NOISE NUISANCE AT A FORMER AIRFIELD

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1 INTRODUCTION

This paper describes the noise monitoring and legal proceedings by City of York Council following noise complaints from motor sports and other events at a former airfield.

2 PRIOR TO 2000

2.1 Background

Elvington airfield is located in a Green Belt area of flat countryside to the south east of the City of York. The villages of Elvington and Wheldrake lie close by, to the east and south of the airfield respectively. There are private residences and farms located all around the airfield. There is a small and relatively quiet industrial estate to the eastern end of the airfield. Traffic noise can be heard from the B1228 to the east. Farming and other activities produce intermittent, comparatively low levels of noise. At the western and southern edges of the airfield the predominant local sounds are of birdsong and the wind in the trees. It is generally a rural area, with exceptionally low levels of background noise and could be described as “tranquil”.

2.1 MoD Ownership

The airfield was constructed in the 1950s for the use of nuclear bombers of the US Air Force, but they were never deployed. RAF Vulcan bombers did use the airfield. However the main use of the airfield during the 60s and 70s was training for take off and landing using jet aircraft, on weekdays only. Complaints by local residents were few and these were dealt with effectively by the MoD. RAF use effectively ceased around 1992.

Motor sports have occurred at the airfield at the weekend since the 1960s with motorcycle racing and continued with dragster racing during the 70s. It was also used for land speed records and driver training.

Despite all of the above the airfield was not heavily used and local residents benefited from prolonged periods of respite from noise. When residents complained about noise from unsilenced motorcycles the MoD banned them and did not allow them back to the airfield until they were silenced. This led to a “gentlemen’s agreement” between the MoD and Selby District Council, within whose area the airfield lay. The agreement guaranteed a minimum of two quiet weekends per month for local residents.

Following local government re-organisation in 1996 the airfield and the surrounding villages and countryside became part of City of York Council (CYC). In 1997 CYC produced a planning development brief; this stated that planning permission would be required for sport and recreational uses if they occurred for more than 28 days per year. This was repeated in the sales document when the airfield was put up for sale by the MoD.

3 COMPLAINTS, NOISE MONITORING AND LEGAL PROCEEDINGS

3.1 Pre 2005

In 2000 Elvington Park Limited (EPL) and its sister company Elvington Events Limited (EEL) bought Elvington Airfield from the MoD.

Whilst the airfield had been used for some motor sports events, EPL/EEL introduced Formula 1 testing and intensified other motor sports use. No planning permission was sought and there was no consultation with the local parish councils or local residents. Aston Martin 24 hour endurance testing was also allowed. Local residents complained to City of York Council's environmental protection unit (EPU) about the noise. EPU first wrote to the airfield owners in 2003 about the noise. EPU did some initial monitoring with mixed results. The motor sports noise was intermittent. Most of the events at that time were held at the eastern end of the airfield where the background noise was higher due to traffic noise. However the monitored events had the potential to constitute a statutory noise nuisance.

EPU continued to write to the airfield owners about the noise complaints, what events were causing them, advice on how to reduce noise levels and their concerns that they could become a noise nuisance. EPU held a number of meetings in an attempt to reduce noise levels. The airfield owners refused to acknowledge a potential noise nuisance and discussions broke down.

3.2 Statutory noise nuisance

Noise monitoring resumed. EPU established a statutory noise nuisance under section 79(1)(g) of the Environmental Protection Act 1990. The noise nuisance was due to Formula 1 testing, together with a combination of other motor sports and related activities, including motorcycle and car racing.

Following legal advice, noise abatement notices were served under section 80 of the Environmental Protection Act 1990, on 23 March 2005. The notices were served on both Elvington Park Limited and Elvington Events Limited. The notice was served as a result of "noise from motor vehicles and associated activities". The notice gave the owners three months to abate the nuisance and prevent its recurrence. The notice also required them to "take the steps necessary to prevent noise from motor vehicles and associated activities causing a statutory nuisance". The notice ended with the words: "The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure required." Letters were sent to EPL/EEL with the notices advising them to stop Formula 1 testing; to reduce the number of other noisy events; to notify residents when these would happen and to provide respite to local residents.

3.2 Magistrates Court appeal

EPL/EEL appealed the notices on all grounds:

i) the abatement notice is not justified
ii) the Council have unreasonably refused to accept compliance with alternative steps and the requirements of the Abatement Notice are unreasonable in their character and extent and the requirements set, out in the notice are unreasonable and unnecessary
iii) The time allowed for compliance is not reasonably sufficient for the purpose
iv) The best practicable means were used to prevent, or counteract, the effect of the nuisance.

The Council relied on their own monitoring evidence and the Appellants appointed their own independent consultants who undertook measurements. They effectively conceded there was a nuisance. Their evidence was also based on an assumption that the Formula 1 testing occurred for very short periods of time only lasting only a few minutes in total.

In March 2006 EPL/EEL admitted that they had caused a statutory noise nuisance at the airfield.

On 23 November 2006 District Judge Elsey dismissed the appeal to the magistrates court. However he also effectively varied the notice to include hours of operation, classification of events into "noisy", "very noisy" and " exceptionally noisy", limited residents to two quiet weekends per month, included noise monitoring by the appellants and noise limits and the notification of local residents and the Council. He also allowed 10 days of Formula 1 testing a year.

