

## **EXECUTIVE – 10 JULY 2013**

### **MALLORY PARK - EFFECTIVE AND ACCEPTABLE OPERATION**

#### **REPORT OF CHIEF EXECUTIVE**

#### **WARDS AFFECTED: ALL WARDS**



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#### **1. PURPOSE OF REPORT**

To provide Members with the background and current position in respect of this issue and to offer recommendations aimed at its resolution, taking into account all relevant interests, concerns and options.

#### **2. RECOMMENDATIONS**

- \* That the proposal from MPML/BARC, circulated to residents of Kirkby Mallory on 15 May 2013 be not supported, as it would impose an unnecessary and unreasonable noise nuisance on residents of the village;
- \* That the current court case be pursued vigorously by the Officers of the Council on the terms of the 1985 Notice, as understood until January 2013;
- \* That, subsequent to the successful conclusion of that case, the 1985 Notice is subject to continuing enforcement, but under the interpretation now (since January 2013) understood by the Council and that the Council seeks an immediate Injunction, should there be further breaches identified after that date;
- \* That this position remains unless and until noise attenuation measures are introduced by MPML/BARC, with the necessary planning permissions, which actually reduce the noise and activity levels experienced by residents, to the levels set out in the 1985 Notice, as understood since January 2013;
- \* That MPML/BARC be encouraged to consider the practical potential and community benefits of significantly reducing the extent of the 'hairpin' element of the track.

#### **3. BACKGROUND TO THE REPORT**

- 3.1 The track at Mallory Park in the village of Kirkby Mallory has been in operation as a motor racing circuit since 1956. For the great majority of the subsequent 57 years, it has operated with the support and goodwill of the local residents and this has been important, given that the circuit is situated immediately to the southwest of the village itself and that a number of residential properties are immediately adjacent to the track.
- 3.2 In 1985, the issue of noise nuisance was raised by residents, to a point where it was necessary to issue a Statutory Notice (the '1985 Notice') to bring a level of control to the situation, so that residents, some of whom still reside in the village, could continue to enjoy a quality of life commensurate with the village setting. This Notice was issued under the Control of Pollution Act 1974 following consultation with the village and Mallory Park (Motorsport) Ltd (MPML).

- 3.3 For over 20 years following the introduction of the 1985 Notice, residents and track operators lived together in some harmony, with any concerns being addressed relatively amicably. Noise was controlled and the number of recorded complaints over the 15 years prior to August 2011 totalled 8. In 2012 alone the council received 153 complaints relating to activities at the circuit, plus a petition signed by 47 people supporting complaints to the Ombudsman. Of the 153 complaints, 72 relate to one household and 35 to another, with a number of single complaints at the lower end of the scale. This may be an indication of the level of noise nuisance experienced in certain parts of the village
- 3.4 In 2005 the operators, the Overend family, sold MPML to the British Automobile Racing Club (BARC); BARC operates also at other tracks, including Croft (Yorkshire), Thruxton (Hampshire) and Pembrey (Carmarthenshire). The track itself and the surrounding land are leased from Titan Properties.
- 3.5 At the time of the transfer/sale, the existence of the 1985 Notice was well-known and its requirements should have been a factor in the decision of BARC to make the purchase. Significantly also, the ongoing lease of the site, updated for cumulative inflation every five years, is a significant proportion of the annual operating costs. The lease expires in four years.
- 3.6 Although recollections now differ, it does seem that village/track relationships continued to be amicable in the period immediately after 2005. In 2008, MPML decided to abolish the Liaison Committee which had been in existence for some time, and replaced that with direct communication between the company and the Parish Council. This Committee's main remit had been to enable matters of village concerns/circuit development to be discussed in a reasonable atmosphere. Its abolition was the first step on the road to the situation we now face.
- 3.7 The main trigger to the current disharmony and very bad feeling between some residents and MPML/BARC, and also between village residents themselves, was the 'Awesomefest' event in late July 2011. This drifting event was lengthy (full day and a session of drifting in the late evening), noisy (from vehicles and campsite music), and smelly (the fumes were reported as distressing to adjacent residents). This event alone triggered 10 separate complaints directly to the Council and a meeting of the Parish Council attended by over 70 residents.
- 3.8 A further source of complaint arose from the ongoing operation of Motor cross at Mallory Park - a particularly noisy event, about which complaints began to be made. Again, MPML did not take any action to mitigate this nuisance, until they stopped the activity fully from 31 Dec 2012.
- 3.9 Residents also identified that bunding had been constructed from imported waste soil without any clear assessment of the attenuation effects and without planning permission. Other planning conditions have not been implemented and additional works carried out. Despite first being raised with the company in December 2011, the Council has only very recently received a validated retrospective application to consider these matters. Enforcement action is currently being considered.
- 3.10 In January 2013 the village resident representatives challenged the Council's implementation of the 1985 Notice. The advice from their solicitor was that a much tighter interpretation should be applied, which would allow MPML to operate on only 92 'noisy' days per year. The Council's Barrister subsequently supported that interpretation. On this interpretation, there is a reduction in noisy days of 104 per year as compared with the understanding since 1985. MPML were made aware on 13 February 2013 that this would be the Council's interpretation of the 1985 Notice from 1 April 2013 and data has been gathered on potential breaches since that date.

