

APPENDIX 1**PLANNING COMMITTEE – 7 JANUARY 2021****PART 6**

Report of the Head of Planning

PART 6**NOT FOR PUBLICATION BY VIRTUE OF
paragraphs 5 and 7 of Part I of Schedule
12A of the Local Government Act 1972**

Report containing “Exempt Information” during which the consideration of which it is anticipated that the press and public will be excluded

6.1 Land at Spade Lane, Hartlip

Late last year, my officers were made aware that a boot fair and drive in cinema, hitherto located in South Bush Lane, just within Medway, was to relocate to this site, just to the north of the unauthorised gypsy/traveller site, in Spade Lane, Hartlip.

The cinema operated for a brief period before closing well ahead of its last scheduled screening on Christmas Eve.

The temporary use of land for purposes such as this amounts to permitted development, by virtue of Class B of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This has the effect of granting deemed planning permission for the following:

“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 addition 28 days (14 for a market etc) due to the effects of Covid-19 and the initial national lockdown. This additional period expired on 30th December 2020 and it is unclear whether an additional period will be added in the forthcoming year.

When the use of the land for an outdoor cinema commenced, the Ward Members and County Member requested that officers take action to prevent the use continuing. However – the use took place on only a very few occasions before ceasing and immediate action is no longer required. It remains though appropriate to consider what action the Council can take in such circumstances, and whether such action is expedient and in the public interest in this case.

As I set out above, the use of this land for 28 days per year for a temporary use (of which 14 only can be for use as an outdoor market or bootfair) would not require the express grant of planning permission. The use the land has been put to so far has been as an outdoor cinema. I am though also mindful that the landowner has also run bootfairs from

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other land within his ownership, but located outside the Borough, and such a use of this land also remains a possibility. There is therefore no opportunity to consider the merits of such a use nor to impose conditions.

The only action the Council can take to prevent such a use taking place without the need for planning permission is to make an Article 4 Direction (Art.4 direction). Such a direction has the effect of withdrawing specified permitted development rights. Members may be familiar with the Art.4 direction which covers the Faversham Conservation Area, and which has the effect of certain minor alterations to the front facades of dwellings now requiring planning permission (for example, replacing timber windows with uPVC windows).

The key issues for Members to consider here are whether the unrestricted use of this site for the purposes of an outdoor cinema and/or bootfair over the number of days per year (for next year, currently 28 days in total, of which only 14 can be used for outdoor markets/bootfairs) would be sufficiently harmful to warrant it being brought within the control of the Council as Local Planning Authority. This requires an assessment of the nature of the uses likely, the potential impact on the amenities of the area, and whether the limited number of occasions such uses can take place warrant the making of an Art.4 Direction.

The land in question lies on the west side of Spade Lane in Hartlip, immediately to the north of the currently unauthorised gypsy/traveller site, known as “New Acres”. My understanding at present is that it extends to approximately 2 hectares (although I am awaiting further advice on the extent of land ownership and therefore will advise Members of the size of the site at the Meeting). It has an access at the northern end of the frontage with Spade Lane, immediately adjacent to dense vegetation, which restricts visibility to the north.

Spade Lane is a fairly typical, small country lane. Although there are some passing places, it is for the most part, single track with space for only one vehicle. To the south of the site lies New Acres, which does not have the benefit of planning permission, and which is the subject of upcoming appeals relating to the continuation of the use of the site. To the north lies agricultural land, and beyond that two bungalows and the former Little Chef and Greens Garage, which is currently unused. To the west lies fields, beyond which lies South Bush Lane, with a small number of dwellings. To the east there are a small number of scattered dwellings fronting Spade Lane, and the large former coldstore lies at the junction of Spade Lane with the A2. The area is, in general terms, comparatively peaceful and undeveloped.

As the cinema use only subsisted for a few screenings, and no bootfair use has taken place to date, it is obviously difficult to provide Members with a clear picture of the potential scale of the uses and therefore the likely impacts. However – I understand from anecdotal evidence and press reports, that the final screening of the cinema was intended to be a private event for up to 100 cars. Given that in such circumstances, a large part of the site would have been taken up with a screen and ancillary temporary structures such as toilets, food facilities etc, it is not unreasonable to assume that a bootfair use could attract substantially more vehicles.

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In my view, taking into account the temporary nature of the uses under consideration here, visual impact is unlikely to be so harmful as to warrant an Art.4 Direction.

Equally, whilst both uses would clearly give rise to a degree of noise and disturbance, there is nothing inherent in this location which makes it more sensitive than other locations in terms of noise generation. The number of dwellings in the vicinity is limited, and whilst bootfairs tend to start early in the morning, and cinemas can run late into the evening, such uses are only temporary and such harm will be limited.

I am concerned regarding light pollution from the use of the land as a drive in cinema, in terms of its impact on the character of the countryside, and on the amenities of the area. This is again tempered by the temporary nature of the use, and had this been the only concern I had, I would not recommend making an Art.4 Direction on such a basis.

My principal concern here is the likely highways impact. As I set out above, Spade Lane is single track for much of its length, and the access to the site has poor visibility to the north. 100 vehicles potentially attending a cinema screening, and (in all likelihood substantially) more visiting a bootfair, could give rise to harm to highway safety due to the lack of visibility to the north. I am also concerned that, particularly with regards a bootfair, which would have vehicles coming and going throughout its operation, as opposed to at the start and end of a cinema screening, could give rise to severe traffic congestion, within Spade Lane itself, within South Bush Lane (which is even less suited to high volumes of traffic and is an alternative route back to the A2) and potentially on the A2 itself due. This is, to my mind, the most compelling reason for considering making an Art.4 direction.

There are two types of Art.4 direction which are available to LPAs, and they differ in terms of when they take effect. An “immediate” direction takes effect from the date it is made (although there is a consultation process to be gone through after this, the Council has to confirm the direction after the consultation period, and the Secretary of State has the power to modify or cancel the direction). A “non-immediate” direction has to be the subject of the consultation period and confirmation by the LPA after a minimum of 28 days from the display of site notices relating to it. Again – the Secretary of State has the power to modify or cancel the direction. .

Both immediate and non-immediate directions carry the risk of compensation being payable to the landowner/those with an interest in the site if the LPA subsequently refuses permission within 12 months of making the direction, for development which would otherwise have been permitted by the GPDO, or if it grants planning permission subject to more stringent conditions than those set out in the GPDO.

Non-immediate directions carry less of a risk of compensation than those effective immediately, and if a 12 month period of notice is given prior to the direction taking effect, compensation is not payable. Such a period of notice does though allow the use to continue without control until the direction is confirmed.

The government advises that “the grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.”

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Local Planning Authorities are entitled to have regard to the financial consequences of making an Art.4 direction when determining whether it is expedient to do so. Quantifying the extent of compensation that might be payable here is difficult, as the boot fair use has not taken place, and the cinema use ceased after only a very limited number of screenings.

Members should be clear that the making of an Art.4 direction does not mean that the use should never take place. It does though mean that a planning application has to be submitted to the Council for the use, and the Council should determine it in the normal manner.

If the Council subsequently refuses permission for development that would otherwise have been permitted by the GPDO, the compensation payable could be substantial. Examples I have found date from some significant time ago, and specific details are not available. In addition, it very much depends on the circumstances at the site, and the extent of “abortive expenditure, loss or damage” attributable in the case concerned.

In my view it is expedient to make an Art.4 Direction here, on the basis that uncontrolled temporary use of the land as a cinema and/or for holding bootfairs and outdoor markets has the potential to cause substantial harm to highway safety and convenience.

As the potential risk of compensation is at this stage almost impossible to quantify, and could have a significant impact on the finances of the Council, I recommend that Members delegate authority to the Head of Planning Services, in consultation with the Leader of the Council, the Cabinet Member for Planning and the Chairman of the Planning Committee, to determine whether it is expedient to make an immediate or a non-immediate Article 4 Direction, and the precise time period after which such a direction becomes effective, based on the level of risk to the Council in doing so, and to delegate authority to the Head of Planning Services and the Head of Legal Services to prepare and serve the necessary paperwork, (including on the Secretary of State) together with the precise wording therein.