the use to cease and the removal of go carts, barriers, portakabins, containers and other items associated with the unlawful use, and the repair of any damage caused to the land. These requirements are required to cease the unlawful use and to reinstate the land to its previous condition and are not excessive. The ground (f) appeal thus fails.

The ground (f) appeal in Appeal E – Tyres

77. The storage of tyres not stored for the purposes of creating crash barriers in connection with a lawful use of the land is an unlawful use of the land. The requirements of the enforcement notice, as corrected, require the unlawful use of the land to cease and the removal of tyres not stored for the purposes of creating crash barriers in connection with a lawful use of the land, and the repair of any damage caused to the land. These requirements are required to cease the unlawful use and to reinstate the land to its previous condition and are not excessive. The ground (f) appeal thus fails.

The ground (g) appeal in Appeal A – Barriers

78. The enforcement notice has been corrected to delete from the allegation and the requirements barriers that are used in connection with a lawful use of the land. Alternative types of barriers will not therefore need to be sourced and the three month compliance period, as stated in the notice, is therefore reasonable. The ground (g) appeal thus fails.

The ground (g) appeal in Appeal C – Ginetta track

79. The enforcement notice has been varied by the deletion of the second requirement and compliance with all the other requirements of the notice can be

achieved within the compliance period of three months. The ground (g) appeal thus fails.

The ground (g) appeal in Appeal D – Pro-am go cart track

80. The compliance period of three months, as set out in the enforcement notice, would be sufficient time to remove go carts, barriers, portakabins, containers and other items associated with the unlawful use, and to repair any damage caused to the land. The Pro-am go cart track, however, is a leisure activity for which customers can make advance bookings and it is likely that bookings have been made for use of the track in the near future. It would be reasonable to allow sufficient time for the operators of the track to fulfil bookings in a three month period, to avoid any serious inconvenience, before the track is removed from the land. The ground (g) appeal thus succeeds and the enforcement notice has been varied to include a compliance period of six months.

The ground (g) appeal in Appeal E - Tyres

81. The Appellant is seeking a compliance period of five years rather than three months as stated in the enforcement notice. There are several tyre recycling companies within 50 miles of the airfield. The only issue therefore is the physical removal of the tyres from the airfield and their transport to these recycling facilities. Three months is an insufficient period within which to organise and facilitate the removal of the tyres whilst five years would be excessive. A period of one year is considered to be reasonable and if this proves not to be the case and the Appellant is nevertheless actively seeking to comply with the notice the Council could grant an extension to the compliance period. The ground (g) appeal thus succeeds and the compliance period has been varied to be one year.

Conclusions

82. In all cases the enforcement notices have been corrected. Appeal B (scrap vehicles) succeeds on ground (c) and Appeal F (buses) succeeds on ground (d). In both cases the enforcement notices have been quashed. The enforcement notice in Appeal A (barriers) is upheld and the enforcement notices in Appeal C (Ginetta track), Appeal D (Pro-am go cart track) and Appeal E (tyres) are upheld as varied.

83. The storage of tyres and barriers not for use in connection with a lawful use of the airfield, for a few years, altered the mix of uses of the planning unit but did not materially alter the character of the mixed use of the composite planning unit. Similarly, the creation of separate planning units within the airfield, the bus depot and the Pro-am go cart track, did not materially alter the character of the mix of uses on the airfield. At no time has there been a material change to the mix of uses on the airfield and the lawful uses on the airfield are not threatened by the uses, both lawful and unlawful, considered in this Decision.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr D Hardy LLB BCL(Hons)	Barrister and Partner at Eversheds LLP
He called	
Mr J Gartland BA(Hons) BTP MRTPI	Director of Nathaniel Lichfield and Partners
Mr S Moore	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms R Stockley	Of Counsel instructed by Mr Prosser, Chief Solicitor of Harrogate Borough Council
She called	
Mr B Gill PGDipT&RP MRTPI	Chief Planning Enforcement Officer

INTERESTED PERSONS:

Mrs G Firth	Clerk to Tockwith and Milstrop Parish Council
Mr Clive Saunders	Chairman of Tockwith and Milstrop Parish Council
Mr W Bowyer	Member of Tockwith and Milstrop Parish Council
Mr J Savage	Borough Councillor
Mr K Wilson	Local resident
Mrs C Kavanagh	Local resident
Dr D Curran	Local resident

DOCUMENTS

- 1 Council's letter of notification of the Inquiry and list of those notified.
- 2 List of Appearances on behalf of the Appellant.
- 3 Opening Submissions on behalf of the Appellant.
- 4 Proposed corrected enforcement notices for Appeals A, B, E and F.
- 5 Additional points to witness statement by Mr Wilson.
- 6 Mrs Firth's additional thoughts after first day of the Inquiry.
- 7 Mr Gartland's suggested description of lawful use of the airfield.
- 8 Aerial photograph dated 14 May 1992.
- 9 Statement of Common Ground.
- 10 Composite plan of airfield showing lands subjects of the enforcement notices.
- 10a Corrected Plan 1 for Appeal D.
- 11 Statement for 2007 application for proposed waste plant at the airfield.
- 12 Committee report for proposed waste plant dated 10 September 2002.
- 13 Committee report for proposed waste plant dated 2 December 2003.
- 14 Past companies with contracts at the airfield.
- 15 Closing submissions on behalf of the Council.
- 16 Closing submissions on behalf of the Appellant.
- 17 Folder of third party statements submitted at the Inquiry.
- 18 Thurrock B C v SoS for the Environment and Terry Holding [2001] EWHC.



Plan

This is the plan referred to in my decision dated: 9 February 2012

by **John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

Land at Tockwith Airfield, Rudgate, Tockwith, York YO26 7QF

Reference: APP/E2734/C/11/2153034

Scale: not to scale

