

EXECUTIVE - 24 SEPTEMBER 2014

REPORT OF CHIEF EXECUTIVE RE MALLORY PARK RACE TRACK

WARDS AFFECTED: ALL WARDS



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. PURPOSE OF REPORT

- 1.1 To advise the Executive of actions taken since the meeting of 28 May 2014 and on potential next steps.

2. RECOMMENDATION

- 2.1 That Members note the activity since 28 May 2014 and the potential implications, including the Appeal from RML currently being considered by the Courts.
- 2.2 That, notwithstanding the fact that RML did not complete the actions required in May 2014, and for the reasons set out in the report, the Council serves a new Notice, without time limits, using the same principles as the Notice currently in place, as attached at Appendix D.
- 2.3 That approval is given for a supplementary estimate of £40,000 to cover additional costs of monitoring/court activity, as set out in paragraph 3.10 in the report.

3. BACKGROUND TO THE REPORT

- 3.1 Members will recall that, at the meeting of the Executive on 28 May 2014, it was agreed that a Statutory Notice be served for the remainder of 2014 only, with the overall aim of enabling Real Motorsport Ltd (RML) to operate to their already published calendar, where possible. In the event (see below), in order to have a consistent Notice and ensure that the fundamental principles within it were upheld, some events on the calendar have proved problematic. The full minute of the meeting is attached at Appendix A.
- 3.2 A condition of serving the Notice was that RML undertook to complete three actions within two months of the service date (10 June 2014), on fulfilment of which the Council would seek to issue for 2015 and after a less stringent Notice from that served for 2014. Failure to complete these actions satisfactorily and within the timescales would result in the Council, prior to 31 December 2014, serving a Notice 'reflecting the controls under the former Control of Pollution Act 1974 notice, dated 18 December 1985'. These conditions are reproduced at section 3.9 below, with comments as to progress in responding.
- 3.3 Immediately prior to the deadline for submission, RML (via their solicitors) did submit an Appeal, ostensibly because officers refused their request for a relaxation of the specific terms of the Notice to enable a pre-published event to continue. Whilst the Executive had given the indication to which reference is made in 3.1 above, the refusal was because it did not comply with the strict terms of the Notice served on 10 June 2014. Members are well aware of the ramifications of not enforcing a published Notice in the strictest terms.

- 3.4 The process for hearing that Appeal is already being drawn out, with two initial hearings (just to confirm the grounds for Appeal) being adjourned. The next one is due on 7 October and it is now very clear that there will be no conclusion until late spring 2015 at the earliest.
- 3.5 In the meantime, it should be recognised that RML have made, largely successful, attempts to adhere to the terms of the Notice, as served (including the rearrangement of pre-published events) and have taken some steps to reduce noise levels experienced in the village of Kirkby Mallory (including the recent erection of additional barriers, particularly around the hairpin). Evidence to prove the efficacy of these initiatives either way has been made available only at the time of completing this report and this is being evaluated. A Noise Management Plan has been submitted, again only immediately before the finalisation of this report, and this is attached at Appendix B. Different individuals and groups who live in the village have divergent views on the changes (if any) they have perceived in noise levels directly experienced, although I think it is fair to say that there is some acknowledgement that positive attempts are being made.
- 3.6 Initial work on data gathered by the Council has identified noticeable reductions in the level of noise in the village on 'like for like' comparisons (see Appendix C(i)) and this seems to be endorsed by a separate exercise conducted by RML, which is attached at Appendix C(ii). A more detailed evaluation will be presented to Members by officers at the meeting. Complaints have continued to be received from some residents concerned about the overall level of noise and frequency of events through 2014 and since service of the Notice. Of particular concern was the Sunday of the Bike Bonanza in July. Under the terms of the Notice the Council agreed a relaxation of exhaust controls to reflect the original exhaust when the classic bikes operated many at Mallory Park in previous years. That condition will be excluded from any new Notice.
- 3.7 It is acknowledged also that RML have made attempts to engage with village residents in a far more proactive and welcoming manner than their predecessors, but greater promotion of the positive aspects of what they are doing might have been more productive.
- 3.8 However, the fundamental issue for the Executive to consider now is whether RML has complied with the conditions set out on 28 May and, if so, how timely have those responses been. Given the time available to take these actions, Members could take a simple/clear view as to whether they have been addressed in full or not; promises and intentions were made by the previous operator and, whilst there is more confidence in the integrity of RML, that confidence must be reinforced by evidence of actions taken.
- 3.9 In reviewing the evidence now available in relation to the conditions set on 28 May 2014, the following conclusions can be drawn:

CONDITION 1

The operator shall install and maintain a drive-by noise monitoring system, calibrated to identify individual vehicles exceeding the vehicle equivalent static test or other agreed noise limit. This shall be used to identify those vehicles exceeding the required noise level and action shall be taken by the operator to immediately remove the vehicle from the track. The details of the system and action levels shall be submitted to and approved by HBBC within two months of the service of the first notice. The data from this system shall be provided to the HBBC on request and direct access allowed.

