

**Decision Maker:** RENEWAL, RECREATION AND HOUSING PORTFOLIO  
HOLDER

**FOR PRE-DECISION SCRUTINY AT THE RENEWAL,  
RECREATION AND HOUSING POLICY DEVELOPMENT AND  
SCRUTINY COMMITTEE AND DEVELOPMENT CONTROL  
COMMITTEE**

**Date:** DCC: 28 January 2021  
RR&H PDS: 2 February 2021

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

**Title:** PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION TO  
REMOVE PART 1, CLASS B AND C PERMITTED  
DEVELOPMENT RIGHTS IN PETTS WOOD ASRC

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**Chief Officer:** Tim Horsman, Assistant Director (Planning)

**Ward:** Petts Wood and Knoll; Cray Valley West

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1. Reason for report

- 1.1 This report proposes making an Article 4 Direction to remove Part 1, Class B and C Permitted Development (PD) rights in the Petts Wood Area of Special Residential Character (ASRC). These PD rights allow various alterations to the roof of a dwellinghouse without planning permission.
- 1.2 The Direction would replace an existing Direction which removes these PD rights on front roofslopes only.

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2. **RECOMMENDATION(S)**

- 2.1 That Members, if they agree with the justification put forward for the proposed Article 4 Direction, endorse the making of a 'non-immediate' Article 4 Direction (covering the Petts Wood ASRC shown on the plan in Appendix 1) to withdraw Part 1, Class B and C permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"), Schedule 2.

- 2.2 That Members note, pending agreement to 'make' the Article 4 Direction, that the Portfolio Holder for Renewal, Recreation and Housing will be asked to authorise the making of a non-immediate Direction, which will come into force 12 months from the day on which it is made, if the Direction is subsequently confirmed following public consultation as required by the GPDO (where practicable).**
- 2.3 That Members note that any such decision to confirm a non-immediate Direction will be accompanied by a concurrent decision to cancel the existing Article 4 Direction which relates solely to the removal of Part 1, Class B and C permitted development rights on front roofslopes.**

## 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: Regeneration

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## Financial

1. Cost of proposal: Limited cost associated with 'making' and publicising any Article 4 Direction
2. Ongoing costs: No Cost
3. Budget head/performance centre: Planning Policy and Strategy
4. Total current budget for this head: £0.568m
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: Article 4 and Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015
2. Call-in: Applicable: Further Details – Portfolio Decision

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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? Yes
2. Summary of Ward Councillors comments: There has been significant levels of correspondence with Petts Wood and Knoll Ward Councillors on this issue. Petts Wood Councillors consider that the Direction should cover the front and side roof slope but exclude the rear roof slope.

### 3. COMMENTARY

#### Article 4 Directions

- 3.1 Article 4 Directions allow authorities to withdraw the PD rights that would otherwise apply by virtue of the GPDO. An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission be first obtained from the local planning authority for that development. This gives a local planning authority the opportunity to consider a proposal in more detail, i.e. assessing against policies in the Development Plan.
- 3.2 As set out in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), the use of Article 4 Directions should be limited to situations where they are necessary to protect local amenity and / or the wellbeing of the area. These criteria are not further defined in the NPPF or the PPG. The PPG notes that the potential harm that a Direction is intended to address should be clearly identified.
- 3.3 Provided that the local authority considers it expedient, an Article 4 Direction can cover an area of any geographic size, from a specific site to a local authority-wide area.
- 3.4 Article 4 Directions relating to certain specified PD rights (including Part 1 PD rights) can be made with immediate effect; or they can be made to take effect following a period of notice (non-immediate); this is usually done in order to remove compensation liability. This report recommends that the Council makes a non-immediate Article 4 Direction to come into force on 12 months from the day on which it is made, which would mean the Council has no liability to compensate landowners affected by the removal of PD rights. This is discussed further in the legal implications of this report.
- 3.5 Prior to coming into force, the Council must confirm whether it intends to proceed with the Directions based on consideration of representations received during public consultation. The decision on whether to confirm will be taken by the Portfolio Holder for Renewal, Recreation and Housing.
- 3.6 During the 12-month notice period, the PD rights would continue to apply (except on front roofslopes which are subject to an extant Direction). If the Direction is confirmed, following this notice period any alterations to any part of a roof within the Petts Wood ASRC would require full planning permission.
- 3.7 The Secretary of State for Housing, Communities and Local Government has the power to revoke or modify Article 4 Directions at any time.

#### Planning policy context

- 3.8 There is a range of national, London and local planning policies that are considered material to any decision of whether it is expedient to make an Article 4 Direction.
- 3.9 The NPPF is underpinned by three overarching objectives, relating to the economic, social and environmental pillars of sustainable development; the social objective refers to the need to foster a well-designed and safe built environment. Paragraph 9 of the NPPF states that: “Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.”
- 3.10 Section 12 of the NPPF sets out national planning policy for achieving well-designed places. Paragraph 124 sums up the importance of good design: “The creation of high quality buildings and places is fundamental to what the planning and development process should achieve.”

Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

- 3.11 Paragraph 127 sets out criteria that should be addressed in planning policies and decisions to ensure development is well designed. This criteria includes ensuring that developments:
- a) *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
  - b) *are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
  - c) *are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
  - d) *establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
  - e) *optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
  - f) *create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*
- 3.12 Further guidance is set out in the PPG. The PPG highlights the importance of effective and early engagement with local communities and the local planning authority, to ensure good design is achieved. It states that “planning policies can set out the design outcomes that development should pursue as well as the tools and processes that are expected to be used to embed good design.”<sup>1</sup>
- 3.13 The PPG is also clear that “[a] plan’s vision and objectives can be used to set out the types of place(s) which the plan aims to achieve, how this will contribute to the sustainable development of the area and how this translates into the expectations for development and investment, including design.”<sup>2</sup>
- 3.14 The PPG should be read alongside the National Design Guide<sup>3</sup>. Good design is set out in the National Design Guide under 10 characteristics, including:
- Context - the location of the development and the attributes of its immediate, local and regional surroundings. Well-designed places are based on a sound understanding of the features of the site and the surrounding context, using baseline studies as a starting point for design; integrated into their surroundings so they relate well to them; influenced by and influence their context positively; and responsive to local history, culture and heritage.
  - Identity – The identity or character of a place comes from the way that buildings, streets and spaces, landscape and infrastructure combine together and how people experience them. It is not just about the buildings or how a place looks, but how it engages with all of the senses. Local character makes places distinctive. Well-designed, sustainable places with a strong identity give their users, occupiers and owners a sense of pride, helping to create and sustain communities and neighbourhoods.

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<sup>1</sup> Paragraph: 002 Reference ID: 26-002-20191001, available here: <https://www.gov.uk/guidance/design>

<sup>2</sup> Paragraph: 003 Reference ID: 26-003-20191001, available here: <https://www.gov.uk/guidance/design>

<sup>3</sup> Available here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843468/National\\_Design\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843468/National_Design_Guide.pdf)

- Built form – the three-dimensional pattern or arrangement of development blocks, streets, buildings and open spaces. It is the interrelationship between all these elements that creates an attractive place to live, work and visit, rather than their individual characteristics. Together they create the built environment and contribute to its character and sense of place.
  - Homes and buildings - well-designed homes and buildings are functional, accessible and sustainable. They provide internal environments and associated external spaces that support the health and wellbeing of their users and all who experience them. Successful buildings also provide attractive, stimulating and positive places for all, whether for activity, interaction, retreat, or simply passing by.
- 3.15 Looking forward, the ‘Planning for the Future’ white paper<sup>4</sup> sets out potential reforms of the planning system to streamline and modernise the planning process, including a strong focus on design. While the white paper is not yet relevant material consideration relating to the justification of an Article 4 Direction, it is useful context to understand the Government’s likely approach to design issues in the planning system. Pillar two of the white paper - Planning for beautiful and sustainable places – states that: “planning should be a powerful tool for creating visions of how places can be, engaging communities in that process and fostering high quality development: not just beautiful buildings, but the gardens, parks and other green spaces in between, as well as the facilities which are essential for building a real sense of community.”
- 3.16 The white paper also cites the Building Better, Building Beautiful Commission report, noting that it found that “[t]oo many places built during recent decades fail to reflect what is special about their local area or create a high quality environment of which local people can be proud.”
- 3.17 At the London level, the new draft London Plan policy D3 sets out a design-led approach which requires consideration of design options to determine the most appropriate form of development that responds to a site’s context and capacity for growth. Development proposals should, inter alia:
- enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape, with due regard to existing and emerging street hierarchy, building types, forms and proportions; and
  - respond to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character.
- 3.18 Local planning policy set out in the Bromley Local Plan. One of the Local Plan’s key objectives relates to design and the public realm; it aims to ensure that new development of all kinds is well designed, safe, energy efficient and complements its surroundings, respecting the existing scale and layout.
- 3.19 Policy 44 relates to ASRCs, which are important local designations where new development is required to respect, enhance and strengthen their special and distinctive qualities. Appendix 10.6 of the Local Plan gives detailed descriptions of designated ASRCs including Petts Wood, detailing what makes them special and distinctive.
- 3.20 All ASRCs have been assessed against the following criteria and found to warrant designation:
- There should be a sufficient number of properties to form an area of distinctive character. The areas should be well established, readily identifiable and coherent,

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<sup>4</sup> Available here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907956/Planning\\_for\\_the\\_Future\\_web\\_accessible\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf)

- The majority of properties should have the same readily identifiable characteristics (e.g. spatial standards, similar materials, well landscaped frontages),
- The boundary should be easily defined and defensible; and
- The areas defined should be primarily residential in character.

3.21 The ASRCs provide significant benefits in terms of local amenity by ensuring that the distinctive character and high-quality environments of the areas are maintained. Alterations to roofs in the ASRC through Part 1, Class B and C PD rights have the potential to significantly affect the ASRC, undermining their distinctive characteristics and adversely impacting local amenity.

#### Justification for Article 4 Direction to remove Part 1, Class B and C PD rights

3.22 Part 1, Class B and C PD rights allow the enlargement of a dwellinghouse consisting of an addition or alteration to its roof; and any other alteration to the roof of a dwellinghouse. The PD rights are subject to a number of restrictions and conditions on their use.

3.23 An Article 4 Direction to remove Part 1, Class B and C PD rights in the Petts Wood ASRC has been in force since 16 January 2018 (see Appendix 1). This Direction only removes the PD rights from the front roofslope, primarily because the potential installation of front rooflights which are visible and prominent from the street could have adverse impacts on the character of the ASRC.

3.24 Subsequently, there have been instances of side roof extensions which are also prominent. As a result, officers have been asked to consider an amended Direction to remove PD rights which allow side roof extensions.

3.25 Having considered the potential impacts of the PD rights, officers consider that a new Direction should be made to entirely remove the Part 1, Class B and C PD rights in the Petts Wood ASRC. A further Direction to remove the PD rights from specific sections of roofs risks further unforeseen circumstances arising, which could lead to further extensions which impact on the character of the ASRC and affect local amenity. While front and side alterations are likely to have the most prominent impacts, rear extensions also have some potential to cause adverse impacts on character, and when considered alongside other alterations, there is a risk of a cumulative deleterious effect on the wider ASRC.

3.26 Removal of the PD rights from the entire roof means there is no ambiguity in terms of how the PD rights apply. An Article 4 Direction is a blunt tool – anything which partially removes PD rights introduces the need for a subjective assessment. Part 1, Class B and C PD rights were not drafted to accommodate such an assessment (unlike other PD rights which require prior approval). It is considered that the planning policy context noted above (an important material consideration) and the potential impacts on local amenity that may arise from further roof extensions, justify removal of the Part 1, Class B and C PD rights in the Petts Wood ASRC.

## **4. POLICY IMPLICATIONS**

4.1 As set out above, there could be significant adverse impacts on local amenity resulting from roof alterations. This could have a particular impact on the Petts Wood ASRC Local Plan designation.

## **5. FINANCIAL IMPLICATIONS**

5.1 This report recommends the making of one non-immediate Article 4 Direction which will ensure that compensation liability is removed. This requires a 12-month notice period to be given, before the Directions come into effect. During this period, the PD rights would continue to apply, and landowners might take advantage of these rights. However, if the Council were to remove these rights with immediate effect, any refusal of planning permission could result in

compensation liability. Compensation can be claimed based on abortive expenditure or other loss or damage directly attributable to the withdrawal of PD rights; this could include differences in land value between an existing and altered property, which could be substantial.

- 5.2 Costs associated with publishing and consulting on the Article 4 Directions will be met by Planning Policy and Strategy and the Council's legal services department.

## 6. LEGAL IMPLICATIONS

- 6.1 Article 4 (1) of the GPDO allows local Planning authorities to withdraw certain PD Rights. The procedure for putting in place an Article 4 Direction is set out in Schedule 3 of the GPDO. The Council's legal services department will be responsible for making and publicising the Directions, in line with the statutory requirements set out in the GPDO.
- 6.2 This includes serving notice on owners and occupiers of every part of land within the areas to which the Direction relates, unless the local planning authority considers that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable. The proposed Direction encompasses over 1,500 properties (which includes instances where there are numerous properties within a single building). This level of notification is considered to be impracticable, hence individual notice will not be given. Notice will be given by local advertisement and site notice, as per the other requirements of the GPDO.
- 6.3 The GPDO requires notice of the proposed Direction 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 2020<sup>5</sup>.
- 6.4 Cancellation of the existing Direction (at Appendix 1) relating to the front roofslope should be aligned with any new Direction coming into force. For a non-immediate Direction, a decision to cancel the existing Direction will be brought forward alongside any future decision to confirm. Where an immediate Direction is put in place, a decision to cancel the existing Direction should be made at the same time as any decision to pursue an immediate Direction.

<b>Non-Applicable Sections:</b>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p>
Background Documents: (Access via Contact Officer)	<p>The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)</p> <p>Bromley Local Plan</p> <p>National Planning Policy Framework</p> <p>Publication London Plan (December 2020)</p>

<sup>5</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875045/Chief\\_Planners\\_Newsletter\\_-\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf)