

SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

28 AUGUST 2014

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ABBREVIATIONS: commonly used in this Agenda

- CDA Crime and Disorder Act 1998
- GPDO The Town and Country Planning (General Permitted Development) Order 1995
- HRA Human Rights Act 1998
- SBLP Swale Borough Local Plan 2008

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Deferred Items

Part 2

2.1 EASTCHURCH SW/14/0576 46 High Street, Eastchurch

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Part 3

3.1 SITTINGBOURNE SW/14/0088 Central Park Stadium,
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PLANNING COMMITTEE – 28th August 2014

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended.

2.1 SW/14/0576		(Case23965)		<u>Eastchurch</u>	
APPLICATION PROPOSAL					
Demolition of existing redundant workshops & erection of 2 dwellings					
ADDRESS Rear Of 46 High Street, Eastchurch, Isle of Sheppey, Kent, ME12 4BN					
RECOMMENDATION Grant with conditions					
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL					
Proposal conforms with adopted policies and design guidance, and would not give rise to any serious amenity issues.					
REASON FOR REFERRAL TO COMMITTEE					
Parish Council objection					
WARD		PARISH/TOWN COUNCIL		APPLICANT	
Sheppey Central		Eastchurch		Mr E Batten	
				AGENT Gregory Bunce	
DECISION DUE DATE		PUBLICITY EXPIRY DATE		OFFICER SITE VISIT DATE	
27/06/14		16/06/14		12/06/14	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):					
App No	Proposal			Decision	Date
SW/96/1021	Use of outbuildings for light industrial purposes.			Approved	06/01/97
SW/10/0732	Demolition of workshops and erection of two dwellings.			Approved	14/07/10
	The approved dwellings were of an almost identical design to those currently applied for, although parking and turning layout differed very slightly.				
SW/10/0355	Demolition of workshops and erection of two dwellings.			Refused	05/05/10
	The approved dwellings were of an almost identical design to those currently applied for, although parking and turning layout differed very slightly.				
SW/14/0216	Demolition of workshops and erection of two dwellings.			Withdrawn	29/04/14

SW/13/0030	Use of the site as a gypsy site, including one static and one touring caravan, the use of the barn as ancillary accommodation and the retention of the dwelling house.	Refused	05.07.13
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MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site comprises a parcel of land to the rear of 46 High Street, Eastchurch. The main part of the site measures approximately 37m deep by 12m wide, with a vehicle access running northwards to the side of 46 to the High Street to form a roughly L-shaped parcel.
- 1.02 The land previously contained a large detached workshop building, the footprint of which occupied most of the site. However this was demolished prior to submission of the current application and I have no further details in regards to its design.
- 1.03 Rubble from the demolition remains on the site but it is otherwise relatively flat. Immediately to the east there are two pairs of semi-detached chalet bungalows currently under construction (approved under application ref. SW/12/0787), while to the west and south the site abuts the rear gardens of the surrounding properties

2.0 PROPOSAL

- 2.01 The application seeks permission for erection of two semi-detached chalet bungalows. These would be of a very similar design to those currently under construction on the adjacent plot, and would measure approximately 9.8m wide x 11.7m deep x 6.4m high.
- 2.02 The dwellings would be situated a minimum of 21m from the rear of 47 High Street (to the front), and 16m from the rear of 25 to 29 Bramley Close (to the rear).
- 2.03 Internally each building will provide two bedrooms (served by a dormer window to the front and high level roof lights to the rear) and a bathroom within the roof space, and lounge, kitchen and WC at ground floor.

- 2.04 Each property will have a garden measuring approximately 8m deep x 5.8m wide, and four parking spaces, turning area, and bin storage will be provided to the front. Vehicle access is via an access track measuring 2.2m wide running along the side of 46 High Street.
- 2.05 Members should note that, as in the table above, the design of the proposed dwellings is almost identical to those approved under SW/10/0732.

3.0 SUMMARY INFORMATION

	Proposed
Approximate Ridge Height (m)	6.4m
Approximate Eaves Height (m)	2.4m
Approximate Depth (m)	11.7m
Approximate Width (m)	9.8m
No. of Storeys	1 (with rooms in roof)

4.0 PLANNING CONSTRAINTS

The site lies within the built up area boundary and an area of archaeological potential.

5.0 POLICY AND OTHER CONSIDERATIONS

Policies SP1, SP4, E1, E19, H2 and T3 of the Swale Borough Local Plan 2008 are relevant, and encourage the provision of new residential development within existing built up areas subject to there being no over-riding amenity concerns.

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG) are also both relevant in terms of encouraging sustainable housing development of a high standard of design and without serious amenity impacts.

The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is relevant in terms of setting minimum separation distances between properties. It advises that there should be at least 21m rear-to-rear between dwellings in order to minimise the potential for overlooking.

6.0 LOCAL REPRESENTATIONS

A site notice was displayed on the High Street, and letters were sent to neighbouring residents.

One letter has been received from a local resident, commenting that the buildings had potential to house bats prior to demolition, and that the loss of trees on site would remove a green buffer between Bramley Way and the High Street.

7.0 CONSULTATIONS

7.01 Eastchurch Parish Council object on the grounds that:

“The application is over intensive use of the site.
The vehicular access opposite a primary school is inadequate.”

7.02 Kent Highway Services have no objection subject to the standard condition listed below, and comment:

“As per the previously approved scheme, SW/10/0732, I accept the use of the access to serve this development, as the proposal does not involve the creation of a new vehicular access. The access is already in existence, and has served the former commercial operations that took place on this site. The use of the access is therefore already established, and the amount of activity associated between the previous commercial and proposed residential use would not be significantly different.”

7.03 Southern Water has no objection subject to the informative below.

7.04 The Environmental Health manager has no objection subject to the standard condition listed below.

8.0 BACKGROUND PAPERS AND PLANS

The application is accompanied by a site location plan, existing and proposed layouts, and proposed elevations.

9.0 APPRAISAL

Principle

9.01 The application site is within the built up area boundary and close to local shops, services and public transport links, and the principle of residential development is therefore acceptable in accordance with the above local and national policies. I would also reiterate that planning permission was granted for the erection of two dwellings (of a similar design) in 2010 under reference SW/10/0732.

9.02 I am therefore firmly of the opinion that permission could not justifiably be refused on principle, as per the Parish Council’s objection – such a refusal would be difficult to defend at an appeal given the sites history.

Impact on visual amenities/landscape

- 9.03 Given the mixed layout and pattern of this part of the village, I do not believe that proposed development would be noticeably out of character or would undermine the character and setting of the village, particularly given the similar dwellings currently under construction on the adjacent plot. It should also be noted that the units will be to the rear of existing properties, and thus not readily prominent within views from the road.
- 9.04 Furthermore I believe that the proposed dwellings themselves are of an acceptable scale, design and appearance. I have recommended a materials condition to ensure that the external appearance of the buildings is also of a suitable standard and appropriate to the local area.

Residential Amenity

- 9.05 The front of the proposed dwellings would be a minimum of 21m from the rear of 46 High Street, with a minimum of 16m rear-to-rear with the properties on Bramley Way. The rear of the proposed dwellings will be served by roof lights at first floor, which will be set at a high level to prevent overlooking.
- 9.06 The proposal therefore accords with the advice of the Council's adopted SPG, and I have no serious concerns in regards to privacy or overlooking of existing and future residents.
- 9.07 The dwellings themselves each feature internal floor space sufficient to provide a good standard of living, and adequately sized gardens. I therefore believe the development would provide a good standard of amenity for future occupants.
- 9.08 I note the potential for disturbance to residents of 46 High Street from vehicles using the side access running the length of the common boundary. However, I note that the access previously served commercial workshops and, as per KHS comments, the levels of traffic generated would not be significantly different. I also note the gap to the side of no.46 and, therefore, do not have any serious concerns in this regard.

Highways

- 9.09 Kent Highway Services have no objection, as detailed above, noting that the level of traffic on the access road – which is existing – would likely not be significantly different from when the site was in use as workshops.
- 9.10 The development will also provide off-road parking and turning in accordance with current adopted Kent Vehicle Parking Standards.
- 9.11 Whilst I note the Parish Council's objection the scheme is, in my view, acceptable in highway terms.

