

Wiltshire Council

Eastern Area Planning Committee

22 March 2018

Subject: Article 4 Direction

At: Land at Crookwood Farm, Crookwood Lane, Potterne, Wiltshire, SN10 5QS

1 Purpose of Report

- 1.1 To consider the making of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (An "Article 4 Direction") to remove 'permitted development' rights for the above Land, as outlined in red on the Location Plan at Appendix 1, under Part 4, Class B (Temporary Use of Land) of Schedule 2.
- 1.2 Having regard to all relevant considerations, the recommendation is that a 'non immediate' Article 4 Direction is made.

2. Background

- 2.1 The Land, comprising approx. 5.3 ha of mainly open field, is located between Potterne and Urchfont in the countryside. To its south-west side the Land adjoins a bridleway (URCH34) which connects with Crookwood Lane (and Stroud Lane), ('C'-classifications) approximately 1km to the north and a by-way (URCH34/EAST4) approximately 0.6km to the south. The bridleway is also a farm track providing 'tractor' access to fields along its route, and vehicular access to the Land is only really possible via it. Crookwood Lane is a typical rural lane, with single width and double width sections, linking Potterne (via the A360 at Potterne Wick) and Urchfont. To the immediate south-east of the Land is a railway line in a cutting. Beyond this and on all sides are further fields or woodland. Ground levels vary across the Land, although rising generally from the north-west side to the south-east side.
- 2.2 The Land's current use is agriculture (livestock grazing) forming part of Crookwood Farm, although in 2017 it was used temporarily for two unrelated 'motocross' motorcycle racing events on two separate weekends. With this temporary use there was related overnight camping, catering, etc., and some operational development – notably, the formation of earth mounds for jumps along the course of the temporary grass/earth race track formed on the Land, and the laying of stone/'hoggin'-type material on the surface of the bridleway to provide a more useable vehicular access from Crookwood Lane.

3. 'Permitted Development' entitlement

- 3.1 Under the terms of Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), the following is 'permitted development' (that is, permitted by the Order and so not requiring planning permission from the local planning authority):

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 practising for these activities,*

and the provision on the land of any moveable structure for the purposes of the permitted use.

The entitlement is subject to conditions set out in the Order, although these are not relevant to this case.

4. Recent History

- 4.1 In July 2017 complaints were received from local residents referring to works taking place on the Land to form a grass/earth motor cycle racetrack, this prior to a motocross event taking place in mid-August. This event was Round 6 of the 'MX Nationals' series, with the 'Crookwood Motorparc' to be used in place of another track near Swindon.
- 4.2 When approached by the Planning Enforcement Officer the landowner advised that the Land would be used in accordance with the permitted development entitlement referred to above - that is, for temporary *motorcycle racing including trials of speed and practising for these activities* for no more than 14 days in any calendar year. At all other times the Land would be used for agricultural purposes – specifically, the grazing of livestock.
- 4.3 In isolation the earthworks on the Land – to form the jumps along the course of the racetrack – amount to 'engineering operations' and so require planning permission for this reason. This separate requirement does not affect the permitted development entitlement under Part 4. An application has been made, and is referred to in Section 5 of this report below.
- 4.4 Prior to the mid-August event taking place a 'briefing note' was circulated by Wiltshire Council to all local Parish Council's setting out what was known at that time. The note was informed by information provided by the event organiser and relevant Wiltshire Council Services. Of note in this briefing note are the following:
 - The event organiser anticipated c. 1,000 attendees at the event, of which c. 250 would be motocross riders. The event organiser had certification from relevant bodies which oversee motor sport events; this certification is subject to conditions requiring compliance with other legislation, including the Motor Vehicles (Off-Road Events) Regulations 1995.
 - Wiltshire Council Highways had received an informal 'traffic management plan' from the event organiser which provided some assurance that the organiser was experienced in event and traffic management, and that marshals would be in place to direct traffic and provide signage.
 - Wiltshire Council Rights of Way had no immediate issues regarding the re-surfacing works to the bridleway, which to all intents and purposes had improved it. Any concerns over potential 'illegal' use of the bridleway would be a matter for Rights of Way to separately address.
 - Wiltshire Council Public Protection referred to a motorsport Code of Practice for managing noise at motocross and grass-track events. Notwithstanding the potential for noise generation, the code refers to between 6 and 10 events per

annum on single days and with minimum 4 week breaks in-between being potentially acceptable in any event.