However, no formal action has been taken to enforce this interpretation, as our legal advice is that the current prosecution of MPML, relating to breaches of the notice in August and September 2012, should be concluded before that is instigated. It should be noted that only the courts can determine the interpretation of the terms of the existing notice and will no doubt do so in August.

- 3.11 Throughout the extensive negotiations on usage/noise levels, MPML and BARC have argued with increasing force that restrictions on their levels of operation and limits on their type of usage would result in their becoming commercially unviable. Indeed, on more than one occasion they have written to residents to make that point and made it again at the public meeting on 30 May 2013. Review of the company's finances indicates that operating at lower levels of activity without reductions in their costs and/or changes to their operating model could cause financial hardship. However, it is not for the Council to dictate to MPML/BARC how they should run their business successfully; the Council can only directly influence the 'nuisance' effects of these operations. MPML have publicly stated that they wish to be 'good neighbours' with the village and to continue their contribution to the community, through use of their facilities and other activities.
- 3.12 Members should also be aware that individuals and a group on behalf of 47 residents have complained to the Local Government Ombudsman in June and November 2012 about the Council's handling of their complaints and the final decision is awaited.

#### 4. **COUNCIL RESPONSE**

- 4.1 The position taken by officers, following the 'Awesomefest', was to begin negotiations with MPML on a revised Operational Management Plan for the circuit, as the issue did not relate just to those set out in 3.7; the management of the traffic to/from the event and of spectators before and after the event (overnight camping) was also, in our view, lax.
- 4.2 The reasons for adopting this approach, as opposed to immediate enforcement, were that the court process (as we have since found) can be lengthy and subject to appeals, as well as costs. At the start of the negotiations MPML appeared to be adopting a constructive stance; officers were attempting to resolve the matter in advance of the 2012 season; and there was a recognition of our duty to promote (and not discourage) the economy and the contribution to it made by Mallory Park, albeit balanced by our statutory obligations to local residents. This approach was also initially supported by the newly elected Liaison Committee.
- 4.3 There is no doubt that this course of action, whilst well-intentioned, has proved to be ineffective. It has not reached any meaningful conclusion after nearly two years, although it is the case that MPML has taken action to cease all 'drifting' and motor cross activities and there is some evidence to show that the number of events has reduced in 2013, as compared to previous years; but the perception of many of the village residents is clearly that the noise level and frequency has increased.
- 4.4 In June 2012, I instructed that MPML be given formal notice that breaches of the 1985 Notice, as then understood, after 1 August 2012 would be prosecuted; a position I confirmed when I met with them for the first time on that date. Five 'sample' breaches were identified and papers were filed with the Court in February 2013. The first hearing took place on 19 April and the full hearing is scheduled for mid August 2013.
- 4.5 We have continued to engage in negotiations with MPML/BARC, notwithstanding the legal process, in the hope that we could accommodate the legitimate requirements of many of the residents with those expressed by MPML/BARC to be able to operate commercially. The Executive (and indeed some Members of the Opposition, notably the ward councillor and former Leader) has repeatedly expressed its view that it did not wish to take any action which might lead directly to Mallory Park ceasing to operate.

- 4.6 The last point has proved a particularly divisive one within the village and, indeed, outside it, as many residents make the legitimate point that the viability of the company is not their concern, whilst others argue that a significant nationally-known facility might be lost, with loss of reputation and economic vitality to the local area. Many have stated that they do not wish Mallory Park to close, but the current situation is now unacceptable.
- 4.7 In late February 2013, it did appear that matters might be brought to a head. Indeed the resident representatives had convened a public meeting for 6 March to debate the issue. However, because no final proposal could be agreed and because of concerns about external interests placing pressure on village residents, the meeting was (rightly, in the circumstances) cancelled. Negotiations continued, but no significant progress was made.
- 4.8 In the end, in order to make progress, even though we had not been able to put together a set of operating arrangements which officers considered would be generally acceptable, we agreed that the 'best offer' from MPML should be put to the residents as part of a public consultation. By this means, the Executive could make an informed decision on a way forward. The 'best offer' was in essence that which MPML stated was the minimum they could operate without the company becoming commercially unviable. A copy of the proposal is attached at Appendix A.
- 4.9 We have been criticised in some quarters for undertaking the 'negotiation' route in the first place, for the very slow (if any) progress made and for the content of the proposal put forward for consultation, compared to the protections already in place from the 1985 Notice, even on its original interpretation. I can reassure Members and residents that the Council officers have genuinely sought to achieve an acceptable balance between the two competing requirements of our statutory enforcement duty and our duty to promote economic well-being from the Local Government Act 2000, whilst avoiding unnecessarily costly and time-consuming legal processes. There have been occasions when a similar commitment has seemed evident from MPML and BARC. However, it has become clear that such an 'ideal' resolution is not achievable and that the Council should give priority to the rights of local residents to their quality of life.