Landscaping

- 9.12 The submitted drawings show planting to the front of the new houses, and rear gardens laid to lawn and this is acceptable. I have recommended standard

landscaping conditions which will ensure that these areas are planted and maintained.

Other matters

- 9.13 I note local concern in relation to bats within the former workshops. However the buildings had already been demolished by the time the letter was received, and there is therefore no potential to investigate such claims.
- 9.14 Demolition of the previous buildings was covered by the consent granted in 2010, and I am of the opinion that there is little the Council could reasonably do (such as request a retrospective application) in this regard.

10.0 CONCLUSION

- 10.01 Taking the above into account I consider the proposed development to be acceptable and in accordance with current adopted policies and guidance. I also note the previous approval for a similar development on the site, which weighs heavily in favour of this proposal.
- 10.02 I therefore recommend that planning permission should be granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions

CONDITIONS to include

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Grounds: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) No development shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development as approved.

Grounds: In the interest of promoting energy efficiency and sustainable development.

- (3) Prior to the commencement of development, details of the external finishing materials to be used on the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details.

Grounds: In the interest of visual amenity.

- (4) Notwithstanding the provisions of Class A, Part 2, Schedule 2, of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any order revoking and re-enacting that Order, no fences, gates walls or other means of enclosure shall be erected within the application site without the prior written approval of the Local Planning Authority.

Grounds: In the interests of residential amenity.

- (5) No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the District Planning Authority, comprising:

- a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be approved by the District Planning Authority prior to any intrusive investigations commencing on site.
- b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

Grounds: To ensure any contaminated land is adequately dealt with.

- (6) The commencement of the development shall not take place until a programme for the suppression of dust during the demolition of the workshop and the construction of the development has been submitted to and approved in writing by the District Planning Authority. The measures approved shall be employed throughout the period of construction unless any variation has been approved by the District Planning Authority.

Grounds: In the interests of residential amenity.

- (7) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 - 1900 hours, Saturdays 0730 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Grounds: In the interests of residential amenity.

- (8) During construction of the development adequate space shall be provided on site, in a position previously agreed by the Local Planning Authority to enable all employees and contractors vehicles to park, load and off load and turn within the site.

Grounds: In the interests of highway safety and convenience.

- (9) No asbestos associated with the demolition of the existing buildings shall remain on the site.

Grounds: In the interests of appropriate contamination control.

- (10) Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the District Planning Authority shall be carried out in full (or in phases as agreed in writing by the District Planning Authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the

additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the District Planning Authority.

Grounds: To ensure any contaminated land is adequately dealt with.

- (11) Upon completion of the works identified in the contaminated land assessment, and before any part or agreed phase of the development is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

Grounds: To ensure any contaminated land is adequately dealt with.

- (12) The vehicle parking and turning spaces shown on drawing 14-05-10, received 2 May 2014, shall be provided, surfaced and drained prior to the first occupation of any dwelling hereby permitted, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Grounds: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity.

- (13) No dwelling shall be occupied until space has been laid out within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority for 2 cycles to be securely stored and sheltered.

Grounds: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

- (14) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which should be native species where possible and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Grounds: In the interests of the visual amenities of the area.

- (15) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Grounds: In the interests of the visual amenities of the area.

- (16) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Grounds: In the interests of the visual amenities of the area.

- (17) No further windows, doors, voids or other openings shall be made or inserted into the southern roof slope of the dwellings hereby permitted.

Grounds: In the interest of minimising the potential for overlooking of the residential properties to the rear of the application site.

PART 3

Applications for which **REFUSAL** is recommended.

3.1 SW/14/0088		(Case09198)		Sittingbourne	
APPLICATION PROPOSAL					
Variation of condition (7) of SW/09/0314, to allow speedway racing between 1500 and 2200 hours on weekdays and bank holidays					
ADDRESS Central Park Stadium, Church Road, Sittingbourne					
RECOMMENDATION REFUSE					
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL					
Whilst consideration has been given to the benefits the use brings to the town and the wider Borough, the use of the site for the holding of league and cup speedway meetings beyond the current finish time of 8:30pm would give rise to demonstrable and substantial harm to the residential amenities of nearby residents by virtue of noise and disturbance late into the evening such that planning permission should be refused					
REASON FOR REFERRAL TO COMMITTEE					
Significance					
WARD Murston		PARISH/TOWN COUNCIL N/A		APPLICANT Cearnsport Ltd AGENT Robinson Escott Planning	
DECISION DUE DATE 29/04/14		PUBLICITY EXPIRY DATE 14/04/14		OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):					
App No	Proposal			Decision	Date
SW/08/0962	This application sought permanent planning permission for the use of the site for the holding of speedway racing. My officers recommended that planning permission should be refused on the basis of likely harm to residential amenity by virtue of noise and disturbance. Members though resolved to grant temporary planning permission, to allow the use of the site on a trial basis only, for a period of a single season. The permission granted required the erection of an acoustic fence (Members may recall that the fence which has been constructed does not comply with the approved details), and also sets a limit on the number of races and the start and finish times for meetings, in accordance with the details			GRANT	16/1/09

	and specific times submitted with the application. 17 races are permitted per meeting, meetings can take place once per week, and start and finish times are: on weekdays between 1700 & 2030 hours only, with warming up of bikes permitted from 1630, and from 1500 to 1800 hours on Bank Holiday Mondays, with warming up of bikes from 1430 hours.		
SW/09/0274	This application sought to amend the design of the acoustic fence approved under SW/08/0962. This application was approved. The fence as constructed does not comply with these approved details either.	GRANT	11/09/09
SW/09/0275	This application sought to vary condition (2) of SW/08/0962, in order to allow a minimum of 7 seasons speedway use. The application made clear that a permanent planning permission was being sought and that 7 years would be the minimum the applicant considered would enable the use to be viable. The application was not originally accompanied by any viability information. Some information in this regard was submitted at a late stage during the consideration of the application. However – it was not considered sufficient to justify the grant of a 7 year temporary planning permission, nor the grant of a permanent planning permission.	REFUSED	17/08/09
SW/09/0313	This application sought to vary condition (7) of SW/08/0962, in order to allow the warming up of speedway bikes at 2pm rather than at 2:30pm as specified in the original permission.	REFUSED	28/08/09
SW/09/0314	The application sought to vary condition (5) of SW/08/0962, in order to allow meetings to be held once per week only on any weekday, rather than on either a Monday, Tuesday or a Wednesday.	GRANT	13/10/09
	The applicant submitted appeals against the refusal of SW/09/0275 and the approval (including the disputed condition restricting use to one season		

	only) of SW/09/0314. At the appeal, the applicant produced detailed viability information, which the Inspector considered in coming to his decision to allow both appeals and grant temporary planning permission for four years use of the stadium. A copy of the appeal decision is attached as an appendix A to this report.		
	The use commenced last year, and the use may therefore continue, under the terms of the temporary planning permission granted on appeal, until the end of the 2016 season.		

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Central Park Stadium lies within the built up area of Sittingbourne, on the fringes of the Eurolink industrial estate, and adjacent to the East Hall Farm industrial and residential development. Murston lies to the south of the site. An established sport venue, Central Park Stadium is used successfully for greyhound racing and, currently, for league speedway racing. A large parking area is located to the front of the building. Pit areas for the speedway bikes and riders etc are located to the north east of the site. A substantial acoustic fence has been erected along the southern boundary of the site, in order to try and prevent substantial noise and disturbance to the dwellings in the vicinity, the closest of which lies approximately 150 metres to the south.

2.0 PROPOSAL

- 2.01 This application seeks to vary condition (7) of the planning permission granted on appeal under reference SW/09/0314, in order to extend the start and finish time for racing.
- 2.02 The restriction as it stands allows for racing on weekdays to take place between 1700 & 2030 hours only, with warming up of bikes permitted from 1630, and from 1500 to 1800 hours on Bank Holiday Mondays, with warming up of bikes from 1430 hours.
- 2.03 This application seeks to vary those times, to allow use of the site between 1500 and 2200 hours, regardless of whether the day is a bank holiday or not.

2.04 The application is accompanied by a noise report, including measurements taken in a supporting letter, which is attached at appendix B to this report. An extract from the letter is as follows:

The introduction of speedway racing was conditional upon the construction of an acoustic barrier around the southern part of the stadium in order to provide acoustic protection to the residents in the nearest streets such as Hugh Price Close and Oak Road.

The construction of this barrier has enabled an empirical assessment to be undertaken of its effectiveness in limiting noise emissions from the stadium whilst racing is in progress. The conclusions of this investigation are set out in a report dated 4 July 2013 prepared by Hill Engineering Consultants. The analysis concluded that the noise barrier is operating effectively so as to safeguard these residents from the adverse effect of noise emissions. The Planning Committee resolved on 1st August 2013 to take no action on the basis that the acoustic fence is performing effectively. [This is incorrect. The report to Members made clear that the fence was operating as predicted – that is to say that officers were clear from the outset that it was unlikely to provide an appropriate level of attenuation and that harm to residential amenity was likely to occur. I address this point further below.]

These conditions were originally imposed for the reason that they were necessary in order to safeguard the residential amenity of the locality. Whilst this was a reasonable, and initially acceptable principle, as far as the applicant is concerned it has now been satisfactorily demonstrated that under normal conditions residential amenity is not adversely affected. At the same time the conditions impose severe restrictions on the operational flexibility of the speedway racing in terms of its ability to attract spectators, competitors and volunteers and also to attract more prestigious race meetings to make the most of the recreational and sporting opportunities which the stadium offers.

The current time limit means that it is contended by the applicant that the finish time is excessively early, meaning that the time to start the racing is also inevitably excessively early. It takes two hours to complete a meeting, so practice is started at 1830 to allow spectators, competitors and volunteers to reach the stadium. However, many find this too early in order to get to the stadium in time for such an early start. Many local spectators commute to and from London. The sport aspires to be family friendly (for example under 12s are admitted free) meaning that parents have to get home and collect their children before reaching the stadium and in practice this tends to be an impossibility for many. This adversely affects the number of people who actually come to see a race meeting.

The same difficulties apply to volunteers and race meetings are very reliant upon volunteers assistance. Volunteers are affected by adverse traffic conditions in the locality as well. For example, race meetings cannot start without an ambulance being present and it is vital that such volunteers have ample time to get to the stadium. The present early start makes this too

difficult in many situations having regard to the fact that the minimum duration of a meeting has to be two hours. Competitors also encounter difficulty particularly if they are coming from any distance away. The ability of the stadium to recruit skilled and experienced speedway riders to their team is evidence of the present difficulties. The applicants wish to have the ability to recruit more skilled and experienced racers to their team so that they can compete in more senior leagues.

Evidence from other stadia, some located in equivalent positions as Central Stadium, show that most circuits are able to start racing at 1930 with a 2200 hours finish time. This would seem entirely reasonable, given the conclusions of the noise assessment report.

In order to make the stadium an attractive venue and to ensure its financial viability, it is necessary to facilitate and attract more spectators. The stadium currently holds races on a Monday, which is not a good day of the week to attract maximum potential attendance. It is, therefore, vital that potential spectators are not deterred by inconveniently early start times. There is also an aspiration on the part of the operators to attract more prestigious events. Currently, for example, international events cannot be allocated to Central Park with the restrictions that currently exist.

- 2.05 The applicant has recently signalled that he would be willing to accept an earlier finish time of 9:30pm. I consider this below.

3.0 POLICY AND OTHER CONSIDERATIONS

- 3.01 The National Planning Policy Framework (NPPF) sets out the following:

Paragraph 109 – The Planning system should contribute to and enhance the natural and local environment by....preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability;

Paragraph 120 - To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

Paragraph 121 - Planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;

- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;

Paragraph 70 - To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
- guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
- ensure that established shops, facilities and services are able to develop and
- modernise in a way that is sustainable, and retained for the benefit of the community; and
- ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

National Planning Practice Guidance (NPPG)

The following are extracts from the NPPG on Noise:

Local planning authorities' plan-making and decision taking should 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.

At the lowest extreme, when noise is not noticeable, there is by definition no effect. As the noise exposure increases, it will cross the no observed effect level as it becomes noticeable. However, the noise has no adverse effect so long as the exposure is such that it does not cause any change in behaviour or attitude. The noise can slightly affect the acoustic character of an area but not to the extent there is a perceived 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 above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design and layout. Such decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused.

This table summarises the noise exposure hierarchy, based on the likely average response

Perception Examples of Outcome		Increasing Effect Level	Action
Not noticeable	No Effect	No Observed Effect	No specific measures required
Noticeable & not intrusive	Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but no such that there is a perceived change in the quality of life.	No Observed Adverse Effect Lowest Observed Adverse Effect Level	No specific measures required
Noticeable & intrusive	Noise can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.	Observed Adverse Effect Significant Observed Adverse Effect Level	Mitigate and reduce to a minimum
Noticeable and disruptive	The noise causes a 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.	Significant Observed Adverse Effect	Avoid
Noticeable	Extensive and regular changes	Unacceptable	

and very disruptive	in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory	Adverse Effect	Prevent
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The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation.

These factors include:

- the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night;
- for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise;
- the spectral content of the noise (ie whether or not the noise contains particular high or low frequency content) and the general character of the noise (ie whether or not the noise contains particular tonal characteristics or other particular features). The local topology and topography should also be taken into account along with the existing and, where appropriate, the planned character of the area.

How can the adverse effects of noise be mitigated?

This will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- engineering: reducing the noise generated at source and/or containing the noise generated;
- layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;
- using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
- mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

Saved Policies of the Swale Borough Local Plan 2008:

Policy E1 requires, amongst other things, for development proposals to cause no demonstrable harm to residential amenity.

Policy C1 seeks to support existing community facilities, (including sporting facilities) and states that:

The Borough Council will grant planning permission for new or improved community services and facilities. Additionally, where proposals would meet an identified local need in an accessible location, it will permit development proposals that will help maximise the use of existing public and private community services and facilities, including those that would make them available for wider public use, in locations where shortfalls in local public provision could be met.

4.0 LOCAL REPRESENTATIONS

22 letters in support of the application (including one letter from have been received, together with two petitions in support, bearing a total of 340 signatures (although some of these are duplicated between the two petitions). The comments are summarised as follows:

- This will go a long way in promoting and attracting a bigger audience in the county of Kent to the sport of speedway
- It is vital for the success of the sport at Central Park to remove the 8:30pm curfew;
- If it was permitted to start a little later it would enable more people to take advantage of it;
- More flexibility of times will be of benefit to the club and spectators;
- A depressed town like Sittingbourne needs this we have a reputation for being Swale dump full of charity shops and very little else with the most minimum of entertainment;
- New speedway exhaust regulations with the exhaust silencers mean that bikes are a lot quieter now;
- It makes sense to have a later start time as sometime people don't finish work until 6pm;
- This is a family sport with people attending from babies to OAPs. There is nothing else in Sittingbourne that families can do;
- These meetings are attended by families from all over Kent and Essex and further afield, so must be good for local businesses;
- This sport benefits the local community;
- Sittingbourne is at a disadvantage in starting and finishing earlier compared to other stadia;
- The noise is intermittent and no longer than one and a half minutes;
- The number of people who attended the speedway in its first season illustrates what a need there is for speedway in Swale;
- The speedway enterprise has been professionally and responsibly run, the curfew has been strictly adhered to and spectators have not used air horns. This demonstrates a respect for any local people possibly affected by the racing by the management and supporters of the speedway operation. Meetings run regularly, not on an ad hoc basis and are contained - therefore any potential noise can be anticipated and accommodated. Speedway is a local asset, bringing the sport back to Kent after a drought of 26 years and in my opinion you should be encouraging it.

