

**Decision Maker:** DEVELOPMENT CONTROL COMMITTEE

**Date:** Tuesday 25 November 2014

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

**Title:** **ARTICLE 4 DIRECTION - PETTS WOOD AREA OF SPECIAL RESIDENTIAL CHARACTER & THE CHENIES AND CHISLEHURST ROAD CONSERVATION AREAS**

**Contact Officer:** Tim Horsman, Development Control Manager  
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**Chief Officer:** Chief Planner

**Ward:** Petts Wood and Knoll;

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1. Reason for report

Members are asked to consider whether to agree an Article 4 Direction that would restrict permitted development rights to erect walls/fences or gates to the front of properties within the Petts Wood Area of Special Residential Character (ASRC) and the Chislehurst Road and The Chenies Conservation Areas as shown on the UDP Proposals Map. Householders would then be required to submit a full planning application for such changes. This would allow the Council to consider all of such proposals on their own merits. This may be considered necessary in order to preserve the character and appearance of the designated areas mentioned, as the enclosure of residential curtilages could in some cases be detrimental and harmful to the open plan nature of these areas.

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 ASRC and Conservation Areas caused by a possible proliferation of proposals.

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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 restricting permitted development rights relating to the erection or construction of gates, fences, walls or other means of enclosure in Petts Wood ASRC, and The Chenies and Chislehurst Road Conservation Areas 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, ... of a gate, fence, wall or other means of enclosure.**

### Corporate Policy

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

1. Cost of proposal: Cannot be quantified at this moment in time
  2. Ongoing costs: Recurring Cost
  3. Budget head/performance centre: Planning & Renewal
  4. Total current budget for this head: £1.588m
  5. Source of funding: Existing Controllable Revenue Budget 2014/15
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### Staff

1. Number of staff (current and additional): 60 ftes
  2. If from existing staff resources, number of staff hours:
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### Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance None: Further Details
  2. Call-in: Applicable Not Applicable: Further Details
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### Customer Impact

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

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Report requested by Cllr Fawthrop

### 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 residential properties, the rights currently granted by Part 2 (Minor Operations) Class A1 (a-d) of the GPDO (as set out above) would allow gates, fences, walls or other means of enclosure potentially up to 2 metres in height (or up to 1 metre in height adjacent to a highway). Some permitted development allowed under this Class may be regarded as having an adverse impact on the character and appearance of the designated areas of this report.
- 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 Advice on Article 4 Direction is set out in the national Planning Practice Guidance (2014). 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. In the areas referred to in this report, this may be considered necessary in order to preserve the character and appearance of the designated areas mentioned, as the enclosure of residential curtilages could in some cases be potentially detrimental and harmful to the open plan nature of these areas.
- 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 if Members wish to approve a Direction in this case they should 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. 4

- 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. In this case, it is expected that the risk of substantial compensation is low, due to the circumstances set out in section 3 below.
- 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.
- 3.12 An Article 4 Direction could have the benefit of preventing insensitive use of permitted development rights to the frontage of properties that may in some instances harm the special character and appearance of the designated areas subject of this report. Members should be aware that due to the location of most front boundaries adjacent to a highway, the majority of boundary enclosures to the front of properties are already limited to a maximum of 1 metre in height by permitted development (any higher enclosure would require planning permission). These restrictions do already limit the impact of boundary enclosures in all locations, and this should be considered alongside the benefits and costs of the proposal, in particular since any planning applications for works which would otherwise be permitted development would not attract a fee and will represent a cost to the Council to process.
- 3.13 It is recommended that it would not be necessary to restrict the maintenance, improvement or alteration of enclosures, as this would relate to structures already in place and could hinder, for example, improvements to a dilapidated fence. Members are therefore asked to consider whether to agree an Article 4 Direction to limit permitted development rights under Part 2 of the GPDO which relate to only the erection or construction of a gate, fence, wall or other means of enclosure.

#### **4. POLICY IMPLICATIONS**

- 4.1 Policy implications, Unitary Development Plan Policies H10, BE11 and Appendix 1. Council's Planning Information Sheet 2.11 ARSCs, Town and Country Planning (General Permitted Development) order 1995 (as amended).

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 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.
- 5.2 By issuing a 12 month non-immediate Direction under Article 4, it is unlikely that any compensation claims will be payable.
- 5.3 Planning applications for works for development restricted by an Article 4 Direction which would otherwise be permitted development do not attract a fee. Any planning applications for works restricted by the proposed Article 4 Direction would represent a cost to the Council to process. It is not possible to quantify this potential cost.
- 5.4 In this case, it is expected that the risk of substantial compensation is low, due to the circumstances set out in section 3.

## 6. LEGAL IMPLICATIONS

6.1 If an immediate Article 4 Direction was imposed this could result in additional inputs relating to work associated with compensation claims.

## 7. PERSONNEL IMPLICATIONS

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

<b>Non-Applicable Sections:</b>	
Background Documents: (Access via Contact Officer)	Unitary Development Plan Policies H10, BE11 and Appendix 1.  Council's Planning Information Sheet 2.11 ARSCs,  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 sub-paragraph (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.**