

Report

on an investigation into
complaint numbers 12 001 338 & 12 010 505
against
Hinckley and Bosworth Borough Council

5 March 2014

Investigation into complaint no 12 001 338 & 12 010 505 against Hinckley and Bosworth Borough Council

Table of Contents	Page
Report summary	1
Introduction	3
Legal and administrative background	4
Environmental Health legislation	4
The Council's duty and powers	5
Investigation	5
Background	5
The 1985 Statutory Notice	6
The impact of the noise on residents	8
Level of activity at the track	10
Independent noise reports	10
Motocross activity at the track	12
Action taken by the Council in response to residents' complaints	12
Findings	13
Recommendation	16

The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mr and Mrs X = first complainants

Mr and Mrs Y = second complainants

Report summary

Environmental Health, noise nuisance and planning

Mr and Mrs X and Mr and Mrs Y live near to a motor racing track. Activities at the track have been organised by different operators since motor racing first began in the 1950s. The track operators changed in 1984 and again in 2005. In October 2013, the operator who had organised activities from 2005 went into administration. From November 2013, the track has had new operators.

Mr and Mrs Y are also acting as representatives of 47 residents of the village. They have complained about a failure by the Council to take action when the track operators breached a Notice specifying the permitted frequency and noise level of events at the track.

Due to delays by the Council in taking enforcement action for repeated breaches of the Notice, Mr and Mrs X, Mr and Mrs Y and the villagers they represent have suffered an injustice through additional noise nuisance.

Finding

Maladministration causing injustice.

Recommended remedy

To remedy the complaint, the Council has agreed to instruct a barrister to provide legal advice on the contents of a new Notice. Any new Notice will have to be served on the new track operators once they start activities.

I also recommend the Council should:

- consider how to address the outstanding queries over the impact the spectator bunds and track alterations have had on noise levels. And how to address the outstanding planning matters and unapproved alterations to the track. The Council should advise the complainants and the Ombudsman how it intends to address these issues within three months of the date of this report;
- pay £2,500 to Mr and Mrs X for their avoidable loss of amenity from March 2011 to February 2013 when the Council took formal enforcement action;
- pay £5,000 to Mr and Mrs Y as a contribution towards their receipted expenses for legal advice and noise reports; and

- make a donation of £1,000 to the village schoolroom committee to use as it sees fit for the benefit of the residents who have joined this complaint.

Introduction

1. These complaints are raised by residents who are affected by noise from a race track near to their homes. Mr and Mrs X raised a complaint on their own accounts. Mr and Mrs Y have raised a complaint on behalf of 47 other residents of the village. The residents complain the Council has:
 - failed to monitor activity and noise at the race track, although there is a known nuisance. A Statutory Notice was issued in 1985 and this set out an agreed level of use and noise within which the track could operate;
 - delayed acting on residents' complaints about noise from the site;
 - delayed obtaining legal advice about whether it could enforce the 1985 Statutory Notice, whether motocross (off-road motorcycle racing) was allowed at the site and what would be a reasonable level of use for a track so close to a village;
 - failed to take enforcement action although the race track operators persistently breached the terms of the 1985 Statutory Notice;
 - failed to take enforcement action for breaches of planning permission at the track. The residents believe unapproved works have amplified noise levels throughout the village;
 - continued an approach of trying to get residents and the track operators to agree on an increased level of use for the track rather than prosecute for breaches.

2. My investigator has:
 - considered the complaint and documents provided by Mr and Mrs X;
 - considered the complaint and documents provided by Mr and Mrs Y;
 - met with Mr and Mrs X and Mr and Mrs Y;
 - made enquiries of the Council;
 - met with Council officers;
 - considered the comments and documents the Council provided; and
 - considered the comments made by the Council and the complainants in response to previous draft reports.

Legal and administrative background

3. I investigate complaints of injustice caused by fault. I can consider the way an authority makes its decisions, but it is not my role to comment on them unless they were taken with fault.
4. If I find fault but no injustice, I will not ask a council to provide a remedy. If I find both fault and injustice, I may ask for a remedy.
5. I have the power to decide whether to start, continue or discontinue an investigation into any complaint.

Environmental Health legislation

6. The Council issued a Statutory Notice in 1985, under section 58 of the Control of Pollution Act 1974. The Notice limited the activity at the race track. Under the legislation any breach of the Notice could result in the Council taking proceedings to restrict the recurrence of the nuisance.
7. Section 58 of the Act was repealed in 1991 by the Environmental Protection Act 1990. In 1994, the House of Lords decided that Notices dealing with noise nuisance issued under Section 58 of the Control of Pollution Act 1974 had to be complied with even though Section 58 had been repealed¹.
8. Under Section 79 of the Environmental Protection Act, local authorities must take “such steps as are reasonably practicable” to investigate a complaint of noise nuisance. The Act says a statutory nuisance is one where the noise emitted from premises is prejudicial to health or is a nuisance. The law does not set levels at which noise becomes a statutory nuisance. Whether a nuisance exists is a matter of judgement in the individual case.
9. Section 80 of the Environmental Protection Act says that if a council is satisfied a statutory nuisance exists or is likely to occur or recur, it “shall” serve an abatement notice. An abatement notice requires the owner or operator of the premises to:
 - stop the nuisance or prohibit or restrict it from happening;
 - require works or steps to be taken to stop the nuisance or prohibit or restrict it from happening.

An abatement notice should specify the time frame for action to stop the nuisance. Failure to comply with the notice can lead to prosecution in the magistrates’ court.

10. If the magistrates’ court is satisfied a nuisance exists, it can order the defendant to carry out work to prevent the nuisance occurring and impose a fine.

¹ Aitken v South Hams District Council [1994] 3 All ER 400

The Council's duty and powers

11. Councils have a duty to investigate complaints that could be a statutory nuisance. When a Council receives a complaint about noise it must take such steps as are reasonably practicable to investigate that complaint and decide whether a statutory nuisance has occurred. If officers detect nuisance, they have a duty to issue an abatement notice. The decision over whether to then take enforcement action for breaches of the notice is discretionary.
12. When considering whether to take enforcement action, councils must consider whether it is expedient to do so. Councils will consider whether it is in the public interest to take enforcement action and whether such action is likely to succeed. They will consider whether it is more suitable to seek to resolve a matter through informal action and agreement rather than formal enforcement action.

Investigation

Background

13. In the 1950s, Leicestershire County Council granted planning permission to convert an existing pony race track on grass to a car and motorcycle race track on a hard surface. The applicant's solicitors explained the application was for surfacing work to the track only. All other areas inside and outside the track would remain as grass for grazing. The solicitors said the track would be used for less than 28 days in any year, although there are no planning restrictions to that effect.
14. The track has been used regularly for motor sports since then. The frequency of events has varied over the years depending on the popularity of the sport.
15. The track is sited close to a village, with most of the village properties being within 500 metres of it. Some properties are even closer. Many residents of the village can hear motorsport noise whenever the track is used, regardless of the size of the event. When the track was a grassed surface used for pony racing, the proximity of the track to the houses was not a concern. But motor racing on a hard surface is clearly audible throughout a large part of the village. Historically the activity was controlled and limited to a level that was acceptable to the majority of residents.
16. By its nature, track racing creates a statutory nuisance. Hinckley and Bosworth Borough Council ("the Council") has explained that in 1983 there was an increase in activity at the track. The increase in events led to an increase in complaints from neighbours. In 1985, following negotiation and discussion with residents and the track operators, the Council served a Statutory Notice on the operators of the track. The Council wanted to control the number and days when the nuisance was allowed, to reduce the impact on nearby residents. The intention was that

residents would be able to plan around the noisy days and would have respite from the noise. The Notice specified the allowed activity, noise level and frequency of use.

17. Also in 1985, the race track operators created and managed a liaison committee. This had representatives from the race track, the parish and borough councils, county councillors, the Council's environmental health department and from the village. The committee met a couple of times a year to discuss matters relating to the track. Between 1985 and 2008 when the track operators disbanded the liaison committee, there were very few complaints about noise. Issues were generally dealt with at a local level and there was no need for the Council to take enforcement action under the 1985 Notice.
18. After the liaison committee was disbanded, residents raised any concerns with the parish council rather than with Hinckley and Bosworth Borough Council. The Council was not actively monitoring activity at the race track and explained this was because the relations between the track operators and the residents as a whole were generally amicable.
19. Mrs X first complained about noise from a "drifting" event in March 2011. Drifting is where the driver forces the car to slide sideways through a turn. Then a late night drifting event in July 2011 prompted a large number of complaints to the Council. Residents complained of noise from drifting vehicles, a personal address system and music going on late into the night. The drifting created smoke and burning tyre smells. From July 2011 to October 2013 when the previous operators went into administration, activity at the track generated continued complaints from residents.
20. There is no motor sport activity taking place at the moment, although a new company has taken over the lease and intends to start activities in March 2014.

The 1985 Statutory Notice

21. The 1985 Notice required the occupier of the track to restrict the recurrence of noise nuisance. The track could not be used by motor vehicles, other than as allowed in the schedule attached to the Notice. The Notice said a breach would be an offence against Part III of the Control of Pollution Act 1974, for which a fine was payable. The Council could also take proceedings for securing the abatement, prohibition or restriction of the nuisance.
22. The 1985 Notice schedule specified, among other matters:
 - a maximum of 40 race days in any year, of which not more than 22 shall involve the use of the circuit for motorcycles;
 - a race day was defined as "*any day on which motor vehicles are raced on the circuit in competition with each other*";

- a maximum of 4 two-day events in any 12-month period;
 - the track should not be used on Mondays, except when racing is taking place on a Bank Holiday Monday;
 - no use of the track on a Saturday unless this was part of a two-day event or was a non-noise producing event. This was defined at a noise level “*not exceeding 45 decibels measured over a ten minute period (LAeq (Fast and a maximum of 55 decibels (L_{max} (Slow)))*” at either of two locations in the village;
 - the Wednesday of each week to be available for general practice on the circuit, but not racing;
 - the permitted hours of operation. On race days, 9.30am to 6pm with a one hour break between 11am and 2pm. On practice days and weekdays, 9am to 12.30pm and 1pm to 4.30pm;
 - all motor vehicles using the circuit must be effectively silenced, with the operator responsible for taking noise level tests and recording these; and
 - the permitted decibels for car and motorcycle races.
23. When it first started to receive complaints about noise at the race track in March 2011, the Council did not know if it could take enforcement action using the 1985 Notice. The Council was also unsure over whether this Notice had been superseded by a 2003 voluntary agreement the track operators produced. This agreement made provision for more intensive use of the track, including Saturday use.
24. In September 2011, the Council confirmed the existence of the 1985 Notice to Mr and Mrs X and Mr and Mrs Y but explained it was concerned the length of time that had passed since it issued the Notice would affect the likelihood of successful enforcement action. The Council anticipated a local solution, achieved through reforming the liaison committee and agreeing a new Notice would be the best way to resolve the increase in complaints. This approach had been successful in the past.
25. Mr Y took a copy of the 1985 Statutory Notice to a solicitor, who confirmed the Council could enforce against it and clarified the level of use permitted under the Notice. When Mr Y provided the Council with this legal advice, it sought its own legal opinion. This confirmed the Council could take enforcement action. The 2003 voluntary agreement was dismissed as an enforceable document. By now it was June 2012, more than 12 months after Mrs X’s initial complaint. During that time, the track operator had been holding many more events than the 1985 Notice allowed.
26. The Council told the track operators it would start to collect evidence of breaches of the 1985 Notice. It did this in August 2012, collecting evidence of Saturday use of the track.

