

WOKINGHAM BOROUGH COUNCIL
12 JULY 2019
DELEGATED DECISION REPORT
THE MAKING OF AN IMMEDIATE ARTICLE 4 DIRECTION
DATED 23 JANUARY 2019
COOMBES WOODLAND, COOMBES LANE, BARKHAM, WOKINGHAM, BERKSHIRE RG41
5SU

OFFICER DECISION SHEET

Delegated Decision	Authority for the decision is delegated to the appropriate officer pursuant to paragraph 11.3.9 of the Council's Constitution: to exercise on behalf of the Council the duties and powers of the Council under the legislation at appendix A of the Constitution which includes the statutory duties and powers under the Town and Country Planning Act 1990 (as amended) to Director of Locality and Customer Services
Title of Report	Article 4 Direction –Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 2015 Order) land at Coombes Woodland, Coombes Lane, Barkham, Wokingham, Berkshire RG41 5SU (the Land) – Consideration of Objections to the Article 4
Decision	To confirm an Article 4 Direction to restrict permitted development under Schedule 2 Part 2 Class A and Schedule 2 Part 4 Class A of the 2015 Order and undertake the procedure to advertise, consult and fulfil the statutory requirements having considered all relevant representations duly received. (Copy of Article 4 Direction attached at – Appendix 1)

Subject	Whether having considered the objections to the Article 4 Direction made on 23 January 2019 with immediate effect pursuant to the 2015 Order it is considered expedient in all the circumstances described below to require that planning permission be required for what in the absence of the Direction would be permitted development under Schedule 2 Part 2 Class A and Schedule 2 Part 4 Class A of the 2015 Order
Actual Decision Made	Following consideration of the objections Permitted Development under Schedule 2 Part 2 Class A and Schedule 2 Part 4 Class A of the 2015 Order on over or under the Land shall be removed by making permanent through confirmation an Article 4 Direction the effect of which will be to require planning permission for Minor Operations: including the erection, construction, maintenance, improvement of a gate, fence wall or other means of enclosure and further for Temporary Buildings: including <i>the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.</i>
Date of Decision	12 July 2019
Decision made by: Officer name and contact details	Sarah Hollamby Director Locality and Customer Services sarah.hollamby@wokingham.gov.uk

Key or non key decision	Non-key decision
Executive Member and Director	Councillor Wayne Smith Executive Member for Planning and Sarah Hollamby Director Locality and Customer Services
Reasons for Decision	<p>Background</p> <p>Residents in the locality of the Land alerted the Council's enforcement team to building operations and the damage to trees on the Land, which is protected by a Tree Preservation Order and is designated as a Local Wildlife Site. The Council has amongst other things secured an interim injunction to stop these activities on the Land and in addition to the injunction made an Article 4 Direction with immediate effect under the 2015 Order to remove certain permitted development rights so that planning permission is required for Minor Operations and Temporary Buildings. New owners, who have not already erected fencing, have indicated that they intend erecting boundary treatments and other minor developments to facilitate their use of the land.</p> <p>Expediency</p> <p>Only by the use of the Article 4 direction, and through the requirement for planning permission, can the Council determine a planning application in accordance with the development plan, as well as other material considerations such as the NPPF (National Planning Policy Framework). As such the Article 4 direction meets the legal test in that the Council is "satisfied that it is expedient that development... should not be carried out unless permission is granted..." (2015 Order). By the same measure, the Council is also satisfied that the making of the Article 4 direction is in accordance with the guidance within the National Planning Practice Guidance (NPPG) in being "necessary to protect local amenity or the wellbeing of the area."</p> <p>Coombes Wood sits in is a very important landscape, one of the finest in the borough, and is of local significance. The Coombes woodland forms an important component of that landscape. Recently sections of the Coombes woodland have been sold through a company registered outside this jurisdiction. The Council has monitored unauthorised development of these plots and amongst other things has secured an injunction to stop the residential development and occupation of a plot within the woodland. Respective owners of the recently purchased plots have made a number of tree works applications and planning applications. Despite the unauthorised developments the plots still retain a high degree of woodland cover, further protected by a recent woodland TPO to replace one from 1988. They afford a high degree of visual amenity and also recreational value because of the public rights of way that pass beside and through them.</p> <p>The Council determined to make an Article 4 Direction having immediate effect because it was considered necessary to bring within planning control the fencing off of Coombes Wood in relatively small plots (approximately 0.5 of a hectare or just over one</p>

acre) and the carrying on of other building operations on the Land which have escalated since the Article 4 Direction was made and came into force on 23 January 2019. These operations have created negative visual impacts in the woodland. The continuing unauthorised development of the plots, through importing building materials and the siting of tents, and the construction and siting of buildings and structures for residential use has significantly threatened the visual and biodiversity amenity of the Coombes Woodland. The Council in January 2019 was concerned that further building operations on the Land might be imminent and as such a 12- month waiting period would be self-defeating and render the Article 4 direction irrelevant.

