
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 PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN AN AREA WITHIN THE RAVENSBOURNE VALLEY LOCAL VIEW		
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Chief Officer:	Tim Horsman, Assistant Director (Planning)		
Ward:	Bromley Town		

1. Reason for report

- 1.1 A report to Development Control Committee on 19 November 2020 recommended a number of Article 4 Directions to withdraw permitted development (PD) rights which allow blocks of flats to extend upwards by up to two storeys to provide new residential units. The report was subsequently considered by the Renewal, Recreation and Housing Policy Development and Scrutiny Committee (RRHPDS) on 16 December 2020. RRHPDS asked Development Control Committee to consider a further Direction covering a discrete area which falls within the local view of the eastern skyline of the Ravensbourne Valley.
- 1.2 This report discusses whether there is justification for the Direction; and sets out the approach for making the Direction if Members consider that there is justification.

2. **RECOMMENDATION(S)**

- 2.1 **That Members note the discussion in the report.**

- 2.2 That Members, if they agree with the justification put forward by RRHPDS for the proposed Article 4 Direction, endorse the making of a ‘non-immediate’ Article 4 Direction (covering the area shown in the plan attached at Appendix 1) to withdraw the following permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”), Schedule 2:**
- Part 20, Class A**
 - Part 20, Class AA**
 - Part 20, Class AD**
- 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.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: None

Corporate Policy

1. Policy Status: N/A
2. BBB Priority: Regeneration:

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

Personnel

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

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

Procurement

1. Summary of Procurement Implications: None

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Bromley Town Ward Councillors have expressed support for an Article 4 Direction to remove upwards extension PD rights from the area outlined on the map at Appendix 1.

3. COMMENTARY

Background

3.1 Six PD rights which allow the upwards extension of residential and mixed-use buildings have been recently introduced through amendments to the GPDO. These are:

- Part 1, Class AA - permits the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwellinghouse. Two storeys may be added if the existing dwellinghouse is two or more storeys tall, or one additional storey where the dwellinghouse consists of one storey.
- Part 20, Class A – permits the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats.
- Part 20, Class AA – permits construction of up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use.
- Part 20, Class AB - permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.
- Part 20, Class AC - permits the construction of new flats on top of terrace dwellinghouses (including semi-detached houses); two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.
- Part 20, Class AD - permits the construction of new flats on top of detached dwellinghouses; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.

3.2 There are a number of restrictions imposed on these new PD rights, as well as further considerations relating to how Development Plan policy applies to the assessment of prior approval assessments. Further information on the details of the PD rights are set out in two recent reports to Development Control Committee, the Upwards Extension Permitted Development Rights report¹ which was noted at the meeting held on 14 July 2020; and the Planning Legislation Update report² which was noted at the meeting held on 24 September 2020. At both of these meetings, members asked officers to investigate the potential for Article 4 Directions to remove the new PD rights in certain areas across the Borough.

3.3 Officers subsequently presented a report to the 19 November 2020 Development Control Committee meeting³ recommending Article 4 Directions covering 15 areas; 13 Areas of Special Residential Character as shown in the Bromley Local Plan (January 2019), and two discrete areas which fall within local views. These proposed Directions were informed by a detailed assessment of a number of locations relating to Local Plan policy areas which could be adversely affected by the PD rights. One of these policy areas was local views and landmarks protected by Local Plan policy 48. Officers assessed all 10 views of local importance to determine whether any of them merited protection; only one was considered to justify an Article 4 Direction, the view of Croydon town centre from Village Way, Beckenham.

¹ Available here:

<https://cds.bromley.gov.uk/documents/s50082500/UPWARDS%20EXTENSION%20PERMITTED%20DEVELOPMENT%20RIGHTSPART%201%20REPORT%20TEMPLATE.pdf>

² Available here: <https://cds.bromley.gov.uk/documents/s50083418/PLANNING%20LEGISLATION%20UPDATE%20-%20PERMITTED%20DEVELOPMENT%20RIGHTS%20AND%20CHANGES%20TO%20THE%20USE%20CLASSES%20ORDERP.pdf>

³ Available here: <http://cdslbb/documents/s50084647/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTEN.pdf>

- 3.4 The report was the subject to pre-decision scrutiny by RRHPDS ahead of consideration by the Renewal, Recreation and Housing Portfolio Holder. As set out in the minutes of the 16 December 2020 meeting⁴, RRHPDS recommended that the Portfolio Holder authorise the making of the Directions as detailed in the report, and also asked for a report be submitted to the next meeting of the DCC recommending that an Article 4 Direction is put in place to remove PD rights for tall buildings located towards the top of Ravensbourne Valley which would in the opinion of RRHPDS, interfere with the skyline if further extended.

Article 4 Directions

- 3.5 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. The PD rights in question all require prior approval of certain issues, but this determination is limited and does not allow for full consideration against adopted Development Plan policies.
- 3.6 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. For the Directions proposed in this report, justification is set out in the following sections.
- 3.7 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. PPG advises that any Direction removing PD rights where prior approval powers are available to control PD should have particularly strong justification.
- 3.8 Article 4 Directions relating to Part 20 PD rights can only be made to take effect following a period of notice (non-immediate); giving 12 months' notice 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.
- 3.9 Prior to coming into force, the Council must confirm whether it intends to proceed with the Directions, based on consideration of representations received. The decision on whether to confirm will be taken by the Portfolio Holder for Renewal, Recreation and Housing.
- 3.10 During the 12-month notice period, the PD rights would continue to apply. If the Directions are confirmed, following this notice period any upwards extensions within the areas covered by the Directions would require full planning permission.
- 3.11 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

- 3.12 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.
- 3.13 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

⁴ <http://cdslbb/documents/g7035/Public%20minutes%20Wednesday%2016-Dec-2020%2018.30%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20.pdf?T=11>

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.”

- 3.14 Paragraph 118(e) sets out a policy approach to encourage upwards extensions, which predates the introduction of the upwards extension PD rights. It is notable, however, that the policy approach set out in the NPPF refers explicitly to compliance with local design policies and standards, reflecting the importance that such policies have in terms of guiding suitable development in keeping with local character.
- 3.15 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.”
- 3.16 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.*
- 3.17 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.”⁵
- 3.18 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.”⁶

⁵ Paragraph: 002 Reference ID: 26-002-20191001, available here: <https://www.gov.uk/guidance/design>

⁶ Paragraph: 003 Reference ID: 26-003-20191001, available here: <https://www.gov.uk/guidance/design>

3.19 The PPG should be read alongside the National Design Guide⁷. 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.
- 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.

3.20 Looking forward, the ‘Planning for the Future’ white paper⁸ 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 Governments 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.”

3.21 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.”

3.22 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.

⁷ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843468/National_Design_Guide.pdf

⁸ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf

- 3.23 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.
- 3.24 Policy 48 of the Local Plan requires developments which may impact on the skyline to demonstrate how they will protect or enhance the quality of the views, vistas, gaps and skyline. This includes 10 views of local importance, five landmarks and two major skyline ridges.

Potential Article 4 Direction within the Ravensbourne Valley Local View

- 3.25 The area under consideration for a potential Article 4 Direction is identified in Appendix 1. It is made up of three separate blocks of flats - Cameron House on Highland Road; and Treversh Court and Townend Court on Grasmere Road.
- 3.26 As noted above in paragraph 3.1, six upwards extension PD rights have been recently introduced. Any Direction covering the above buildings would only need to remove Part 20, Class A, Class AA and Class AD PD rights, as these are the only ones that could be utilised by these buildings (Part 1, Class AA only applies to houses, and Part 20, Class AB and AC only apply to terraced buildings).
- 3.27 Local Plan policy 48 identifies views of local importance. Development which may impact on these views must demonstrate how it will protect or enhance the view quality. In principle an increase in height through PD rights could impact on designated views; the views reinforce a sense of place and add significant amenity value in their localities, and therefore an increase in height through PD rights have potential to harm this local amenity. The addition of extra storeys can block or obscure views; or introduce an obtrusive element which detracts from the overall quality of the view; this is particularly the case where PD rights may be utilised in the foreground of a view. The key question in terms of whether an Article 4 Direction is justified is whether the potential adverse impacts on local amenity are of enough significance to justify a Direction.
- 3.28 Paragraph 3.3 refers to the previous officer assessment of potential Directions in local views. Officers consider that this assessment still stands and that there is not sufficient justification, in line with the PPG, to justify an Article 4 Direction. While the impact on local views can in principle justify a Direction as noted above, in this case officers consider that the existing prominence of Townend Court and the visibility of the other buildings, means that the additional potential impacts would not likely be of such significance that would justify an Article 4 Direction.
- 3.29 The justification put forward by RRHPDS is that any further increase in height on the three buildings in question would seriously diminish the value of the skyline. The tallest of the three buildings – Townend Court - already intrudes on the skyline within the local view, with the other two buildings being visible just above the treeline. Further height increase would increase the prominence of Townend Court and potentially increase visibility of the other two buildings above the tree line.
- 3.30 Photos 1 and 2 below show Google Streetviews from Farnaby Road and from further afield at a point in the playing field off Warren Avenue (taken in August 2020 and June 2019 respectively).