Comment

An approved (by the Council) trackside system has been installed and the Council has had direct data access from this since 29 August 2014 - but that was nearly three weeks after the due date. There is clear evidence, however, that greater control is being exercised over individual vehicles and excessively loud vehicles removed from the track. A noise management plan has been submitted relating to the control of noise from the circuit and has been amended, following comments submitted by the Council. This is attached at Appendix B. Again, that Plan was submitted only over the weekend immediately prior to the publication of this report.

CONDITION 2

The operator shall install a trackside monitoring system to measure noise arising from track activities. The details of the system shall be submitted to and approved by HBBC within two months of the service of the first Notice. Once installed, the system shall be calibrated and levels agreed with HBBC as to reflect the noise limits given in the definitions of days of use. Once agreed, these levels will form the levels for control over days in a future notice. Data from the system shall be provided on request to HBBC and direct access allowed.

Comment

At the time of writing this paper, it is still unclear as to whether RML intend to use the pit lane meter and other meters. The Council has received information from RML (Appendix C (ii)) about levels of noise experienced in the village, which shows reductions from former noise levels, which our own data seems to support. However, because of the lateness (again) of receipt, this is subject to evaluation and further information will be provided to Executive at the meeting.

CONDITION 3

Within two months of the service of the first Notice, a noise report is produced by the operator identifying suitable and cost effective measures for the attenuation of noise from the track affecting the village to be agreed by the Council. A planning application is required to be submitted within a further month for the identified works. The agreed measures identified shall be installed prior to 1 March 2015 or other such date or dates as agreed with the Council.

Comment

The Council has received a noise report, but only days before this report had to be completed for publication. As with the response to Condition 2 (above), officers will attempt to advise Executive of their evaluation of this report at the meeting. We have received plans regarding the proposed installation of bunding, but no fencing details have been submitted. Temporary barriers and bales have been installed facing Stapleton Lane and around the hairpin, as mentioned earlier, and this appears, from the acoustic data presented, to have had a positive effect on noise reduction in the village. Further proposals and implementation have not been agreed at the current time.

- 3.10 A budget of £20,000 was approved for 2014-15 relating to the legal and consultant support required to progress the service of the new notice and ongoing prosecutions relating to health and safety matters at Mallory Park relating to the previous operator. This budget has been committed and a further budget is required for the defence of the appeal which was not anticipated. It is therefore requested that supplementary approval is given for £40,000 to support the appeal and service of the notice.

4. CONCLUSION

- 4.1 It is clear from 3.9 above that RML have not met fully the conditions set out by the Executive on 28 May 2014 within the timescales set. However, the tasks that have been completed in time for this meeting and some positive effects on noise levels in the village can be evidenced by data gathered by both the Council and RML, comparing levels before and after the temporary measures have been put in place; certainly, as compared with the levels recorded in previous years. By the time of the meeting, we will be able to confirm (or otherwise) whether the RML data fully substantiates that view.
- 4.2 Members can be reassured that RML has made efforts to engage residents far more effectively than their predecessors through the issue of a monthly newsletter, but there has previously not been regular and clear notification of events sufficiently in advance (if at all in some cases) to enable residents to prepare. Events are shown on the website for Mallory Park.
- 4.3 As this report was being finalised, it did appear that we were in very much the same position as we were some twelve months ago, albeit with a different operator, who has made some progress. Although this somewhat negative view might be tempered by the information received over the last few days, this has still to be evaluated and, because of the late responses, Members might conclude, yet again, that the more stringent Notice to which the Executive committed, if conditions were not met, should be prepared and served.
- 4.4 However, there are implications for the present (from the current Appeal process) and for the future (a potential further/additional appeal), as set out below in the Legal Implications (especially 6.2 and 6.3), which might lead Members to conclude that they should adopt a more straightforward and constructive approach. This is reinforced by the fact that the '2014 Notice' can be seen to have been an element in the noise and activity reduction, of which there is recorded evidence, and in the more recent constructive responses from RML. A number of events programmed for this year have been cancelled, thereby reducing the actual number of events to an estimated 85 by the year end.
- 4.5 Members may, therefore, take the legitimate view that the serving of a '1985-style' Notice would be counter-productive, but they may be justifiably cautious also about serving '2015-style' Notice, without the full evidence to support it at this point. The alternative offered, therefore, could be the serving of a new Notice, using the same principles as those which formed the basis for the current (2014) Notice, without a time limit, thus continuing with what seems to have been a successful approach.
- 4.6 On balance, it is the approach set out in 4.5 above which is recommended to the Executive, in the form of the draft Notice attached at Appendix D.

5. FINANCIAL IMPLICATIONS [KP]

- 5.1 As outlined in 2.3, a supplementary budget request of £40,000 is being requested to cover additional costs of monitoring/court activity. In line with the financial procedure rules, this requires approval of Executive.

- 5.2 It is proposed that this supplementary budget is funded from the Enforcement Reserve. Council approved the transfer of £100,000 to this reserve on 1 July 2014, which could be called upon to fund one-off enforcement costs. Mallory Park was cited in the Council report as specific example of such a case.

6. **LEGAL IMPLICATIONS [ST]**

- 6.1 The Notice served on 10 June 2014 is a time limited Notice and will lapse on 31 December 2014. It has been appealed by the Operators, RML, and the due appeal process is being followed, but the proceedings will not conclude until next year. In the meantime, there is a duty on the Council to serve a new notice if it is satisfied that there is, or is likely to be, nuisance.
- 6.2 The Council, prior to serving this new Notice, will have to draft its terms. In doing so, the Council will have to take into account any nuisance or recurrence of nuisance as well as any improvement of the situation. The terms of the new notice will have to accord to this state of affairs. The terms should therefore reflect that level of nuisance. It is open to the Council to serve a notice which is more restrictive than that served in 2014, with reference to the use of the land by the operators if there is evidence to substantiate it. It is equally open to Members to serve the new notice in terms similar to those contained in the present 2014 notice. This will have to be borne out in the evidence available to the Council and the terms will therefore be less restrictive with regard to the operator's use of the land. It is key, therefore, to assess the situation at the time that the future notice is being drafted and at any other point.
- 6.3 Whilst the option to serve a Notice similar to that served in 1985 was detailed in the report of 28 May 2014, the Council is nonetheless bound by its ongoing duty to assess the evidence as is available at present, prior to embarking on the drafting of a notice to be served in 2015. It is indisputable that the evidence available now reflects a reduced number of events taking place. Any notice served henceforth would have to take this into account. As a result, it would not be justifiable or reasonable for the Council to exercise its statutory function by the service of a notice in more restrictive terms. It is anticipated, therefore, that the Council discharge its duty by serving a notice to prevent the recurrence of nuisance, but on terms and principles which are largely similar to those contained in the notice of 2014.
- 6.4 Upon the service of the new notice, the operator has the ability to appeal the new notice. If the appeal is lodged in time, then there will be a situation where there are two appeals in tandem. Under these circumstances, it is proper for the two appeals to be consolidated. If the terms are identical, then it will be a simpler process of defending the notices. If the notices differ, then the terms of the second notice alone are relevant, as the first notice will have lapsed.
- 6.5 The appeal process commences in the Magistrates' Court and is governed by the directions made by the Court. The main body of the report contains the relevant text with regard to this.

7. **CORPORATE PLAN IMPLICATIONS**

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

8. **CONSULTATION**

8.1 There has been no further consultation since the report of 28 May 2014, other than a continuing informal and e-mail dialogue with RML

9. **RISK IMPLICATIONS**

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

9.2 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.

9.3 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 members of the local community remain dissatisfied with the Council's decision	a) That there is sufficient clear evidence that actions have been taken by the operator, which have resulted in reduction in noise experienced at houses in the village b) That any Notice continues to be the subject of enforcement action c) That the Council responds to any further complaints/action as necessary (see the Financial Implications in 6 above)	Chief Executive Chief Officer (Environmental Health) / Chief Executive
That the operator enters a further appeal	See Legal Implications above - respond to any appeal using funds set aside in the enforcement reserve	Chief Executive

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

10.1 This report has attempted to ensure that the primary responsibility of the Council towards affected residents is met, whilst taking into account the views of other residents in the village of Kirkby Mallory and the legitimate minimum commercial needs of the operator.