27. In February 2013 the Council started proceedings against the race track operator for five breaches of the Statutory Notice. The proceedings were limited to the Saturday breaches on the advice of the barrister instructed by the Council. The case came to court in August 2013 when Magistrates confirmed the Statutory Notice was enforceable and had been breached. Magistrates fined the track operator £2,500 and awarded £23,000 costs against them. The Council said it would take further enforcement action if the track operators breached the 1985 Notice again, although it did not do this in response to further complaints of mid-week use, prior to the track operators ceasing to trade in October 2013. The Council says this was because there was no time to take further enforcement action.

The impact of the noise on residents

28. Mrs X lives near to the race track. She understood the track was limited to a small number of racing events on Sundays and track testing on Wednesdays. In March 2011 she contacted the Council to explain the impact the activities at the site were having on her amenity. She wanted to understand what was an acceptable level of noise from the track and how often events were allowed. She knew and accepted there would be noise from the track, but believed the volume and frequency of this was increasing without any control.
29. By now, racing or other activity was taking place most Saturdays and Sundays. She could hear vehicles on the track on Mondays and other designated “quiet” days under the 1985 Notice. The days when there was no disruptive noise originating from the track were reducing.
30. When there was activity at the track, Mrs X could not peacefully enjoy her home or garden. Whereas the 1985 Notice allowed for 4 “noisy” Saturdays each year if they were part of a two-day event, the reality was noisy activity on most Saturdays and Sundays for months at a time.
31. On two separate occasions, people carrying out work at Mrs X’s home refused to continue because of the intolerable noise from the race track. Mrs X had to provide ear defenders before one contractor would continue to install replacement, thicker and more sound proof doors.
32. In July 2011, the Council received an “unprecedented” number of complaints from other residents of the village. These related to a one-off event at the track, where cars were racing and drifting. There was a drifting demonstration after 10pm. This created excessive noise and tyre smoke. Loud music and other noise from a campsite continued into the early hours of the morning. The event prompted a group of residents to attend a parish council meeting and raise their concerns about the increasing noise and activity at the track.

33. While the residents who are complaining have lived near to the race track for many years, they consider the increase in activity over the last few years is unacceptable. It is having a significant impact on their amenity. During the summer months particularly, at a time when it is reasonable to expect to be able to enjoy being outdoors or have windows open, noise disturbance from the track occurred on the majority of days each week. Where they could previously tolerate noisy activity on a Sunday because Saturday was a quiet day, residents now had racing noise throughout the day on both weekend days for a large part of the summer. Residents also believe that unauthorised changes to the landscaping around the track have contributed to the increase in noise levels by reflecting sound back into the village.
34. Mrs X has described how she can rarely use her garden in the summer due to the noise and sometimes fumes from the track. There is no escape from the noise inside her home. She can still hear it when all her doors and windows are closed. Her enjoyment of her home has been seriously affected.
35. Mrs X has explained she could plan around a limited and controlled number of noisy days each year. And if the track was being used in accordance with the limits specified in the 1985 Statutory Notice she would be happy with that. But she shares the view of many residents that the frequency of the events has increased without control or consideration for residents. Although there was a Statutory Notice in place to restrict the days when activity takes place at the track, the Council did not enforce this. It allowed the track operators to dictate a level of use based on its business needs. The increased use of the track and the revenue that brought in for the company was at the expense of the amenity of local residents.
36. Mrs X has provided me with a copy of the noise disturbance record sheets she completed for the Council. Sometimes she describes the noise as "loud but comfortable" or "to be expected from racing noise". But her diary entries for August 2012 show 23 days of activity at the track where she described the noise as "loud", "very loud", "unbearable" or "uncomfortable to be outside". These included every Saturday and Sunday and the Bank Holiday Monday. There were only eight days in August 2012 where Mrs X recorded no noise. She was away from home for one of those days.
37. In the two years since Mrs X first complained to the Council, she has provided detailed noise diaries and along with other residents has hosted sound recording equipment. But residents have not seen any improvement in the situation and consider the Council failed to fulfil its duty to take enforcement action. Residents have no certainty over how many events are likely to take place at the track.
38. This uncertainty has increased since the track operators went into administration. The 1985 Notice was served on the previous track operators, so cannot be

enforced now a new operator has taken over the track. Residents do not know what level of activity the Council is likely to agree with the new operators.