Subsequently there has been further unauthorised development on some of the plots recently purchased. A structure formerly used as a small reservoir for water and now long unused has been subject to significant operational development. The owner of the plot and their planning consultant assert that the development is permitted development and despite the Council making it clear that in law this unequivocally not the case they have continued to carry out unauthorised development. It is imperative therefore that the Council brings within development control by Article 4 Direction Minor Operations and Temporary Buildings that would otherwise be permitted and likely used to further erode both the visual and biodiversity amenity of Coombes woodland.

Consideration of Representations

Considering the representation in chronological order:-

- *Email of 23 January 2019 – not objecting but seeking clarification of the reason for making the Article 4 Direction which would require planning permission for the erection of fences formerly permitted development. It was confirmed to the correspondent that a planning application in this circumstance would not attract a planning application fee in any event. The visual amenity of Coombes woodland needed to be protected and the Direction was expedient to that end.*
- *Email of 25 January 2019 – to Acting Chief Executive, again not objecting to the Article 4 Direction but confirming that they intended using their plot for family recreation. Noted*
- *Email to the Planning Enforcement Team on 25 January 2019 – strongly objecting to the Article 4 Direction on the basis that it was a waste of public money and a misuse of statutory powers to make Article 4 Directions. Fencing was necessary to protect the plot from incursion. The author threatened the Council with legal action. For reasons amplified in this report it was considered expedient to protect the visual and biodiversity amenity of Coombes Woodland which is accessible to the public on public footpaths. Unauthorised development is continuing on a number of plots which have been purchase by separate owners and it*

was considered expedient that permitted development rights for Minor Developments and Temporary Building be brought within development management control to address the real risk to visual and biodiversity amenity associated with the unauthorised development.

- *Strong supporting email of 29 January 2019 from resident of in excess of 25 years who set out the historic importance of Coombes Woodland referred to in the Domesday Survey of 1086. Coombes is described as a haven for wildlife and an area of biodiversity which has been adversely affected by increased and constant human activity resulting from the sale of small plots with the hope of development. The bringing of activity such as the effect of fencing within planning control was considered critical. Noted*

Letter of 6 February 2019 on behalf of plot owner through their solicitor, confirming their client's intention to use their land for recreation. Assertion made that his client's insurers' require replacement of the wooden fence running along the boundary. It is unclear which boundary is referred to but if it relates to the boundary to Coombes Lane (a highway over which the public can pass and repass) and this appears to be the case because the concern relates to risk to the public, that fence was constructed after the Owner took transfer of the plot and would not be affected by the Article 4 Direction. The other boundaries are to farmland and are bounded by post and wire fencing typical of a rural location. Further though the Coombes Woodland is not a Conservation Area, it is protected by a Tree Preservation Order and is designated as a Local Wildlife Site (LWS). Such LWS sites are regularly surveyed and there is a 2018 ecological survey report for this site provided in partnership with TVERC (Thames Valley Environmental Records Centre). One of the observations of the survey is 'The site is primarily composed of Lowland Mixed Deciduous Woodland (a priority habitat under Section 41 of the NERC Act 2006)' and 'has some physical features associated with ancient woodland on the ground and 23 species typical of long-established woodland were recorded during the survey'. There is evidence of use of heavy machinery on the plot, including the scraping of the natural woodland mulched surface and the Council consider it expedient to bring within planning control through Article 4 Direction Minor Operations and Temporary Buildings. Coombes Woodland is of acknowledged importance and it is in the interests of the woodland and part of the Council statutory duty as Local Planning Authority to protect amongst other things the biodiversity of the woodland. It should be noted that Coombes Woodland is a landscape of high quality afforded policy protection under the Development Plan in policy TB21 and in the National Planning Policy Framework (NPPF) under paragraphs 170 and 170(b) – the need to conserve and enhance the landscape and the countryside

Specifically in TB21 states:

'Policy TB21: Landscape Character

1. Proposals must demonstrate how they have addressed the requirements of the Council's Landscape Character Assessment, including the landscape quality; landscape strategy; landscape sensitivity and key issues.

2. Proposals shall retain or enhance the condition, character and features that contribute to the landscape.'

In order to ensure that the Council has an opportunity to apply adopted planning policy and discharge its statutory duty Minor Operations and Temporary Buildings will fall within planning control.

Effect of Confirming the Article 4 Direction

Article 4 directions can take immediate effect (an 'immediate Article 4 direction'), or can take effect after a period of one year (a non-immediate Article 4 direction'). The Article 4 Direction made on 23 January 2019 had immediate effect. An immediate Article 4 direction can render the Council liable to paying compensation. Compensation may be claimed on "abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights." Paragraph 42 of the NPPG.



The decision to confirm the Article 4 Direction has been made following consideration of all material issues including the representations made in both objection to and support of the Direction.

Equality Implications

The Article 4 direction allows the Council to exercise its development control function by requiring planning permission for Minor Operations and Temporary Building on the Land. Planning Enforcement and Social Services officers from the Council have visited the site and have engaged with its occupants to make an initial assessment. The Article 4 Direction is sought to protect the amenity and welfare of the area and as such does not adversely impact those with protected characteristics under the Equality Act 2010.

Conclusion

The Land has a valued community role and is part of the fabric of the local community. There are public footpaths besides and through Coombes Woodland. It makes a significant contribution to the character of the area and its loss would have a harmful impact through fencing of lots within the woodland or the construction of buildings or structures. Its loss would have a detrimental effect on the amenity and wellbeing of the area. The removal of permitted development rights on the Land for Minor Operations and Temporary Buildings with immediate effect is expedient. The Article

	<p>4 Direction should be made permanent and subject to periodic monitoring because unauthorised development continues on the site, primarily to change the use of parts of a plot to residential use associated with businesses run from home described as 'wellbeing'. On a further plot unauthorised material operations are taking place to convert a disused small reservoir to a structure that appears excessively large and domestic in appearance to be considered reasonable necessary for forestry use. The Council as Local Planning Authority therefore consider it expedient having considered all representation both opposing and supporting the Article 4 Direction to make that Direction permanent.</p> <p>Without the Article 4 Direction, the Council would be unable to require a planning application, for Minor Operations and Temporary Buildings, and that would not allow consideration of the proper planning of the area.</p>
Alternative Options considered and rejected at the time decision was made	The option of doing nothing and allowing the Article 4 Direction (with immediate effect) to lapse is not considered appropriate in these circumstances, as it would fail to protect the amenity and wellbeing of the area.
Any conflict of interest declared by any Exec Member who was consulted when the decision was made	None
Any dispensation granted by the Head of Paid Service in respect of any declared conflict of interest	None
Any Wards affected	Barkham
Executive Member signature	
Director signature 12 July 2019	

APPENDIX 1
(Copy of Article 4 Direction)

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015

DIRECTION MADE UNDER ARTICLE 4(1)

WHEREAS Wokingham Borough Council being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) are satisfied that it is expedient that development of the descriptions set out in the First Schedule below should not be carried out on the land described in the Second Schedule and shown edged in red (for identification purposes) on the Plan annexed hereto unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990 (as amended).

NOW THEREFORE the said Council in pursuance of the power confirmed on them by Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) hereby direct that the permission granted by Article 3 of the said Order shall not apply to development on the said land of the descriptions set out in the First Schedule hereto.

THIS DIRECTION is made under Article 4(1) of the Order and is proposed to come into force on 23 January 2019

FIRST SCHEDULE

In respect of land described in the Second Schedule

The development referred to in Schedule 2 Part 2 Class A and Schedule 2 Part 4 Class A to the said Order not being development comprised within any other class that is to say:-

