

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: 31 August 2021
RR&H PDS: 8 September 2021

Decision Type: Non-Urgent Non-Executive Key

Title: PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION TO REMOVE PART 2, CLASS A PERMITTED DEVELOPMENT RIGHTS IN THE KNOLL ASRC

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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: Petts Wood and Knoll

1. Reason for report

- 1.1 This report recommends that the Council makes a non-immediate Article 4 Direction to withdraw the Part 2, Class A permitted development (PD) right which allows the erection or construction of a gate, fence, wall or other means of enclosure. The Direction would apply to the Knoll Area of Special Residential Character (ASRC). The Direction would come into force at least 12 months after being made, subject to confirmation by the Renewal, Recreation and Housing Portfolio Holder after taking account of representations received.

2. RECOMMENDATION(S)

- 2.1 That Members endorse the making of a 'non-immediate' Article 4 Direction (covering the Knoll Area of Special Residential Character, as defined in the Bromley Local Plan) to withdraw the permitted development right granted by Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

(“the GPDO”), Schedule 2, which allows the erection or construction of a gate, fence, wall or other means of enclosure.

- 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 authorise the making of a non-immediate Article 4 Direction, which will come into force 12 months from the day on which it is made, if it 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: 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

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? No
2. Summary of Ward Councillors comments: Ward councillors were not asked to comment on the report, but it is noted that the request to investigate the potential for an Article 4 Direction originally came from ward councillors.

3. COMMENTARY

Article 4 Directions - background

- 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 NPPF was amended in July 2021, which introduced a new requirement for Directions to be based on robust evidence and apply to the smallest geographical area possible¹. The PPG notes that the potential harm that a Direction is intended to address should be clearly identified. For the proposed Direction, justification is set out in this report.
- 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. PPG advises that any Direction covering a wide area or removing PD rights where prior approval powers are available to control PD should have particularly strong justification.
- 3.4. Article 4 Directions removing Part 2 PD rights can be made with immediate effect or to take effect following a period of notice to remove compensation liability (non-immediate). The PPG says that an immediate Direction can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area, but in all cases the local planning authority must have already begun the consultation processes towards the making a non-immediate Article 4 Direction. This report recommends that the Council issues a non-immediate Article 4 Direction with a 12-month notice period, in order to reduce the Council's liability to compensate landowners affected by the removal of PD rights.
- 3.5. Prior to coming into force, the Council must confirm whether it intends to proceed with a non-immediate Direction, based on consideration of representations received. The decision on whether to confirm will be taken by the Portfolio Holder for Renewal, Recreation and Housing.
- 3.6. During the 12-month notice period, the PD rights would continue to apply. If the Directions are confirmed, following this notice period, the erection or construction of a gate, fence, wall or other means of enclosure within the Knoll 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.

Proposed Article 4 Directions – justification and evidence

- 3.8. There are 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:

¹ The amended NPPF introduces a different test for Article 4 Directions which relate to change from non-residential use to residential use; such Directions should be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts.

“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 126 sums up the importance of good design: *“The creation of high quality, beautiful and sustainable 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 130 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 users⁴⁹; 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, which 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.”*²
- 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.”*³
- 3.14. The PPG should be read alongside the National Design Guide⁴. 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

² Paragraph: 002 Reference ID: 26-002-20191001, available here: <https://www.gov.uk/guidance/design>

³ Paragraph: 003 Reference ID: 26-003-20191001, available here: <https://www.gov.uk/guidance/design>

⁴ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962113/National_design_guide.pdf

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.

3.15. Looking forward, the ‘Planning for the Future’ white paper⁵ 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, 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 is 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 identified ASRCs, which provide significant benefits in terms of local amenity by ensuring that the distinctive character and high-quality environments of the areas are

⁵ Available here:

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

maintained. Appendix 10.6 of the Local Plan gives detailed descriptions of designated ASRCs, including the Knoll ASRC, detailing what makes them special and distinctive.

- 3.20. Two background papers⁶ prepared in support of the ASRC policy ahead of the Local Plan examination - one specifically relating to the Knoll ASRC - provide further clear evidence of the value of the ASRCs.
- 3.21. 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.
- 3.22. The Part 2, Class A PD right allow gates, fences, walls or other means of enclosure of up to 2 metres in height (or up to 1 metre in height adjacent to a highway used by vehicular traffic). Officers have been asked to consider the justification for an Article 4 Direction to remove Part 2, Class A PD rights in the Knoll ASRC.
- 3.23. Considering the intent of the ASRC designation and the potential impacts of the PD right, officers consider that there is justification to put in place an Article 4 Direction. Part of the justification for the Knoll ASRC is the views through to rear gardens and landscaping in front gardens. While gates, fences, walls or other means of enclosure would already be restricted to 1 metre for front gardens (as they are adjacent to a highway), there could still be scope for harm to local amenity which affects these distinctive characteristics, for example by obscuring views or landscaping. This is the case in terms of individual properties but especially when considering cumulative impacts.
- 3.24. The PD right allows the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Officers consider that it is not necessary to remove the part of the PD right which allows maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The PD right already restricts any height increase for maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure; the height can only be increased through the erection or construction of a gate, fence, wall or other means of enclosure.
- 3.25. Removing the part of the PD right which allows maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure would therefore only affect an existing gate, fence, wall or other means of enclosure; this could mean that repairs or improvements to them, would need full planning permission. This could affect, for example, repairs to a broken gate.
- 3.26. It is noted that an existing Article 4 Direction⁷ which covers the Petts Wood ASRC, the Chenies Conservation Area and the Chislehurst Road Conservation Area only removes the ability to

⁶ Local Plan Background Paper - Potential Areas of Special Residential Character Spatial Character Assessments (September 2015), available from: https://www.bromley.gov.uk/download/downloads/id/3088/sd52_potential_asrcs_-_spatial_character_assessments_2015.pdf; and Local Plan Background Paper - Proposed North Copers Cope Road and The Knoll Areas of Special Residential Character Spatial Character Assessments (November 2016), available from: https://www.bromley.gov.uk/download/downloads/id/3089/sd53_north_copers_cope_rd_and_the_knoll_asrcs_-_character_assessments_2016.pdf

⁷ Available here:

https://www.bromley.gov.uk/download/downloads/id/2578/petts_wood_asrc_the_chenies_ca_and_chislehurst_road_ca.pdf

erect or construct a gate, fence, wall or other means of enclosure; maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is still PD in these areas.

4. POLICY IMPLICATIONS

- 4.1 As set out above, there could be significant adverse impacts on local amenity resulting from the erection or construction of a gate, fence, wall or other means of enclosure. This could have a significant impact on the particular characteristics of the Knoll ASRC Local Plan designation.

5. FINANCIAL IMPLICATIONS

- 5.1 This report recommends a 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 Direction comes into effect. During this period, the PD right would 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.
- 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 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. The proposed Direction encompasses several hundred properties. 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.

<p>Non-Applicable Sections:</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>Bromley Local Plan (January 2019)</p> <p>London Plan (March 2021)</p> <p>National Planning Policy Framework (July 2021)</p>