

**Committee: Planning Committee**

**Date of meeting: 11 February 2020**

<b>Subject:</b>	Confirmation of the Immediate Article 4 Direction for Land off Pointers Road, Cobham
<b>Lead Officer:</b>	Head of Planning Services
<b>Portfolio Holder:</b>	Councillor Karen Randolph
<b>Link to Council Priorities:</b>	Character and Environment
<b>Exempt information:</b>	None
<b>Delegated status:</b>	For resolution to confirm the Immediate Article 4 Direction

### **Executive Summary:**

To consider a representation received following the making of the Immediate Article 4 Direction which removed Permitted Development Rights under Class A and Class B, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) prior to authorising the confirmation of the Immediate Article 4 Direction.

### **Recommended: that**

**To approve confirmation of an Immediate Article 4 Direction relating to land off Pointers Road in Cobham, as identified in the plan attached to the report, and to delegate to the Head of Planning Services authority to carry out all necessary steps required in confirmation and notification pursuant to requirements under the Town and Country Planning (General Permitted Development) Order 2015 (as amended).**

### **Report:**

#### **The Site**

1. The site is located on the northern side of Pointers Road, Cobham and to the south of the River Mole. The site falls within the Metropolitan Green Belt and the vast majority of the site is currently undeveloped woodland. In the most part the site is adjacent to either neighbouring residential properties or Pointers Road.

#### **Background**

2. The Land off Pointers Road, (the 'Site'), is best described as undeveloped woodland, located within the Metropolitan Green Belt. Any form of building would require planning permission. Notwithstanding this, any owner of the plots could erect fences (or other means of enclosure) up to two metres in height, or up to one metre where it adjoins a highway, without the need for planning permission, subject to the provisions of Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In addition, the GPDO permits temporary change of use of land for various activities for up to 28 days in a calendar year. This could, but is not limited to, use for the

land for camping, recreational events or paintballing. Other use of land, such as a caravan site, holding markets or motorcycle racing, are restricted to 14 days a calendar year.

3. The Council considers that development which could be carried out without planning permission, under the provisions of Schedule 2, Part 2, Class A & Part 4 Class B, of GPDO, would have a negative impact on the Green Belt. The National Planning Policy Framework sets out at Paragraph 133 that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open, and it further states that the essential characteristics of the Green Belt is its openness and its permanence. The erection of means of enclosure, or the temporary change of use of the land is considered to conflict with this fundamental aim of Green Belt Policy.
4. The northern part of the Site edged in red on the attached plan falls within Flood Zones, 2, 3a and 3b (the functional flood plain). Local Policy CS26 (Flooding) in the Council's Core Strategy adopted 2011 states that development should not constrain the natural function of the flood plain, either by impeding flood flow or reducing storage capacity. The potential for the un-planned erection of means of enclosure could lead to both impedance of flood flow and the reduction of flood storage capacity.
5. The western part of the Site on the red edged plan is located within the 400m buffer of the Thames Basin Heath Special Protection Area (TBHSPA). Local Policy CS13 sets out that residential development within the 400m buffer is unable to mitigate potentially harmful impacts upon the protected zone. The use of the land therefore has the potential to introduce additional recreational pressures upon the protected area which would have an adverse impact upon the area's integrity.
6. The National Planning Policy Framework 2019, at para 53, explains that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area.
7. Article 4 directions can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether but instead it can ensure that development cannot be carried out under the specified permitted development rights and therefore such development would require planning permission. A planning application would need to be submitted that would then be determined in accordance with the development plan and a planning application fee may be payable.
8. Article 4 directions can either be immediate or non-immediate. Immediate directions can be made where specific permitted development rights present an immediate threat to a local amenity or prejudices the proper planning of an area. Article 2(6) of the Schedule 3 of the GPDO 2015 states that an Immediate Article 4 direction expires at the end of the period of 6 months beginning with the date on which it comes into force unless confirmed by the Council before the end of the 6 month period.

9. The Council was aware that the owner(s) of one of the plots at the Site had erected fencing to mark out the extent of their ownership. There was a genuine threat the other owners would want to demarcate the extent of their ownership by the erection of walls and fences. It was strongly implied within the sales particulars that the land has scope for residential development. However, the Council considers the Site heavily constrained and does not consider the Site appropriate for residential development. The Council had already received through their pre-application advice service proposals to construct residential buildings on the Site. There was a genuine concern that once purchasers realised that the plots they have bought for considerable sums cannot be developed in the way that was implied by the sales particulars, they may turn to carry out activities on the land on a temporary basis, to recover some of their investment. It was and still is considered suitable, in the circumstances, to gain some control over these uses, by removing their ability under permitted development, to carry out these temporary changes of uses.
  
10. The Council therefore considered it appropriate to make an immediate Article 4 Direction on 17 September 2019 which removed the following permitted development rights from the Site as such development would be prejudicial to the proper planning of the area of Elmbridge or constitute a threat to the amenities of the area of Elmbridge:
  1. **Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 –**  
  
*The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.*
  
  2. **Schedule 2, Part 4, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 –**  
  
*The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of—*  
*(a) the holding of a market;*  
*(b) motor car and motorcycle racing including trials of speed, and practising for these activities,*  
*and the provision on the land of any moveable structure for the purposes of the permitted use.*
  
11. The procedures relating to notification and publication, as set out in Schedule 3 of the GPDO, have been followed. The relevant notices have been served on the owners/occupiers where these were known at the time or on the conveyancers/solicitors dealing with the transfers of the plots on Site, on the County Planning Authority and on the Secretary of State. Site notices were displayed on Site for a period of 6 weeks.

## **Response to Representation**

12. The notices stated that representations may be made concerning the Immediate Article 4 Direction between 23 September 2019 to 23 October 2019. One letter(s) of representation have been received by the Council from one of the owners of Land off Pointers Road, Cobham. The Council now needs to decide whether to confirm the Direction, taking into account the representation received. If confirmation does not happen within 6 months the Direction will lapse.
13. The issues raised in this representation are set out below:
  - The Article 4 Direction is contrary to the agreements which were made since fencing has been erected on land owned by this representor.
  - The Site is already covered by a Tree Preservation Order (“EL:90/22”), and as such there is no need for the Council to remove permitted development rights.
  - The Article 4 Direction will influence the value of the land.
14. Officer comment in response to the representation received:
  - This representor was the first and only landowner to erect fencing on the land covered by the Article 4 Direction. The fencing was erected prior to the service of the Immediate Article 4 Direction and therefore the Council had less control to enforce its removal. A resolution was negotiated, which negated the need for formal enforcement action.
  - Whilst the Site is covered by a Tree Preservation Order, this Order would not prevent landowners from using their permitted development rights to erect fencing and/or make a temporary change of use of land,
  - The influence that the Article 4 Direction would have on the value of the land is not a planning consideration. There is a process for claiming compensation, which is covered in detail within the Risk implications section of this report.

## **Conclusion**

15. Considering the single representation received, it is considered that the serving of an Immediate Article 4 Direction remains an appropriate and proportionate response that would allow the Local Planning Authority to properly consider the impacts of development proposals on the Metropolitan Green Belt. It is therefore recommended that the Direction should be confirmed. Members are requested to be mindful of the compensation provisions associated with the removal of Permitted Development Rights when considering this recommendation as set out in more detail in the Risk implications below.

### **Financial implications:**

See Risk implications below

### **Environmental/Sustainability Implications:**

None

**Legal implications:**

Members need to consider the representation made against the confirmation of an Immediate Article 4 Direction, the specific permitted development rights that have been withdrawn from private landowners, the grounds for the making of the Immediate Article 4 Direction and the Council's desire to preserve the Metropolitan Green Belt at this location.

There are 8 plots of land that are subject to the making of the Immediate Article 4 Direction. Exposure to potential compensation claims from the landowners of these plots are difficult to assess. The onus is on the landowner(s) to submit a claim.

**Equality Implications:**

None

**Risk Implications:**

The Council can be liable under section 108 of the Town and Country Planning Act 1990 (as amended) to pay compensation to those whose permitted development rights have been withdrawn but only if, within 12 months of the effective date of the Article 4 Direction, the Council

- 1) Refuses planning permission for development which would otherwise have been permitted development, or
- 2) Grants planning permission subject to more limiting conditions than the GDPO.

The grounds on which compensation may be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. Abortive expenditure includes the preparation of plans for the purposes of work and other similar preparatory matters but no more. 'Other loss or damage directly attributed to the withdrawal of permitted development rights' includes the depreciation of the land.

The onus is on the claimant to prove a financial loss resulting from the refusal to grant permission or from the grant subject to conditions formerly granted by the permitted development. There are various factors that are taken into account in a determination of whether or not compensation is payable.

**Community Safety Implications:**

None

**Principal Consultees:**

None

**Background papers:**

Held in Planning Services

**Enclosures/Appendices:**

1. Site Plan
2. Letter of representation from one of the owners of the Land off Pointers Road

**Contact details:**

Paul Falconer Development Manager [pfalconer@elmbridge.gov.uk](mailto:pfalconer@elmbridge.gov.uk)

Aaron Dawkins Senior Compliance Officer [adawkins@elmbridge.gov.uk](mailto:adawkins@elmbridge.gov.uk)

Location Plan



Scale: 1:1500

Date: 4/02/2019 at 14:48 PM by adw

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[REDACTED]  
Owner of Land off Pointers Road, Cobham,  
Surrey, KT11 1PQ

Address:  
[REDACTED]

Date: 23/10/2019

Dear Sir/Madam,

**Representation against the Direction made under Article 4 relating to the Land off Pointers Road, Cobham, Surrey, KT11 1 PQ. It was served on me with the following documents:**

- 1) *Notice pursuant to Schedule 3 of the Making of an Article 4 Direction.*
- 2) *Article 4 Direction with immediate effect made on 17th September 2019.*
- 3) *Planning Report regarding the Grounds for the making of an immediate Article 4 Direction.*

On 19<sup>th</sup> June 2019 a Planning Contravention Notice was served on me to gather information with respect of the land (enclosed). In response to that I had a meeting at Civic Centre to discuss the matters mentioned in the notice. Then, on 09<sup>th</sup> July 2019 I received an email from the council to inform me what actions I should undertake (enclosed). By the 6th August, the deadline date, all the council requests have been complied with.

The direction decision is contrary to what was agreed upon. Moreover, the Planning Report regarding the Grounds for making the Direction did not mention that agreed arrangement. It mentioned communication with other neighbors and therefore, their lands were excluded from the direction decision. Similarly, it did not mention that there is a Tree Preservation Order ("EL:90/22") covering the whole land at Pointers Road which this direction apply to.

All the above indicate that there is no pressing need for the council to use Article 4 directions to remove national permitted development rights. Although, I have no intention to carry out any work on the land for the next upcoming years, however, such restrictions will influence the value of the land.

Based on the above, I wish the Council will reconsider the issue and cancel the direction decision.

Yours sincerely

[REDACTED]

Owner of Land off Pointers Road, Cobham, Surrey, KT11 1PQ

Dated: 23th October 2019

Singed: [REDACTED]