Schedule 2 Part 2 Minor Operations

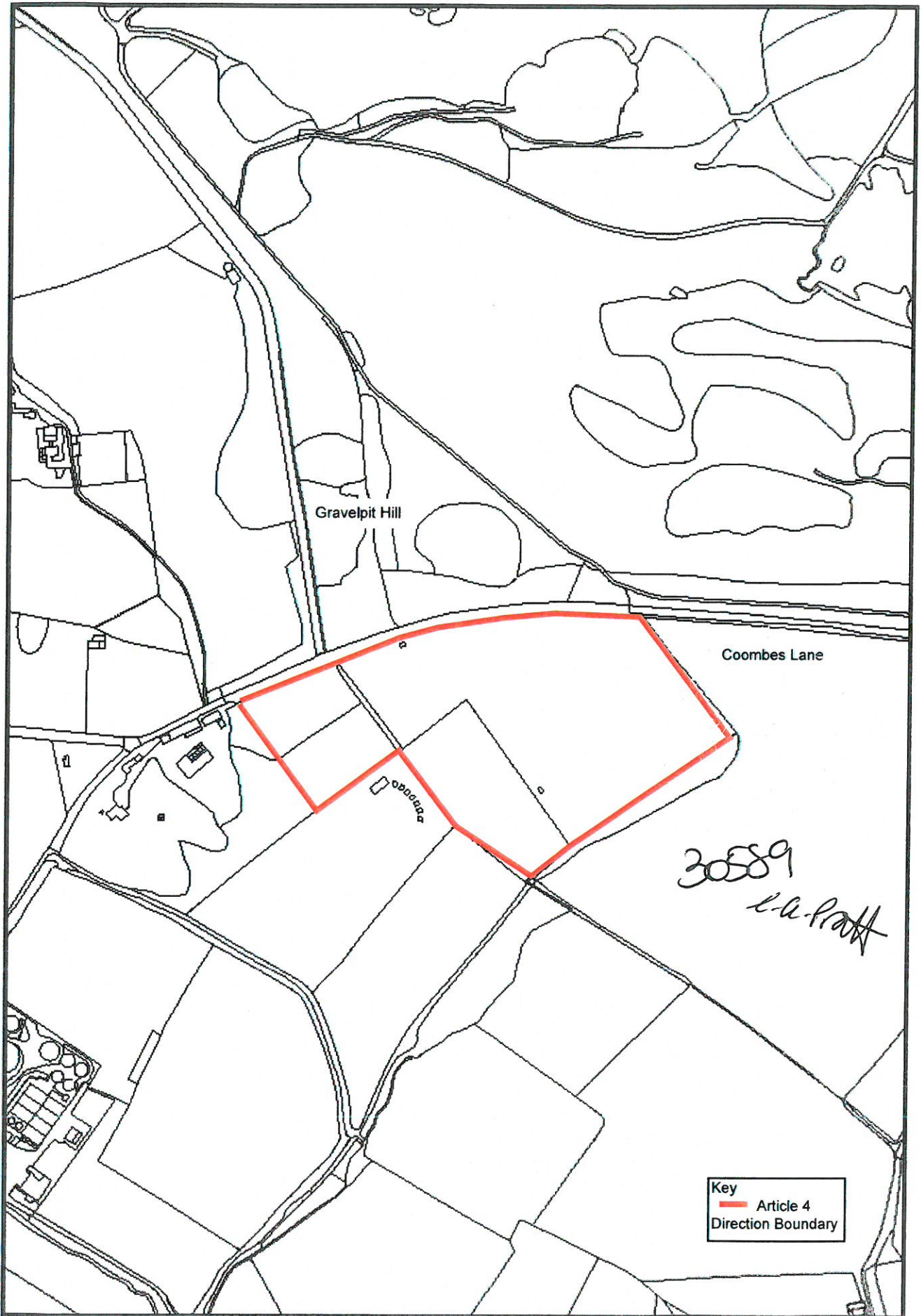
Class A *erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*

Schedule 2 Part 4 Temporary Buildings and uses

Class A *The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.*

SECOND SCHEDULE

The Direction applies to the land shown edged in red (for identification purposes) on the Plan annexed hereto being the land at Coombes Woodland, Coombes Lane, Barkham, Wokingham, Berkshire RG41 5SU.



Scale: 1:5000



This Direction was made under the Common Seal of Wokingham Borough Council on this day 23 January 2019

THE COMMON SEAL of)
WOKINGHAM BOROUGH COUNCIL)
Was hereunto affixed in the presence of:)



30589

Authorised signatory

W. Pratt.....

SOLICITOR

This Direction was confirmed under the Common Seal of Wokingham Borough Council on this day

THE COMMON SEAL of)
WOKINGHAM BOROUGH COUNCIL)
Was hereunto affixed in the presence of:)

Authorised signatory

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THE TOWN AND COUNTRY PLANNING
(GENERAL PERMITTED DEVELOPMENT)
(ENGLAND) ORDER 2015

REMOVING PERMITTED DEVELOPMENT
RIGHTS RELATING TO PART 2 CLASS A
(MINOR OPERATIONS) AND PART 4
CLASS A (TEMPORARY BUILDINGS AND
STRUCTURES) OF SCHEDULE 2 MADE
UNDER ARTICLE 4(1) OF THE ORDER

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