IN THE MATTER OF SANDOWN PARK RACECOURSE, ESHER AND 2019/0551

ADVICE

1. I am instructed to advise Daytona Motorsport Management Ltd whose subsidiary Daytona Sandown Park is a long leaseholder of the Go Kart Circuit facility within the redevelopment Site C.

2. The go-karting is carried out in the central part of the site on what is described in the application as Site C. It is proposed in the application for 'Remodelling of the existing kart track to accommodate a new year-round family/community zone that would comprise the outdoor recreational areas, a cycle track and an indoor soft play with ancillary café building following demolition of existing buildings' (report para 6.5).

3. Daytona's position is that its go karting facility has security of tenure under the Landlord and Tenant Act 1954, and the go-karting may remain even if the rest of the proposed development is carried out. The planning application should be assessed on that basis.

4. The report says on the effect of noise from the go karting facility on the new residential development:

> "9.8.3.8 The existing use on Site C is situated approximately 300m from Site 3. As stated in paragraph 4.8 above, the existing use of the go-karting facility is limited in terms of opening hours, restriction on floodlights and the use of **silent karts**. Due to these arrangements and the separation distance, the future occupiers of Site 3 are not considered to be adversely affected by this use. The LPA would ensure that no adverse effects on residential amenities of Site 3 result by way of imposition of appropriate conditions or planning obligations at the detailed stages should the proposed use on Site C is permitted.
>
> 9.8.3.12 As discussed on Site 3, the residential properties on Site 5 would be approximately 150m away at the nearest point from the proposals on Site C. Should the existing go-kart business remain in operation, there are planning controls in place securing reasonable protection of residential amenities of the future residents on this site. Should the new, proposed use be permitted, there are planning controls available in the form of conditions or planning obligations to

ensure protection of amenities of the future occupiers of Site 5, which would be exercised at the detailed stages as appropriate." **(emphasis added)**

5. The 1995 planning permission for the go kart track required only the use of 'silenced karts', rather than 'silent karts', see para 4.8 of the report. There is a considerable difference between the two. The committee report fails to mention the substantial planning history since 1995 which has relaxed the controls on the go kart operation. Planning permission 97/0259 allowed the use of twin engine karts.

6. A variation planning permission was granted in 2011 (ref 2010/2743) for the use of two stroke, water cooled karts. This was approved on the basis that noise levels would be acceptable at the then nearest residential locations on New Road and Lower Green Road, which are at least 180 metres away.

7. The report cites the hours of operation conditions in the 1995 consent but fails to appreciate that they were partly set aside by a certificate of lawfulness of existing use or development granted on appeal in 2010. The CLEUD certifies go-karting from 9am to 9pm Mondays to Saturdays and 10am to 6pm on Sundays, without any earlier finish for dusk, along with the use of public address systems and floodlights until 10pm Monday to Saturday and 7pm on Sundays.

8. The applicant's noise assessment does not consider the effect of the go kart operation on residential amenity, but instead assumes that it will be removed. Paragraph 5.18 of the assessment by Sharps Redmore says:

> "The remodelling of the existing kart track with a cycle track will significantly reduce noise levels from this area. It is understood that the kart track regularly operated into the late evening period and noise from screeching tyres, engine noise was cause of complaint to local residents. By comparison, the noise from the play areas will be significantly less."

9. There has been no assessment by the applicant or the Council of the effect of noise from the go karting track on the new residential uses. The karting adds an additional and relatively high noise level with distinctly different characteristics to the noise environment particularly at Site 3. External noise levels, in particular on balconies are likely to be above the desirable levels and the nature of the noise may well prompt complaints. There is a risk therefore that the development will increase complaints against the go karting track, with the threat of nuisance or statutory nuisance

proceedings. Even if no nuisance is found, such issues are likely to be disruptive and inhibiting on the business.

10. The ability to design out noise impacts on balconies is limited and has not been explored in this context as the effect of karting has not been considered.

11. The impact of placing noise sensitive development in close proximity to noise generating businesses is material. The importance of protecting such businesses is recognised in the NPPF, para 182.

12. The issue cannot be deferred to conditions. The locations of the dwellings and the go-karting track are fixed, so any detail has to work within those constraints. There is necessarily a limit as to how detailed design can reduce impacts, particularly for balconies and outdoor amenity space. Proposed condition 15 which requires a noise impact statement assumes that the whole of the proposed development is carried out – so there is no go-karting – and does not set fixed criteria. At the most it requires the developer to achieve the greatest compliance with noise standards and guidelines possible, within the confines of the planning permission which has already been granted.

13. Furthermore, a specialist acoustics assessment carried out on behalf of Daytona predicts noise levels on balconies of dwellings in Site 5 would well in excess of the BS/WHO recommended maximum of *50dB LAeq,T* . Indeed, it concludes "Noise characteristics of kart racing i.e. acoustic features/tones and transitory noise peaks may result in unacceptable noise levels within external amenity areas *comparable* with measured levels in excess of 55 dB LAeq,T."

14. The committee report fails to deal with these issues in a lawful manner. It misunderstands the lawful scope of the go-karting operation. Both the report and the underlying application material which it relies upon fail to carry out any assessment of the effect of go-karting on the proposed noise sensitive residential at all. These matters need to be considered on a properly informed and consulted upon basis.

15. If any matters arise out of this advice, please do not hesitate to contact me in Chambers.

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29th September 2019