

DATED 9th OCTOBER 2012

SCHYDE INVESTMENTS LIMITED
- and -
SHAPE & SCAPE LTD

-to-

CHERWELL DISTRICT COUNCIL

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING

under section 106 of the Town and Country Planning Act 1990 (as amended) and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 relating to Land at Arncott Motoparc, Murcott Road, Upper Arncott, Bicester, Oxfordshire

THIS UNILATERAL UNDERTAKING is given this *9th* day of *OCTOBER* 2012

BY

- (1) **SCHYDE INVESTMENTS LIMITED** (Company registration number 05328485) whose registered office is at Royal Mews, St Georges Place, Cheltenham, Gloucestershire, GL50 3PQ ("the Owner"); and
- (2) **SHAPE & SCAPE LTD** (Company registration number 07219579) whose registered office is at Astral House, Granville Way, Bicester, Oxfordshire, OX26 4JT ("the Tenant")

TO

- (2) **CHERWELL DISTRICT COUNCIL** of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA ("the District Council")

INTRODUCTION

- 1 The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site subject to the interest of the Tenant but otherwise free from incumbrances as the Owner hereby warrants.
- 3 The Tenant has a tenancy agreement with the Owner to occupy the Site.
- 4 During an Inquiry held on 25 July 2012 into the use of the Site for motocross racing and practising the Owner undertook to provide a management plan to the District Council every year for approval governing any motocross use of the land in the year next following which would include, among other things, an undertaking that no motocross use would be carried out other than in accordance with the approved management plan.
- 5 The Owner and the Tenant enter into this Deed in order to give effect to the obligations outlined in recital (3) above with the intention that the covenants in this Undertaking shall be enforced by the District Council against the Owner and the Tenant and their successors in title.

NOW THIS DEED WITNESSES AS FOLLOWS

OPERATIVE PART

1 **DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990 as amended
"Plan"	the plan attached to this Deed
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan as further described in the First Schedule

2 **CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly.
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.

2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.8 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council the successors to their respective statutory functions and any duly appointed employee or agent of the District Council or such successor.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other such enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner and the Tenant under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authority against the Owner and the Tenant and their successors in title

3.3 This Deed is capable of and may be registered as a local land charge by the District Council.

4 OBLIGATIONS OF THE PARTIES

The Owner and the Tenant undertake to the District Council to comply with the obligations set out in the Second Schedule.

5 MISCELLANEOUS

5.1 The Owner and the Tenant will reimburse the District Council in respect of all legal and administrative costs reasonably and properly incurred in connection with the enforcement of any of the provisions hereof should the need for enforcement arise in the reasonable opinion of the District Council.

5.2 No provisions of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the parties and their successors in title and assigns and any successor to the District Council's functions.).

5.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6 WAIVER

No waiver (whether expressed or implied) by the District Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7 NO FETTER

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council in the exercise of their respective functions in any capacity.

8 CHANGE OF OWNERSHIP etc

The Owner and the Tenant undertake to the District Council to give the District Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office if a company or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan.

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

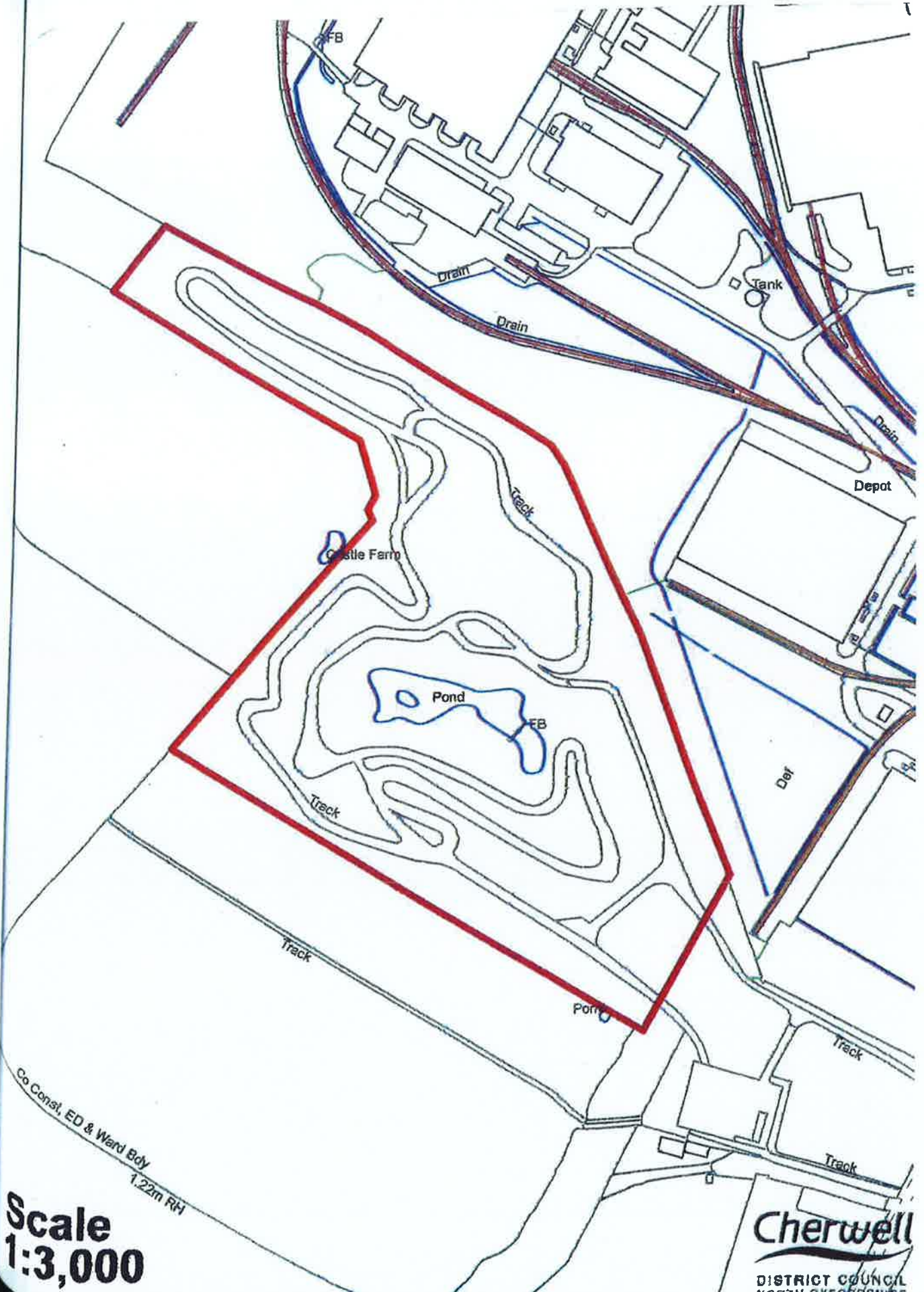
10 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Land at Arncott Motoparc, Murcott Road, Upper Arncott, Bicester, Oxfordshire being part of the land comprised in Land Registry Title Number ON137081 shown edged red on the Plan



Co Const, ED & Ward Bdy
1:22m RH

Scale
1:3,000

Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

SECOND SCHEDULE

COVENANTS WITH THE DISTRICT COUNCIL

Definitions

In this Schedule in addition to the definitions in clause 1 of this Deed the following words and expressions have the following meanings:

- | | |
|-----------------------|--|
| "the Appeal Decision" | means the decision of the Planning Inspectorate dated 3 August 2012 in relation to appeal ref: APP/C3105/C/12/2173710 attached to this Deed at Appendix 1 |
| "the Management Plan" | means a plan submitted for approval to the District Council by 31 December each calendar year in accordance with paragraph 2 of this Schedule which plan shall include a programme of motocross racing and practising events in the year next following such events to be consistent with the restrictions set out in paragraph 1 of this Schedule and details of how the Owner will submit monthly returns to the District Council setting out data in respect of the number of motocross racing and practising events and numbers of motorcycles or quad bikes on the track during those events in the preceding month |

1. The Owner and the Tenant covenant and undertake to the District Council that they the Owner and the Tenant will not use or cause or permit the use of the Site for motocross racing and practising otherwise than as follows:-

1.1 during 2012 only on the dates and times identified in the 2012 schedule of diary events set out in the Appeal Decision;

1.2 From 1 January 2013, on only:

1.2.1 30 Wednesdays at most in any calendar year, such Wednesday use limited to 10.30-15.30 and a maximum of 15 motorcycles or quad bikes on the track at any one time;

- 1.2.2 20 weekend days at most for practising in any calendar year with any such weekend practising use limited to one day over any given weekend between 10.30-15.30 and a maximum of 35 motorcycles or quad bikes on the track at any one time. No practising on consecutive weekends;
- 1.2.3 6 weekend days at most for competitive racing in any calendar year with any such weekend racing limited to 09.00-17.30 and a maximum of 40 motorcycles or quad bikes on the track at any one time. No racing on consecutive weekends.

2. The Owner and the Tenant covenant and undertake to the District Council that they the Owner and the Tenant will prior to 31 December each calendar year submit to the District Council in writing for approval the Management Plan for the year next following and in the event of default will not cause or permit any further motocross racing or practising to take place on the Site until the Management Plan has been submitted to in writing and approved in writing by the District Council;

3. The Owner and the Tenant covenant and undertake to the District Council that they the Owner and the Tenant will not carry out or cause or permit to be carried out any motocross racing or practising on the Site in a given calendar year otherwise than in accordance with the approved Management Plan for that calendar year.

4. The Owner and the Tenant covenant and undertake to the District Council that they the Owner and the Tenant will submit or procure the submission of monthly returns to the District Council in respect of the motocross racing and practising events in the preceding month in accordance with the details set out in the approved Management Plan.

