

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Thursday 21 May 2020

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

Title: LAND AT NEW YEARS LANE, KNOCKHOLT - ARTICLE 4 DIRECTION

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Chief Officer: Assistant Director (Planning)

Ward: Chelsfield and Pratts Bottom;

1. Reason for report

1.1 To seek agreement to confirm the Article 4 Direction for Land at New Year's Lane, Knockholt

2. RECOMMENDATION(S)

2.1 Members are requested to recommend that the Portfolio Holder confirm the immediate and non-immediate Article 4 Directions on Land at New Year's Lane (identified in Appendix 1) restricting the following permitted development rights, with the non- immediate direction (V) not coming into effect until the required 12 month period of notification has elapsed (7th January 2021):

- 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).

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
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Corporate Policy

1. Policy Status: N/A
 2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.596m
 5. Source of funding: Existing Revenue Budget for 2020/21
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Personnel

1. Number of staff (current and additional): 10fte
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: N/A
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: None
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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? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The land at New Year's Lane is located on the south east boundary of the borough adjoining Sevenoaks District Council and comprises 3.26 hectares of agricultural land as indicated on the attached plan (Appendix 1).
- 3.2 The Local Plan 2019 designates it as Green Belt and part of a larger Site of Importance for Nature Conservation (Metropolitan) in addition, the surrounding woodland is subject to a Tree Preservation Order (TPO) and parts of the plots on the South Eastern side of the site are included in this TPO. The TPO'd trees on the North East and South west sides of the site are Ancient Woodland. The character of the surrounding area is essentially woodland open countryside predominantly in agricultural use.
- 3.2 Given the Green Belt policies within the National Planning Policy Framework and Development Plan (both Bromley Local Plan 2019 and the adopted and draft London Plan) the potential for new development is severely constrained. The land makes a significant contribution to the openness of the Green Belt and its appearance and character could be materially harmed by unrestricted development which would normally fall beyond the scope of planning control.
- 3.3 As noted in the report to Development Control Committee of 23rd July 2019¹, the land had been offered for sale in 90+ lots. The 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 (GDPO), over which the Council would otherwise have no control. 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 these permitted development rights.
- 3.3 At the meeting of the Development Control Committee on 23rd July 2019, the committee recommended removing permitted development rights for certain classes of development which would otherwise not require permission under the GDPO, but could erode the rural character and openness of the countryside. The specified classes of permitted development which it was considered appropriate to bring within planning control at New Year's Lane were:
- 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 The Directions were made on 7 January 2020 following a decision of the Portfolio Holder for Renewal, Recreation and Housing, as recommended by Development Control Committee. The Article 4 directions fell into two categories:
- directions which take immediate effect but requiring confirmation by the Council after six months (which covers the permitted development rights cited in paragraph 3.3i to iv above); and
 - Non-immediate 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 and subsequently confirmed that the direction will come into force. This covers the direction cited in paragraph 3.3v above.

¹<https://cde.bromley.gov.uk/documents/s50070994/LAND%20AT%20NEW%20YEARS%20LANE%20KNOCKHOLT%20ROPOSED%20ARTICLE%204%20DIRECTIONPART%201%20REPORT%20TEMPLATE.pdf>

Representations and council response

- 3.5 The directions were advertised in accordance with the relevant procedure set out in the GPDO. One representation was received, from the owner of the land covered by the directions. The representation advised that the landowner has not put any part of his land up for sale or authorised the online advertisement for 92 plots. The landowner advised that the sites area resembles but does not accurately match the borders of his land and that having purchased the land at auction, the intention is to develop an already existing agricultural business. The landowner suggests that this advertising may have occurred prior to auction.
- 3.6 The landowner asks that the Article 4 Directions be removed for the following reasons:
1. The Council already has sufficient powers to combat problems or unauthorised developments.
 2. The introduction of further powers is therefore completely unnecessary.
 3. Article 4 should be used as a last resort, however the Council has not attempted to communicate with landowner regarding either the proposed agenda of the meeting held on 23/07/2019 by the Development Control Committee, nor have they communicated with the landowner about the alleged dividing of the land into plots and their respective sale.
 4. The 2x Article 4 Directions have been rushed through without proper consultation with the landowner.
 5. In the light of these points, the landowner considers that there is no justification for the council to continue with the 2x Article 4 Directions issued.
 6. Should the Directions remain in place they will have an adverse effect on the running of the proposed agricultural business by causing delays and increased costs.
 7. The value of the land would be affected by the Article 4 Directions.
- 3.7 In response to the representation, the council considers that the justification for article 4 directions, as identified in the report to Development Control Committee of 23rd July 2019², is still relevant, and that there remains a risk of plots being subdivided in the Green Belt which would cause adverse impacts as set out in the report.
- 3.8 An article 4 direction is a legitimate and proportionate response in light of the potential impacts. The process for article 4 directions enables representations by the landowner to be made. The consultation was undertaken in line with statutory procedures.
- 3.9 The relatively recent online publication of sales particulars may yet result in approaches to the current owner, irrespective of who authorised the advertisement. As such, and notwithstanding the confirmation of the landowner's intentions, the potential threat from various forms of permitted development, set out in the original report, remains. The issues raised regarding impact on the running of a business are not elaborated on, and are not considered to hold much weight in terms of determining whether or not to confirm the directions. Likewise, the impact on land value is not considered to be a relevant consideration, and notwithstanding this, the directions are considered very unlikely to have any material impacts on land value.
- 3.10 It is recommended that both the immediate and non-immediate Direction be confirmed, with the non- immediate direction not coming into effect until the required 12 month period from notification and advertisement has elapsed (7th January 2021).

4. POLICY IMPLICATIONS

²<https://cds.bromley.gov.uk/documents/s50070994/LAND%20AT%20NEW%20YEARS%20LANE%20KNOCKHOLT%20ROPOSED%20ARTICLE%204%20DIRECTIONPART%201%20REPORT%20TEMPLATE.pdf>

4.1 In accordance with development plan policies seeking to protect the Green Belt from development which harms its openness and character.

5. FINANCIAL IMPLICATIONS

5.1 Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn 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.

5.2 Compensation liability cannot be removed entirely, unlike certain permitted development rights prescribed in regulations. Therefore, the directions will be at risk of compensation claims for as long as they remain in effect. Compensation can be claimed based on abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. Whilst some PD rights, for example those which permit changes of use, could lead to significant compensation risk associated with what could be a significant difference in land values, the PD rights in question are very unlikely to have a significant impact on land value.

5.3 All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).

6. LEGAL IMPLICATIONS

6.1 Article 4 (1) of the GPDO allows local Planning Authorities to withdraw certain PD Rights. The procedure for confirming an Article 4 Direction is set out in Schedule 3 of the GPDO. The Council's legal services department will be responsible for confirming the Directions, in line with the directions in line with the statutory requirements set out in the GPDO.

6.2 The GPDO requires notice of confirmation to be given as soon as practicable. Due to the current COVID-19 restrictions, it may not be practicable to give notice as per the GPDO requirements. In such instances, the Council will seek to issue notice following the lifting of the COVID-19 restrictions. This is considered to be a practical and pragmatic approach as advocated in the Chief Planners Letter of 20 March 2020³.

6.3 The Secretary of State for Housing, Communities and Local Government has the power to revoke or modify Article 4 Directions at any time. To date, the SoS has acknowledged receipt of notification of the directions but has not exercised, or indicated that he intends to exercise, his powers to revoke or modify the directions.

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| Non-Applicable Sections: | |
| Background Documents: (Access via Contact Officer) | Previous committee reports |

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf