

APPEAL BY BRANDON ESTATES LTD

APPLICATION REF: R/0186

COVENTRY STADIUM, RUGBY ROAD

OPENING STATEMENT

ON BEHALF OF

SAVE COVENTRY SPEEDWAY AND STOX CAMPAIGN GROUP (SCS)

Introduction

1. Save Coventry Speedway and Stox Campaign (SCS) wish to see speedway and stock car racing return to the appeal site. The appeal site is variously known as the Brandon or Coventry Stadium.¹ The appeal site has had a long and very distinguished association, both locally, nationally and internationally, with speedway since 1928 and stock car racing since 1954. The stadium is well-known for having one of the best shale speedway tracks in the UK and as the “Wembley Stadium” of stock car racing.
2. Irrespective of the stadium buildings, the appeal site as a “place” should, SCS believe, be considered a “heritage asset” (non-designated)² by virtue of that treasured

¹ More detail concerning SCS, its committee etc, is set out, for example, at CD10.19, pages 3 and 20-21.

² As defined in the NPPF Glossary.

Paragraph 203 sets out the relevant policy test: “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

association with speedway and stock car racing. The proposed development would result in a total loss of the heritage asset.

3. Neither SCS, the Council, White Young Green consultants nor any of the respective sports' governing bodies³ (and related organisations⁴) regard the site as surplus to requirements.
4. Is all this significance to be consigned to history in return for an artificial turf football pitch for which there is no great need; its proposed provision is both an afterthought and speculative.
5. The reference made to speedway and stock car racing simply being a minority interest tends to the discriminatory. The obvious pleasure given to the skilful (and courageous) participants and to their spectators contributes to well-being and social interaction. This is not to be ignored or diminished.
6. The Stadium is recognised, moreover, as a valued community facility by Policy LF1 of the Brandon and Bretford Neighbourhood Plan. The Local Plan Inspector was also careful to ensure that the Stadium be safeguarded by Policy HS4 of the Local Plan.
7. There is common ground that the 124 proposed homes are not needed for RBC to maintain a 5-year housing supply. Moreover, the Local Plan makes provision for 14,567 dwellings⁵: the objectively assessed need for Rugby is 9,600 dwellings⁶, added to which Rugby Borough is to meet 2,800 of Coventry City's unmet housing need; quite apart from Coventry's needs, the Plan already makes provision for 2,167 additional dwellings (22.5% more than Rugby's OAN). So there appears to be no need for the housing proposed on the appeal site.
8. The Appellant necessarily tries to put as much weight as possible on the proposed provision of 25 'affordable' homes. This is of course, however, a Local Plan *requirement* for this type of development. This alone does not, in SCS's view, begin to justify the grant of planning permission. Further, a number of matters relating to the AH proposed require clarification.

³ Speedway Control Board CDs 10.11 and 10.12; British Stock Car Association CDs 10.2-10.4.

⁴ See, for example, CD10.1-10.4, 10.6-10.12.

⁵ CD8.2, page 20, para 4.12.

⁶ Ibid, page 19, para 4.7.

9. In addition to which, SCS believe that the proposed development would lead to a greater impact on the openness of the Green Belt; if so, it is not to be regarded as 'appropriate' development but instead as requiring "very special circumstances" to be demonstrated – i.e. that all the harms are "clearly outweighed" by other considerations.
10. Quite apart from the extension of the built coverage of the appeal site in a westwards direction over the existing, extensive open areas hitherto used, when needed, for racing-related parking, the proposed new access⁷ would have to break through the existing, and *characteristic*, tree cover along the Rugby Road boundary, only to afford views of the development.

Relevant background and context

11. Contrary, with respect, to Mr Hooper's view, it is submitted that the background is not irrelevant in this case. The appeal site was openly marketed by GVA in 2013 primarily as a "residential development opportunity"⁸, not simply for continued use (impliedly viably) for speedway and stock car racing. Clearly the 'hope value' for residential development far exceeded that for continued use of the site for speedway and stock car racing.⁹ The then owner, and RBS as chargee, wished no doubt to achieve the highest value possible so as to enable loans secured on the site in respect of the then owner's other (it appears unrelated) business interests, to be repaid.
12. The Appellant already had a sufficient interest in or over the land by October 2014 to decide to hold a public exhibition regarding its then proposal for some 250 dwellings, to be developed in 2 phases from west to east across the site.
13. The Appellant plainly therefore, from the outset, had no intention of continuing the stadium's use for racing, other than in the short term whilst it progressed its plans for residential development. Indeed, an indication of the Appellant's mindset is provided

⁷ The roadway and pavements alone would be some 9.5 m in width. The Council's Landscaping officer refers to the loss of a stretch of some 33 m in extent.

⁸ CD 10.18, Appendix 2.

⁹ Implicitly acknowledged by the Appellant's solicitors, Howell and Co in March 2017 in response to an email from Mr Hunter (both email and letter in Appendix WH1): "On appeal ... it is almost certain [that the appeal will be allowed]. I hope that this information helps you to assess a value for the site."

(i) by the view, expressed in March 2017, that it was “almost certain” that an appeal would be successful;¹⁰ (ii) similarly the statement in May 2017 that “[u]nder no circumstances will Brandon Estates permit Stock Car Racing to return to Brandon Stadium”;¹¹ (iii) by the apparent fact that a buildings insurance policy was not taken out by the Appellant.

