

**Decision Maker:** DEVELOPMENT CONTROL COMMITTEE

**Date:** Tuesday 9 June 2015

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

**Title:** LAND ADJACENT TO THE DRIFT, KESTON BR2 8HL

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

**Ward:** Bromley Common and Keston;

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1. Reason for report

An area of land adjacent to The Drift and fronting Croydon Road in Keston has been identified as being a sensitive area of Green Belt and vulnerable to development that may be carried out under permitted development and could harm the openness and character of the area.

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2. **RECOMMENDATION(S)**

**Members are asked to agree that the Portfolio Holder authorise an Article 4 Direction for land adjacent to The Drift to remove permitted development rights for the following classes of development in the Town and Country Planning (General Permitted Development) Order 2015:**

- (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)

and that the Direction be made with immediate effect for the classes of development specified in (i) to (iv) as the Council considers that development be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area.

### Corporate Policy

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

1. Cost of proposal: Cannot be quantified at this time
  2. Ongoing costs: Non-Recurring Cost:
  3. Budget head/performance centre: Planning
  4. Total current budget for this head: £2.144m
  5. Source of funding: Existing revenue budget 2015/16
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### Staff

1. Number of staff (current and additional): 65.22 FTEs
  2. If from existing staff resources, number of staff hours: 5
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### Legal

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

1. Estimated number of users/beneficiaries (current and projected): Not quantifiable
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Request for Direction from Ward Councillor

### 3. COMMENTARY

- 3.1 The land adjacent to The Drift in Keston is a sensitively located area of open land of approximately 1.8 hectares which provides an important visual break in the locality and is designated Green Belt due to its openness and character. Given its location it is land which is vulnerable to a number of forms of potential development which would be permitted under the Town and Country Planning (General Permitted Development) Order 2015 (referred to as the GPDO), but would have potential to harm the openness and landscape character of this land.
- 3.2 In particular the subdivision of the land into smaller plots 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. It is therefore on that basis expedient to issue an Article 4 direction.
- 3.3 The specified classes of permitted development for which it would be appropriate to bring within planning control at this location 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).
- 3.4 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.

#### Compensation

- 3.5 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.
- 3.6 Compensation may be claimed for *abortive expenditure* or other loss or damage *directly* attributable to the withdrawal of PD rights.
- 3.7 ‘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

- 3.8 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.
- 3.9 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. 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 3.3 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.

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

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 National Planning Policy Framework 2012.

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

- 5.1 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.
- 5.2 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.
- 5.3 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.

#### **6. LEGAL IMPLICATIONS**

- 6.1 There are two categories of Article 4 directions which are relevant in this case.
- 6.2 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 certain Parts of the GPDO 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 3.3 (i) – (iv).
- 6.3 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 3.3 (v)

## 7. PERSONNEL IMPLICATIONS

No significant implications given the size of the land concerned.

<b>Non-Applicable Sections:</b>	None
Background Documents: (Access via Contact Officer)	Town and Country Planning (General Permitted Development) Order 2015