The event took place, with monitoring by Wiltshire Council. The event organiser used marshals and signs to manage traffic. After the event the Land was inspected by a Planning Enforcement Officer; all paraphernalia associated with the motocross activities had been removed and livestock returned to the Land.

- 4.5 After the event some further complaints were received from third parties referring to issues arising including noise, traffic inconvenience and incompatibility with another event taking place in the locality.
- 4.6 On 17 September the event organiser notified Wiltshire Council of a second planned motocross event, to be held over the weekend of 23 & 24 September. This event was for the 'Severn Valley Schoolboy Scramble Club', with 200 riders anticipated. Although the prior notice was short, the Council actioned formal monitoring of this event. The outcomes from the monitoring of the second event are summarised as follows:
- Wiltshire Council Highways local division officers observed marshalling and a one way traffic system in place. They received no complaints directly in relation to highway safety matters.
 - Wiltshire Council Public Protection witnessed noise from motor cycles and/or loud speakers in some locations but not in others – this depending at least in part on the wind direction.
 - Wiltshire Council Rights of Way inspected the bridleway after the event and reported no damage or matters to follow-up in terms of its condition.
- 4.7 After the event the Land was again inspected by a Planning Enforcement Officer; and again all paraphernalia associated with the motocross event had been removed and livestock returned to the Land.
- 4.8 Also after the event the wider road network was inspected by a Wiltshire Council Highways Officer – to assess its wider capability to accommodate event traffic in general. The Highways Officers' full assessment and conclusions follow –

The junction of the A360 / Crookwood Lane has a shortfall in visibility to the south and there is a shortfall in visibility for northbound vehicles of a vehicle waiting to turn right into the lane.

The lane leading into the site via Potterne Wick has narrow sections interspersed with some short sections wide enough for 2 vehicles to pass. There are some passing opportunities on the narrow sections. Parts are winding and of poor horizontal and vertical alignment. Other sections are of good straight alignment although still of a width too narrow for 2 vehicles to pass until the site is reached.

The site access is on a bend and has satisfactory visibility in each direction.

The section of Crookwood lane leading to the main road network at Urchfont has generally better width and alignment, although still has considerable sections too narrow for 2 vehicles to easily pass. There are frequent passing opportunities however. I would not expect the majority of event traffic to use this route, as it accesses the B3098 which runs west to east rather than the A360 with its north / south alignment towards the M4 and A303 / A36 to the south.

The junction of Crookwood Lane and the B3098 has a shortfall in visibility to the east but is satisfactory to the west.

There were some signs of minor verge overrunning but no evident significant damage to the lane and first section of bridleway caused by the recent events.

Given the standard of the A360 / Crookwood Lane junction and the standard of the lane leading in from Potterne Wick I consider a limited number of events could be accepted within the 14 day (permitted development) rule providing there is adequate marshalling - particularly of the A360 / Crookwood Lane junction, the B3098 / Crookwood Lane junction, and the site access. It would be important that there are event warning signs located warning northbound A360 traffic before the Crookwood Lane junction. Local residents should be provided with better notice of events and an informal one-way system (in from Potterne Wick and out via Urchfont) should be encouraged.

These points are important, but providing the authority can be satisfied that they will be put in place I consider a highway objection to a small number of events through the year would be difficult to justify.

- 4.9 Since first being notified of the activities at the Land the Planning Enforcement Team has closely monitored matters and attempted to enter into constructive dialogue with the event organisers. To a certain extent this engagement has been successful – the event organiser having provided an informal traffic management plan for the first event, and having notified the Council of the second event (albeit at very short notice) and actioned the plan to a point.

5. 'Live' planning application

- 5.1 Following the Planning Enforcement Officer's initial investigation a planning application was made by the event organiser in October 2017 – for the use of the site as a temporary motocross track and for agriculture with associated earthworks for jumps. Following submission of further essential information the application was validated and registered on 31 January 2018. More recently the applicant has requested that the description is changed to just refer to the matters that require planning permission from Wiltshire Council – these being the mounds forming the racetrack jumps. At the time of writing of this report, re-consultations with neighbours and interested parties on the revised description had just commenced.

- 5.2 As the planning application now 'only' relates to the mounds its relevance to the consideration of the making of an Article 4 Direction has diminished. This said, the application is accompanied by a statement which provides additional information about the management of events, and this is relevant in the context of the comments made by the consultees referred to above. The statement is referred to in Section 6 of this report and is attached as Appendix 2.

6. 'Events Management Plan'

- 6.1 The events' organiser has stated in the live planning application, effectively in an Events Management Plan, that he is agreeable to the following –
- Meet/liase with local parish councils;
 - Provide advance warning of planned events through site notices and local advertisement;

- Provide advance warning of changes to dates in view of forecast inclement weather;
- Limit numbers of competitors “... *an event can only have forty rides in each class with a maximum of nine classes [=] 360*”;
- Provide traffic management – “... *marshals with radio contact monitoring the roads at the times when traffic will be at its peak signs directing competitors*”;
- Carry out noise monitoring – “*Our organisation carries out noise testing throughout our events and any bikes that are over the limit for noises would be stopped from competing with immediate effect*”; “*No Tannoys ... till 8:30 in the morning and all Tannoys off by 18:00 ...*”.

6.2 The event organiser has further stated that four weekend events are proposed in 2018 – on 21/22 April, 12/13 May, 23/24 June and 1/2 September.

7. Article 4

7.1 Article 4 of the Town and Country Planning (General Permitted Development) Order (GPDO) provides the Council (or the Secretary of State for Communities and Local Government) with the power to make a direction in particular areas which can remove specified permitted development rights which would otherwise be available.

7.2 The Planning Practice Guidance (PPG) gives guidance on the use of Article 4 Directions, including the form they should take. This states, amongst other things, that “*the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified*”.

7.3 Article 4 Directions can be immediate or non-immediate. A non-immediate Direction is one which does not come into force at the point at which it is made, rather it comes into force on a later date to be determined by the Council. An immediate Direction can withdraw permitted development rights straight away; however they must be confirmed by the Council within 6 months of coming into effect to remain in force. Confirmation occurs after the Council has carried out a local consultation.

7.4 The PPG advises that the circumstances in which an immediate Direction can restrict development are limited. Immediate Directions can be made in relation to development permitted by Parts 1 to 4 and 31 of Schedule 2 to the GPDO, where the development presents an immediate threat to local amenity or prejudices the proper planning of an area. In all cases the local planning authorities must have already begun the consultation processes towards the making of a non-immediate Article 4 Direction.

7.5 The procedures for making an Article 4 Direction are set out in article 5 of the GPDO, and in article 6 for Directions with immediate effect. The PPG provides guidance on modifying or cancelling Article 4 Directions and advises that “*an Article 4 Direction can remain in place permanently once it has been confirmed. However, local planning authorities should regularly monitor any article 4 directions to make certain that the original reasons the direction was made remain valid. Where an Article 4 Direction is no longer necessary it should be cancelled*”.

7.6 The Secretary of State must be informed of all Article 4 Directions to be made and when they have been confirmed. The Secretary of State does not have to approve

Article 4 Directions, and will only intervene when there are clear reasons for doing so. Such intervention can prevent the Council from subsequently confirming a Direction (via a 'holding notice'). The Secretary of State has the power to modify or cancel Article 4 Directions at any time before or after they are made, with a few exceptions. One exception being that directions with immediate effect removing permitted development rights under Parts 1, 2, 3, 4 and 31 of Schedule 2 to the General Permitted Development Order may not be modified. Ensuring the Council is satisfied with the supporting case for designating an Article 4 Direction will reduce this risk of intervention.

7.7 To make and confirm a 'non-immediate' Article 4 Direction the following process must be followed (with indicative timeline for this case) –

- The making of the non-immediate Article 4 Direction (April 2018);
- Advising the Secretary of State of the non-immediate Article 4 Direction (April 2018);
- Consultation on non-immediate Article 4 Direction (c. May-July 2018);
- Consideration of consultation responses and decision on whether to confirm non-immediate Article 4 Direction (c. August-September 2018);
- If confirmed, Implementation and monitoring.

8 The Implications of an Article 4 Direction

8.1 The practical effect of an Article 4 Direction, when in force, is not to automatically prevent development which would otherwise have been permitted, but to require an application for planning permission for that development. The existence of a Direction does not convey any more restrictive policy approach to the determination of such applications.

8.2 A constraint on the use of Article 4 Directions – and in particular 'immediate' Article 4 Directions – is a possible claim of compensation for abortive expenditure or loss of income directly attributed to the withdrawal of permitted development rights, if permission is later refused or granted subject to more limiting conditions. There are also time limits to paying compensation following the Direction coming into effect and the refusal of planning permission.

8.3 A Direction cannot be made retrospectively; therefore permitted development already carried out at a site cannot be made unlawful by a Direction coming into force.

9. Need for an Article 4 Direction

9.1 In view of the government advice set out above, an Article 4 Direction must be justified both in terms of purpose and extent, and it is necessary to assess the need for making it. In this case, such an assessment should be based on whether the exercise of permitted development rights at the site will in the future cause harm to matters of acknowledged importance – notably in this case highway safety, residential amenity and general tranquillity – and, therefore, whether it is considered necessary to bring the matter within planning control in the wider public interest.

9.2 In assessing the necessity for planning control the Council has the benefit of the outcomes from its monitoring of the two motocross events that have already taken place. It also has the benefit of statements of intent on the part of the events' organiser to manage future events.

9.3 With regard to the residential amenity consideration – and more particularly, the noise consideration – the Council’s Public Protection officers witnessed at the second event noise in some locations (depending on wind direction); in one instance this noise was considered to be “intrusive”.

9.4 By their very nature motor cycles generate noise, and with this in mind there is a Code of Practice on Noise from Organised Off-road Motor Cycle Sport, produced by the Noise Council in association with a number of motorcycle user groups. In general, and in relation to the timings of events, the Code states the following:

It should be borne in mind by all Organising Bodies that motor cycling recreational events have a potential to create noise nuisance. It is preferable to organise events on land remote from noise sensitive areas. However, if this is not possible, in planning an event on a site in proximity to noise sensitive areas, careful attention should be given to the need for noise control.

There are technical limitations in controlling noise from individual machines. Other methods may have to be used to limit the overall noise of the event, this minimising the impact of noise heard by neighbours. The following factors are relevant:

- (a) Access/egress for cars and the location for parking;*
- (b) Location of start line, paddock and noise test area;*
- (c) Times and duration of events;*
- (d) Numbers of machines in operation simultaneously;*
- (e) Public address systems;*
- (f) Physical barriers provided to reduce sound propagation.*

A judgement needs to be made on the suitability of a site taking into account the proposed frequency of its use. It is suggested that a site may be used for not more than 10 days per year, with at least 4 weeks between events. In practice many clubs only require a site for 3 or 4 meetings per year. In noise-sensitive areas, the event should be limited to a single day. A slightly longer single day is preferable to a 2 day event.

9.5 By operating the events under the permitted development entitlement the good practice referred to in this Code cannot be assumed; and as the event organisers have only provided what may best be described as a loose Events Management Plan to cover matters such as prior notice periods for events and noise controls, there are no assurances that amenity will be safeguarded and that intrusive disturbance will not be kept to a minimum. In view of local concerns in relation to amenity, this is considered to be justification for an Article 4 Direction. An Article 4 Direction would result in a requirement for a planning application, and in the event of planning permission being given this could be subject to conditions to properly address and, if necessary, enforce potential noise issues, numbers of events, and so on.

9.6 With regard to highway safety, the monitoring of the previous events confirmed that there was some management of traffic – with marshals, informal signage and the informal operation of a one way system. However, in view of the Highway Officer’s concerns over the adequacy of the Crookwood Lane / A360 junction and Crookwood Lane in general, and the related need for signage and appropriate marshalling; and as there is, again, no all-embracing Event Management Plan to set ‘ground rules’ for prior notification of events, provision of signs and marshals, and management, the highway safety concerns in general are considered adequate further justification for an Article 4 Direction. Again, an Article 4 Direction would result in a requirement for a planning application, and in the event of planning permission being given this could be subject

to conditions to ensure highway safety measures are required to be put in place, and thereafter enforced.

- 9.7 In terms of approach it is recommended that a non-immediate Article 4 Direction is made. As stated above, a non-immediate Direction is one which does not come into force at the point at which it is made, rather it comes into force on a later date to be determined. This approach is recommended here for three reasons – firstly, to allow the events' organiser to run the events already planned over the next 8 months (at relatively short notice it is considered unreasonable to put at risk the running of these events as a consequence of the Direction); secondly, and in the meantime, to allow the events' organiser time to make alternative arrangements for future events; and(/or) thirdly, to allow the applicant time to apply for planning permission to use the site for occasional motocross events in any event, this application to include a meaningful, and enforceable, Events Management Plan. Allowing the 2018 events to take place would also allow the events' organisers to put into practice their management plan and allow monitoring of this by the Council's Services. The results of this monitoring could then inform any parallel planning application process.
- 9.8 An immediate Article 4 Direction is not recommended because the Council may then be liable to pay compensation to the landowner and/or the event organiser for forcing cancellation of planned events and/or if planning permission is subsequently refused for the development to which the Direction applies. The risk of a compensation claim would reduce where there is a 'lead in' period as provided by a non-immediate Direction.
- 9.9 An extensive consultation exercise will take place if the recommendation is agreed by the Planning Committee. The consultation will take place over several weeks following publication of the notice and include publication of the notice on the Council's website.

10. Other options

- 10.1 The other option would be to do nothing, and so to allow continued and unregulated exercise of the permitted development entitlement. This option is not considered appropriate as although a loose events management plan has now been presented by the events' organisers, this lacks sufficient detail and is unenforceable by the Council in any event.

11. Conclusion

- 11.1 The Town and Country Planning (General Permitted Development) Order grants planning permission for the temporary use of land for motorcycle racing and related practice for up to 14 days in any calendar year. It can reasonably be assumed that those who drafted the Order considered that in these terms such temporary use of land would not normally need regulation through a planning application process. This should be the starting point in considering the need to introduce regulation to remove permitted development.
- 11.2 The above notwithstanding, the Order does allow regulation to be introduced via Article 4 Directions. Guidance advises that the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area; and that the potential harm that the direction is intended to address should be clearly identified.
- 11.3 In this case it is considered that having regard to the circumstances of this particular Land – namely, its tranquil situation with scattered nearby residential development and

its access via relatively narrow country lanes – there is a prospect of harm being caused to residential amenity and highway safety unless formal controls and measures are put in place to manage events. By all accounts these circumstances of the Land are not ideal for the exercise of permitted development rights for temporary uses of this nature, and as such a non-immediate Article 4 Direction is considered appropriate. In the event of a planning application then being made, and then being approved, measures – for regulation and, where/if necessary, enforcement - could then at least be put in place to ensure local amenity and the well-being of the wider area is safeguarded.

Recommendation

That the Head of Development Management be authorised to:

- 1) Make a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), to remove ‘permitted development’ rights under Part 4, Class B of Schedule 2 with all necessary public consultation; and**
- 2) Following public consultation to provide a further report to the Eastern Area Planning Committee setting out the responses and, in the light of these and other evidence gathered, to recommend the confirmation or otherwise of the Direction at that time.**