

Case Name: *James, R (On the Application Of) v Dover District Council* [2022] EWHC 961 (Admin) (28 April 2022)

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Commentary:

The Claimant sought to challenge the decision of Dover District Council (the “Defendant”) in granting planning permission for development at Lydden Hill Race Circuit (the “Race Circuit”), located in the Kent Downs Area of Outstanding Natural Beauty. The Race Circuit has a long history of leading to concerns about noise in the local area. In 2015 a noise abatement notice was served on the Race Circuit by the Defendant and the Race Circuit was found to be causing a statutory noise nuisance.

In May 2020 the Defendant granted planning permission for development at the Race Circuit which would lead to an increase of the days on which activities could take place at the Race Circuit, albeit that the noise generated by such activities would be lower than those taking place under the existing planning permission. The Claimant sought to challenge the decision to grant planning permission on four grounds. The claim failed on all grounds.

In its first ground the Claimant submitted that the Defendant erred in regarding the existing level of noise, which was a statutory nuisance, as a fallback position against which to judge the application for planning permission. Mrs Justice Lang found that the planning officer was correct to identify the fallback position as that which currently existed under the existing planning permission and abatement notice. Indeed, she held that members had been correctly advised in the officer’s report to consider whether the proposed planning permission would be more effective in controlling noise levels, as it would include more stringent and effective conditions, than the existing planning permission and abatement notice. The officers report was not required to consider or advise members as to what further abatement notices might be served in the future, it is not its role to make any decisions on such matters and speculation would not be appropriate.

The Claimant’s second ground was that it was irrational for the Council to conclude that the additional use of the Race Circuit “would not significantly diminish the tranquillity beyond the application site” and that it was unlawful when it undertook the assessment required by paragraph 172 of the NPPF as it condoned a level of noise which had been accepted as a statutory nuisance. The first of these points turned on evidence and the judge found that the Defendant’s decision making had been rational. As to the second limb of this ground Mrs Justice Lang held that paragraph 172 of the NPPF does not require permission to be granted only for development that reduces noise impacts to levels that are not a statutory nuisance, still less to zero.

Ground 3 and 4 related to reasons given under the officer's report and to human rights considerations and were both dismissed.

Case summary prepared by Juliet Munn