44 letters of objection have been received. Members should be aware that, at the time the application was the subject of consultation, a flyer was distributed to local dwellings which contained incorrect information on this and the now withdrawn application SW/14/0087. It set out that races would take place every 20 minutes between 3pm and 10pm every day of the week. This is incorrect and was never the intention of the applicants. Indeed, the number of days per week in which meetings can take place is restricted to one only by the temporary planning permission granted for the use. 16 of the letters of objections specifically refer to the incorrect information in the flyer. However – they all also refer to specific impacts experienced from the use of the site for speedway since the use commenced last year. I have therefore summarised their contents (in so far as they are relevant to this proposal) below:

- Almost all of the objectors state that they have to have their windows closed and are unable to use their gardens during meetings;
- It is ruining the time spent in our home and in the summer when it is hot we have to keep our windows closed;
- The noise is repetitive and annoying;
- We were led to believe that with the noise reduction measures in place this would not happen but it is far more intrusive than we thought;
- The noise echoes down the road and rolls around the estate. It is ridiculous to expect people to put up with this;
- The area is already extremely deprived and to inflict the noise of speedway racing on the people living in the area is unfair and unjust;
- Last season, depending on the wind direction, was unbearable. We had to shut all windows and doors just to make the noise bearable, which was very uncomfortable;
- Will cause loss of value to property [Members will be aware that this is not in itself a material consideration]
- Even with double glazing shut, during summer evenings, we can still hear the noise of the speedway above our television;
- Greyhound racing operates from the site starting at 6:30pm. Why can't speedway?
- The noise causes misery for local residents;
- Noise from the bikes is very loud and intrusive, despite the acoustic fence;
- The area used to be peaceful and tranquil;
- Will greatly infringe on the human right to enjoy an acceptable level of peace and tranquillity on our property;
- Having taken part in speedway events, I am very aware of how loud they are' The proposed location is totally unacceptable because of the effect of noise pollution to residents in the vicinity;
- The speedway use means I have to leave my property to find peace and quiet elsewhere;
- The constant noise from speedway is "horrendous" and "like torture". For this to be increased, we would be like prisoners shut in our homes;
- The speedway is not beneficial to us or the community in any way;
- Will increase traffic and damage to local roads;
- Will harm air quality;
- If this is allowed it will make the lives of residents of Oak Road intolerable;
- Young children will be in bed by 8 o'clock. This will blight their lives and harm their education;
- The acoustic fence constructed is not fit for purpose;
- One writer's husband works shifts and has to be in bed by 8pm;
- When racing takes place, one writer alleges that you can't hear someone speaking to you;

- This Council doesn't care for its residents any more;
- The noise is particularly bad when the wind is from the north, which it was most of last season;
- We have to put up with the warm up laps and revving of engines prior to the race, not just the race itself;
- My house backs on to the playing field behind the stadium and when the races are on the noise is terrible and I know it's 3 minutes at a time but for that 3 minutes you can't hear yourself think let alone speak to your family;
- The acoustic fence does nothing to stop the noise;
- Any more than 8:30pm once per week would be cruel, unkind and unacceptable;
- Will cause light pollution from late night floodlights;

5.0 CONSULTATIONS

5.01 Kent Highway Services do not raise objection;

5.02 The Environmental Health Manager raises objection, and comments as follows:

"The application states that the acoustic barrier is operating effectively and the report accompanying it concludes that it does not need to be raised or modified. This is based on an empirical level in the WHO evening guidelines relating to 55 dB(A) Leq. It is not considered appropriate to adopt the guidelines in this situation and this argument was advanced at the Appeal and resulted in both parties agreeing to differ. However, it suits the applicant's argument to use this guideline.

The Council took the view that the actual noise level heard by residents should be compared with the background noise level without racing. Looking at an average LAeq level, whether of individual races lasting just over a minute or over a 15 minute period involving a few races, or all evening; the difference is marked.

When comparing the relative levels with the maximum level created by speedway bikes, the difference becomes even more substantial.

This can be explained by looking at noise levels taken on 3rd June 2013 during a race meeting. The applicant's consultant Mr Hill measured a background noise level of 42 dB(A), a 15 minute LAeq level of 56.5 dB and a maximum level of 82 dB(A) in the time period 18:45 – 19:00 hours at Hugh Price Close.

This gives a substantial difference above the normal background of 14.5 dB(A) over 15 minutes and 40 dB(A) resulting from revving and accelerating peaks. These peaks are the most noticeable impact and are heard clearly inside homes.

Between 21:00 and 21:15 hours, Mr Hill confirmed that the background level had dropped to 35 dB(A), adding another 7 dB to the difference above.

The department has done noise monitoring during some race meetings in 2013 and the levels above broadly agree with those measured.

Therefore after 21:00 hours the average noise from racing over 15 minutes will be a massive 21 dB (A) and the peaks will sound much louder with a difference of 47 dB(A).

To put this in context, because noise measurements are logarithmic, the human ear can only detect a difference in sound levels of 2 to 3 dB(A) higher or lower. An increase of 5dB(A) is certainly noticeable, but a difference of 10 dB(A) to the ear equates to doubling the loudness. As previously stated the noise in reality is considerably higher.

The acoustic barrier is not particularly effective as in northerly wind conditions noise is taken straight over the top of the barrier to the nearby houses and beyond. Because of the distance from the moving bikes to the barrier and then the distance to the houses the barrier is ineffective for the peak noises. Acoustic barriers work best when the noise source is close to the barrier and linear as in the case of motorways. The barrier at Central Park is at the southern end and is only effective when the bikes are at that end of the track not when the bikes are accelerating away and being ridden around the northern end.

A finish time of 22:00 hours is too late into the evening and noise will undoubtedly adversely affect a large number of families in their homes at that time of night. The noise from speedway bikes is clearly audible inside the nearest resident's homes with the windows closed. We have considered the noise climate generated by a race meeting and conclude that retaining the current finish time of 20:30 hours is crucial to ensuring the level of noise disturbance does not become unreasonably excessive."

In response to an assertion from the agent that tracks in similar locations elsewhere in the UK operate without complaint until later into the evening, the Environmental Health Manager has researched other a number of other UK speedway tracks and advises as follows:

Leicester Lions, Leicester Lions Speedway, Leicester

Planning permission granted in 2009, contrary to Environmental Health and Planning Officer recommendation. Hours of use – 8am -10:30pm. The Environmental Health Officers have confirmed that they receive a significant number of complaints, although some of these relate to the use of the site for dirt bikes, which takes place during the day. Speedway use lasts into the evening, and the EHOs consider the use is harmful to amenity.

Plymouth Devils, St Boniface Arena, Plymouth

Planning permission to expand hours of use and days of use for speedway granted in 2013, contrary to Environmental Health Officer recommendation, allowing 7:15pm-9:45pm on Thursday, Friday or Saturday, and 6pm - 8:30pm on Bank Holidays. The Environmental Health Officers have received a large volume of complaints relating to noise.

Lakeside Hammers, Arena Essex Raceway

Permission granted for the use in 1976. Condition relating to noise rendered unenforceable by significant noise sources introduced to the area since then (the M25, A13 and flight path to London City Airport). Speedway tends to occur once per fortnight and although 100 complaints have been received relating to the use of the site, not all of these relate to speedway and most relate to events which have gone beyond 10pm.

Eastbourne Eagles, Arlington Stadium, Hailsham

Site has been in operation since 1929, and is remote from housing. Noise can be heard in the town, but is distant. No noise complaints.

Poole Speedway, The Stadium, Poole

Established speedway use, in operation for 50 years, in town centre location close to dwellings. Events take place once per week and finish at 10pm. Very few complaints received. Environmental Health Officer at Poole advises that the speedway is long established and part of Poole town culture, so very few complaints received. Officers have visited residential properties that back on to the stadium and the noise from the speedway can be heard in gardens but not inside properties with the windows shut.

Redcar Bears, South Tees Motorsports Park, Middlesbrough

Approved in 2005, races once per week from 7pm-10pm. 6 hours practice per week. Complaints have been received by the Environmental Health team.

