

EXECUTIVE - 20 NOVEMBER 2013

MALLORY PARK - DELEGATION OF POWERS

REPORT OF CHIEF EXECUTIVE

WARDS AFFECTED: ALL WARDS

1. PURPOSE OF REPORT

To advise Executive of actions taken since the decisions on 10 July 2013 and to seek delegated authority to negotiate/act in the event of further changes in the situation in relation to the operation of racing at Mallory Park.

2. RECOMMENDATIONS:

That the Executive:

- i) note and support the actions taken since its decisions on 10 July 2013.
- ii) approve the delegation of authority to determine the operating principles which may form part of any Noise Abatement Notice, should there be a new operator at the track, to the Chief Executive, in consultation with the Leader and the Executive Member for Environment, Health and Climate Change.

3. BACKGROUND TO REPORT

- 3.1 On 10 July 2013, the Executive approved a number of recommendations regarding the operation of the track at Mallory Park, Kirkby Mallory, by Mallory Park (Motorsport) Ltd (MPML); these included the commitment to continue robustly with court action against MPML for noise nuisance and that MPML should take real action to reduce that nuisance. MPML were encouraged to return to negotiations with the Council to achieve that end.
- 3.2 Further discussions between MPML and the Council did recommence very soon after 10 July, but the court action continued and the Council was successful in its application on all five 'breaches', with the judge issuing a total fine of £2,500, plus a contribution of £23,800 against MPML.
- 3.3 Following the conclusion of the court case, MPML approached the Council and asked for support in relation to encouragement to the landowner to fund/allow amendments to the track, as well as reducing the onerous lease arrangement (some 35-40% of annual turnover). In addition, MPML asked for Business Rate Relief and a 'relaxation' of the Notice to enable operation until 31 December 2013, as a means of securing certainty of income to support future operating viability and work to the structure of the track, as well as an indication of the allowable limits (beyond the current Notice) into 2014.

- 3.4 Discussions between MPML and the landowner were inconclusive. On Business Rates, whilst the Council was open to giving consideration to a formal application, with supporting evidence, none was forthcoming until submitted by the Administrator on 4 October 2013 (see below).
- 3.5 In early September, the Council was advised that MPML and BARC (British Automobile Racing Club) were very concerned about the future viability of the circuit, in part due to the outcome of the court action, but also because of the financial position (see 3.3 above). There was an increasing possibility that the company might be wound up. If that were to happen, it was clear that the 1985 Notice would not be enforceable, as it was served against the original track operator MPML and assumed by BARC when they purchased MPML and, therefore, the operating lease in 2005.
- 3.6 Residents had stated clearly, most recently in response to the consultation of residents earlier this year, that they did not want the circuit to cease operation; they simply wanted not to have the constant noise. The Council shared this aspiration and had continued to hold discussions with MPML to that end.
- 3.7 Despite criticism from some residents, the Council continued to be under a duty to engage with MPML to secure its longer term operation, but within noise levels acceptable to residents, as agreed by the Council's Executive on 10 July. In furtherance of that duty, and to secure the work necessary to address the level of noise experienced in the village, the Leader was prepared to give consideration to a request from MPML relating to the level of activity at the track to December 2013 only; with the 1985 Notice remaining in place and any 'relaxation' ('forbearance to prosecute') ending on 1 January 2014, unless there was clear evidence of the necessary actions being taken to reduce ongoing noise. Any temporary measure would not have allowed any Saturday activity and there were conditions requiring MPML and the landowner to undertake work on the site to address the need for noise reduction.
- 3.8 I was advised late on Friday 6 September, however, that MPML felt unable to accept that offer of 'forbearance' at this time, under the conditions attached to it.
- 3.9 Officers and Members of the Council have made it clear that it was not the aim or desire of the Council that MPML cease operation - and that remained so throughout the discussions.
- 3.10 On 13 September, MPML/BARC approached the Leader of the Council with a draft 'Recovery Plan', taking into account his genuine ambition to secure a 'compromise' set of arrangements; an ambition he had made clear at and after the 10 July meeting. Discussions on that Plan moved positively, and MPML/BARC acknowledged that the Council was making every effort to secure a solution which would enable motor racing to continue at the track, but with much reduced nuisance to local residents. At all times, there was a commitment also that any 'compromise' must be subject to consultation with all the residents in Kirkby Mallory, before being considered by the Executive.