## 5. **CONSULTATION**

- 5.1 The public consultation was undertaken with the residents of Kirkby Mallory and businesses operating in the Village. It commenced with a letter signed by me, dated 15 May 2013, and ended at midnight on 14 June 2013 – a full month. During this period, the Leader of the Council met with a group of the 'most affected' residents on 22 May; the Chief Officer (Environmental Health) and I met residents individually/as families at a 'drop in' session in Kirkby Mallory on 29 May 2013; and a full public meeting for residents was held at the track itself (Hailwood Suite) on 30 May 2013. The Leader and I also met with representatives from MPML/BARC on 17 June 2013 and a separate meeting took place with Financial Officers from MPML, the Council and an independent accountant, commissioned by the Resident Representatives, on 12 June 2013, to ascertain the financial status/viability of the operation.
- 5.2 In summary:
- 160 properties received a copy of the proposal
  - 84 households responded (52.5%).
    - 25 supported the proposal.
    - 51 rejected the proposal.
    - 8 expressed views/comments, but not an outright conclusion

In terms of individuals (158 in total), the responses were:

- 44 supported the proposal.
- 99 rejected the proposal.
- 15 provided comments only.

All residents' responses were considered, even if they had a commercial/business interest as well as residential interest.

- 5.3 Because respondents were asked to provide their addresses (on a strictly confidential basis), we were able to plot them on a map of the village, in order to seek to identify if there was a cluster(s) of those most affected, which might point to the potential for remediation work. From that exercise, there is some indication that the main, though not only, nuisance is concentrated on the area directly north and east of the hairpin. This goes some way to support the view expressed by many residents that the worsening experience since 2009/2010 is related to the bunding introduced around that time.
- 5.4 The majority of responses were constructive, whatever their conclusions, and many did make suggestions as to how we might reach a resolution. It was made clear prior to and during the consultation that a decision would not be made on a simple majority of responses, and this will be maintained, as the comments made are at least as important on the number, and nearly half the households did not respond at all. We can speculate as to whether this is tacit approval or not, but any such speculation is precisely that.
- 5.5 The comments made have been of great assistance on putting this report together and Members should be grateful for the responses given, as I am.
- 5.6 Without referring to individual comments, there was a general consensus that:
- There were few, if any, major concerns before 2005.
  - The change in ownership and the earthworks carried out in the last few years seem to have had a notable (and negative) effect on the levels of noise experienced.
  - The Awesomefest event in July 2011 was a significant watershed in village resident/track operator relations.
  - A proposal allowing up to five out of every seven days to be 'noisy' (i.e. above accepted 1985 levels for non noise producing events) was wholly unreasonable.
  - A proposal allowing such a concentration of noisy events in the summer period was also unacceptable.
  - Whatever the content of any Notice (existing or new) there must be absolute clarity about the terms used in the Notice (e.g. what are 'quiet days').
  - There could be different access/exit points for vehicles wishing to use the site for events, other than through the Village.
  - The 'landscaping' was undertaken without Planning permission and without any assessment of the effects on the noise and its channelling.
  - The 1985 Notice was widely endorsed as reasonable.
  - The track should continue to operate, provided that it complied with the Notice.
- 5.7 There were some views expressed on which there was not a consensus. The main differences covered:
- 'Track Days' do not attract paying spectators and are not, therefore, essential for commercial viability nor do they make a major contribution to the local economy.
  - A compromise should be sought, but closer to the 1985 Notice than the current.
  - MPML/BARC should be given the opportunity to 'prove themselves'.
  - MPML/BARC must 'abide by the rules' set in the 1985 Notice.
  - Commitments have been given the past and not honoured.
- 5.8 In addition, an e- petition of over 32,500 to 'Save Mallory Park Circuit' has been submitted to the Department for Culture, Media and Sport. The wording of the petition is:

“We, the undersigned, believe that Mallory Pk (sic) Circuit should not be closed, redeveloped or sold for any other use than the pursuance of Motorsport”

- 5.9 In addition, over 500 people did contact me in early March (around the time of the cancelled public meeting) expressing their support for the continued operation of the track. Whilst this is an important expression of support for the track as a tourist attraction and contributor to the local economy, Members should note that the extent of that contribution is yet to be proved, so we have commissioned research to provide some hard evidence of what the real position might be. Importantly, however, the Council has a primary statutory obligation to address any identified noise nuisance. To paraphrase a number of respondents – commercial exigencies should not allow the operator to be above the law.
- 5.10 Members may wish to know that I personally visited Kirkby Mallory on Sunday 30 June, to hear the level of noise for myself during a permitted two-day race event and this experience has contributed also to the conclusions and recommendations in this report.

## 6. **CONCLUSIONS**

- 6.1 Members are reminded that there is a Statutory Notice in place from 1985. At this point, there is nothing in its place and the right thing to do would be to enforce the most recent interpretation of that Notice
- 6.2 Consideration has been given to the options of immediate instigation of enforcement, relying on the current ('stricter') interpretation of the Notice and/or the taking of an Injunction to secure an immediate termination of any activity, which breaches the 1985 Notice, whatever the interpretation. In the case of the first option, the legal advice received is that, whilst we should continue to gather evidence of breaches, to initiate legal action at this point would serve only to confuse the hearing of the case already before the courts. As regards an Injunction, it is suggested that, whilst this could be appropriate, its timing should be to address any breaches after a favourable decision by the court in August 2013. The reasons for this are: to ensure that MPML are given reasonable notice and to reduce the risk of the Council bearing the (potentially considerable) costs of any failed application, in terms of the application itself and damages to MPML in relation to lost trade already booked. These would be costs which would impact on the rest of the Borough and its services, not just Kirkby Mallory.
- 6.3 Of course, it is entirely possible that MPML/BARC could revise their proposals on the basis of a revised business case and/or act on their commitments to introduce noise attenuation measures as soon as possible. One additional possibility might be, given that there is a relatively clearly defined area of heightened noise nuisance, to alter or even remove the hairpin. Without such or similar action, the Council has very little option than to enforce the 1985 Notice.

## 6. **FINANCIAL IMPLICATIONS [KB]**

The Council has incurred £3,000 in legal costs to date which have been funded from existing budgets.

The financial position of MPML has been reviewed by the finance team at Hinckley and Bosworth Borough Council through a review of available financial accounts and credit rating reports. Whilst, the company has seen a decline in financial performance in recent years, it is deemed by the Council that they remain financially solvent and a “going concern”. This is supported by credit agency reports and the opinion of the company’s auditors.

7. **LEGAL IMPLICATIONS [PB]**

These are generally contained within the body of the Report. Consideration of the merits of a legal injunction to restrain MPML from any further breaches of the 1985 Notice should factor in the risk of escalating costs. An undertaking to the court as to costs would run a risk (to be assessed). The risk is that, ultimately, if an interim Injunction against MPML was overturned, the Council could incur the cost of revenue lost to MPML.

8. **CORPORATE PLAN IMPLICATIONS**

The considerations and conclusions/recommendations in this report have particular relevance to the elements of the Council's Corporate Plan relating to Cleaner and Greener Neighbourhoods (minimising environmental nuisance)

9. **CONSULTATION**

Consultation has taken place with all the residents of the village of Kirkby Mallory, with senior officers and office holders in MPML and BARC and with those who have a direct local commercial interest in the operation of the track.

In addition, over 500 emails have been submitted (March 2013) to the Chief Executive from non-residents of the village expressing strong support for the continuation of the operation and there is an electronic petition, with some 32,000 signatures, in support of the continuation of the operation at Mallory Park

10. **RISK IMPLICATIONS**

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
That the local community remains dissatisfied with the Council's actions, thus harming its reputation locally	Adopting the recommendations in this report and ensuring that the agreed actions are implemented	Chief Executive
That litigation from residents and/or ongoing complaints from them to the Ombudsman continue, thus costing time and money to council taxpayers as a whole	Adopting the recommendations in this report and ensuring that the agreed actions are implemented	Chief Executive
That MPML/BARC continue with court action to appeal any favourable (to the Council) decision on the current case	That the prosecution case be presented in the most robust manner possible	Chief Executive

That the Council loses the current case	That an alternative/new Notice be served immediately on the conclusion of the case, reflecting the stance taken in the recommendations in this report and legal advice	Chief Executive
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11. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

This report has attempted to ensure that the relative needs and requirements of village residents and the track operator have been taken into account in reaching the conclusions and recommendations made. Particular account has been taken of the rural setting of the village of Kirkby Mallory, but also of the long-standing location and operation of the track over 57 years.

12. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

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Background papers: None

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