

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Tuesday 7 January 2014

Decision Type: Non-Urgent Non-Executive Non-Key

Title: ARTICLE 4 DIRECTION - STATION SQUARE, PETTS WOOD

Contact Officer: Tim Horsman, Deputy Development Control Manager (East)
Tel: 020 8313 4956 E-mail: Tim.Horsman@bromley.gov.uk

Chief Officer: Chief Planner

Ward: Petts Wood and Knoll;

1. Reason for report

Members are asked to consider whether to agree an Article 4 Direction to restrict specific permitted development rights for commercial frontages and forecourts in Station Square, Petts Wood in order to preserve the character of the Station Square conservation area by allowing the Council to consider each proposal on its merits. If an Article 4 Direction is served, the Council may be liable to pay compensation to applicants in certain circumstances – this needs to be balanced against the potential harm to the conservation area caused by a possible proliferation of proposals.

2. **RECOMMENDATION(S)**

Members are invited to consider whether the portfolio holder should be requested to confirm a non-immediate (12 month) Article 4 Direction withdrawing permitted development rights in Station Square, Petts Wood, Conservation Area in respect of the following Parts of the Town and Country Planning (General Permitted Development) Order 1995 (as amended):

Part 2, Class A: The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Part 4, Class B: Temporary uses and moveable structures associated with such uses

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment:
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Financial

1. Cost of proposal: Estimated Cost: Cannot be quantified at this moment in time
 2. Ongoing costs: Recurring Cost: N/A
 3. Budget head/performance centre: Planning and Renewal
 4. Total current budget for this head: £2.689m
 5. Source of funding: Existing revenue budget 2013/14
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Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: 4
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Support making Article 4 Direction as proposed

3. COMMENTARY

- 3.1 The Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the GPDO] provides permitted development rights to carry out development without the need for planning permission in a variety of circumstances.
- 3.2 In the case of shops and other commercial premises in Station Square, the rights currently granted by Part 2 of the GPDO set out above would allow boundary enclosures potentially up to 2 metres in height (up to 1 metre adjacent to a highway). The rights granted by Part 4 would allow temporary uses and moveable structures in connection with such uses. It should be noted that Part 4 does not apply to land within the curtilage of a building, so in practice could not be widely used within the area concerned, as shop forecourts would not normally benefit from this Part. Some permitted development allowed under these Classes could have an adverse impact on the character and appearance of Station Square.
- 3.3 Article 4 of the GDPO allows for the making of a direction that can withdraw specified permitted development rights. This does not completely prevent the development to which it applies but instead requires that planning permission is first obtained from the Local Planning Authority for that development.
- 3.4 Guidance issued by DCLG in November 2010 advises that local planning authorities should consider making Article 4 Directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity. In deciding whether an Article 4 would be appropriate, LPAs should ... “identify clearly the potential harm that the direction is intended to address” and may want consider whether the exercise (by property owners) of permitted development rights would “...undermine the visual amenity of the area or damage the historic environment”.
- 3.5 In procedural terms there are two main types of article 4:
- non-immediate direction (permitted development rights are only withdrawn, normally after 12 months, upon confirmation of the direction by the local authority following local consultation); and
 - immediate directions (where permitted rights are withdrawn with immediate effect, but must be confirmed by the LPA following local consultation within 6 months, or else the direction will lapse).
- 3.6 Article 4 Directions cannot be applied retrospectively to development undertaken before a direction comes into force and any planning application required as a consequence of an Article 4 Direction is exempt from the usual planning application fee.
- 3.7 In this instance it is suggested that Members consider a non-immediate Direction for which compensation is not payable to those affected. This would take effect after 12 months
- 3.8 If Members do instead wish to consider an immediate Direction, there are circumstances where LPAs may be liable to pay compensation in relation to immediate Directions, although the potential liability is limited in many cases by the time limits that apply. Compensation may be payable to those whose permitted development rights have been withdrawn if the Local Planning Authority:
- refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or
 - grant planning permission subject to more limiting conditions than the GDPO would normally allow as a result of article 4 direction being in place.

- 3.9 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. Under section 107 of the TCPA 1990 this could include ‘...any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it...’ It could also include any loss of value although this can be difficult to calculate.
- 3.10 In Bromley Borough, Article 4 Directions have been in place in conservation areas such as Alexandra Cottages since 2004, Chancery Lane since 1984, and Barnmead Road since 1992. These cover a wide range of possible alterations to the fronts of residential properties, including the installation of roof lights (specifically in Alexandra Cottages). The intention of each direction has been to safeguard the character of the conservation area. Whilst the detail of regulations and procedure have changed over the years it should be noted that no compensation claims were made in respect of any of these article 4 directions – nor did they lead to a proliferation of requests for directions in other conservation areas. There has been some increase in workload arising from applications for proposals (such as window replacements) that did not previously require planning permission.
- 3.11 Members should also be aware that in respect of the placing of moveable structures (such as chairs, tables, umbrellas and potentially gazebos and marquees), if these were used in connection with the existing lawful use of the premises, depending on their permanence, they would not be development requiring planning permission and would fall outside of planning control, including an Article 4 Direction. With the exception of boundary enclosures (which an Article 4 Direction could cover), other permanent development to the front of buildings in the Square would normally require planning permission irrespective of whether an Article 4 Direction is in place.
- 3.12 An Article 4 Direction could have the benefit of preventing insensitive use of permitted development rights to the frontage of properties that could harm the special character and appearance of the Station Square Conservation Area and Members are therefore asked to consider whether to agree an Article 4 Direction for the limited Parts of the GPDO that apply to forecourts and frontages of commercial premises in Station Square as set out above.

4. FINANCIAL IMPLICATIONS

- 4.1 As referred to above, the withdrawal of permitted rights for certain classes of development as a result of issuing an immediate Article 4 Direction may give rise to claims for compensation by landowners in certain circumstances.

5. 4.2 By issuing a 12 month non-immediate Direction under Article 4, it is unlikely that any compensation claims will be payable. LEGAL IMPLICATIONS

- 5.1 Article 4 of the GPDO 1995 (as amended) allows LPAs to withdraw specified permitted development rights for specified sites within their areas.

6. PERSONNEL IMPLICATIONS

- 6.1 There is a possible minor increase in workload arising from Article 4 directions with no increase in fee income.

Non-Applicable Sections:	Policy Implications
Background Documents: (Access via Contact Officer)	Station Square, Petts Wood Conservation Area Supplementary Planning Guidance; Town and Country Planning (General Permitted Development) Order 1995 (as amended)

**Relevant Extracts from the Town and Country Planning (General Permitted Development)
Order 1995 (as amended)**

**Part 2 – Minor Operations
Class A**

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1. Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—
(i) for a school, two metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than one metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, one metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in subparagraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater;
or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

**Part 4 – Temporary Buildings and Uses
Class B**

Permitted development

B. 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 referred to in paragraph B.2, and the provision on the land of any moveable structure for the purposes of the permitted use.

Development not permitted

B.1. Development is not permitted by Class B if—

(a) the land in question is a building or is within the curtilage of a building,

(b) the use of the land is for a caravan site,

(c) the land is, or is within, a site of special scientific interest and the use of the land is for—

(i) a purpose referred to in paragraph B.2(b) or other motor sports;

(ii) clay pigeon shooting; or

(iii) any war game,

Or (d) the use of the land is for the display of an advertisement.

Interpretation of Class B

B.2. The purposes mentioned in Class B above are—

(a) the holding of a market;

(b) motor car and motorcycle racing including trials of speed, and practising for these activities.