

PC 354-21

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE – 16 FEBRUARY 2021

ARTICLE 4 DIRECTION, CADNAM

Report by David Williams, Enforcement Manager

1.0 Summary

- 1.1 Members will recall from the November Committee meeting that an Article 4 Direction was issued with immediate effect that month regarding land on the south side of Ringwood Road near Bartley. The Direction removed the deemed planning permission for fencing and means of enclosure afforded by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), meaning that express planning permission would be required for those types of development within the area marked on the plan.
- 1.2 The Direction was issued because the land was being sold off online as 16 plots. It was considered that should these individual plots be delineated by means of fencing it would seriously undermine the visual amenity of the Forest North East Conservation Area and the intrinsic landscape character of this part of the National Park.
- 1.3 Members are now asked to consider whether to confirm the Direction. In considering whether to do so, Members must take into account the responses received to the consultation.

2 Background

- 2.1 The National Planning Policy Guidance (NPPG) sets out 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. The potential harm that the direction is intended to address needs to be clearly identified. The GPDO also stipulates that immediately effective Directions may only be used where the development right being removed would otherwise be prejudicial to the proper planning of the area or would constitute a threat to the amenities of the area (paragraph 2(1)(a), Schedule 3, GPDO). Officers are of the view that these tests are met in respect of the site and the permitted development rights in question, as further detailed below.
- 2.2 The land consists of an agricultural field of approximately 4 hectares and is situated adjacent to the main A336 Ringwood Road at Bartley near Copythorne, within the Forest North East Conservation Area. The land is currently a grassy open field with a thick line of trees protected by TPOs fronting on to Ringwood Road. This section of Ringwood Road, which lies outside the main settlements, is characterised by mature trees and hedges and open fields. The entrance to the site lies on a prominent bend, and visibility is poor onto the main road. The field has been used for temporary show events in the past, which appear to have fallen under permitted development rights.

- 2.3 As Members will recall, a substantial area of the land has been sold in individual plots through an organisation called 'Exclusive Estates and Auctioneers', although part of the land remains unsold and is currently being marketed by the auction house Barnard Marcus as well as by Exclusive Estates and Auctioneers. Following the service of requisition of information notices it appears likely that the majority of the overall area has been bought by four main parties, although at the time of writing this report the Land Registry shows pending entries so this cannot be established with certainty.
- 2.4 The concern from a planning management perspective remains that where land ownership is subdivided in this way, it would be normal practice for individual landowners to fence their land and to create individual accesses. The subdivision of this land could well render it unsuitable for agriculture and the individual fencing of smaller properties would change the character of the field and be harmful to the visual amenity of both the Conservation Area and the wider landscape of the National Park. The field is important in landscape terms as it forms part of the open established agricultural land in this part of the National Park, and the clutter caused by separate and mixed types of boundary treatment of various sizes and designs would harm the wider character and visual amenity of the locality.
- 2.5 The site lies in the area identified as "Dispersed farms and arable land" character area within the Forest North East Conservation Area Character Appraisal. This character area is formed by an open undulating arable landscape of medieval and 18th century field systems, with wooded areas dotted throughout. The area is characterised by very little development, which is generally confined to the isolated farmsteads and any associated buildings and cottages, and a small section of linear development along Ringwood Road. The Conservation Area Character Appraisal identifies the prominent hedges along various boundaries of the land together with the woodland in the same area as important features that contribute to the character of the area.

3. Recent Actions

- 3.1 The site has been the subject of consultation regarding the Article 4 Direction as required by the GPDO. As part of this the Authority has posted site notices at the land, which have had to be replaced on three occasions following their removal by unknown parties.
- 3.2 Over the weekend of 5 – 7 December 2020 the felling and cutting of a number of trees protected by a Woodland Tree Preservation Order took place at the site. Further felling took place overnight on 7 December, leading the Authority to make an urgent application without notice to the High Court for an interim injunction to protect the remaining woodland (pursuant to sections 214A and 187B of the Town and Country Planning Act 1990 as amended), which was granted on 11 December 2020. The injunction was confirmed by the High Court on 13 January 2021 for a further five year period and was extended to prevent the importation of materials and machinery onto the land (note that this injunction does not cover the entire area of land that is subject to the Article 4 Direction, but rather the area covered by the relevant TPO). Breach of this injunction could amount to contempt of court, which potentially carries a penalty of imprisonment, fine or seizure of assets. The infringement of the Woodland TPO is the subject of a separate report to this meeting under Part II.

4. Consultation responses

- 4.1 Two responses were received during the consultation period. One response has been received stating that a consulted company has no interest in the land. A second joint letter from two of the new landowners raises the following objections: Loss of basic rights to enclose one's land; additional bureaucracy and costs for the need to apply for consent; with only 3 main landowners likely to now result the Direction is unnecessary and inappropriate. The full response is attached to this report at **Annex 2**, and Members must take these comments into account in making their assessment.
- 4.2 The Direction that has been made removes permitted development rights under Class A, Part 2 of Schedule 2 of the GPDO, which permits the erection/construction of gates, fences, walls, or other means of enclosure not exceeding 2 metres above ground level (or not exceeding 1 metre above ground level if adjacent to a highway used by vehicular traffic) without the need for express planning permission. The removal of permitted development rights relating to the erection of boundaries enables the Authority to maintain control over development of this type. It does not mean that such development cannot be undertaken, but rather that it requires a formal planning application that the Authority must consider it on its planning merits.
- 4.3 If a local planning authority makes an Article 4 Direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it either refuses planning permission for development that would otherwise have been permitted development, or else grants planning permission subject to conditions other than those set out in the GPDO, within a year of the effective date of the Direction. Compensation is limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 4.4 Due consideration has been given to the representations and in the officers' view they raise no further material issue that would prevent the Direction from being confirmed, particularly in the light of the history of this site together with the harm that the fencing of individual plots would cause to the landscape.

5. Next steps

- 5.1 Members are asked to consider whether to confirm the Direction (at **Annex 1**), taking into account the consultation responses and other relevant considerations. If the Direction is confirmed, a further round of publicity/notification will be undertaken as required by the GPDO.
- 5.2 The plan attached to the Direction that was issued on 3 November contained a minor typographical error in the label, referring to the 'A36' instead of the 'A336', although the plan itself was correct. If Members are minded to confirm the Direction the error will be corrected in the confirmed version.
- 5.3 Should Members choose not to confirm the Direction it will lapse on 8 May 2021, being six months after its effective date, but if the Direction is confirmed it will continue in effect indefinitely unless cancelled by the Authority or the Secretary of State. The Authority will continue to monitor it to ensure that the original reasons for making it remain valid, and if it appears no longer to be necessary it should be cancelled.

RECOMMENDATION:

That Members confirm the Article 4 Direction (attached as Annex 1 to the report) withdrawing the permitted development rights granted by Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, and authorise the Executive Director to attest its sealing and to take all such action as necessary in relation to its publication and service in accordance with the GPDO.

Annex 1: Article 4 Direction and plan
Annex 2: Consultation response