

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: 9th July 2014

Decision Type: Non-urgent Non-Executive Non-Key

Title: LAND AT NEW BARN LANE, WESTERHAM PROPOSED
ARTICLE 4 DIRECTION

Contact Officer: John Stephenson, Acting Planning Investigation Development Control
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Chief Officer: Chief Planner

Ward: Darwin

1. Reason for report

- 1.1 An area of land at New Barn Lane, Westerham has recently been advertised for sale as separate parcels of land, on the internet.
- 1.2 The land comprises approx. 50 acres of land which has in recent years been used for agriculture. The land is within the Green Belt where there is a presumption against inappropriate development unrelated to agriculture or other uses appropriate to the Green Belt and part of the land is designated Area of Outstanding Natural Beauty (AONB). Although the land is considered to have no development potential in the foreseeable future there is concern that it may be fragmented and sold in the form of separate plots. In this way its open, rural character could be eroded by uncontrolled development which would normally not require planning permission.
- 1.3 It is therefore considered expedient to make an Article 4 Direction to remove certain classes of 'permitted development' as there is concern that sub-division of the land into small plots could undermine the open character and visual amenities of the area due to indiscriminate development including fencing, structures, temporary uses of land, and stationing of caravans.
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2. **RECOMMENDATION(S)**

- 2.1 To the Portfolio Holder that Article 4 Directions be made on land at New Barn Lane as indicated on the attached plan (Appendix 1) to remove permitted development rights for the following classes of development:

- (i) erection or construction of gates, fences, walls or other means of enclosure (Class A of Part 2);
- (ii) formation, laying out and construction of means of access ... (Class B of Part 2);
- (iii) provision of temporary buildings, etc. (Class A of Part 4);
- (iv) temporary uses of land for any purpose for not more than 28 days per year (Class B of Part 4);
- (v) use of land as a caravan site (Class A of Part 5)

For (i) and (iv) above, this would be a direction with immediate effect and for (v) the earliest possible effect (as explained further in section 7 of the report).

Corporate Policy

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

1. Cost of proposal: Cannot be quantified at this moment in time
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Planning and Renewal
 4. Total current budget for this head: £1.8m
 5. Source of funding: Existing revenue budget 2014/15
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Staff

1. Number of staff (current and additional): 62 ftes
 2. If from existing staff resources, number of staff hours: 5
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Legal

1. Non-Statutory - Government Guidance
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): approx..40
householders in surrounding area
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? The Report follows concerns raised by the Ward Member
2. Summary of Ward Councillors comments: A Direction should be made to protect the open land.

3. COMMENTARY

- 3.1 The land at New Barn Lane comprises 50 acres of agricultural land as indicated on the attached plan (Appendix 1). The land is within the Green Belt and partly in an Area of Outstanding Natural Beauty (AONB) and retains its open, rural character. The small residential enclave around Horn Green lies to the east of New Barn Lane but the character of the surrounding area is otherwise open countryside predominantly in agricultural use.
- 3.2 In 2014 part of the land has been offered for sale in 15 lots. Given the location within the Green Belt and the general presumption against inappropriate development there is very little prospect of the land being released for development in the medium to long term. An area of hardstanding/access was recently developed and the related enforcement matters are already the subject of separate consideration.
- 3.3 As the land has very limited potential for new development there are concerns that plots may be used for a variety of inappropriate uses or forms of development which do not require planning permission. In other parts of the Borough where similar threats have arisen – such as Snag Lane, Shire Lane and Keston Fruit Farm - Directions have been made under Article 4 of the GPDO to remove permitted development rights for certain classes of development which would otherwise not require permission but could erode the rural character and openness of the countryside. Article 4 Directions have also been in place at Walden's Farm and Layhams Road for many years and have had some positive impact in preventing the erosion of amenity.
- 3.4 The land at New Barn Lane forms part of an extensive area of open countryside within the Green Belt, which serves an important Green Belt function in maintaining its open character and preventing the coalescence of adjoining settlements. It has considerable landscape value including the AONB which the Council has a duty to protect and is at present largely devoid of urban intrusion, other than several isolated dwellings and farm buildings. The land is or has been used for agriculture and generally retains its open character.
- 3.5 Sub-division into plots threatens to undermine the character and appearance of the landscape by the erection of fencing, structures, temporary uses of land and other forms of development which would be permitted development under the General Permitted Development Order, over which the Council would otherwise have no control.
- 3.6 The land makes a significant contribution to the openness of the Green Belt and AONB its appearance and character could be materially harmed by unrestricted development which would normally fall beyond the scope of planning control. There are no proposals to release this Green Belt land for development.
- 3.7 The specified classes of permitted development for which it would be appropriate to bring within planning control at New Barn Lane are considered to be:
- (i) Erection or construction of gates, fences walls or other means of enclosure (Class A of Part 2);
 - (ii) Formation, laying out and construction of a means of access ... (Class B of Part 2);
 - (iii) Provision of temporary buildings, etc. (Class A of Part 4);
 - (iv) Use of land for any purpose for not more than 28 days per year (Class B of Part 4);
 - (v) Use of land as a caravan site ... (Class A of Part 5).
- 3.8 Development which would normally be permitted under Part 6 ("agricultural permitted development") may also potentially threaten the protection of the land. This would include the

