

AGENDA SUPPLEMENT (1)

Meeting: Eastern Area Planning Committee
Place: Wessex Room, Corn Exchange, Market Place, Devizes SN10 1HS
Date: Thursday 14 June 2018
Time: 3.00 pm

The Agenda for the above meeting was published on **6 June 2018**. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Tara Shannon, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718352 or email tara.shannon@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

7 **Article 4 Direction: Land at Crookwood Farm, Crookwood Lane, Potterne, Wiltshire, SN10 5QS (Pages 3 - 8)**

Two attachments – Letter of representation from Thrings Solicitors 8 May 2018, Reply Letter from Wiltshire Council 10 May 2018

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For the attention of Andrew Guest
 Development Services Central
 Wiltshire Council
 Town Hall
 Bythesea Road
 Trowbridge
 Wiltshire
 SN10 5QS
Also via email

8 May 2018

Your Reference:
 Our Reference: AM/lcl/G4576-1

Direct Line: 0117 930 9575
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Dear Sirs

Notice of Article 4 Direction

Land at Crookwood Farm, Crookwood Lane, Potterne, SN10 5QS ("the Land")

Our Client: Giddings Brothers

We act on behalf of Giddings Brothers ("Our Client") and confirm we have had sight of your letter dated 11 April 2018 enclosing the Article 4(1) Direction dated 10 April 2018 relating to the Land which removes permitted development rights contained in Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 ("the GPDO")("the Direction"). We have been instructed to make the following representations and have numbered the following paragraphs for ease of future reference:

1. Statutory requirements and Policy Guidance

1.1 Under Article 4(1) of the GPDO the Secretary of State or (as the case may be) the local planning authority, may make a direction under Article 4 that the permission granted by article 3 does not apply to—

- (a) all or any development of the Part, Class or paragraph in question in an area specified in the direction; or
- (b) any particular development, falling within that Part, Class or paragraph, which is specified in the direction

and the direction must specify that it is made under this paragraph.

1.2 To this end, the Council have not specified within the Direction whether it is made pursuant to Article 4(1)(a) or 4(1)(b). Given that criminal sanctions can flow from non-compliance with planning control, precision in the drafting of the Direction is paramount. A failure to specify

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under which subparagraph the Direction is made thus renders the Direction defective on its face.

- 1.3 As you are aware, National Planning Policy Guidance (“PPG”) provides that *“the circumstances in which an immediate direction can restrict development are limited...in all cases the local planning authority must have already begun consultation processes towards the making [of] a non-immediate article 4 direction”*. We are not aware that such consultation processes had begun at the time the Direction was issued. Please confirm either way.

2. Failure to comply with National Policy

- 2.1 We also note the alleged potential harm that the Direction is intended to address has not been set out. The use of article 4 directions to remove national permitted development rights should be limited to situations where it 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 as provided for in the PPG. The National Planning Policy Framework (“NPPF”) further highlights this by stating at Paragraph 200 *“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 wellbeing of that area”*.

- 2.2 Further, the PPG goes on to state that there should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- a wide area (e.g. those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)
- agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty
- cases where prior approval powers are available to control permitted development
- *leisure plots and uses (our emphasis)*
- the installation of microgeneration equipment

- 2.3 It is submitted that the use of the Land for Motocross falls within “leisure plots and uses” and therefore there is an even greater importance placed on the Council to justify the withdrawal of the national permitted development right. The Council has fallen into error by failing to comply with this policy requirement and the Direction is thus unlawful.

3. Lack of Justification

- 3.1 Our Client advises us that in 2017 one Motocross event was held on part of the Land for two days and a further event for one day totalling three days over two weekends. To this end, the activities which were carried out on the Land were entirely within the scope of the permitted development right, given the consent provided under Part 4 Class B (b) allows such events for a period of up to 14 days in any one calendar year.

- 3.2 It is therefore unreasonable and wholly disproportionate to issue the Direction in these circumstances given the infrequency of the events being held and the lack of any tangible evidence of any alleged harm to the area.

- 3.3 Moreover, it is submitted that the 14/28 day rule is so prescribed having regard to the fact that the temporary use of land for such activities like motocross and clay pigeon shooting for instance will invariably involve environmental considerations. To this end, without any assessment of the same having been undertaken by the Council the decision to issue the Direction has been made without taking into account all relevant considerations. This renders the decision *ultra vires*.
- 3.4 Furthermore, whilst it has now been repealed, it is noteworthy that the previous detailed guidance regarding article 4 directions set out in Replacement Appendix D to DoE Circular 09/95 specified that permitted development rights should be withdrawn only in exceptional circumstances, and only where there is a real and specific threat; the Council have failed to identify any real or specific threat in the circumstances.
- 3.5 In addition, our Client advises that there have been a number of misrepresentations regarding the use of the Land. We understand that it has been suggested that the Motocross events are held for 20,000 people, which is incorrect as a traffic plan submitted to the Council specified that there would be a maximum of 1,000 people on the Land at the events.
4. **Incorrect use of immediate direction**
- 4.1 We note that the Land does not lie within any specific designation. For an Immediate Direction to be used, the development carried out has to be "prejudicial to the proper planning of their area or constitute a threat to the amenities of their area" (paragraph 2(1)(a), Schedule 3, GPDO. There is no evidence base that the Motocross activities constitute an immediate threat to the local amenity and there has, therefore, been a misapplication of the Council's powers under Schedule 3 (2)(1)(a) of the GPDO.

In summary, the decision to issue the Direction has been made without having regard to all relevant considerations. Moreover, the Direction fails to satisfy mandatory legislative requirements and does not comply with policy guidance. As such, the Direction should be withdrawn immediately forthwith and should not be, on any view, confirmed.

Kindly acknowledge receipt.

Yours faithfully



Thrings LLP

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10 May 2018

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Dear Sir/Madam

Article 4 Direction – Land at Crookwood Farm, Potterne, SN10 5QS (your ref: AM/lcl/G4576-1)

I refer to your letter dated 8 May 2018 regarding the above matter.

The points in your letter are noted. However, the Council is satisfied that the Article 4 Direction 'making' process has been followed correctly. It follows that the Council will not be withdrawing the Article 4 Direction.

I briefly respond to your specific points as follows:

1. The Article 4 Direction specifies that it is made under Paragraph 4(1), as is required by Paragraph 4(1). There is no requirement for the Article 4 Direction to specify sub paragraph references within Paragraph 4(1).

Schedule 3 of the Town and Country Planning (General Permitted Development) Order sets out the procedures for Article 4 Directions. Paragraph 1(1) (applicable to both non-immediate and immediate Directions) states the following:

.... notice of any direction made under article 4(1) of this Order must, as soon as practicable after the direction has been made, be given by the local planning authority [by local advertisement, etc.] ..."

The Article 4 Direction was made on 10 April 2018. Site notices were displayed on 11 April 2018; Notices were served on landowners/occupiers on 11 April 2018; press advertisement was on 19 April 2018; WC website advertisement was c. 12 April 2018 – this is "as soon as practicable", and so in accordance with the Order.

In any event, Planning Practice Guidance requires that, "*In all cases the local planning authorities must have already **begun the consultation processes towards the making [of] a non-immediate article 4 direction***" (own emphasis). This is not applicable to this matter as the Article 4 Direction is **an immediate one**.

2. There is no requirement in Article 4 or Schedule 3 of the Town and Country Planning (General Permitted Development) Order for an Article 4 Direction or any related notices to specify the harm that the Direction is addressing.

Also, it is the case 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 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order, where the development presents an immediate threat to local amenity or prejudices the proper planning of an area - see PPG.

Clearly, the development the subject of the Article 4 direction falls under Part 4 class B of the Town and Country Planning (General Permitted Development) Order; and the Council's reason for making the Article 4 Direction, including an assessment of the environmental considerations, is set out in the report and minutes for the relevant meeting of its Eastern Area Planning Committee; these can be viewed on the Council's website.

3. Your statements in paragraphs 3.2 to 4.1 appear to be mainly your opinions on the merits of allowing motocross events to take place on the land. It is not clear from these statements whether or not you have seen the report and minutes referred to above; these address your statements.

None of your conclusions in your final paragraph are agreed. It follows that the Article 4 Direction will not be withdrawn as you request.

Your client is, of course, entitled to make a planning application for the use of the land for the purposes now excluded by the Article 4 Direction. Such an application would be considered on its merits and with due regard to all representations received.

Yours sincerely

A S Guest

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