

WOKINGHAM BOROUGH COUNCIL
11 January 2021
DELEGATED DECISION REPORT
THE CONFIRMATION OF AN ARTICLE 4 DIRECTION
DATED 29 JULY 2020

LAND AT MILL LANE SINDLESHAM EARLEY WOKINGHAM

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 (renamed the Director Place and Growth). Under paragraph 11.3.2.2 of the Council's Constitution "Any delegation to a Director or other Officer may be exercised by the Chief Executive".
Title of Report	The Confirmation of an Article 4 Direction –Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 2015 Order) The Land at Mill Lane Sindlesham Earley Wokingham (the Land).
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 that are duly received.

Subject	Whether having considered all responses or objections duly received to the Article 4 Direction made 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 responses/objections duly received Permitted Development under Schedule 2 Part 2 Class A and Schedule 2 Part 4 Class A of the 2015 Order at the Land (outlined in red and hatched black on the attached plan) 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 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".
Date of Decision	11 January 2021

Decision made by: Officer name and contact details	Susan Parsonage, Chief Executive of Wokingham Borough Council Susan.parsonage@wokingham.gov.us
Key or non-key decision	Non-key decision
Executive Member and Chief Executive	Councillor Wayne Smith Executive Member for Planning and Susan Parsonage, Chief Executive of Wokingham Borough Council
Reasons for Decision	<p>Background</p> <p>The lawful use of the land is for agriculture. A routine site inspection found evidence that the open agricultural land was being divided into small plots with stakes forming boundary markers to separate plots. Searches of title at HMLR Land Registry confirm the sub-division of the Land into separate plots now owned by several separate owners. This is not consistent with the lawful use of the land for agricultural. The Council anticipating the imminent subdivision of the open land into small plots removed certain permitted development rights through an Article 4 Direction (with immediate effect and made on 29th July 2020) under the 2015 Order so that from the Article 4 Direction having effect (immediately) planning permission will be required for Minor Operations and Temporary Buildings. Owners of plots, have already started erecting boundary treatments including fencing and installing metal stakes to demarcate their plots.</p> <p>Expediency</p> <ul style="list-style-type: none"> 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." The Land is primarily open agricultural grassland bordered in part by trees and hedgerows. The Land is a designated a Berkshire Biodiversity Opportunity Area and is in part a Badger Settle Consultation Zone. There are four veteran trees on the boundaries of the Land. Part of the Land is within the Environment Agency Surface Water Flood Zones 2 and 3 The Land is within a Special Scientific Interest Impact Risk Zone. <p>As a Valued Landscape the Land is further worthy of protection and enhancement under paragraph 170 (a) of the National Planning Policy Framework 2019 which provides the following:-</p>

"170. Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);"

The Council considered that making an immediate direction on 29 July 2020 was necessary as it had come to its attention that the fencing of the plots has already started and other building operations were imminent and likely to escalate in the near future. These would have created a negative visual impact to the open grassland and fail to protect this valued landscape. The Council made the Article 4 Direction and advertised it in accordance with the statutory requirements. During the period of consultation a number of responses/objections were received, which are considered below.

Objections and Responses

Initially a response was received by email dated 7th August 2020, from the 'Mill Meadow Group'. This is a group of at that time five parties who have acquired parcels of the Land. The Mill Meadow Group' representation is not an objection to the making of the Article 4 Direction but sought clarification of the scope, effect and reasoning for the Article 4 Direction. Subsequently 3 objections were received within the consultation period from parties associated with the Mill Meadow Group. Those objecting have acquired title to plots within the Land subject of the Article 4 Direction. Each representation/objection is considered in turn below:-

Objection 1 (was received on 22 August 2020). The objectors have acquired title to a plot within the open land subject to the Article 4 Direction. Their objection refers to government guidance as follows:

1. An article 4 direction should have justification for both its purpose and extent. [Paragraph: 037 Reference ID: 13-037-20140306]
2. The use of article 4 directions should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. [Paragraph: 038 Reference ID: 13-038-20190722]
3. The potential harm that the direction is intended to address will need to be clearly identified. [Paragraph: 038 Reference ID: 13-038-20190722]
4. There will need to be a particularly strong justification for the withdrawal of permitted development rights relating to ... agriculture and forestry development. [Paragraph: 038 Reference ID: 13-038-20190722]
5. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty. [Paragraph: 038 Reference ID: 13-038-20190722]

The objectors consider the Council is in contravention of paragraph 3 of the above guidance.

They further assert that the Land subject of the Article 4 Direction does not merit the protection afforded by the withdrawal of certain permitted development rights because they do not consider the Land to be of "exceptional beauty" or to fall within any of the following:-

- It's not in a conservation area.
- There are no Tree Preservation Orders.
- There are no public rights of way through or adjacent to the land except for a small section of Mill Lane at the very south of the area.
- The land itself is not designated as a Local Wildlife Site, although we understand that the River Loddon adjacent to the site is.
- We are not aware of any protected or priority species known to be present within or adjacent to the site.

Response: A routine site visit alerted planning officers to activity on the site subject to the Article 4 Direction. That activity included the staking out of plots within the open agricultural land. Subsequent searches of the title indicated that transactions were pending to sell the areas in individual parcels to multiple parties. All of those objecting to the making of the Article 4 Direction have acquired small plots within the open land, subject of the Article 4 Direction. The Council considered the criteria in the guidance in determining that an Article 4 Direction was necessary in this case to protect amenity. The Council considered that the imminent threat of the fencing off of an open and valued landscape into multiple plots would not safeguard local amenity and that it was necessary to make an Article 4 Direction with immediate effect to protect local amenity. The potential harm to amenity of fencing off in multiple plots of an open agricultural land which is amongst other things a valued landscape is evident. Planning enforcement appeal decisions upheld enforcement notices served on very similar factual grounds in a number of appeal cases including under Appeal Reference: APP/M1710/C/03/1126975 regarding Land on the west side of Lovedean Lane, Horndean, Waterlooville, Hampshire.

The Land is valued and worthy of protection from the consequences of fencing into multiple small plots, which would have a detrimental sub-urbanising affect that would significantly harm local amenity. In addition to being a Valued Landscape to which paragraph 170(a) of the National Planning Policy Guidance 2019 applies the Land is primarily open agricultural grassland bordered in part by trees and hedgerows. The Land is a designated a Berkshire Biodiversity Opportunity Area and is in part a Badger Setts Consultation Zone. There are four veteran trees on the boundaries of the Land. Part of the Land is within the Environment Agency Surface Water Flood Zones 2 and 3 The Land is within a Special Scientific Interest Impact Risk Zone.

The identified harm was imminent and evidence by the objectors' immediate intentions, therefore an Article 4 Direction taking immediate effect was the only effective way to protect the amenity of this valued landscape.

This Article 4 Direction does not remove permitted development for agricultural or forestry purposes but it does raise a separate issue. If the use intended by the individual owners of their plots is for other than for forestry or agricultural purposes (and the size of the plots does indicate that forestry or agricultural use is unlikely) planning permission would also be required for a change of use. The current lawful use of the land is for agriculture.

Objection 2 (was received on 26 August 2020):- This representation was made by a party who has acquired title to a plot within the Land subject of the Article 4 Direction. The objection is inter alia to the perceived "*lack of clarity for the reasons that this notice has been served*". Further, the objector takes issue with the asserted ambiguous use of the word "enclosure" in the Article 4 Direction. The objector points out that the Land is already enclosed by trees and other vegetation but the boundary treatment does not secure the Land from access by third parties. As an owner of a plot within the Land the objector wishes to secure the boundary to the Land and is not clear whether the effect of the Article 4 will impact on the "*existing boundary enclosure*"

The objector also raises concerns that the effect of the Article 4 may inhibit the carrying out of their responsibilities to the Environment Agency to maintain the adjacent watercourse. The owners maintenance responsibilities the objector asserts include the following:-

- *essential riverbank and flood defence repairs*
- *desilting of riverbeds*
- *waterway access improvements*
- *managing grass, trees and bushes on flood embankments*

Lastly the objector considered that their action in staking out the boundaries of their parcel of the Land affected by the Article 4 Direction did not justify the making of an Article 4 Direction. They considered it to be unfair of the Council to make an Article 4 Direction for the Land in which they had acquired a plot and set stakes to mark its boundaries when an adjacent site with boundary stakes was not subject of an Article 4 Direction.

Response: The word "enclosure" is used in Schedule 2 Part 2 Class A of the GPDO 2015 in the context of the phrase "means of

enclosure". The representation to this extent seeks clarification of the scope of the article 4 Direction rather than an objection to the use of the word "enclosure" in its statutory context as the wording of the GPDO is a matter of law. Further any means of enclosure of the Land affected by the Article 4 Direction existing on or before the Direction was made on 22 July 2020, is not affected by the Direction. Any proposed works after the Article 4 Direction was made to the means of enclosure are likely to require planning permission. It should be noted that work requiring planning permission which would have been permitted development but for an Article 4 Direction do not require a planning application fee. In the normal course of events before carrying out any operations on the land affected by the Article 4 Direction the interested parties would be advised to contact the Local Planning Authority to establish whether their proposals require planning permission.

The reasons for making the Article 4 Direction are set out in the initial authority and in this report.

The objector seeks clarification of the scope of the Schedule 2 Part 4 Class A of the GPDO 2015 in respect of maintenance of the adjacent watercourse. The watercourse itself is outside the land affected by the Article 4 Direction (the Land). Desilting the watercourse is unlikely to require planning permission unless the silt was deposited on the land affected by the Article 4 Direction so as to create a bund or the silt were to be considered waste. Similarly improvements of waterway access which are confined to the waterway will not be affected by the Article 4 Direction. Managing grass, trees, bushes on the flood embankments (to the extent that those embankments are on the land affected by the Article 4 Direction will not require permission of the Local Planning Authority unless in the case of trees, those trees are protected under a Tree Protection Order. Turning to "essential riverbank and flood defence repairs" it would be difficult to determine without details whether planning permission would be required. In the unlikely event that a fence, wall, boundary were being proposed on the land affected by the Article 4 Direction adjacent to the watercourse planning permission would be required. In the normal course of events before carrying out any operations on the land affected by the Article 4 Direction the interested parties would be advised to contact the Local Planning Authority to establish whether their proposals require planning permission.

To the limited extent that the proposal for the objector's parcel are set out, we understand that the objective is to create boundary fences between the individual plots on the open land which is subject to the Article 4 Direction. This intention was evidenced on a site inspection by planning officers prior to the making of the Direction. The objectors stated intention is: "placing a few stakes in the ground to mark out our parcels". The Council carried out title searches of the land subject to the Article 4 Direction prior to its making on 29 July 2020. The searches revealed that the land was being sold in parcel to multiple parties. The Council considered that the imminent threat of the fencing off of an open and valued landscape into multiple plots would not safeguard local amenity and

that it was necessary to make an Article 4 Direction with immediate effect to protect local amenity. It therefore authorised the making of the Article 4 Direction.

In the normal course of events before carrying out any operations on the land affected by the Article 4 Direction the interested parties would be advised to contact the Local Planning Authority to establish whether their proposals require planning permission.

Objection 3 (was also received on 26 August 2020):- The objector has also acquired title to a plot within the Land. They assert that *"We only plan to use the land for our leisure and would like get a Land survey done and put post and agricultural fence to mark our boundaries at this stage."*

They consider as Council tax payers that it is a waste of money to make the Article 4 Direction. That it is unnecessary and will cost them money to have to submit planning applications for what formerly was permitted development prior to the making of the Article 4 Direction.

Response:- The objectors' stated aim at least initially is to create boundary fences between their individual plot within the open land, which is subject to the Article 4 Direction. This intention was evidenced on a site inspection by planning officers prior to the making of the Direction. As explained in the objector's email of 26 August 2020 that the initial intentions is as follows: *"We only plan to use the land for our leisure and would like get a Land survey done and put post and agricultural fence to mark our boundaries at this stage."*

The Council have carried out title searches of the land subject to the Article 4 Direction prior to its making on 29 July 2020. The searches revealed that the land was being sold in parcels to multiple parties. The Council considered that the imminent threat of the fencing off of an open and valued landscape into multiple plots would not safeguard local amenity and that it was necessary to make an Article 4 Direction with immediate effect to protect local amenity. It therefore authorised the making of the Article 4 Direction.

With reference to unnecessary costs please note that works requiring planning permission which would have been permitted development but for an Article 4 Direction does not require a planning application fee. In the normal course of events before carrying out any operations on the land affected by the Article 4 Direction the interested parties would be advised to contact the Local Planning Authority to establish whether their proposals require planning permission.

Effect of 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 29 July 2020 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 paragraph 170(a) of the NPPF, government guidance on Article 4 Directives and the representations made in objection to the Direction.

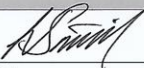

Equality Implications

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 officers from the Council have visited the site and have engaged with its owners present on the Land to make an initial assessment. The Article 4 Direction is sought to protect the Land which has amenity value and is amongst other things a Valued Landscape. There is no evidence that as such it adversely impacts those with protected characteristics under the Equality Act 2010. Any adverse impact on individuals sharing protected characteristics is weighed against the wider adverse impact on the amenity of the public should the Land be fenced off in small plots under permitted development. The harm to the public amenity is judged in the circumstance to support the confirmation of the Article 4 Direction.

Conclusion

The Land has amenity value as open grassland. It makes a significant contribution to the character of the area and its loss would have a harmful impact through fencing into plots of the open grassland area or the construction of buildings or structures. The Council is required to have regard to the guidance under paragraph 170 (a) of the NPPF 2019 and the imminent risk of adverse impact on a Valued Landscape. 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 and further the confirmation of the Article 4 Direction is necessary to prevent such detrimental impact on amenity in the future.

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.

Alternative Options considered and rejected at the time decision was made	The option of doing nothing and not confirming the Article 4 Direction having immediate effect is not considered appropriate in these circumstances, as it would fail to protect the amenity and wellbeing of the area in the future.
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	Hawkedon
Executive Member signature	
Chief Executive signature 11 January 2021	

Plan of the Land