

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: 11 January 2022
RRH PDS: 26 January 2022

Decision Type: Non-Urgent Non-Executive Key

Title: CONFIRMATION OF ARTICLE 4 DIRECTIONS TO REMOVE
PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS
EXTENSIONS IN SPECIFIED AREAS

Contact Officer: Ben Johnson, Head of Planning Policy and Strategy
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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: Bickley; Bromley Common and Keston; Bromley Town; Chelsfield and Pratts
Bottom; Chislehurst; Clock House; Copers Cope; Hayes and Coney Hall;
Kelsey and Eden Park; Petts Wood and Knoll; Shortlands

1. Reason for report

- 1.1. This report recommends that the Council confirms 16 non-immediate Article 4 Directions to withdraw permitted development (PD) rights which allow certain buildings to extend upwards by up to two storeys to provide new or extended residential units. These Directions would apply to the 13 Areas of Special Residential Character as shown in the Bromley Local Plan (January 2019); and to three discrete areas which fall within local views.
- 1.2. The areas selected for the Directions are areas which add significant character and distinctiveness, linked to adopted policy in the adopted Local Plan. The Article 4 Directions 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. Two representations were received, both in support of specific Directions. If confirmed, the Directions would come into force on 15 March 2022.
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2. RECOMMENDATION(S)

- 2.1. **That Members endorse the confirmation of 16 non-immediate Article 4 Directions to withdraw various permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”), Schedule 2, Part 1 and Part 20. The areas covered by the Directions are shown on the maps at Appendix 1 and Appendix 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 16 non-immediate Directions covering the areas shown on the maps at Appendix 1 and Appendix 2, to come into force on 15 March 2022.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: No impact
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Regeneration
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Financial

1. Cost of proposal: Costs associated with publicising the confirmation will be met from the Planning Policy and Strategy budget.
 2. Ongoing costs: N/A
 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: N/A
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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. Six PD rights which allow the upwards extension of residential and mixed-use buildings were introduced in 2020, through amendments to the GPDO. Further information on these PD rights is set out in two reports to Development Control Committee (DCC) from last year; 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.
- 3.2. Article 4 Directions allow authorities to withdraw the PD rights that would otherwise apply by virtue of the GPDO. Details of the Article 4 Direction process and relevant legislation and guidance are set out in paragraphs 3.3 to 3.9 of the November 2020 DCC report³ which recommended the upwards extensions Directions.
- 3.3. It is noted that the NPPF was amended in July 2021, which introduced a new requirement for Article 4 Directions; this requires Directions which relate to a change from non-residential use to residential use to be limited to situations where an Article 4 Direction is necessary to avoid wholly unacceptable adverse impacts. Directions should apply to the smallest geographical area possible. The PPG notes that the potential harm that a Direction is intended to address should be clearly identified. For the proposed Directions, justification to address the NPPF requirements is discussed below.
- 3.4. In November 2020, Development Control Committee⁴ (DCC) considered a report recommending that 15 non-immediate Article 4 Directions were made to withdraw Part 1, Class AA PD rights, and Part 20, Class A, AA, AB, AC and AD PD rights, which allow certain buildings to extend upwards by up to two storeys to provide new or extended residential units. The proposed Directions related to the 13 Areas of Special Residential Character (ASRC) as shown in the Bromley Local Plan (January 2019); and to two discrete areas which fall within local views (shown at Appendix 1). DCC recommended that an immediate Direction was made to withdraw Part 1, Class AA PD rights in the Petts Wood ASRC⁵, but otherwise agreed with the report recommendations⁶.

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 'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN SPECIFIED AREAS', Development Control Committee 19 November 2020, available from: <https://cds.bromley.gov.uk/documents/s50084647/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTENSION.pdf>

⁴ Ibid

⁵ The immediate Direction was confirmed on 19 July 2021 and remains in force.

⁶ Minutes of the DCC meeting held at 6.30 pm on 19 November 2020, available from: <https://cds.bromley.gov.uk/documents/g6909/Printed%20minutes%20Thursday%2019-Nov-2020%2018.30%20Development%20Control%20Committee.pdf?T=1>

- 3.5. The Renewal, Recreation and Housing Policy Development and Scrutiny Committee (RRHPDS) considered the proposed Directions on 16 December 2020⁷. RRHPDS resolved that the Portfolio Holder be recommended to authorise the making of 15 non-immediate Directions⁸.
- 3.6. RRHPDS also resolved that a report be submitted to the next meeting of the DCC recommending that an Article 4 Direction be made to withdraw PD rights for an area at the top end of Ravensbourne Valley (shown at Appendix 2). DCC considered this report on 28 January 2021⁹, and recommended that a Direction was made to remove Part 20, Class A, AA and AD PD rights; this is fewer PD rights than the other Directions, as the other PD rights would not apply within the proposed area, as the area includes three purpose built flatted blocks and Part 1, Class AA only applies to houses, and Part 20, Class AB and AC only apply to terraced buildings.
- 3.7. RRHPDS considered the additional proposed Direction on 2 February 2021¹⁰, and resolved that the Portfolio Holder be recommended to authorise the making of the Direction¹¹.
- 3.8. The 16 Directions were subsequently authorised by the Portfolio Holder and 'made' on 15 March 2021.

Representations

- 3.9. Consultation on the non-immediate Directions was undertaken from 15 March to 26 April 2021 (a period of six weeks). As detailed in the November 2020 report to Development Control Committee, 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 and in the three areas within local views, as per the other requirements of the GPDO. Details were also provided on the Council's website.
- 3.10. Two representations were received in support of the proposed Directions, as follows:
 - A residents' association who operate within one of the ASRCs fully supported the proposals. The response noted that without the Directions, the Council would lose control over unacceptable development.

⁷ 'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN SPECIFIED AREAS'. Renewal, Recreation and Housing Policy Development and Scrutiny Committee 16 December 2020, available from: <http://cdslbb/documents/s50085122/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTENS.pdf>. Addendum report available from: <http://cdslbb/documents/s50085123/Addendum%20for%20Portfolio%20Holder%20report.pdf>

⁸ Minutes of the RRHPDS meeting held at 6.30 pm on 16 December 2020, available from: <http://cdslbb/documents/g7035/Public%20minutes%20Wednesday%2016-Dec-2020%2018.30%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20.pdf?T=11>

⁹ 'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN AN AREA WITHIN THE RAVENSBOURNE VALLEY LOCAL VIEW', Development Control Committee 28 January 2021, available from: <http://cdslbb/documents/s50085741/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTION%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTENS.pdf>

¹⁰ 'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN AN AREA WITHIN THE RAVENSBOURNE VALLEY LOCAL VIEW', Renewal, Recreation and Housing Policy Development and Scrutiny Committee 2 February 2021, available from: <http://cdslbb/documents/s50085766/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTION%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTENS.pdf>

¹¹ Minutes of the RRHPDS meeting held at 6.30 pm on 2 February 2021, available from: <http://cdslbb/documents/g6916/Printed%20minutes%20Tuesday%2002-Feb-2021%2018.30%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20S.pdf?T=1>

- Another residents' association operating in a different ASRC. The respondent supported the proposed Directions, considering them a necessary environmental safeguard to protect the amenity of ASRCs. As such, the Association supports the proposed Directions.

Discussion and justification

- 3.11. Paragraphs 3.10 to 3.23 of the November 2020 DCC report¹² set out the national, London and local planning policy context which is material to any decision of whether it is expedient to make an Article 4 Direction. Since the November 2020 report, the London Plan has now been adopted and the NPPF has been updated with a stronger emphasis on design and the creation of high quality, beautiful and sustainable buildings.
- 3.12. In terms of the justification for the proposed Directions, officers consider that the justification set out in paragraphs 3.24 to 3.33 of the November 2020 DCC report¹³ remains robust and is sufficient to address the updated NPPF requirements with regard to ensuring wholly unacceptable adverse impacts are avoided. The ASRCs and local views are important Local Plan designations which protect character and local amenity, which could be undermined by the new PD rights. Therefore, the proposed Directions will help to protect this character and amenity.
- 3.13. With regard to the Direction within the Ravensbourne Valley local view, officers consider that the justification set out in paragraph 3.29 of the January 2021 DCC report¹⁴ remains robust and is sufficient to address the updated NPPF requirements, for the same reasons as noted above, i.e. local views are important Local Plan designations which protect character and local amenity, which could be undermined by the new PD rights; and the proposed Direction will help to protect this character and amenity.

4. POLICY IMPLICATIONS

- 4.1. As set out in the main body of this report, there could be significant adverse impacts on local amenity resulting from upwards extensions in specific areas linked to Local Plan designations, if the proposed Article 4 Directions are not confirmed to come into force. This could undermine elements of the Development Plan.
- 4.2. The proposed Directions will restrict housing supply to a degree, but this is likely to be of limited impact 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. The areas subject to the Directions cover are a very small proportion of the total area of the borough, which leaves a significant amount of land where PD rights would continue to apply. The potentially significant impacts on local amenity, identified in this report, would outweigh this potentially limited impact on housing supply, in terms of the deciding whether it is expedient to confirm the Article 4 Directions.
- 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 Article 4 Directions 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 recognised that minimum space standards will be required for new housing developed through PD rights,

¹² Op cit, see footnote 3

¹³ Ibid

¹⁴ Op cit, see footnote 9

but, important as these standards are, this will not guarantee the development of high quality housing; only full application of Development Plan policy can do this.

- 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 the 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 recommends 16 non-immediate Article 4 Directions are confirmed to come into force on 15 March 2022. As a 12-month notice period to be given prior to the Directions coming into effect, compensation liability is removed.
- 5.2. Costs associated with confirming 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 confirming the Directions, in line with the statutory requirements set out in the GPDO.
- 6.2. There is a requirement to give notice of confirmation to 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 Directions together encompass around 4,500 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 (which is consistent with the approach taken as part of the notification process when the Directions were first made). 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 after the Directions have been confirmed.

<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>Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf</p> <p>London Plan (adopted 2 March 2021), available from: https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf</p> <p>National Planning Policy Framework (July 2021) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf</p> <p>National Planning Practice Guidance - https://www.gov.uk/guidance/when-is-permission-required</p> <p>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</p> <p>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 - https://www.legislation.gov.uk/ukxi/2020/755/contents/made</p> <p>‘PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN SPECIFIED AREAS’, Development Control Committee 19 November 2020, available from: https://cds.bromley.gov.uk/documents/s50084647/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTEN.pdf</p> <p>‘PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN AN AREA WITHIN THE RAVENSBOURNE VALLEY LOCAL VIEW’, Development Control Committee 28 January 2021, available from: http://cdslbb/documents/s50085741/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTION%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20UPWARDS%20EXTENS.pdf</p>