6.0 APPRAISAL

- 6.01 Members will note that Kent Highway Services do not raise objection. I concur that the additional hours of use requested do not give rise to harm to highway safety and convenience and as such I do not recommend that planning permission be refused on such a basis. Equally, Members will be aware that the loss of value to property is not a material consideration to be afforded weight here.
- 6.02 For the sake of clarity, whilst Swale Borough Council owns the Central Park Stadium site, Members cannot afford this any weight whatsoever in considering this application. The proposed extension to the hours of use of the stadium should be considered on its own merits, having regard to planning policy and relevant material considerations.
- 6.03 The key issues to be considered here are the implications for the extension of hours of use in respect of residential amenity, and the potential benefits to be derived from approving this scheme.

Residential Amenity

- 6.04 Whilst the application seeks to widen the hours of use that speedway racing would be permitted at the site to 3pm-10pm regardless of whether the day in question is a bank holiday or a weekday, such a use would still be restricted as to the number of races which could take place – up to a maximum of 17 per meeting, and one meeting only per week. It is extremely unlikely, if this application were to be approved, that racing would actually start at 3pm and not finish until 10pm. The key issue here is not in my view, the earlier start times during the week, but the later start finish times on weekdays and bank holidays. It is this element of the proposal which would have an impact on residential amenity, and it is this which Members should give careful consideration to here.

- 6.05 It is clear to me from the representations received, and from the comments of the Environmental Health Manager, that the use of the site within the current time limits does cause harm to residential amenity. Having regard to the criteria set out in the policy section above, in my view the use of the site up to 8:30pm is likely to give rise to, as a minimum, noticeable and intrusive noise. The representations received from local residents, with specific regard to their behaviour during meetings at present,, together with the comments of the Environmental Health Manager set out that the noise generated is sufficient to lead to a change in the behaviour of local residents – the representations suggest that residents turn up the volume of their television, speak more loudly, have to close windows for some of the time because of the noise and use their gardens less if at all whilst the speedway takes place. Furthermore, the type of noise and its intermittent nature exacerbates the impact it has.
- 6.06 Government planning guidance in such circumstances is clear that such noise should be mitigated against and reduced to a minimum. In my view, without prejudice to any future application to make this temporary planning permission permanent, it is arguable that the restrictions in place relating to hours of use, together with the other restrictions relating to days of the week and the number of races per meeting, go some way to mitigating against this noise. I am firmly of the view that increasing the hours in which speedway racing could take place would cause demonstrable and significant harm to residential amenity. An increase in use to 10pm would be likely, in my view, to lead to noise levels becoming noticeable and disruptive. Government guidance, as set out above, is that such situations should be avoided.
- 6.07 The restriction on times of use was clearly uppermost in the Inspector's mind at the appeal, where he set out at paragraph 19, as part of his considerations in favour of the grant of permission, that "It is also the case that each race would be short in duration, that there would only be a limited number of meetings during the year and that the timing of the meetings, particularly the finish times for the evening meetings, would be such as to minimise disturbance at what are generally accepted as the most sensitive times of the day" [my emphasis.]
- 6.08 The Inspector thus gave some weight to the reduction in potential disturbance from noise due to the comparatively early start and finish times, when considering whether to grant an extended trial period here.
- 6.09 Members should be clear that the start and finish times for racing at the site are those suggested by the applicant under his original application. Furthermore, his case at the appeal, based on the viability of the use over time, was made and accepted by the Inspector on the basis of the use being carried out within the specified hours. No appeal was made against these hours of use.

- 6.10 Members should equally be clear that this application comes part of the way through the four year trial period, which was granted only so that the Council could assess the noise impact on local residents. Officers have never considered it likely that the use of the site for speedway racing could be carried out without some harm to the amenities of local residents by virtue of noise and disturbance, and the empirical evidence collected by the Environmental Health Manager, together with anecdotal evidence from local residents, suggests that this is the case.
- 6.11 As a trial period, this temporary planning permission is only granted as a means to assess whether permanent permission should, if the applicant seeks it, be granted in future, having specific regard to the impacts considered possible. The applicant has not argued that the refusal of permission to hold events later into the evening would prevent this trial period taking place. Equally, it is evident to me from the information already gathered during the first season's racing, that the speedway meetings cause some harm to residential amenity and that there is certainly enough empirical evidence to suggest that it is extremely likely that if the use were to begin later and extend later into the evening that the impact on the living conditions of local residents would be more pronounced, bearing in mind the late time, the reduction in background noise levels, and the fact that most people will be looking to go to bed around that time.
- 6.12 I have given consideration to the stadia referred to by the Environmental Health Manager. It appears from the details provided that, where a speedway use is established over some significant time, that there is unlikely to be significant complaints from local residents. As set out in relation to the Poole stadium, it becomes part of the local culture and is not seen as intrusive. However – where such uses are new, such as Plymouth and Leicester, significant numbers of complaints have been received. Notwithstanding that this seems to run counter to the agent's suggestion that similar stadia in similar locations with finish times of 10pm do not give rise to complaints, it seems to me to be an inherently unreliable means of gauging potential harm. Each stadium is different, in a different location both topographically and relative to sensitive uses, and the reaction of local residents is likely to be different dependent on how long running such a use is. The evidence in relation to noise as set out above is a more reliable means of gauging the impact of this particular use of this particular site.
- 6.13 I therefore conclude on the issue of noise and disturbance that the proposed extension of the hours of use would give rise to significant and intrusive noise at a very quiet period of the evening, which would be very likely to harm the living conditions of residents nearby. Whilst the applicant has subsequently suggested that a 9:30pm finish time could be acceptable, the Environmental Health Manager is clear that any increase over and above the current 8:30pm curfew on weekdays, and 6pm on Bank Holidays is likely to give rise to unacceptable noise and disturbance.

Benefits of the proposal

- 6.14 The application does not make explicit what benefits to the local economy would flow from this proposal. Nonetheless it is possible that the increase in hours of use would provide for some limited additional employment at the site, and that the later start may encourage some fans to go to Sittingbourne town centre either before (although this seems unlikely bearing in mind the principal argument made by the agent in favour of the proposal) or after racing has finished. This will provide some uplift to the local economy such that Members may have regard to it in reaching their decision on this application.
- 6.15 There are clear benefits to the wider community both within and beyond Swale in the provision of a well used facility such as this. In general terms, support should be given in order to maximise the potential for recreational facilities and spectator sports to reach as wide an audience as possible. In particular, I have some sympathy with the notion that early start times in particular do limit the potential for spectators to make their way to the site. Members are entitled to give this matter some weight.
- 6.16 I give little weight to the agent's assertion that it is difficult to attract sufficient volunteers to be able to stage a meeting (as set out in section 2 above.) No evidence has been provided to support the assertion that race meetings have been adversely affected by a lack of volunteer staff.

Balancing Exercise

- 6.17 In balancing the harm against the benefits, Members will need to consider whether the significant likely harm identified by the Environmental Health Manager, and as expressed in anecdotal evidence from local residents, is outweighed by the wider benefits of approving an extension of time, namely making the use of the stadium for speedway racing more accessible to spectators. In reaching a decision, Members are not necessarily restricted to consideration only of the 3pm – 10pm time the applicant originally requested, or indeed for it to apply to the remaining two or so years of the temporary planning permission which still remain. It is open to Members to allow a finish time, in line with that recently suggested by the applicant, of 9:30pm and, for example, to limit this to the remainder of this season, in order that the effects be monitored over the remaining fixtures, or for the first few fixtures of the next season or both.
- 6.18 I would not though recommend such an approach as, firstly, the evidence of the Environmental Health Manager strongly suggests that this would be harmful to residential amenity, and secondly, as I remain wholly unconvinced that the benefits of approving this application are outweighed by the harm that would result to the living conditions of residents in the vicinity of the site.

6.19 I do give weight to the representations received in support of this application, and in particular, the notion that a later start and correspondingly later finish time would attract more spectators. Equally, I am clear that the speedway racing takes place once per week only, and that the number of races is limited, the warm up times are limited and that racing itself takes place over a comparatively short time.

6.20 However – in balancing the likely harm against the likely benefits, I can only conclude that the benefits of this scheme would not be so significant as to outweigh the very significant harm which would certainly arise to the living conditions of nearby residents.

7.0 CONCLUSION

7.01 Given the above, whilst I am mindful that there would be some benefit to be derived from a later start and finish time to speedway racing at the Central Park Stadium, I am firmly of the view that any extension of the hours of use later into the evening would cause substantial harm to residential amenity, such that this application should be refused.

8.0 RECOMMENDATION – REFUSE for following reasons:

1) Whilst consideration has been given to the benefits the use brings to the town and the wider Borough, and the benefits which would arise as the result of the proposal, the use of the site for the holding of league and cup speedway meetings beyond the current finish time of 8:30pm would give rise to demonstrable and substantial harm to the living conditions of nearby residents by virtue of noise and disturbance late into the evening. The proposal is contrary to Policy E1 of the Swale Borough Local Plan 2008 and to the provisions of the National Planning Policy in relation to Noise.

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

1) The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict.

- 2) The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.
- 3) It is noted that the applicant/agent did not engage in any formal pre-application discussions.



Appeal Decisions

Inquiry held on 16 February 2010 and
27-29 April 2010

Site visits made on 16 February 2010
and 29 April 2010

by **L Rodgers** BEng CEng MICE MBA

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

The Planning Inspectorate
4/11 Eagle Wing
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Decision date:
25 May 2010

Appeal A Ref: APP/V2255/A/09/2114712

**Central Park Stadium, Church Road, Eurolink, Sittingbourne, Kent
ME10 3SB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Cearnsport Ltd against the decision of Swale Borough Council.
- The application Ref SW/09/0275, dated 3 April 2009, was refused by notice dated 17 August 2009.
- The application sought planning permission for a part change of use of the existing sports stadium to permit the holding of speedway meetings, including the installation of a clinker track surface, provision of a covered 'warm up' area and pits and erection of an acoustic fence around part of the perimeter without complying with a condition attached to planning permission Ref SW/08/0962, dated 16 January 2009.
- The condition in dispute is No 2 which states that: The use of the site for speedway shall cease on or before 31st October in the calendar year of races first taking place.
- The reason given for the condition is: In order to allow the District Planning Authority to reassess the impact of the use, having regard to the residential amenities of the occupiers of nearby dwellings, and in pursuance of Policies E1 and E2 of the Swale Borough Local Plan 2008.

Appeal B Ref: APP/V2255/A/09/2115416

**Central Park Stadium, Church Road, Eurolink, Sittingbourne, Kent
ME10 3SB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Cearnsport Ltd against the decision of Swale Borough Council.
- The application dated 9 April 2009, was approved on 13 October 2009 and planning permission was granted subject to conditions.
- The development permitted is a variation of condition (5) of SW/08/0962 to allow speedway motorcycle racing to take place once per week between Mondays and Fridays, as opposed to between Mondays and Wednesdays.
- The condition in dispute is No 2 which states that: The use of the site for speedway shall cease on or before 31st October in the calendar year of races first taking place.
- The reason given for the condition is: In order to allow the District Planning Authority to reassess the impact of the use, having regard to the residential amenities of the occupiers of nearby dwellings, and in pursuance of Policies E1 and E2 of the Swale Borough Local Plan 2008.

SWALE BOROUGH COUNCIL

20 MAY 2010

PLANNING SERVICES

Application for costs

1. At the Inquiry an application for costs was made in respect of both appeals by Cearnsport Ltd against Swale Borough Council. This application is the subject of a separate Decision letter.

Decisions

2. I allow Appeal A and grant planning permission for a part change of use of the existing sports stadium to permit the holding of speedway meetings including the installation of a clinker track surface, provision of a covered 'warm up' area and pits and erection of an acoustic fence around part of the perimeter at Central Park Stadium, Church Road, Eurolink, Sittingbourne, Kent ME10 3SB in accordance with the application Ref SW/09/0275, dated 3 April 2009, without compliance with condition numbers 2, 4 and 5 previously imposed on planning permission Ref SW/08/0962, dated 16 January 2009 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
 - (2) The use of the site for speedway shall cease within four years of the date of the first race taking place. The local planning authority shall be notified of the date of the first race in accordance with the arrangements laid out in condition (5).
 - (4) The acoustic fencing approved under Ref SW/09/0274 shall be constructed in full prior to the first use of the site for speedway and shall thereafter be retained until use of the site for speedway has ceased.
 - (5) Speedway motorcycle racing shall take place only once per week between Mondays and Fridays inclusive between 1st March and 31st October plus four Bank Holiday Monday afternoon meetings and the dates and times of races shall be provided on the stadium website, published in the local press, made available at the application site and provided in writing to the local planning authority, all at least six weeks prior to their taking place.
3. I allow Appeal B, and vary the planning permission Ref SW/09/0314 for a part change of use of the existing sports stadium to permit the holding of speedway meetings including the installation of a clinker track surface, provision of a covered 'warm up' area and pits and erection of an acoustic fence around part of the perimeter at Central Park Stadium, Church Road, Eurolink, Sittingbourne, Kent ME10 3SB granted on 13 October 2009 by Swale Borough Council, deleting conditions 2 & 4 and substituting for them the following conditions:
 - (2) The use of the site for speedway shall cease within four years of the date of the first race taking place. The local planning authority shall be notified of the date of the first race in accordance with the arrangements laid out in condition (5).
 - (4) The acoustic fencing approved under Ref SW/09/0274 shall be constructed in full prior to the first use of the site for speedway and shall thereafter be retained until use of the site for speedway has ceased.

Main issue

4. Although there are two appeals, both are in respect of a common condition. I therefore consider there to be only one main issue; whether the condition in dispute is necessary in the interests of the living conditions of local residents and meets the other tests of Circular 11/95.

Reasons

The necessity of the condition

5. The Appellant accepted at the inquiry that speedway is an inherently noisy sport. It was also accepted that the residential development near to the stadium is noise sensitive and that the noise climate at the nearest properties is likely to change as a result of the proposed use.
6. According to the Statement of Common Ground (SOCG) on noise, the nearest noise sensitive residential properties are those to the south of the stadium at Hugh Price Close and Oak Road and the currently uninhabited and dilapidated property at Mere Court to the east. With the acoustic barrier in place, the Appellant predicts a speedway noise level of some 57dB $L_{Aeq,1h}$ at Mere Court and around 52dB $L_{Aeq,1h}$ at Hugh Price Close with maximum noise levels no greater than 75dB $L_{Amax,fast}$. The Appellant suggests that, having reference to the British Speedway Promoters' Association (BSPA) adopted criterion, these noise levels are unlikely to give rise to justifiable complaints from local residents.
7. In predicting the likely noise levels above, the calculations not only assumed that the noise barrier would be in place but that the noise source would be in the centre of the stadium. Initially, the Council queried the validity of assuming that the noise source would be in the centre of the stadium, pointing out that as the bikes moved further away from the barrier, it would become less effective. However, following further work during the course of the inquiry (Document 18), the Council accepted that the increased attenuation over distance would compensate for any reduction in the effectiveness of the barrier. The reverse would be true in that the barrier would be more effective when the bikes were at their closest. Consequently, it was agreed by the Council that there would be similar noise levels at Hugh Price Close and Oak Road irrespective of the bike's position on the track. Nevertheless, the Council remains concerned that the submitted evidence is insufficient to demonstrate that the predicted noise and disturbance would be at an acceptable level.
8. I shall turn first to the effect on the properties at Hugh Price Close and Oak Road which, based on the submitted evidence, would be similar. The ambient evening noise levels at Hugh Price Close were measured at around 42-45dB L_{A90} , not untypical for a suburban area. I found on my visits that the area was generally quiet. The predicted speedway noise level would be some 7-10 dB above the ambient noise levels and, if one were to apply a BS 4142: 1997 (Method for rating industrial noise affecting mixed residential and industrial areas) type methodology, would be likely to lead to some complaints. This would be particularly so if a 5 dB correction was to be applied to account for the intermittent nature of the noise.

SWALE BOROUGH COUNCIL

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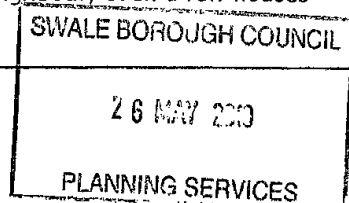
26 MAY 2010

PLANNING SERVICES

9. However, the Appellant argues that experience elsewhere, reflected in the 2003 report commissioned by the BSPA, '*Preliminary Assessment of Environmental Noise from Speedway in the UK*', suggests that an energy equivalent noise level of between 15 and 18 dB(A) above the background noise level would be an appropriate criteria for determining whether the noise from speedway would be acceptable. The Appellant also claims further support from the *Code of Practice on Environmental Noise Control at Concerts* (The Noise Council 1995). This, it is pointed out, includes guidance stating that the Music Noise Level should not exceed the background noise level by more than 15dB(A) over a 15 minute period. Whilst the Appellant acknowledges that it would be strictly incorrect to apply criteria for music noise to speedway noise, it is nevertheless suggested that an excess of greater than 10 dB(A) would be acceptable for a short-term, occasional, noisy event.
10. I find none of these arguments conclusive. The Council's view is that BS 4142 does not sit comfortably with the analysis of speedway noise and I agree that looking at an $L_{Aeq,1h}$ figure would not be representative of the characteristics of speedway where parcels of high activity are followed by relative lulls. A BS4142 type analysis may therefore underestimate the potential for annoyance and it is possible that justified complaints could arise at lower excess noise levels than envisaged by BS 4142. However, and conversely, BS 4142 is an accepted method of assessing the noise from fixed plant where any potential annoyance may extend over a much longer period than would be the case with speedway. I therefore consider it highly questionable as to whether BS 4142 can be directly applied to speedway and using a BS 4142 type of analysis has the potential to underestimate, or indeed overestimate, any harm.
11. Turning to the BSPA report, this has the advantage that it relates directly to speedway. However, it has never been turned into a code of practice and has therefore not undergone the scrutiny normally associated with that process. It remains a private report commissioned by the Promoters' Association and for these reasons can, in my view, attract no more than moderate weight. In any event, whilst the report shows that, at certain stadia, levels of speedway noise greater than 17 dB(A) over the background noise have not attracted complaints specific to bike noise, it also shows that at other stadia, lower levels of excess noise have resulted in a range of complaints. The conclusion of the report that an "energy equivalent noise level of between 15 and 18 dB(A) above the background noise level would be an appropriate criteria for determining whether the noise from speedway would be acceptable" seems, on this basis, open to question.
12. In respect of the guidelines in the *Code of Practice on Environmental Noise Control at Concerts*, these are concerned with far fewer events than would be likely here. Although there is some ambiguity about the number of speedway events likely to take place at Central Park Stadium in any one season, the Council's analysis of the potential number of race meetings shows that, within the framework prescribed by other conditions on the existing permissions, up to 39 meetings could be held during 2010. This far exceeds the 4-12 concert days per calendar year per venue referred to in the guidelines. However, compared to the noise from speedway, the noise associated with concerts is likely to be more sustained throughout the course of the event. It would in any

case have different characteristics which in my view would render direct comparisons inappropriate.

13. I have also been referred to other guidance on noise matters including Minerals Planning Guidance 11: The control of noise at surface mineral workings (MPG 11). This says that, other than in certain specified circumstances (which may result in lower, or higher, limits) the daytime nominal limit at noise-sensitive properties used as dwellings should normally be 55 dB $L_{Aeq, 1h}$ (free field) where 1 h means any of the one hour periods during the defined working day. However, whilst the noise levels at Hugh Price Close and Oak Road would come within the limit, the permitted hours of speedway operation would in part fall outside the normal definition of 'daytime' and again the noise characteristics in terms of duration and pitch are likely to be significantly different between a speedway and mineral workings.
14. Although my attention was also drawn to the World Health Organisation (WHO) guidelines, the Council and Appellant agreed that whilst the noise from speedway would not increase the existing 16 hour daytime noise level by more than 1 dB(A), neither party were content with the inclusion of intermittent noise within a WHO type assessment.
15. Notwithstanding the difficulties in applying existing guidance, the Appellant argues that, based on the $L_{Aeq, 1h}$ and $L_{Amax, fast}$ analysis, the noise levels would be consistent with the existing levels in the area and would be less than in other places where speedway has been successfully introduced. However, in comparing the predicted and existing noise levels, the analysis does not specifically account for the nature of the noise, and particularly the fact that the higher levels of noise would be sustained over the duration of a race and would not simply be very short, discrete events.
16. For these reasons I consider that it is not possible to establish with any reasonable degree of certainty whether or not there would be material harm to the living conditions of local residents in Hugh Price Close and Oak Road. The fact that the BSPA report shows that complaints have arisen at a variety of noise levels suggests that much is dependent on the particular local circumstances. As was pointed out at the inquiry, it is, for instance, difficult to accurately model the effect of the range of reflective surfaces around the stadium.
17. In respect of the property at Mere Court, if one were to assume the background noise levels were similar to those at Hugh Price Close, the predicted speedway noise level of some 57dB $L_{Aeq, 1h}$ would, even adopting the conclusion of the BSPA report, be approaching the upper limit of acceptability and would be more likely to result in material harm. However, I am conscious that the property is in a dilapidated state and whilst I accept the Council's point that it could potentially be made available for occupation, I was given no substantive evidence to show that it would be restored to residential use. In these circumstances I consider that the possibility of harm to any potential future residents of Mere Court should carry only limited weight.
18. Although I accept that the proposed use could be detrimental to local residents, the Appellant points out that the speedway noise levels arising at Hugh Price Close would be significantly quieter than if a neighbour, even a few houses



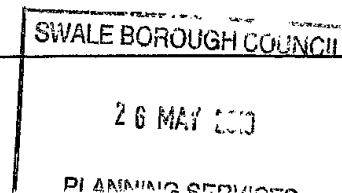
distant, were mowing a lawn with a powered lawnmower. The introduction of new silencers is likely to further reduce the predicted noise levels and, despite the Council's concerns as to whether use of the new silencers could be controlled, I note that a licensed speedway promoter is not given permission to stage speedway racing until he has signed a contract to abide by the Speedway Control Bureau (SCB) rules and regulations. Amongst other matters, these regulate the use of silencers. In these circumstances, and despite the limited testing to date, I consider it reasonable to have some regard to the benefits of the new silencers. It is also the case that each race would be short in duration, that there would be only a limited number of meetings during the year and that the timing of the meetings, particularly the finish times for the evening meetings, would be such as to minimise disturbance at what are generally accepted as the most sensitive times of the day.

19. According to the Appellant, the introduction of speedway would also help to offset the downturn in revenue from greyhound racing and would help to secure the future of the stadium. It was also said that the development would result in a contribution to the local economy. Whilst these assertions were not supported by substantive evidence, it nevertheless seems to me likely that there would be some benefits to the community.
20. However, notwithstanding any possible benefits, given that I have found that the proposed racing could be detrimental to local residents there may also be conflict with the Swale Borough Local Plan, particularly Policies E1 and E2. In these circumstances an unrestricted permission would not be appropriate. However, it is not certain that residents would suffer material harm. Circular 11/95 says that "where an application is made for a permanent permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run".
21. In this case, the number of years of racing could be controlled by condition. However, Circular 11/95 makes it clear that any such temporary permission should be reasonable having regard to the capital expenditure necessary to carry out the development and a trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or refusal is the right answer. I deal with these matters below.

