

Decision Maker: **Development Control Committee**

Date: **8 September 2011**

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

Title: **POSSIBLE ARTICLE FOUR DIRECTION AT THE CHENIES,
PETTS WOOD**

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Chief Officer: Bob McQuillan

Ward: Petts Wood

1. Reason for report

The issue for consideration by Members is whether the Council should seek, with the use of an article 4 direction, to withdraw permitted development rights for the insertion of roof lights in the front slopes of roofs of properties in The Chenies conservation area. A recent proposal on one of the properties in the area has given rise for some concern. If an article 4 direction is served, the Council may be liable to pay compensation to applicants in certain circumstances – this needs to be balanced against the potential harm to the conservation area caused by a possible proliferation of proposals.

2. **RECOMMENDATION(S)**

Members are invited to consider whether Executive should be requested to confirm an Article 4 direction withdrawing permitted development rights for roof lights in The Chenies, Petts Wood, Conservation Area.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: Possible unquantifiable cost implications arising from compensation issues
 2. Ongoing costs: Recurring cost. Possible ongoing cost from increased workload.
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding: revenue budgets
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Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: 4
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: Not specifically in respect of this report - but have been involved in ongoing discussions on the issue.

3. COMMENTARY

- 3.1 The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) grants various rights to householders to alter or extend their dwelling houses without the need to obtain planning permission. This is referred to as 'permitted development' (pd). One such right (under Part 1 of Schedule 2, Class C) is to carry out alterations to the roof of a dwelling house. Provided any alteration does not protrude more than 150mm beyond the plane of the slope of the original roof (such as would normally be the case with a roof light or 'Velux' window) it can be undertaken as 'pd'. This particular right does not differentiate between general residential areas and conservation areas and it is therefore possible for householders within designated conservation areas to insert roof lights in the front roof slopes of their houses without the need to obtain planning permission from the Council.
- 3.2 Article 4 of the GPDO allows for the making of a direction that can withdraw specified pd rights. This does not prevent the development to which it applies but instead requires that planning permission is first obtained from the local planning authority for that development.
- 3.3 The Chenies Conservation Area was designated in 1982 and comprises a total of 29 detached houses set in generous plots. In the Supplementary Planning Guidance for The Chenies, adopted by the Development Control Committee in February 2000, advice is given in respect of dormers and roof lights in order to ensure that roof slopes do not become over cluttered. A recent photo survey of properties in The Chenies showed that only one property (No. 5) had a roof light facing the front (photos attached at Appendix 1).
- 3.4 The issue for consideration by Members is whether the Council should seek to withdraw permitted development rights for roof lights in The Chenies given the recent development at No.5.
- 3.5 Guidance issued by DCLG in November 2010 advises that local planning authorities should consider making article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity. In deciding whether an article 4 would be appropriate, LPAs should ... "identify clearly the potential harm that the direction is intended to address" and may want consider whether the exercise (by property owners) of pd rights would "...undermine the visual amenity of the area or damage the historic environment".
- 3.6 In procedural terms there are two main types of article 4:
- non-immediate direction (permitted development rights are only withdrawn upon confirmation of the direction by the local authority following local consultation; and
 - immediate directions (where permitted rights are withdrawn with immediate effect, but must be confirmed by the LPA following local consultation within 6 months, or else the direction will lapse).
- 3.7 Article 4 directions cannot be applied retrospectively to development undertaken before a direction comes into force and any planning application required as a consequence of an article 4 direction is exempt from the usual planning application fee.

- 3.8 There are circumstances where LPAs may be liable to pay compensation having made an article 4 direction, although the potential liability is limited in many cases by the time limits that apply. Compensation may be payable to those whose pd rights have been withdrawn if they:
- refuse planning permission for development which would have been pd if it were not for an article 4 direction; or
 - grant planning permission subject to more limiting conditions than the GDPO would normally allow as a result of article 4 direction being in place.
- 3.9 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of pd rights. Under section 107 of the TCPA 1990 this could include '*...any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it...*' It could also include any loss of value although this would be difficult to calculate.
- 3.10 For certain pd rights, including those for roof alterations and insertion of roof lights, compensation can only be claimed if an application is submitted within 12 months following the effective date of the direction. Alternatively, if the LPA gives an 'early notice' of between 12 months and 2 years of the making of the direction (using the non-immediate direction process referred to above) then no compensation can be claimed.
- 3.11 In Bromley Borough, article 4 directions have been in place in conservation areas such as Alexandra Cottages since 2004, Chancery Lane since 1984, and Barmead Road since 1992. These cover a wide range of possible alterations to the fronts of properties, including the installation of roof lights (specifically in Alexandra Cottages). The intention of each direction has been to safeguard the character of the conservation area. Whilst the detail of regulations and procedure have changed over the years it should be noted that no compensation claims were made in respect of any of these article 4 directions – nor did they lead to a proliferation of requests for directions in other conservation areas. There has been some increase in workload arising from applications for proposals (such as window replacements) that did not previously require planning permission.
- 3.12 It is very difficult to estimate the extent of possible compensation to which the Council may be liable. It could amount to the cost of preparatory work for roof lights for the 28 remaining properties in The Chenies. This could be avoided however if the making of the notice were delayed for 12 months after local consultation – in which case no compensation would be payable.
- 3.13 Members should balance the risk of compensation and resource issues against the possible harm caused to the conservation area if roof lights were to proliferate in the area. The roof structure of the houses in The Chenies is clearly important to the character of the area - the photographs circulated enable Members to judge the potential damage to the character and appearance of the conservation area that could be caused if further roof lights were implemented using pd rights.
- 3.14 The views of residents will be an important factor in helping Members decide on how to proceed. The 'early notice' procedure enables time for local consultation to be carried out before a direction needs to be confirmed.

4. FINANCIAL IMPLICATIONS

There are compensation and other resource issues referred to above in paras 3.9 and 3.10 above.

5. LEGAL IMPLICATIONS

Article 4 of the GPDO 1995 (as amended) allows LPAs to withdraw specified pd rights for specified sites within their areas.

6. PERSONNEL IMPLICATIONS

There is a possible increase in workload arising from Article 4 directions with no increase in fee income.

Non-Applicable Sections:	Policy Implications;
Background Documents: (Access via Contact Officer)	The Chenies, Petts Wood Conservation Area Supplementary Planning Guidance Feb 2000