14. The acquisition of the site was completed in 2015. The evidence suggests that the stadium was “evidently fit for purpose operationally at the point of its closure”¹² in 2016.
15. Whilst in the autumn of 2016 it appears that Mr Sandhu, the immediately previous owner but by now a lessee, removed certain racing-related fixtures or fittings, presumably in the belief that he was entitled to do so and/or because he had not been offered the opportunity to continue stockcar racing at the site for a further year, in any event, a few months later he publicly offered to restore them at his own expense.¹³ This offer does not appear to have been taken up.
16. No further racing thereafter took place, the Appellant company having taken possession of the site in late 2016. The speedway team (Coventry Bees) tried to race elsewhere, with some financial assistance from the Appellant, but this was unsuccessful. Attempts to relocate stock car racing were likewise unsuccessful.
17. Having taken possession of the site in late 2016, the Appellants thereafter failed to secure the site properly, despite repeated warnings and complaints and despite incursions which caused substantial damage, in particular to the grandstand. A formal Community Protection Notice had not only to be issued by RBC in September 2017¹⁴ but also, and extraordinarily, ultimately criminal proceedings had to be brought by RBC against the Appellant. These resulted in convictions¹⁵ and fines in November 2022 for failures to comply with the Notice (in respect of the periods the

¹⁰ Mr Hunter’s proof, Appendix WH1, letter from Howell and Co solicitors.

¹¹ CD 10.18 Appendix 9: email to Mr Townsend (who enquired about a lease of the stadium).

¹² CD 15.1.2.

¹³ CD 10.18 Appendix 12, Mr Sandhu Press Release 16th May 2017 refers.

¹⁴ pursuant to section 43 of the Anti-social Behaviour, Crime and Policing Act 2014

¹⁵ It should be noted that Section 48 provides the following defences: “A person does not commit an offence under this section if—(a) the person took all reasonable steps to comply with the notice, or (b) there is some other reasonable excuse for the failure to comply with it.”

subject of the informations, namely April-September 2019 and May-September 2021¹⁶). Given the very protracted period of time over which these failures occurred, the Appellant's intentions for the site and the 'mindset' referred to above¹⁷, it is reasonable to infer that the neglect was deliberate. Since the convictions, it appears that the site has now been properly secured.

18. Neglect involving the commission of a criminal offence should not be rewarded by the granting of planning permission.¹⁸ SCS submit, therefore, that when applying the test in NPPF paragraph 99(c) as to "whether the benefits [of the alternative sports and recreational provision] clearly outweigh the loss of the current or former use" that use is to be regarded as viable.

19. In any event, SCS believe that there is a real, as opposed to purely hypothetical, prospect that re-use, in due course, of the appeal site for speedway and stock car racing could be achieved financially if the appeal be dismissed; and that in the longer term there is also a real prospect of the grandstand being rebuilt. The West Midlands Mayor has also put before the Inquiry a supportive letter in this regard.¹⁹

20. Whilst the original planning application was submitted in January 2018, a "speedway and stock car needs assessment"²⁰ was only submitted, retrospectively, at RBC's request, in October 2018. SCS took the view²¹, and a subsequent independent report commissioned by RBC from WYG supported this view²², that the assessment had

¹⁶ Mr Carter, Sports Issues proof, Appendix DC1.

¹⁷ Paragraph 12.

¹⁸ NPPF paragraph 196 provides that: "Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision."

It is submitted that the government could not have intended paragraph 99 to be applied other than on a similar basis: no doubt express provision was not thought to be necessary in respect of open space and recreation policy.

The courts also apply a similar principle (not being permitted to benefit – here a grant of planning permission from one's own wrong – here neglect, confirmed by the convictions) when interpreting a statutory provision (including planning legislation), where a literal application of it is relied upon by a miscreant: see, for example, the Supreme Court decision in the notorious case of Secretary of State for Communities and Local Government [2011] UKSC 15, paragraphs 43-58. (house secretly built within a permitted barn)

¹⁹ Mr Carter Sports Issues proof, Appendix DC1 pages 3-4.

²⁰ CD 1.30.

²¹ CD 15.5.3. See, too, CDs 10.15, 10.14.

²² CD 15.1.2.

been poorly researched; moreover neither Sport England (in respect of speedway racing) nor the respective governing bodies for speedway and stock car racing had been consulted. WYG advised that they were not satisfied that the requirements of NPPF para 99(a) had been met.

21. The Appellant was indulged by RBC for a further 2 years before, after a final warning in May 2021, the Appellant submitted the revised application which is now before this inquiry; provision of an artificial turf football pitch is now proposed as alternative sport provision, purportedly to try to satisfy paragraph 99 (c). The number of dwellings has had to be reduced.
22. Sport England were unimpressed by the supporting justification advanced, and also observed, for example, that it would be harder to achieve the relocation of the current use to an alternative location than to provide a 3G pitch elsewhere.²³
23. The planning officer herself commented in her report to committee in November 2022 that “there is no clear and convincing evidence that the alternative sports provision is required”.²⁴ It is noted, moreover, that the “3G Feasibility Study” submitted in 2023²⁵ encourages the early provision of the pitch so that it “impact[s] on the feasibility of” other [possible proposals for] pitches rather than it being the other way around.” The Appellant’s pursuit of its own self-interest is again noted.
24. The foregoing matters will all be explored further, as necessary, during the inquiry.

19th September 2023

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²³ CD 9.32.

²⁴ CD6 (Report to committee), paragraph 6.33.

²⁵ CD 3.1.