3.3 Crown Court appeal

The complicated decision by D.J. Elsey was again appealed by EPL/EEL. They claimed that he had erred in rejecting a "double-barrelled notice, i.e. a notice that said both "abate the nuisance" and specified the measures that should be taken to do this. The appellants also said the decision created excessive and unnecessary conditions which went beyond those measures required to abate the nuisance and sought to fetter their lawful use of the airfield.

The use of the airfield intensified. Formula 1 testing increased to 21 events in 2007.

City of York Council appointed Mike Stigwood as their acoustic consultant, both to review the noise monitoring undertaken to date, to do further noise monitoring and to give his professional advice on the nuisance and its impact upon local residents.

Mike Stigwood independently assessed the impact from residential property and similarly concluded there was a clear nuisance due to the noise. He observed and measured the noise from a number of events both external to dwellings and within. He compared the noise impact with:

a) Noise limits set at other circuits.
b) Guideline values in various standards and documents.
c) Its loudness and intrusiveness compared to the general soundscape of the area which was generally considered tranquil.

Mike Stigwood also compared and contrasted the impact objectively in relation to the sound characteristics and psycho-acoustical factors that were pertinent to nuisance and which are not addressed by reference to the decibel level.

Whilst District Judge Elsey allowed 10 Formula 1 events a year Mike Stigwood did not agree this was acceptable and was not prepared to agree with this element.

In January 2008 both parties met at York Crown Court and tried to reach a compromise. EPU proposed to monitor noise from a reduced number of events, once the airfield had produced a noise management plan. This was initially agreed for a six month trial period. However when both parties met the following day EPL/EEL refused the noise monitoring and to produce a noise management plan. The Council wrote to the Crown Court asking for the resumption of proceedings.

The Crown Court appeal was heard from 19 to 23 May 2008. Recorder Roberts and two magistrates heard evidence on behalf of the airfield and its users, local residents, Mike Stigwood for the council and Doug Sharps of Sharps Redmore Partnership for the airfield.

The findings of Mike Stigwood are summarised in the presentation slides. Most weight was given by the court to the psycho-acoustic effects.

The appellants argued for a double barreled notice and for 10 Formula 1 testing events per year, 16 other high noise events and an unspecified number of other “low noise” events, with one weekend a month free of any noise.

In his judgment of June 2008 Recorder Roberts stated that even a single Formula 1 testing event would cause a statutory nuisance. He said the airfield was not designed for that type of noise and that no noise mitigation measures were put in place. Recorder Roberts was unable to say that 16 high noise events, together with the other events, would not cause a statutory noise nuisance, but that it was the total noise dose upon local residents as opposed to the impact of individual events.

Recorder Roberts could not support the proposal to reduce the number of quiet weekends for residents to one weekend per month, but favoured the Selby agreement. He said the appellant’s argument for the council to specify exactly how to abate the noise nuisance would be tantamount to expecting the council to run the airfield, because the measures and noise mitigation proposals would have to be so detailed.

He therefore dismissed the appeal and concluded that the council properly exercised their discretion to issue a single-barreled notice.

3.4 The High Court

EPL/EEL requested a Case Stated with four questions for the opinion of the High Court:

(1) Whether, in the particular circumstances of this case, an abatement notice which does not specify works or steps to be taken to achieve an abatement of the nuisance fails to meet the requirements of clarity and fairness which attach to notices which may result in criminal sanctions, and is therefore wrong in law;
(2) Whether, in the particular circumstances of this case, an abatement notice which specifies works or steps to be taken to achieve an abatement of the nuisance should have been imposed;
(3) Whether the learned Judge and the lay Magistrates misdirected themselves as to the significance and effect of the Outline Settlement Agreement reached between the parties on 14 January 2008; and
(4) Whether, in all circumstances, a full award of the costs incurred in the course of proceedings in the Crown Court should have been awarded in favour of the respondent.”

This was heard in July 2009.

Both barristers concluded that issues (3) and (4) were no longer of any significance.

Mr Justice Silber stated that the two questions that to be resolved and which would answer questions (1) and (2) were:

(a) the abatement notices served on the appellant should have specified the steps to be taken by the respondent (“The Invalidity Issue”) and if not;
(b) whether in the circumstances it was irrational of the respondents not to set out those steps (“The Irrationality Issue”)

Mr Justice Silber stated that if an abatement notice requires not merely abatement of noise but also steps to be taken, that these steps should be specified; since the council’s notices did not do so they were invalid. Mr Justice Silber concluded that since the acoustic experts (Mr Stigwood and Mr Sharps) could not come to a conclusion as to what was needed to abate the noise nuisance, it could not have been irrational for the council to have failed to specify those steps.

Mr Justice Silber said the council would have to consider serving new abatement notices, but wondered whether both parties might consider mediation so as to specify what steps the appellants should take to end the statutory nuisance and to prevent it recurring.

4 CURRENT POSITION

After the High Court, EPU continued to receive noise complaints about the activities at the airfield. EPU resumed noise monitoring and a motorcycle racing event was deemed to be a statutory noise nuisance. EPU served a second noise abatement notice on 22 October 2009 on EPL and EEL. Following consultation with Mike Stigwood and legal advice, this time the notices did not include the word “steps”. EPU also offered mediation and discussion. EPL/EEL appealed this notice. The appeal will be heard from 14-18 June 2010. In the meantime EPU and EPL/EEL agreed to meet on 1 March 2010 to discuss a way forward.