Whether or not the disputed condition is reasonable and meets the other tests of Circular 11/95

22. According to the Appellant, the capital expenditure required to prepare the stadium for speedway racing would be of the order of £250,000. Although the Council questioned the make up of the figure, the Council also noted that the capital costs of recent similar projects at other stadia were comparable or slightly higher. Notwithstanding the Council's concerns it therefore seems reasonable to take a figure of £250,000 as the likely capital expenditure.
23. The forecast profit and loss account submitted by the Appellant suggests that payback would occur early in the fifth year of operation. This payback period was also questioned by the Council and in particular the inclusion of a non-cash item of £25,000 per annum for depreciation. The Council also queried other

- matters in the projection such as the assumed number of meetings (25), the lack of other income opportunities and the lack of any sponsorship income. However, even if all the Council's suggested adjustments were to be adopted, payback is shown as occurring in year two.
24. Circular 11/95 says at Paragraph 111 that a temporary permission should be reasonable having regard to the capital expenditure necessary to carry out the development and Paragraph 35 says that a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. Although the Circular does not require any permission to be long enough to pay back the investment, and any financial projections are likely to be subject to variation and uncertainty, it seems to me that the payback period is one indicator of what may be an appropriate length for any temporary permission.
25. In this case, I consider that a condition which limits racing to one season, when even a highly optimistic scenario shows payback would not occur until year two, effectively nullifies the benefit of the permission. I am also conscious that, because of its forward planning cycles, the BSPA view is that permission being granted for a single season means in reality that the stadium would never operate. Although I find no conflicts with the other tests of Circular 11/95, I therefore find the disputed conditions unreasonable.
26. Although the Appellant's figures show that payback would occur in year five I note that over 90% of the capital investment would be paid back in the first four seasons. However, whilst I agree with the Council that it would not be reasonable to include depreciation when considering the length of a temporary permission, it would nevertheless be very marginal to suggest that payback would occur in year three. Although the Council's view was that there were other income opportunities that would help in boosting profitability, the Appellant considered that it would be unreasonable to include these in the projections. As some would affect the intended offer and some would be subject to considerable uncertainty, I accept the Appellant's view.
27. Although the Appellant has made it clear that he is seeking unlimited permissions, or minima of seven years in order to justify the investment, it is my opinion that permissions allowing racing for four years would be reasonable having regard to the capital expenditure involved. The Appellant and Council both accepted that, if I determined that temporary permissions were appropriate, their duration would be a matter for my judgement based on the facts before me.
28. Notwithstanding that a four year permission would be reasonable having regard to the capital expenditure involved, there remains the question of whether a four year permission would be reasonable having regard to the potentially detrimental effect on local residents. Planning Policy Guidance: Planning and Noise (PPG24) says that, in considering noise from recreational and sporting activities, the local planning authority will have to take account of how frequently the noise will be generated and how disturbing it will be, and balance the enjoyment of the participants against nuisance to other people.
29. Despite the opposition of many local residents, a significant number of letters have been received in support of the proposal and there appears to be considerable enthusiasm for the introduction of speedway at Central Park



Stadium. I have already established that the frequency and duration of noisy events would be controlled by other conditions and that the projected noise levels would be further limited by the new silencers. Taking account of all these factors it is my opinion that limiting racing to four years would be reasonable having regard to the potentially detrimental effect on local residents and the enjoyment of the participants. Four years would also be long enough to determine whether a permanent permission or refusal is the right answer.

Other matters

30. A number of local residents have raised other concerns including the use of the proposed track for practice and junior meetings, the commercial viability of the operation and the sensitivity of the financial information. However, other conditions would restrict the number of times that motor cycle racing can take place and prevent use of the track for speedway practice and whilst I have had regard to the sensitivities inherent in the financial projections, the commercial viability of the proposal is largely a matter for the Appellant.
31. In respect of the unease expressed by third parties over the potential for congestion and additional parking on local roads, the Council has not objected on these grounds and as greyhound racing already attracts similar size crowds to the stadium, I see no reason to take a different stance.

Conditions

32. I have established that, if I were to allow the appeals, conditions limiting the number of years over which racing may take place would be necessary. In respect of Appeal A, I would also need to refer back to the conditions imposed on planning permission Ref SW/08/0962 but, for consistency with other permissions subsequently granted by the Council, I would also need to impose new conditions 4 and 5. Similarly, in respect of Appeal B, a new condition 4 would be required. This approach was agreed by the main parties.

Conclusion

33. I have found that the disputed conditions are unreasonable. However, I have also found that the effect of the proposed racing on the living conditions of local residents is uncertain and potentially detrimental. Taking account of these matters I have determined that conditions limiting the racing to four years would be reasonable in all respects. Therefore, and having considered all other matters before me, including the sustainability of the development, I conclude that both Appeal A and Appeal B should succeed but that the resultant permissions should be subject to new conditions limiting racing to no more than four years.

Lloyd Rodgers

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

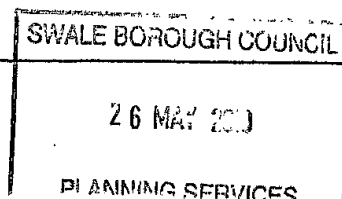
Mr G Stoker of Counsel	Instructed by Ms Blades-Chase, Head of Legal, Swale/Tonbridge/Maidstone Borough Councils
He called	
Mr D N Ledger FCIEH, MRS PH	Environmental Protection Manager, Swale Borough Council
Mr K Godden MISPAL	Director, pmp genesis Ltd
Mr R T Bailey MRTPI	Area Planning Officer, Swale Borough Council

FOR THE APPELLANT:

Mr S Randle of Counsel	Instructed by Robinson Escott Planning
He called	
Mr RJC Cearn	Cearnspport Ltd
Mr A E Mole	President, British Speedway Promoters Association
Mr N Hill C Eng, MIOA, MIMechE	Hill Engineering Consultants Ltd
Mr F Robinson FRTPI, CMILT	Robinson Escott Planning

INTERESTED PERSONS:

Cllr M Henderson	Swale Borough Councillor, Member of the Planning Committee. Appearing on behalf of local residents.
Ms. E Walker	Local resident
Cllr E Lowe	Swale Borough Councillor, Member of the Planning Committee. Appearing on behalf of local residents.
Mr B Bibby	On behalf of a local resident
Mr G Marriott	Local resident
Mr RA Swade	Local resident
Cllr D Banks	Ward councillor and local resident



DOCUMENTS HANDED IN AT THE INQUIRY

- 1 List of persons attending the inquiry on behalf of the Appellant. Submitted by Mr Robinson.
- 2 Bundle of letters. Submitted by Mr Robinson.
- 3 Letter from JP Crook and Co. dated 9.2.10. Submitted by Mr Robinson.
- 4 BPSA letter plus attachments. Submitted by Mr Robinson.
- 5 Supplementary noise proof of Nicholas Hill. Submitted by Mr Robinson.
- 6 Bundle of letters. Submitted by Mr Stoker.
- 7 Response to Appellant's evidence from Pmpgenesis Ltd. Submitted by Mr Stoker.
- 8 The 2009 Speedway Regulations (SCB). Submitted by Mr Stoker.
- 9 BS 4142: 1997. Submitted by Mr Stoker
- 10 Statement of Common Ground (Noise).
- 11 Acoustic evidence of Mr Bibby
- 12 Letter from Cllr Manuella Tomes
- 13 Appellant's opening statement. Submitted by Mr Randle.
- 14 Environmental Noise Assessment June 2000. Submitted by Mr Stoker.
- 15 The 2010 Speedway Regulations (SCB). Submitted by Mr Randle.
- 16 Copy of Decision Notice from Birmingham City Council in respect of Application Number N/04323/08/FUL (Perry Barr Stadium). Submitted by Mr Stoker.
- 17 Letters in respect of the introduction of new homologated silencers (R&D Aggregates/ACU). Submitted by Mr Randle.
- 18 Calculation sheet of N Hill in respect of attenuation effect of barrier with bikes at different track points. Submitted by Mr Randle.
- 19 2010 Calendar showing potential number of meetings under existing permissions. Submitted by Mr Stoker.
- 20 Table 4.1 of WHO guidelines. Submitted by Mr Stoker.
- 21 Council's closing statement. Submitted by Mr Stoker.
- 22 Appellant's closing statement. Submitted by Mr Randle.
- 23 Joint statement on the applicability of the WHO guidelines to properties at Hugh Price Close and Oak Road.
- 24 Costs application on behalf of the Appellant. Submitted by Mr Randle.