

**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: 20 May 2021  
RR&H PDS: 16 June 2021

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

**Title:** CONFIRMATION OF IMMEDIATE ARTICLE 4 DIRECTION TO  
REMOVE PART 1, CLASS AA PERMITTED DEVELOPMENT  
RIGHTS FOR UPWARDS EXTENSIONS IN THE 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 recommends that the Council confirms an immediate Article 4 Direction to withdraw the permitted development (PD) right which allows the enlargement of dwellinghouses by up to two storeys. The immediate Direction applies to the Petts Wood Area of Special Residential Character (ASRC) as designated in the Bromley Local Plan (January 2019). The Direction came into force on 23 February 2021 but to remain in force, it must be confirmed by 23 August 2021 by the Renewal, Recreation and Housing Portfolio Holder, after taking account of any representations received.
- 1.2 ASRCs are areas which add significant character and distinctiveness, linked to adopted policy in the Local Plan. The Article 4 Direction would help to protect this character and distinctiveness which is a positive benefit for local amenity.
- 1.3 In line with the requirements of legislation, representations on the proposed Directions were sought. The Council must take into account any representations made before it confirms the Article 4 Directions. No representations were received.

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## **2. RECOMMENDATION(S)**

- 2.1 That Members endorse the confirmation of an immediate Article 4 Direction (covering the Petts Wood ASRC as shown in the plan attached at Appendix 1) to withdraw the permitted development right granted by Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”), Schedule 2.**
- 2.2 That Members refer the matter to the Renewal, Recreation and Housing Policy Development and Scrutiny Committee for pre-decision scrutiny.**
- 2.3 That Members note that the Portfolio Holder for Renewal, Recreation and Housing will be asked to confirm the immediate Direction before 23 August 2021, to ensure that it remains in force.**

## 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: No Cost
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 2021/22

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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? No
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

#### Background

- 3.1. The Part 1, Class AA PD right 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 added where the dwellinghouse consists of one storey. This PD rights came into force on 31 August 2020. There are a number of restrictions that apply to the PD right, as well as further considerations relating to how Development Plan policy applies to prior approval assessments. Further information is set out in the Planning Legislation Update report<sup>1</sup> which was noted at the Development Control Committee meeting held on 24 September 2020.
- 3.2. In November 2020, Development Control Committee endorsed the making of an immediate Article 4 Direction to remove Part 1, Class AA PD right in the Petts Wood ASRC<sup>2</sup>. This specific ASRC was considered to warrant an immediate Direction due to the potential impact that the PD right could have on the special character of this area, as set out in the Local Plan. The Direction was subsequently approved by the Portfolio Holder for Renewal, Recreation and Housing and 'made' on 23 February 2021 (see Appendix 1).
- 3.3. Consultation on the immediate Direction was undertaken from 23 February to 6 April 2021 (a period of six weeks). As detailed in the November 2020 report to Development Control Committee<sup>3</sup>, the consultation did not include serving notice on owners and occupiers of every part of land within the area to which the Direction relates, as this level of notification was considered impracticable. Notice was given by local advertisement and site notices in various locations within the ASRC, as per the other requirements of the GPDO. Details were also provided on the Council's website. No representations were received.

#### Confirmation of the Article 4 Direction

- 3.4. The immediate Article 4 Direction at Appendix 1 must be confirmed by 23 August 2021 in order to remain in force. When determining whether to confirm an immediate Direction, the Local Planning Authority must take into account any representations received during the consultation period. As noted above, no representations were received.
- 3.5. As set out in the November 2020 Development Control Committee report (paragraphs 3.10 to 3.23), 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.
- 3.6. ASRCs are a designation in the adopted Local Plan. They have been justified based on their special and distinctive qualities and were recently found sound by an independent planning inspector as part of the Local Plan examination.

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<sup>1</sup> Development Control Committee report, 24 September 2020, PLANNING LEGISLATION UPDATE – PERMITTED DEVELOPMENT RIGHTS AND CHANGES TO THE USE CLASSES ORDER, available from: <https://cde.bromley.gov.uk/documents/s50083418/PLANNING%20LEGISLATION%20UPDATE%20-%20PERMITTED%20DEVELOPMENT%20RIGHTS%20AND%20CHANGES%20TO%20THE%20USE%20CLASSES%20ORDERP.pdf>

<sup>2</sup> Minutes of the Development Control Committee meeting held at 6.30 pm on 19 November 2020, available from: <http://cdslbb/documents/g6909/Printed%20minutes%20Thursday%2019-Nov-2020%2018.30%20Development%20Control%20Committee.pdf?T=1>

<sup>3</sup> Development Control Committee report, 19 November 2020, PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN SPECIFIED AREAS, available from: <http://cdslbb/documents/s50084647/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTEN.pdf>

- 3.7. Both the Local Plan policy and supporting evidence highlight the importance of the ASRCs to the character of the Borough. 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,
  - 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.
- 3.8. 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. The new PD rights have the potential to significantly affect the ASRCs, undermining their distinctive characteristics and adversely impacting local amenity. These potential impacts are considered to justify the making of Article 4 Directions to remove the new PD rights in the ASRCs.
- 3.3 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 right in question requires prior approval of certain issues, but this determination is limited and does not allow for full consideration against adopted Development Plan policies.

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

- 4.1 There could be significant adverse impacts on local amenity resulting from upwards extensions in the Petts Wood ASRC, if the proposed Article 4 Direction is not confirmed and therefore does not remain in force. This could undermine elements of the Development Plan.

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

- 5.1 This report recommends confirmation of the immediate Article 4 Direction to remove the Part 1, Class AA PD right in the Petts Wood ASRC. Compensation can be claimed where:
- planning permission is refused for development which would have been permitted development if it were not for a Direction; or
  - grant of planning permission is 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 may only be claimed if an application for planning permission is submitted within 12 months following the effective date of the direction (in this case, 23 February 2021).
- 5.3 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.
- 5.4 Costs associated with confirming the Article 4 Directions will be met by the Planning Policy and Strategy and 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

Planning Policy and Strategy and legal services department will be responsible for confirming the Direction, in line with the statutory requirements set out in the GPDO.

- 6.2 Notice will be given in the same manner as the notification for the making of the Direction, as set out in paragraph 3.3 of this report.
- 6.3 The GPDO requires notice of confirmation 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>4</sup>.
- 6.4 The Secretary of State for Housing, Communities and Local Government has the power to revoke or modify Article 4 Directions at any time.

<p><b>Non-Applicable Sections:</b></p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)</p> <p>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 - <a href="https://www.legislation.gov.uk/uksi/2020/755/contents/made">https://www.legislation.gov.uk/uksi/2020/755/contents/made</a></p> <p>Development Control Committee report, 24 September 2020, PLANNING LEGISLATION UPDATE – PERMITTED DEVELOPMENT RIGHTS AND CHANGES TO THE USE CLASSES ORDER - <a href="https://cds.bromley.gov.uk/documents/s50083418/PLANNING%20LEGISLATION%20UPDATE%20-%20PERMITTED%20DEVELOPMENT%20RIGHTS%20AND%20CHANGE%20TO%20THE%20USE%20CLASSES%20ORDERP.pdf">https://cds.bromley.gov.uk/documents/s50083418/PLANNING%20LEGISLATION%20UPDATE%20-%20PERMITTED%20DEVELOPMENT%20RIGHTS%20AND%20CHANGE%20TO%20THE%20USE%20CLASSES%20ORDERP.pdf</a></p> <p>Development Control Committee report, 19 November 2020, PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN SPECIFIED AREAS - <a href="http://cdslbb/documents/s50084647/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTEN.pdf">http://cdslbb/documents/s50084647/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTEN.pdf</a></p>

<sup>4</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)