erection of agricultural buildings, engineering operations, excavations and provision of hard surfaces for the purposes of agriculture. However, as the lawful use of the land remains agriculture which is an appropriate Green Belt use, it is considered that the provisions for prior notification for agricultural buildings and related development provide sufficient control, which include a requirement for such development to be for a legitimate agricultural business.

4. COMPENSATION

4.1 Local Planning authorities are liable to pay compensation to landowners who would have been able to develop under the PD rights that an Article 4 Direction withdraws, if they:

- 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 GPDO would normally allow, as a result of an Article 4 Direction being in place.

4.2 Compensation may be claimed for *abortive expenditure* or other loss or damage *directly* attributable to the withdrawal of PD rights.

4.3 'Abortive expenditure' includes works carried out under the PD rights before they were removed, as well as the preparation of plans for the purposes of any work. The amounts involved under this may be modest but could accumulate over time and become burdensome

4.4 Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.

4.5 In this case, the immediate withdrawal of permitted development rights could attract claims. The risk of numerous claims is not assessed as high, based on the minimal amount of development to date. The Direction with immediate effect is recommended so as to prevent damage to the landscape and Green Belt objectives, in response to the advertising of plots on the internet and a specific incident of installation of an access/hardstanding. It is difficult to be precise about the scale of possible compensation but it is in proportion to the type of Permitted Development rights that are withdrawn. In this instance, these are the rights set out in paragraph 3.10 above, which we can indicate are relatively low in value when compared with other forms of development. This risk should also be considered against the possible damage to the planning objectives for the landscape and Green Belt.

5. POLICY IMPLICATIONS

5.1 The strategic objectives of the UDP, adopted in July 2006, include: "To protect, promote, enhance and actively manage the natural environment, landscape and biodiversity of the Borough. Also: "To protect the Green Belt, ... from inappropriate development ...". The making of an Article 4(1) direction is consistent with those objectives and with the objectives of the AONB.

6. FINANCIAL IMPLICATIONS

6.1 As referred to above, the withdrawal of permitted development rights for certain classes of development as a result of issuing an immediate Article 4 Direction, may give rise to claims for compensation by land owners in certain circumstances, for example in the event of planning permission being refused for development which would otherwise not require permission. To attract a claim for compensation the application for permission must be made before the end of 12 months beginning with the date on which the Direction takes effect.

- 6.2 At this moment in time, it is not possible to quantify the number or value of claims that may be submitted for compensation, however planning officers consider there to be a low risk of numerous claims being submitted based on the minimal amount of development to date. Also, the rights being withdrawn are relatively low in value when compared with other forms of development.
- 6.3 It is possible to avoid a claim for compensation by giving the prescribed notice of not less than 12 months of the withdrawal of the permitted development rights.

7. LEGAL IMPLICATIONS

- 7.1 There are two categories of Article 4 directions which are relevant in this case.
- 7.2 The first category is for directions which are able to take effect from the time they are made by the local planning authority but which lapse after six months if not confirmed by the Council. This category extends to directions relating only to development permitted by any of Parts 1 to 4 or Part 31 of Schedule 2, if the local planning authority consider the development would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. Therefore this direction only relates to para 3.7 (i) – (iv).
- 7.3 The second relevant Article 4 category is for directions which can only take effect after notice has been given of the making of the direction and the Council has considered any representations received.. This direction relates to para 3.7 (v)

8. PERSONNEL IMPLICATIONS

- 8.1 Making an Article 4 Direction is likely to give rise to the submission of additional planning applications and appeals, having regard to the potential number of plots and the way in which they are marketed. The workload implications are difficult to predict but it is anticipated that the additional work involved may amount to 2-3 additional applications and 1-2 appeals per year which could be accommodated within existing staffing levels.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	