APPENDIX 1

APPEAL DECISION



Appeal Decisions

Inquiry held on 25 July 2012

by **Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 August 2012

Appeal Ref: APP/C3105/C/12/2173710

Arcott Motoparc, Murcott Road, Upper Arcott, Oxfordshire, OX25 1PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Schyde Investments Ltd against an enforcement notice issued by Cherwell District Council.
- The Council's reference is 12/00062/ECOU.
- The notice was issued on 7 March 2012.
- The breach of planning control as alleged in the notice is the material change of use of the land in 2010 by reason of intensification from a use for motocross racing and practising to a use comprising materially more noisy and more frequent motocross racing and practising amounting to a definable change in the character of the use of the land.
- The requirements of the notice are to ensure that no motocross racing and practising shall take place on the land on more than 14 days in a calendar year.
- The period for compliance with the requirements is 8 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

The appeal site

1. The Motoparc lies within the area of two local authorities. The major part of the site lies within Cherwell District Council and the other part, comprising such things as the entrance way and parking areas, is within Aylesbury Vale District Council. The notice relates to the land within Cherwell District only. The site is within the area of Arnott Parish Council.

Procedural matters

2. The Inquiry was originally scheduled to last for three days to consider an appeal in relation to the enforcement notice referred to above together with two Lawful Development Certificate (LDC) appeals¹. In the event, on the first day negotiations took place between the principal parties culminating in agreed corrections to the notice which I was invited to endorse.
3. The diary of events scheduled for the remainder of the year (August – December 2012) was amended during the negotiations². The Appellant also

¹ APP/C31505/X/12/2170522 and APPJ0405/X/11/2167122

² Tab 35 of Mr Anderson's proof – Document 1

undertook to provide a management plan to Cherwell Council every year for approval governing any motocross use of the land in the year next following which would include, among other things, an undertaking that no motocross use would be carried out other than in accordance with the approved management plan.

4. Although there was no appeal on ground (f), the corrected requirements were agreed between the Appellant and Cherwell Council and the corrected requirements remedy the breach of planning control as provided for by s.173(4) of the 1990 Act. I am satisfied that the corrections do not result in any injustice to the Appellant and/or Cherwell Council and I will correct the notice accordingly pursuant to my powers in s.176 of the 1990 Act.
5. As agreed between the principal parties, the outcome of the enforcement appeal therefore is that the notice is upheld as corrected and the appeal is dismissed.
6. The two LDC appeals were consequently withdrawn by the Appellant.

Decision

7. It is directed that the enforcement notice be corrected by:
 - a) In part 2, the insertion of 'Arncott Motoparc' before 'Murcott Road'.
 - b) The deletion of part 5 (1) in its entirety and the insertion of:

5 (1) Ensure, insofar as any motocross racing and practising takes place on the land, that it takes place only as follows:

 - (a) During the remainder of 2012 (August-December), only on the dates identified in the 2012 diary³ as set out in the Schedule below.
 - (b) From 1 January 2013, on only:-
 - (i) 30 Wednesdays at most in any calendar year, such Wednesday use limited to 10.30-15.30 and a maximum of 15 motorcycles or quad bikes on the track at any one time.
 - (ii) 20 weekend days at most for practising in any calendar year, with any such weekend practising use limited to one day over any given weekend, between 10.30-15.30 and a maximum of 35 motorcycles or quad bikes on the track at any one time. No practising on consecutive weekends.
 - (iii) 6 weekend days at most for competitive racing in any calendar year, with any such weekend racing limited to 09.00-17.30 and a maximum of 40 motorcycles or quad bikes on the track at any one time. No racing on consecutive weekends.
 - c) In part 6, the substitution of 'one day' for '8 weeks'.

Schedule of diary events

August 2012

1, 8, 15, 22, 29 – Drug rehab : Ley Project 10.30-15.30

³ Document 1

4, 18 – Mark Thomas Training School 10.00-14.00

10 – Private hire : kids birthday party

12 – Kensworth MX Club Race Meeting

26 – Practice

September 2012

5, 12, 19, 26 – Drug rehab : Ley Project 10.30-15.30

9 – Nora Quads Race Meeting

15, 29 – Mark Thomas Training School 10.00-14.00

23 – Coventry MX Race Meeting

October 2012

3, 10, 17, 24, 31 – Drug rehab : Ley Project 10.30-15.30

13, 27 – Mark Thomas Training School 10.00-14.00

14 – Stevenage MX Race Meeting

28 - Banbury MX Race Meeting

November 2012

4 – Kensworth MX Race Meeting

7, 14 - Drug rehab : Ley Project 10.30-15.30

10 – Mark Thomas Training school

18 - Practice

December 2012

9, 23 - Practice

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Miss S Clover - Counsel, instructed by Mr A Anderson of Pegasus
Planning Group Ltd

FOR CHERWELL DISTRICT COUNCIL AND AYLESBURY VALE DISTRICT COUNCIL

Mr S Whale Counsel, instructed by both District Councils

FOR ARNCOTT PARISH COUNCIL

Mr N Wicks Director, Enforcement Services
BTP Dip Law MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1 - Amended diary
Document 2 - Corrections to the notice

SIGNED AS A DEED BY
~~THE COMMON SEAL~~ of Schyde Investments Limited)

was hereunto affixed in the presence of)

Director:

Director/Secretary:

SIGNED AS A DEED BY
~~THE COMMON SEAL~~ of Shape & Scape Ltd)

was hereunto affixed in the presence of)

Director:

Director/Secretary:

2/10/12