Level of activity at the track

39. The race track operators had a website that showed the events planned for the year. The calendars for the years 2011-2013 showed the track was used all year, with the peak activity between March and October. The activity levels significantly exceeded those permitted under the 1985 Notice.
40. In 2012, events were planned for 27 of the 32 Saturdays between April and October. Under the 1985 Statutory Notice there should be no use of the track on a Saturday unless it is part of a two-day event or is a “non-noise producing event”. While only four two-day events are allowed in any 12-month period, there were six between April and October 2012. There were eight two-day events in 2011. In April 2013, Mrs X reviewed the track operator’s calendar for the forthcoming season and told the Council this showed 60 days when activity was planned that would potentially breach the 1985 Notice.
41. Most of the Saturday use was for track days. These are days when members of the public can take their own car or motorbike to the track. Residents describe how this creates a constant noise, as different vehicles (mostly motorbikes) arrive throughout the day and go round the track. The track days are organised by different companies. Their websites explain the noise limits in place for the Saturday track days, saying each vehicle is limited to noise levels of between 95dB and 105dB. To be a non-noise producing event, the noise from these track days that is recorded at the fixed points in the village must then fall within the range specified in the 1985 Notice. Mrs X has evidence the noise at her back door during the track days exceeds the level required for an event to be considered “non-noise producing”.
42. Mrs X has provided the Council with evidence of vehicles using the track on Mondays, when the 1985 Notice says the track should not be used at all. Other residents have also reported potential breaches of the 1985 Notice to the Council, with noise producing events on weekdays and Saturdays. All sides agree the track has not been operating to the restrictions specified in the 1985 Notice for at least three racing seasons.

Independent noise reports

43. In October 2011 and July 2012 Mrs X and Mr Y commissioned independent surveys to assess how the noise coming from the track affected their amenity. They had become frustrated by the Council’s response to their complaints and the lack of any formal enforcement action. The surveys recorded, in decibels, the noise coming from the track on particular days. The consultant concluded the

noise levels were significantly above those set by the court in a similar case in 2011.

44. The consultant said in October 2011: *"...I consider the noise experienced causes adverse impact on the use and enjoyment of [Mrs X's house] to such an extent it is exceptional and unreasonable..."* And on his follow-up visit in July 2012 he noted: *"The exceptionally high levels of intrusion identified in this report should be experienced only rarely with only a small number of such events affecting any dwelling in any year. It should not be a regular occurrence. Acceptability depends on the total number of days affected per year but when decibel levels are this high there should be substantial freedom from noise most of the time"*.
45. The Council agrees from its own monitoring the noise from the site is a statutory nuisance. That is noise that is harmful to health or a nuisance. The Council has explained that noise from racing is a nuisance because the houses are so close to the circuit. The Council's aim has always been to seek a balance between the high noise days, which will cause a statutory nuisance, and quieter days. The Council has also sought to balance the interests of local residents with a desire to ensure the track can continue to operate.

Planning applications and landscaping amendments to the track

46. Mr Y complains that numerous changes have taken place to the layout of the track and to the land surrounding it. These include alterations to the track and the creation of spectator bunds. He says these changes do not have planning permission and the Council has failed to take any enforcement action. Mr Y also believes a lack of proper planning control over the decades has allowed the area where motorsport activity takes place to spread. The original track has been enlarged and the shape altered. A hairpin bend creates increased noise from rapid deceleration and then acceleration. Motor activity, particularly motocross has taken place in other areas within the site away from the original track. This brings the activity closer to residents' houses.
47. Residents of the village believe that some of the changes within the site have affected the way noise travels. Landscaping schemes the Council required under approved planning applications have not been implemented and noise assessments not completed. The Council has not taken enforcement action. Residents believe the noise is now directed towards the village and causes a greater nuisance than in previous years.
48. Where officers identify a breach of planning control, they will consider whether it is expedient to take enforcement action. It is normal for councils to seek to resolve breaches informally, through action such as requesting planning applications to regularise development, or setting timescales for work to be completed.

49. The Council decided to adopt an informal approach where there has been unauthorised development at the site or the track operators have failed to comply with conditions attached to planning permission. The track operators made applications for retrospective planning permission, but the Council rejected these as the planning applications were incomplete. Independent noise assessments have been requested to understand the impact the alterations within the site have had on the movement of noise. These had not been completed by the time the track operators went into administration.

Motocross activity at the track

50. Motocross activity (a form of motorcycle racing held on enclosed off-road circuits) started at the site over 10 years ago. This was on an area of land outside the main track and nearer to the village. Residents complained about the noise and fumes from the bikes. These initial complaints were mostly made to the parish council or the track operators but the activity continued.
51. When the group of residents made a more formal complaint to the Council in 2012, the Council said it could not control the motocross activity using the 1985 Notice because this did not address motocross use. This opinion was based on previous advice from the Council's legal team. Following a review of planning permission, the Council also considered that motor activity was allowed within the whole site and was not limited to the race track area.
52. The Council still had a duty to serve a new abatement notice if it considered the motocross activity caused a statutory nuisance and was not covered by the existing Notice. The Council did not monitor the noise generated from the motocross activity and did not consider serving a new abatement notice.
53. In December 2012 the track operators decided to stop the motocross use. It was only in February 2013 and in response to challenges from Mr Y the Council asked its solicitor for legal advice on whether motocross activity was covered under the 1985 Notice. The solicitor confirmed it was. Therefore the Council could have taken enforcement action when the motocross activity breached the terms of the Notice. This included permitted days of use and permitted noise levels.

Action taken by the Council in response to residents' complaints

54. The Council's preferred approach since Mrs X's initial complaint in March 2011 and the large number of complaints in July 2011 has been to work with residents, the track operators and relevant parish councillors and officers to try and reach an agreed operational management plan. This would replace the 1985 Notice and set an accepted level of activity and noise at the track. There have been several large meetings and officers have been in regular contact with the

complainants. But it was not possible to reach a mutually agreeable solution before the track operators went into administration.

55. The track operators wanted a significant increase on the activity allowed under the 1985 Notice and said they could not continue to operate unless the Council agreed to this. Residents within the village are divided over what they consider a reasonable level of activity would be:
 - Mrs X's view is that the 1985 Notice already allows for an appropriate use of a track that is situated so close to the village;
 - other residents want a reduction on the activity specified in the 1985 Notice; and
 - there are some residents who would accept a small increase on the current level of operations.
56. The Council says it used the 1985 Notice to guide activities and negotiations with village representatives during the period of complaints. And that it has obtained agreement from the track operators to end the drifting event, motocross and unsilenced testing during this period of negotiation.
57. The Council has successfully taken formal enforcement action against the track operators for five breaches of the 1985 Statutory Notice. These five breaches related to the use of the track on Saturdays during the summer of 2012. The successful prosecution demonstrated the 1985 Statutory Notice could be enforced for Saturday use and the track operators did not repeat that breach before they went into administration.
58. Before the track operators went into administration, the Council had been in contact with them to discharge outstanding planning conditions and use information from noise assessments to inform the best way to do this. These matters have been outstanding for many years but have still not been completed.

Findings

59. The Council is not responsible for managing the race track or producing the noise. The track has been used in various forms since the 1950s and some noise from its use is inevitable. The complainants have always been clear they understand and accept this. Their concerns have been over the increasing levels of noise and activity at the track over the last few years. The residents believe the Council has stood by and allowed the track operators to persistently breach the 1985 Notice. The increased activity at the track has caused significant disruption and upset to many residents of the village. Residents have been unable to enjoy their homes on days that should have been free from noise. Noise levels on a track day were described by an independent noise consultant as "*exceptional and*

unreasonable” with a requirement for substantial freedom from this level of noise most of the time.

60. I will not normally criticise the professional judgement of officers, provided due process has been followed and there is no fault in the actions of the officers. In this case, officers and members have decided the best way to respond to the complaints is through informal action and trying to negotiate new controls and a revised level of activity at the track. This approach was supported by the ward councillor who sought to recognise the wider economic implications if the race track did not continue to operate.
61. But I am concerned at how little progress was made between March 2011 and the track closing in October 2013. It is clear to me the track operators were holding far more noisy events than the conditions of the 1985 Notice allowed. The Council agreed the noise was a nuisance and was occurring more frequently than specified in the 1985 Notice. Mrs X, Mr and Mrs Y and other residents have provided the Council with large amounts of evidence to show this and to facilitate enforcement action. This has included hosting noise monitoring equipment and keeping diary sheets. They also sought independent verification from noise experts and legal advice from solicitors to try and encourage the Council to take some action.
62. I consider the Council was far too slow to get legal advice and take formal enforcement action and this is fault causing an injustice to Mr and Mrs X, Mr and Mrs Y and the other residents of the village. It took the Council 12 months to request legal advice about whether it could enforce the 1985 Notice. That action was only prompted by the complainants providing their own legal advice on this point. I consider this was an unreasonable delay causing injustice to the complainants. And even though the Council had known for 12 months it could enforce the Notice, it only recently did so, on a small number of breaches. This is despite the acknowledged nuisance and complaints from residents about the disruption to their lives on many more days than the 1985 Notice allowed.
63. While the Council repeatedly said that motocross activity was not covered under the 1985 Notice, it did not ask its solicitor for advice on this point until February 2013. By then the motocross track had closed after around 10 years of operation. And if the Council considered motocross activity created a statutory nuisance that was not covered under the 1985 Notice, it had a duty to serve a new abatement notice. I consider the delay asking for further legal advice about the motocross activity and considering whether to serve a separate notice was fault. This caused the residents frustration and the sense that earlier action could have brought about tighter controls and restrictions over the motocross activity.
64. The Council's preference has always been for informal resolution rather than taking formal enforcement action against the track operators for breaching the 1985 Statutory Notice. The Council explained there may be significant costs,

uncertainty and delay involved in enforcing the 1985 Notice and it would rather work with the track operators and residents to reach a mutually acceptable position on the future level of activity at the track. This approach had historically been successful, with very few complaints arising before July 2011.

65. The likelihood of resolving this matter through agreement though has seemed remote since residents first started to complain. The track operators consistently said they could not maintain the business if they had to comply with the 1985 Notice and they wanted to operate more often. Any increase in noisy activity is at the expense of the amenity of the residents of the village. The residents have completed questionnaires and the results show there is no general desire for an increase in activity at the track.
66. While the Council has discretion to pursue an informal approach to breaches of the 1985 Notice, it followed this for three full racing seasons without reaching agreement. Throughout this time, residents were exposed to significantly more noise nuisance than that already allowed under the 1985 Notice. For many residents, there is no escape from the noise even within their own homes. With the majority of events being concentrated in the months April to October, at a time when people want to have their windows open or sit in their gardens, the impact of the increased activity on residents was substantial. I consider the decision to continue with informal action for so long was affected by fault because it failed to take account of the significant levels of disruption residents were suffering from increased noise nuisance.
67. Earlier and more decisive action by the Council when the complaints were first raised during the 2011 racing season could have resolved the situation in time for the 2012 season. But the situation was allowed to drift throughout 2011, 2012 and 2013. During that time residents experienced an ongoing and unpredictable increase in noise and activity. The uncertainty remains now the track is closed. Residents do not know what level of activity the Council is likely to agree with any new track operator. They are concerned the Council will agree to a substantial increase on the nuisance causing activity, placing the commercial interests of the race track operators above the impact on the residents who live so close to the track.
68. I am satisfied there has been unreasonable delay by the Council and a failure to take appropriate action against a known nuisance and significant breaches of the 1985 Statutory Notice that sought to control this nuisance. The Council has been slow to take legal advice where it has been unsure of its position. It has been slow to take enforcement action for persistent breaches of the 1985 Notice. It has not controlled the breaches of planning permission or investigated the impact of the modifications within the site on noise levels and did not consider whether the motocross activity that took place for many years was a nuisance causing activity. These failures have caused Mr and Mrs X, Mr and Mrs Y and other residents of the village significant injustice. They have endured noise disruption

on many days that should have been quiet. This includes most Saturdays throughout the last three summers, most bank holidays (when the previous two days have also been noisy) and additional days throughout the week.

69. I find there has been fault by the Council, causing significant injustice to Mr and Mrs X, Mr and Mrs Y and many other residents of the village.

Recommendation

70. My main concerns are to remedy the substantial loss of amenity residents have endured and the ongoing uncertainty over the level of use the Council will agree for the new track operator. While I have taken account of the complainants' views that they are not seeking personal compensation, I have nevertheless made a recommendation to address the injustice they have suffered.
71. I accept it has been difficult for the Council to seek to achieve a mutually acceptable agreement on activities at the track. It has sought to balance the conflicting views of the track operators who want to operate at a level that is profitable, and the residents who suffer an additional loss of amenity when more events are held. It is clear the Council's Chief Executive and relevant officers have been heavily involved in trying to achieve a satisfactory outcome and they have been in constant communication with residents. But it has been impossible to achieve a mutually acceptable balance.
72. Any new negotiations must be informed by independent legal advice about an acceptable level of nuisance causing activity in this location as most of the village is within 500 metres of the race track.

Remedy

73. To remedy the complaint, the Council has agreed to instruct a barrister to provide legal advice on the contents of a new Notice. Any new Notice will have to be served on the new track operators once they start activities.
74. I also recommend the Council;
- considers how to address the outstanding queries over the impact the spectator bunds and track alterations have had on noise levels. And how to address the outstanding planning matters and unauthorised alterations to the track. The Council should advise the complainants and the Ombudsman how it intends to address these issues within three months of the date of this report;
 - pay £2,500 to Mr and Mrs X for their loss of amenity and enjoyment of their property during the period May 2011 to February 2013 when the Council finally began enforcement action for breaches of the 1985 Notice. I have

explained the impact the increased activity has had on Mr and Mrs X's amenity in the main body of the report. I consider Mr and Mrs X are a special case because of their close proximity to the race track and the substantial impact over three racing seasons on their amenity from the uncontrolled increase in noise disturbance. This payment will also provide a remedy for Mr and Mrs X's considerable time and trouble in pursuing the complaint with the Council and the Ombudsman and collating detailed information demonstrating occasions when the track operators have breached the 1985 Statutory Notice;

- pay £5,000 to Mr and Mrs Y. This is to provide a contribution towards the receipted costs of the legal advice and noise expert reports they have obtained. The legal advice Mr and Mrs Y paid for prompted the Council to confirm it could enforce the 1985 Statutory Notice. The noise expert reports were commissioned in response to residents making many complaints over a long period of time to the Council but seeing no improvement or action as a result of those complaints. While Mr and Mrs Y were not under an obligation to instruct these experts or incur these costs, I consider their doing so was understandable given the lack of action by the Council and helped to move matters along;
- make a donation of £1,000 to the village schoolroom committee to provide some redress for the villagers who have joined this complaint. The schoolrooms are a valuable amenity that benefits villagers. The committee can decide how best to use this donation.



Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

5 March 2014