- 3.11 Nevertheless, on 30 September 2013, MPML announced that they had placed the company into voluntary Administration. Since that time, the appointed Administrator has been in discussion with the Council and the landowner (Titan Properties) to secure the interests of the company's creditors, if possible by securing conditions to be in place to enable the company to continue operation.
- 3.12 Arising from those discussions, I had agreed with the Administrator, at his request, a set of draft principles. These principles were negotiated (from an initial request by the Administrator, based on the MPML draft Recovery Plan, of 138 days), to achieve a compromise to enable track activity to continue, but at levels more acceptable to village residents than what had been happening over the last three to four years. These principles would not necessarily apply to any prospective operator who may be aiming to start afresh, but would depend on the level of rent which could be negotiated with the landowner.
- 3.13 The draft principles allowed for a maximum of 128 noisy days, spread out more effectively, on a weekly and yearly basis, and required a full noise survey and relevant works from that survey to be carried out. The Administrator had indicated that he would be agreeable to that and that it would help towards keeping the company running.

4. **Current Position**

- 4.1 At the time of writing this report, there has been no interest expressed from anyone in securing the assets and business of MPML - the closing date was 18 October. The Administrator continued trying to secure interest before he made a final decision. However, at least two partners have been in discussion with the landowner, seeking an arrangement with him about future operation. We have been notified that the Administrator has called a meeting of creditors (of which the Council is one) on 19 November and I will report the outcome of that meeting verbally on 20 November. A fresh start would mean that the 1985 Notice would no longer apply.
- 4.2 I have suggested to the landowner that, should any interest be shown, all discussions/negotiations should be 'round the table' with the Council, the landowner and the interested party, given that we will be starting effectively from a clean sheet. There should be an 'arms length' involvement from the current Village Liaison Representatives, prior to a full consultation with all residents of Kirkby Mallory and an election of a new Liaison Committee for the future.
- 4.3 As it is likely that any future discussions will be to a tight timescale, given the preparation required to any operation from March 2014, the Executive is asked to approve delegation of authority for any negotiations to the Chief Executive, in consultation with the Leader of the Council and the Executive Member for Environment, Health and Climate Change. To reassure Members, any negotiations will be within the principles already established with the Administrator and the commitment to full consultations with all residents of Kirkby Mallory and the landowner.

5. **FINANCIAL IMPLICATIONS [KP]**

There are no financial implications arising directly from the recommendations contained in this report. Any financial commitment arising as a result of further action will be subject to an additional report.

6. **LEGAL IMPLICATIONS [LH]**

Contained in the report, the delegation proposed is in accordance with the Constitution.

7. **CORPORATE PLAN IMPLICATIONS**

The content and aims of this report have particular relevance to the elements of the Council's Corporate Plan relating to 'Cleaner and Greener Neighbourhoods' (minimising environmental nuisance) and the aim of 'Creating a Vibrant Place to Work and Live'.

8. **CONSULTATION**

Consultation with all residents in the village of Kirkby Mallory took place in May/June 2013. A commitment has been given for a further consultation of the whole village on any further operational option, prior to final approval. The framework, within which the Chief Executive will act, as set out in this report, will ensure that commitment is honoured.

9. **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
New arrangements for operation are delayed, due to formal committee timescales, thus harming the Council's reputation and the ability of any operator to secure the future of the track.	Providing the Chief Executive with the authority to act quickly (in consultation with relevant members of the Executive), within the framework set out in this report.	Chief Executive

10. **KNOWING YOUR COMMUNITY - EQUALITY AND RURAL IMPLICATIONS**

The report is based on the need to recognise and address the particularly rural setting of Kirkby Mallory, but also the economic and sporting contribution of the racetrack.

11. **CORPORATE IMPLICATIONS**

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

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

Background papers:

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