

**PLANNING COMMITTEE – 9 DECEMBER 2021****PART 1**

Report of the Head of Planning

**PART 1**

Any other reports to be considered in the public session

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**1.1 Land at Spade Lane, Hartlip**

In January of this year, a Part 6 report was presented to Members which recommended the making of an Article 4 Direction on a parcel of land on Spade Lane (immediately to the north of the unauthorised Gypsy and Traveller site). This followed the holding of outdoor cinema events on the land in December 2020. A copy of this report is attached as Appendix 1.

The recommendation was agreed by members and an Immediate Article 4 Direction was subsequently served on the land on 12<sup>th</sup> August 2021, removing permitted development rights for temporary uses of land under Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). A copy of the Direction and a plan of the site is attached as Appendix 2. Specifically, this removed the following permitted development rights –

*“The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of*

*(a) The holding of a market;*

*(b) Motor car and motorcycle racing including trials of speed, and practicing for these activities*

*And the provision on the land of any moveable structure for the purpose of the permitted use.”*

In addition to this, the Government last year added an additional 28 days (14 for a market, motorcycle and motorcar racing) due to the effects of Covid-19. This additional period was further extended and is due to expire on 31<sup>st</sup> December 2021.

In accordance with the legislative requirements, an Article 4 Direction remains in force for a period of 6 months and then expires, unless it has been confirmed by the local planning authority in accordance with the requirements of the above Order. The six-month date expires on the 12<sup>th</sup> February 2022.

The Order sets a number of procedural requirements that must be followed in making an Article 4 Direction, including service of the notice on the landowner, local advertisement, the display of a site notice, and submission of a copy to the Secretary of State. In addition, it requires that the local planning authority must take into account any representations received during the relevant consultation period.

This process has been undertaken, and representations against the Article 4 Direction have been received from the landowner. These are summarised as follows –

- The direction has been made without a proper reason or justification
- A number of the planned cinema events last winter did not go ahead and should not be used as evidence of harm.

- The direction has been served on hearsay rather than any factual evidence
- The land has never been used as a bootfair and there are no plans to use it as such
- The cinema event was permitted under a Temporary Events Notice
- The congestion caused by the cinema event was due to rainfall / weather conditions
- Other local events held in or near Swale caused much higher levels of congestion but have not been penalised, and this is discrimination.
- The serving of an Article 4 Direction will devalue the land and compensation will be sought for this.

Members must now consider whether the Article 4 Direction should be confirmed. In response to the representations received from the landowner, I would comment as follows –

*Absence of evidence or harm* – the outdoor cinema ran only for a few screenings last December. The capacity of the site (in terms of vehicle numbers) is not directly known or stated, however press coverage from last year indicates that a private showing attracted 100 vehicles, and the site is over 2 hectares in area. The Temporary Events Notice permitted up to 499 persons which, based on between 2-4 persons per car, would be in the region of 165 vehicles per showing.

The January report also commented on the potential that the site could be used as a bootfair, with a likelihood of more traffic than a cinema operation. Whilst I acknowledge that there is no evidence that a bootfair has been run from the site, I am aware that the landowner runs bootfairs elsewhere in the local area, and I also note that the application for the outdoor cinema Temporary Events Notice referred to the site address as “Rainham Bootfair Two”.

Both an outdoor cinema use and a bootfair would fall under a temporary use of land permitted under Part 4, Class B of the GPDO. It is a matter of fact that the land was used last year as an outdoor cinema. I am of the view that the level of traffic generated by such use (and potentially by a bootfair or other temporary uses) and the narrow and single width nature of Spade Lane provide sufficiently robust evidence that significant highways impacts would be likely to arise from such uses of land – as set out in the January report. Kent County Council Highways has confirmed that it would support confirmation of the Article 4 Direction to prevent uncontrolled use of the site, taking into account the narrow width of Spade Lane.

*That the land has never been used as a bootfair and there is no intention to do so* – this is somewhat academic as officers consider robust evidence exists from the use of the land as an outdoor cinema last year to justify the removal of PD rights.

*The cinema event was permitted under a Temporary Events Notice* - I am advised that the only consultees for such notices are the police and Environmental Health, and that consideration is limited to prevention of crime and disorder, prevention of public nuisance, protection of public safety, or protection of children from harm. I do not consider that these grounds cover matters relating to highways safety and convenience. The grant of a Temporary Events Notice does not preclude the Council from taking action or restricting the use of land under its other functions – as is the case here.

*The congestion caused by the cinema event was due to bad weather* – My primary concern relates to the extent of uncontrolled traffic on the local road network, irrespective of weather conditions.

*Other local events have not been penalised in the same way which is discriminatory* – Although no specific events are referred to, those falling outside of Swale are of course not

subject to the Council's control. I am unaware of any similar recent events within Swale that have benefitted from temporary use rights and caused impacts that would necessitate serving an Article 4 Direction.

*De-valuation of land and compensation* – It is important to make clear that the serving of an Article 4 Direction does not prevent such uses from ever taking place. It removes the right (in this instance) to use land temporarily without the need for planning permission. The owner or an applicant is entitled to make a planning application for such use, which would then be considered on its merits as is normal practice. Compensation is only payable if that planning application is refused or granted with conditions other than those in the GPDO. In any event, I have taken legal advice that compensation is not payable following the removal of permitted development rights in this instance under Part 4 Class B.

### Conclusion

Following the representations received from the landowner and my comments as set out above, I consider that the Article 4 Direction should be confirmed and seek approval from the committee to proceed with this.

**RECOMMENDATION:** That the Committee resolves to confirm the Article 4 Direction made on 12 August 2021 and gives delegated authority to officers to undertake, in consultation with Mid Kent Legal Services, the preparation of any necessary documentation including site and press notices and that officers carry out any required notification to interested parties and the Secretary of State.