Photo 1



Photo 2



4. POLICY IMPLICATIONS

- 4.2 Any Article 4 Direction will restrict housing supply to a degree; this is a relevant consideration in determining whether the making of a Direction is expedient. However, the impacts on housing supply are likely to be of limited impact (individually and cumulatively alongside other Directions) in terms of restricting the amount of new residential units created, and hence the effect on the Council's ability to meet housing targets is limited.
- 4.3 The quality of the housing created must also be considered alongside any impact on housing supply. The creation of new housing is not just a numbers game; it is essential that new housing is fit for purpose in order to ensure sustainable development, for example ensuring appropriate sustainable design measures to mitigate climate change. PD rights have become synonymous with poor quality, small homes. As an Article 4 Direction would require planning permission to be secured for such developments in the future, this will ensure delivery of higher quality residential units and assist with the delivery of sustainable development in the borough. It is noted that the Government have amended the GPDO to introduce a requirement for new housing created through PD rights to meet minimum space standards; while this is a positive step in terms of ensuring better quality homes, there are other design requirements in the Development Plan that would not be required through the GPDO.
- 4.4 Prior approval permissions have often been used as a 'fallback' position, whereby developers secure prior approval permission and then subsequently apply for full planning permission for a more comprehensive development on the same site, noting that if this permission was not

granted then there is an extant prior approval that can be delivered. Fallback positions can be material considerations in the determination of planning applications although the weight given would depend on whether the applicant has secured the prior approval permission; it is not enough to just highlight that prior approval permission could be sought, as there is no guarantee prior approval will be granted. Where prior approval permission has been granted, an applicant would also need to demonstrate that there is a realistic intention to implement the prior approval, for the fallback to be given weight. It is noted that development granted through the upwards extension PD rights must be completed within three years of the date of grant of prior approval, which will factor into any consideration of the weight given to a fallback position.

- 4.5 The impacts of the COVID-19 pandemic are currently uncertain, but it is noted that it could have significant impacts on housing supply in particular. However, such impacts are not yet evident, for example through higher commercial vacancies or impacts on housing delivery statistics. If impacts do materialise, this does not necessarily have implications for any Directions, as these impacts could be a material consideration in a future planning application. However, the PPG notes that it is important for local planning authorities to monitor any Article 4 Directions regularly to make certain that the original reasons the Directions were made remain valid. Therefore, the impact of the COVID-19 pandemic, as well as other positive and negative impacts, will be an ongoing consideration to help determine whether the Directions should remain in place.

5. FINANCIAL IMPLICATIONS

- 5.1 This report discusses whether there is justification for an Article 4 Direction to remove upwards extension PD rights within the local view of the eastern skyline of the Ravensbourne Valley; and sets out the approach for making the Direction if Members consider that there is justification. Where Members consider that a Direction is justified, only a non-immediate Article 4 Direction can be made. This will ensure that compensation liability is removed, if a 12-month notice period is given before the Direction comes into effect.
- 5.2 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 extended property, which could be substantial.
- 5.2 Where Members consider it is expedient to 'make' an Article 4 Direction, the costs associated with publishing and consulting an 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 Directions relate, 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. While the number of properties that would be subject to a Direction are fairly limited, the cumulative amount of properties (combined with other Directions) may be considered to be impracticable, hence individual notice may not be given. Practicability will be determined by available resources, at the point of time when any decision is made to 'make' a Direction and the Direction can then be formally made following the procedure set out in the GPDO. Regardless of individual owner/occupier notice, 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 Directions 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 2020⁹.

Non-Applicable Sections:	IMPACT ON VULNERABLE ADULTS AND CHILDREN PERSONNEL IMPLICATIONS PROCUREMENT IMPLICATIONS
Background Documents: (Access via Contact Officer)	The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 - https://www.legislation.gov.uk/ukxi/2020/632/regulation/22/made The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 - https://www.legislation.gov.uk/ukxi/2020/755/contents/made The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 - https://www.legislation.gov.uk/ukxi/2020/756/contents/made Bromley Local Plan National Planning Policy Framework Publication London Plan (December 2020)

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf