

CABINET

15 November 2019

PROPOSED ARTICLE 4 DIRECTION, OLD BURSLEDON CONSERVATION AREA AND SPECIAL POLICY AREA

Report of the Head of Housing and Development

Recommendation(s)

It is recommended that

- (1) Cabinet approves the principle of putting in place an Article 4 Direction within the Old Bursledon Conservation Area (OBCA), subject to consultation;
 - (2) Cabinet confirms that the Article 4 Direction shall take the form of an immediate direction;
 - (3) Cabinet approves the preparation and serving of an Article 4 Direction and the associated consultation documentation; and
 - (4) Cabinet confirms the Local Area Committee can approve bringing the Direction into force following a report to the Local Area Committee setting out the conclusions of the consultation process.
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Summary

Due to concerns regarding the risks to the character and appearance of the Old Bursledon Conservation Area through development granted under national Permitted Development rights, the Local Planning Authority have explored the opportunities to bring into force an Article 4 Direction. This would remove the right to undertake specified householder development without applying to the Local Planning Authority for planning permission.

This report sets out the nature of development that is automatically granted in Conservation Areas through the Town and Country Planning (General Permitted Development) Order 2015 and identifies which Permitted Development rights it would be most appropriate to remove. It sets out the procedure for two different routes to confirm an Article 4 Direction and advises on the associated risks to support Cabinet in reaching a decision regarding the report recommendations.

Statutory Powers

The Town and Country Planning Act 1990;

The Town and Country Planning (General Permitted Development) (England) Order 2015

(as amended);

The Planning (Listed Buildings & Conservation Areas) Act 1990;

The Town and Country Planning (Compensation) (England) Regulations 2015 (as amended).

Strategic Implications

1. The proposal set out in this report supports the Council's Corporate Plan objective to provide an Excellent Environment for all. It seeks to secure the appropriate level of protection for an area of the Borough which is valued for its attractive character and appearance, recognising the intrinsic value of the Borough's heritage assets.

Introduction

2. Permitted Development Rights (PD rights) are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Development under PD rights therefore falls outside of the control of the Local Planning Authority. The rights set out in the legislation are the same across England and so inevitably cannot take account of local sensitivities.
3. While there are some exceptions within the legislation, for specifically defined areas that are recognised for their intrinsic value, these are limited. However, the legislation does enable the removal of PD rights with sufficient justification by a Local Planning Authority, either by means of a condition on a planning permission, or by means of an Article 4 Direction. Following concerns raised by Councillors, Bursledon Parish Council and local residents, this report has been compiled to explore the option of putting in place an Article 4 Direction to remove a defined range of PD rights related to dwellings within the OBCA, and thereby providing additional protection for this designated heritage asset.

Permitted Development Rights

4. Certain works that would normally require planning permission are permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended. As a result, the developer (typically the owner of the property or land) does not have to make a planning application to the Local Planning Authority to seek permission to carry out certain building works, provided they comply with specific limitations and the small number of conditions set out in the Order. This is because Government has considered that the works are of a scale or type that will generally not have an unacceptable impact. Common examples are single storey rear extensions or minor alterations to roofs such as rooflights.
5. The GPDO 2015 is the principal Order and sets out classes of development for which a grant of planning permission is automatically given. Schedule 2 of

the Order sets out the rules on Permitted Development which are subdivided into a series of Parts. Part 1 specifically deals with development within the curtilage of a dwellinghouse. This is further broken down into classes which cover different types of development. These include:

- Class A - the enlargement, improvement or alterations to a house such as rear or side extensions as well as general alterations such as new windows and doors.
 - Class B - additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows.
 - Class C - other alterations to roofs such as re-roofing or the installation of roof lights/windows.
 - Class D - the erection of a porch outside an external door.
 - Class E - the provision of buildings and other development within the curtilage of the house.
 - Class F - the provision of hard surfaces within the curtilage of the house such as driveways.
 - Class G - the installation, alteration, or replacement of a chimney, flue or soil and vent pipe.
 - Class H - the installation, alteration, or replacement of microwave antenna such as satellite dishes.
6. In addition, there are also other Parts of the Order that may be relevant to householders. For example, Part 2 covers matters such as erection or construction of gates, fences and walls, exterior painting, charging points for electric vehicles and Closed-Circuit Televisions (CCTVs). Part 14 covers the installation of domestic microgeneration equipment such as solar panels.
7. There are some areas within England that are afforded greater protection in recognition of their special value. Article 2(3) land, as defined in the Act, includes Conservation Areas, and as a consequence, some rights are removed that would otherwise be permitted under the GPDO.
8. The rights removed include:
- Class A –
 - (a) The neighbour consultation scheme for larger rear extensions;
 - (b) Cladding of any part of the exterior of the dwellinghouse;
 - (c) Extensions beyond a wall forming a side elevation of the original dwellinghouse;

- (d) Extensions more than one storey and beyond the rear elevation of the original dwellinghouse;
 - (e) Any enlargement that combined with existing enlargements would exceed the limits set out in (c) and (d) above.
- Class B –
 - (a) All types of development permitted within this class.
 - Class E –
 - (a) Buildings, enclosures, pools or containers sited on land between a side wall and the boundary of the land surrounding the house (the curtilage).
 - Class G –
 - (a) The chimney, flue or soil and vent pipe would be installed on a wall or roof slope which fronts a highway, and forms either the principal elevation or a side elevation of the dwellinghouse.
 - Class H –
 - (a) The installation of an antenna on a chimney, wall or roof slope which faces onto, and is visible from, a highway; or on a building which exceeds 15 metres in height.
9. Rights are also removed from Class 14 and details of these have been provided in Appendix One, for information.
10. Although greater protection is afforded to Conservation Areas in recognition of their intrinsic value, there does remain a range of development that can be carried out under PD rights (set out in Appendix One). While, in many cases, the impact of such development is limited, there are situations in which there is the potential for a more significant, detrimental impact. In this scenario, it is appropriate for the Local Planning Authority to consider the use of an Article 4 Direction to enable the LPA to properly assess the impact of the proposed development.

Article 4 Directions

11. A Direction under Article 4(1) of the GPDO 2015 enables the Secretary of State or a Local Planning Authority to withdraw specified permitted development rights across a defined area. Provided that there is justification for both its purpose and extent, an Article 4 Direction can:
- Cover an area of any geographic size, from a specific site to a local authority-wide area;
 - Remove specified permitted development rights related to operational development or change of use;

- Remove permitted development rights with temporary or permanent effect.
12. Government guidance around Article 4 Directions advises that their use should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the Direction is intended to address will need to be clearly identified.
 13. It should be noted that an Article 4 Direction only means that a particular development cannot be carried out under Permitted Development and therefore needs planning permission. This gives a Local Planning Authority the opportunity to consider a proposal in more detail as part of a planning application.
 14. There are two types of Directions under the GPDO 2015: non-immediate Directions and Directions with immediate effect. Their respective processes differ as follows:
 15. Immediate Direction:
 - Stage 1 - The LPA makes an Article 4 Direction withdrawing permitted development rights with immediate effect.
 - Stage 2 – Publication/Consultation stage - the LPA:
 1. publishes the Notice of Direction in a local newspaper;
 2. formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of 21 days;
 3. and places Notices up on site for six weeks.
 - Stage 3 – On the same day that Notice is given under Stage 2 above, the LPA notifies the Secretary of State of its decision.
 - Stage 4 – Confirmation Stage - the Direction comes into force on the date on which the Notice is served on the owners/occupiers of the land. The LPA has between 28 days from the date of when the Notice comes into effect and six months to decide whether to go ahead and confirm the Direction, taking into account any representations which have been received. If this does not happen within six months, the Direction will lapse.
 16. Non-immediate Direction:
 - Stage 1 - The LPA decides whether to introduce a Direction setting a date in the Notice for when the Direction will come into force (at least 28 days and no more than two years after representations can first be made), which is usually after the last publication date.
 - Stage 2 – Publication / Consultation stage - the LPA:
 1. publishes the Notice of Direction in a local newspaper
 2. formally consults with general members of the public and the owners and occupiers of every part of the land within the area or

site to which the Direction relates over a period of at least 21 days

3. and places Notices up on site for six weeks.

- Stage 3 – On the same day that notice is given under Stage 2 above, the LPA refers its decision to the Secretary of State.
- Stage 4 – Confirmation Stage - the Council cannot confirm the Direction until after a period of at least 28 days from publication/service of the Notice. Once a Direction has been confirmed, the LPA must give notice of the confirmation in the same way as it gave notice of the initial direction, and must specify the date that the Direction comes into force. A copy of the Direction as confirmed must also be sent to the Secretary of State. The Direction comes into force on the date it is confirmed.

17. In relation to Conservation Areas, an Article 4 Direction cannot cover Development that is already restricted within the GPDO (set out above and at Appendix One). Article 4 Directions cannot prevent Development which has already received prior approval, has been commenced, or which has already been carried out.
18. An Article 4 Direction can remain in place permanently once it has been confirmed. It is expected however that LPAs would regularly monitor any Article 4 Directions to make satisfy themselves that the original reasons for a Direction remain valid. Where an Article 4 Direction is no longer necessary it can be cancelled. A Direction can be modified by cancelling the existing Direction and replacing it with a new one. The normal procedures for making an Article 4 Direction apply.

Financial Implications

19. Any planning application required as a consequence of an Article 4 Direction is exempt from the usual planning application fee and will have an increased demand of resources due to the need for a planning officer to assess the submitted planning application.
20. In some circumstances, the Council can be liable to compensate developers or landowners whose developments are affected by Article 4 Directions.
21. LPAs are liable to pay compensation to landowners who would have been able to develop under the PD rights that the Article 4 Directions withdraws, if the LPA:
 - Refuse planning permission for development which would have been permitted development if not for the Article 4 Direction, or;
 - Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of the Article 4 Direction being in place.
22. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of PD Rights. (Abortive expenditure includes works carried out under the PD rights before they were

removed, as well as the preparation of plans for the purposes of any work.) It can also include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the cost of preparing the plans for the works.

23. Compensation is only payable if an application for planning permission for certain development, formerly permitted by the GDPO, is made to the Council in writing within 12 months of the Article 4 Direction taking effect.
24. Compensation provisions are set out in Sections 107 and 108 of the Town and Country Planning Act 1990 and the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended).
25. It is difficult to assess the likelihood that a compensation claim will be received, and the possible magnitude of a claim. However, to provide some context, 1 Permitted Development enquiry in OBCA relating specifically to Class E development has been received in the last two years. In 2019, 3 applications for a Lawful Development Certificate for a Proposed Use have been received which relate to Class E. 1 of these applications has been determined to fall outside of development permitted under PD rights; the 2 remaining applications remain to be determined.
26. The guidance around the compensation claim process and assessing the claim is very limited. The LPA considers that claims for compensation would be received through the Council's official complaints procedure and would, in the first instance, be assessed by the Housing and Development team in consultation with the Legal team. Depending on the nature of the claim, it may be necessary to instruct a surveyor to assist with assessing the claim.

Key Considerations

27. As noted above, the National Planning Policy Framework (NPPF) advises that the use of Article 4 Directions to remove national PD rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the National Planning Practice Guidance (NPPG) which also states LPAs should identify clearly the potential harm that the Direction is intended to address and that Immediate Directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.
28. Although PD Rights within a Conservation Area are more restricted, there remains the potential for development permitted under the national regime to have a detrimental impact, affecting both the amenity value of the area, residential amenity, and the value as a designated heritage asset.
29. While the OBCA has a quite diverse character, a significant contributor to the area is the tendency for houses to be set in extensive garden landscapes and with plot sizes generous in proportion to buildings. This contributes to the sense of space and openness which is an attractive and historic feature. In some places where properties have been extended unsympathetically, this sense of space has been eroded creating a more urban character harmfully

impacting the rural and historic character of the locality. In addition, development has been carried out that is architecturally unsympathetic and further undermines the character of the Conservation Area. This is a significant concern for local Councillors and has been raised as an issue by residents in the area.

30. Due to the generous plot size to dwelling relationship, there is the potential for very large detached outbuildings to be constructed under the national regime. While the siting of these outbuildings under PD rights would be restricted to the rear of these properties, due to the Conservation Area designation, there remains a risk that these structures could have a significant and detrimental impact on the spatial characteristics of the area. Further, development granted under PD rights, provided it meets the limitations and conditions stipulated by the GDPO, does not have to be in keeping with, or sympathetic to, the character of the locality or the associated dwelling.
31. The removal of Class E PD Rights (provision of buildings and other development within the curtilage of the house) using a Direction, together with the greater Article 2(3) restrictions already imposed through the GPDO, would enable the LPA to assess the impact of proposed development through the submission of a planning application, supporting the continued aims of preserving or enhancing the character of the Conservation Area. It is considered that this would be a justified course of action. Due to the concerns expressed by residents and Councillors, an Immediate Article 4 Direction may be the most appropriate process to ensure heightened protection is in place as soon as possible.

Risk Assessment

32. As discussed above, there is a financial risk that the proposed Directions will make the Council liable to compensation claims. As circumstances vary widely, it is not possible to gauge the magnitude of such claims. This risk will be present for 12 months from an Immediate Article 4 Direction coming into force.
33. It is difficult to give an indication of the level of risk associated with an Immediate Direction. Research undertaken by the Council's Legal team suggests that there have been very few compensation claims made across LPAs and there is no record of the size of these claims or whether the relevant authority has made payment. The risk can be avoided if a Non-Immediate Direction is put in place and 12 months' notice of confirming the Direction is given by the LPA. As discussed above, given the concerns expressed by residents and Councillors, it may be considered that, on balance, the risk of a compensation claim does not outweigh the benefit afforded to the OBCA through the use of an Immediate Article 4 Direction.
34. Any claim for compensation will be dealt with through the Council's official complaints procedure and it is anticipated that any award would be contained within the Strategic Planning (Planning Policy) budget. Should this not be possible, support from Council reserves would be sought.

Equality and Diversity Implications

Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making and considering these Article 4 Directions, including under Article 1 of the First Protocol (Protection of property) and Article 8 (Right to respect for a private and family life). The European Court has recognised that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”. Both public and private interests are to be taken into account in the exercise of the Council’s powers and duties as a LPA. Any interference with a Convention Right must be necessary and proportionate.

35. The LPA has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4 Directions have been considered under the Human Rights Act 1998 and it has been determined that none of the Articles will be triggered.
36. The Council has given consideration to all the protected characteristics in the Equality Act 2010 and the characteristic of social deprivation, to ensure that any potential impacts of the proposed Article 4 Direction on these groups of people have been considered and, where possible, mitigated. Due to the proposed Article 4 Direction seeking to restrict to Class E of the GPDO only (buildings within the curtilage of the dwelling), it is not anticipated that this would affect individuals desiring to improve disabled access to an existing building.

Conclusion

37. The Council, as LPA, has the ability to bring into force an Article 4 Direction to remove specified Permitted Development rights within the OBCA to provide heightened protection for this heritage asset in response to concerns raised by Councillors and local residents. It considers doing so would be justified. These Directions can take the form of either an Immediate or Non-Immediate Direction. The Immediate Article 4 Direction would provide immediate protection but carries with it a financial risk of compensation claims against the Council. A Non-Immediate Article 4 Direction would not provide immediate protection, although could avoid the risk of compensation claims if 12 months notice is given before it is confirmed. Due to the concerns raised, it is suggested that an Immediate Article 4 Direction may be the most appropriate course of action.

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Date: 22 October 2019

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Appendices Attached: One

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

Old Bursledon Conservation Area Appraisal Supplementary Planning Document,
Adopted February 2012.

APPENDIX 1

Table Summarising Permitted Development Rights within a Conservation Area and the Proposed Rights to be Removed by an Article 4 Direction

Section of GDPO	Associated development (summarised)	Planning application already required as in Conservation Area	Proposed to remove PD Rights
Schedule 2, Part 1			
Class A (enlargement, improvement, alterations to house)	Single storey rear extensions	Required for larger extensions (4-8m depending on house type)	No
	Two storey rear extensions	Yes	n/a
	Side extensions	Yes	n/a
	New windows/doors	No	No
	Cladding	Yes	n/a
Class B (additions, alterations to roof)	Dormer windows	Yes	n/a
	Hip to Gable	Yes	n/a
Class C (other roof alterations)	Re-roofing	No	No
	Rooflights/windows	No	No
Class D (porch)	Porch outside external door	No	No
Class E (curtilage buildings)	Buildings within curtilage of house	Yes, if sited on land between a side wall and the boundary of the land surrounding the house	Yes (all buildings within the curtilage that are not to the side of the house).

Class F (hard surfaces)	Hard surfaces within curtilage of house	No	No
Class G (flue/soil and vent pipe)	Installation/alteration/replacement of flue or soil and vent pipe	Yes, if sited on wall or roof slope which fronts highway and forms principal/side elevation of house	No
Class H (microwave antenna)	Installation/alteration/replacement of microwave antenna (eg. satellite dish)	Yes, if sited on a chimney, wall or roof slope facing onto or visible from a highway; or on a building exceeding 15m in height	No
Schedule 2, Part 2			
Class A (means of enclosure)	Erection/construction/maintenance/improvement or alteration of a gate, fence, wall or other means of enclosure.	No	No
Class B (means of access)	Formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road	No	No
Class C (exterior painting)	Painting of any exterior of building	No	No
Schedule 2, Part 14			
Class A (PV/solar thermal)	Installation/alteration/replacement of solar PV/ solar thermal	Yes – on wall fronting highway	No
Class B (standalone)	Installation/alteration/replacement of	Yes – if nearer to highway than part of house nearest to that	No

solar)	stand-alone solar	highway	
Class C (ground source heat pump)	Installation/ alteration/ replacement of ground source heat pump	No	No
Class D (water source heat pump)	Installation/ alteration/ replacement of water source heat pump	No	No
Class E (flue for biomass)	Installation, alteration, replacement of flue for biomass heating system	Yes – if installed on wall/roof slope fronting highway	No
Class F (flue for CHP)	Installation, alteration, replacement of flue for CHP	Yes – if installed on wall/roof slope fronting highway	No
Class G (air source heat pump)	Installation/ alteration/ replacement of air source heat pump	Yes – if installed on wall/roof slope fronting highway or nearer to highway than part of house nearest to that highway (if stand-alone)	No
Class H (wind turbine)	Installation/ alteration/ replacement of wind turbine	Yes – if installed on wall/roof slope fronting highway	No
Class I (standalone wind turbine)	Installation/ alteration/ replacement of stand-alone wind turbine	Yes - if nearer to highway than part of house nearest to that highway	No