

17 SEPTEMBER 2019

KEY DECISION? NO

**ARTICLE 4 DIRECTIONS AT CHURCH CIRCLE (FARNBOROUGH) AND
PINWOOD PARK (FARNBOROUGH)**

SUMMARY AND RECOMMENDATIONS:

Cabinet previously approved the making of an immediate Article 4 Direction to withdraw certain permitted development rights from several properties at Church Circle in Farnborough, which forms part of the South Farnborough conservation area. This report seeks Cabinet's approval to 'confirm' the Article 4 Direction. If it is not confirmed, the Direction will expire in early January 2020, with the consequence that the permitted development rights could undermine the area's character and appearance.

This report also seeks Cabinet's approval to cancel an Article 4 Direction which withdraws a number of permitted development rights from properties at Pinewood Park in Farnborough. The Direction has been in force since the late 1970s but is no longer considered to be serving a useful purpose. National planning policy advises that Article 4 Directions should be cancelled in such circumstances.

It is recommended that Cabinet approves the confirming of the Article 4 Direction affecting properties at Church Circle and the cancelling of the Article 4 Direction affecting properties at Pinewood Park under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

1. INTRODUCTION

- 1.1. Cabinet approved the making of an immediate Article 4 Direction in February 2019 to withdraw permitted development rights from a number of residential properties at Church Circle in Farnborough, which forms part of the South Farnborough conservation area. The permitted development rights removed by the Direction relate to the replacement of windows, the alteration or removal of chimneys, the removal of front boundary walls and the laying of hard surfaces on front garden areas. This report seeks Cabinet's approval to 'confirm' the Article 4 Direction.
- 1.2. This report also seeks Cabinet's approval to cancel an Article 4 Direction which withdraws permitted development rights from residential properties at Pinewood Park in Farnborough. The Direction has been in place since the late 1970s and withdraws permitted development rights relating to the

erection of extensions, porches, outbuildings, fences and other means of enclosure.

2. BACKGROUND

- 2.1 Set out in national legislation, permitted development 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.
- 2.2 Local planning authorities can remove permitted development rights from a defined area by drafting and implementing an Article 4 Direction. An Article 4 Direction does not prevent the development to which it applies but instead requires that planning permission is first obtained from the local planning authority for that development. Rushmoor currently has three Article 4 Directions in place, and this paper is concerned with two of them.

Church Circle Article 4 Direction

- 2.3 Part of the South Farnborough conservation area, which was designated in July 1987, Church Circle is a significant and visually coherent development of properties constructed, for the most part, in the late nineteenth and early twentieth century. Comprised of properties located on the inner and outer circumference of Church Circle, the development retains a distinctive and cohesive Victorian character, with buildings finished in red brick with slate roofs and sash windows. Twelve of the original semi-detached properties within the inner ring retain original sliding sash windows on their front elevations, whilst buildings within the inner and outer circles have largely retained their brick chimney stacks and pots, as well as their front gardens.
- 2.4 As summarised within Cabinet Report EPSH1908, permitted development rights allow single dwelling houses to replace windows, to remove chimney stacks and to turn over their front gardens to hard surfacing without the need for planning permission. To preserve the architectural and historic character of this part of the South Farnborough conservation area, Cabinet was asked in February 2019 to authorise the making of an immediate Article 4 Direction to remove permitted development rights from a number of properties at Church Circle relating to the replacement of windows, the alteration or removal of chimneys, the removal of front boundary walls and the laying of hard surfaces on front garden areas, thereby bringing such matters under planning control.
- 2.5 Following Cabinet approval, the Corporate Manager – Legal Services, in consultation with the Head of Economy, Planning and Strategic Housing, made an immediate Article 4 Direction on 4th July 2019 to withdraw the permitted development rights from identified properties, with the Direction coming into force on 5th July 2019.

Pinewood Park Article 4 Direction

- 2.6 Although an Article 4 Direction can remain in place permanently once it has been confirmed, the government's National Planning Practice Guidance (NPPG) recommends that local planning authorities 'monitor any Article 4 Directions regularly to make certain that the original reasons the Direction was made remain valid'. It further highlights that an Article 4 Direction can be cancelled if it is no longer considered necessary.¹
- 2.7 In addition to the Church Circle Article 4 Direction, Rushmoor has a further two Article 4 Directions in place. One came into effect in February 2018 and withdraws permitted development rights related to the change of use of offices, light-industrial units, and storage or distribution units to residential use at 'Strategic Employment Sites' and 'Locally Important Employment Sites' identified within the Rushmoor Local Plan. The reasons for making this Direction are still considered to be valid. The other Direction which affects properties at Pinewood Park in Farnborough is no longer considered to serve a useful purpose.
- 2.8 Located in north Farnborough off Sandy Lane and immediately adjacent to Hawley Woods and Rushmoor's administrative boundary with Hart District, Pinewood Park is a housing estate comprised of more than 400 properties. Constructed within the mid- to late 1970s and originally located within Hart District, the estate is subject to an Article 4 Direction which withdraws a number of permitted development rights from the properties. The Article 4 Direction was made by Hart District Council in February 1978 but was inherited by Rushmoor when the administrative boundary was redrawn in the 1980s to incorporate Pinewood Park within Rushmoor.
- 2.9 The Direction removes the following permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), as described by Part 1 of Schedule 2 and Part 2 of Schedule 2 of the Order.
- The enlargement, improvement or other alteration of a dwellinghouse;²
 - The erection or construction of a porch outside any external door of a dwellinghouse;³
 - The provision within the curtilage of the dwellinghouse of:
 - a. any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
 - b. a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.⁴
 - The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.⁵

¹ National Planning Practice Guidance (2014) para. 019, ref. ID: 13-049-20140306.

² Class A of Part 1 of Schedule 2.

³ Class D of Part 1 of Schedule 2.

⁴ Class E of Part 1 of Schedule 2.

⁵ Class A of Part 2 of Schedule 2.

- 2.10 The reasons for making the Article 4 Direction are not entirely clear, but it is likely that the Direction was intended to preserve the appearance, character and amenity of Pinewood Park. Characterised by a Radburn-inspired design, the estate consists of blocks of terraced housing which face on to internal footpaths, with rear garden gates and garages providing access to the street. Pinewood Infant School and a park, which is a designated open space within the adopted Rushmoor Local Plan, lie towards the centre of the development. Although no longer considered to be a positive design concept for new housing developments for various reasons, Radburn design separated vehicle and pedestrian movements and aimed to create a sense of community around communal paths and green spaces. Considering the design of Pinewood Park, the Article 4 Direction was likely intended to retain a sense of uniformity in house design, to ensure that access to the street could be maintained through the rear gardens of properties, and to protect the open nature of the estate's internal footpaths by preventing residents from enclosing their front garden areas.
- 2.11 Since the Direction came into effect in 1978, and following the realignment of the administrative boundary with Hart District which relocated Pinewood Park into Rushmoor, the Council has granted permission for a significant number of developments of the nature covered by the Direction at the estate; such schemes include the erection of rear and side extensions, conservatories, and boundary walls and fences. In addition, a number of properties have undertaken development without first seeking planning permission, perhaps unaware that the Article 4 Direction is in place, with the result that the Council has had to take enforcement action on occasion.
- 2.12 Given the amount of householder development that has taken place at Pinewood Park, the Article 4 Direction is no longer considered necessary or to be serving a useful purpose.

3. PROPOSAL

To Confirm the Church Circle Article 4 Direction

- 3.1. As noted above, the Council made an immediate Article 4 Direction on 4th July 2019 to remove permitted development rights from several residential properties at Church Circle. In line with the statutory procedures for making an Article 4 Direction, notice was served on the affected properties on 5th July 2019, thereby bringing the Direction into effect. Notice of the Direction was also made by site display and by local advertisement (within Issue 358 of the Hampshire Independent, published on 5th July 2019), and Hampshire County Council and the Secretary of State for Housing, Communities and Local Government were informed. The Council invited views on the Direction between 5th July and 28th July 2019, but no comments were received.
- 3.2. Whilst immediate Article 4 Directions come into force once notice has been served on affected property owners and occupiers, they expire after six

months unless they are 'confirmed' by a local planning authority. Officers do not consider that there have been any changes in planning policy at a national or local level since the making of the Direction which would have an impact on the decision of whether to confirm it. Cabinet is therefore asked to approve the confirming of the Direction. If confirmed, it will become permanent and continue to have effect beyond January 2020.

To Cancel the Pinewood Park Article 4 Direction

- 3.3 National planning policy is clear that the use of Article 4 Directions 'should be limited to situations where [it] is necessary to protect local amenity or the well-being of [an] area'.⁶ According to the National Planning Practice Guidance (NPPG), the harm that a Direction is intended to address or avoid should be 'clearly identified', and 'justification for both its purpose and extent' must be given.⁷ The NPPG also notes that Article 4 Directions can be cancelled if they are no longer necessary, highlighting that 'it is important for local planning authorities to monitor any Article 4 Directions regularly to make certain that the original reasons the Direction was made remain valid'.
- 3.4 It is considered that there is no longer a strong justification to retain the Article 4 Direction. As noted above, a significant amount of development has taken place at Pinewood Park since the inception of the Direction, and this has likely had a cumulative impact upon the estate's original character and appearance. Moreover, the permitted development rights removed by the Direction are no longer considered a threat to local amenity or the well-being of the area. They are subject to a range of conditions and limitations to control impacts and to protect local amenity, which are now considered adequate. As such, it is recommended that the Direction be cancelled and that the permitted development rights be reinstated.
- 3.5 A local planning authority can cancel an Article 4 Direction by drafting and implementing a subsequent Direction. The normal procedures for making and confirming an Article 4 Direction apply. It is therefore proposed that a Direction is made which cancels the existing Direction and reinstates the removed permitted development rights.
- 3.6 From the regulations in place at the time of the making of the Pinewood Park Article 4 Direction, it is understood that the Direction came into effect when notice was first served. In this respect, and following the procedures for cancelling Directions, as outlined within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the proposed Direction cancelling the existing Direction would likely be one which takes immediate effect. Like the Article 4 Direction at Church Circle, the proposed Direction would therefore take effect on the date that notice is first served but would expire unless it is confirmed within six months.

⁶ National Planning Policy Framework (2019) para. 53.

⁷ National Planning Practice Guidance (2019) para. 038, ref. ID: 13-038-20190722; (2014) para. 037, ref. ID: 13-037-20140306.

Alternative Options

Church Circle Article 4 Direction

- 3.7 The alternative option is to not confirm the Article 4 Direction at Church Circle. The Direction came into effect on 5th July 2019 but will expire on 5th January 2020 if it is not confirmed. If the Direction were to expire, the permitted development rights would be reinstated and the matters would no longer fall under planning control, with the consequence that the rights could be used in a way that undermines the character and appearance of this part of the South Farnborough conservation area.

Pinewood Park Article 4 Direction

- 3.8 The alternative option is to not make a Direction to cancel the existing Article 4 Direction at Pinewood Park. The current Direction would therefore remain in force and continue to remove permitted development rights from affected properties. However, without a strong justification for withdrawing the permitted development rights, this option would conflict with national planning policy.

Consultation

- 3.9 A local planning authority can only make an Article 4 Direction by following a statutory procedure which requires affected parties to be notified and consulted.
- 3.10 In terms of Church Circle, as per the defined statutory procedure for making an Article 4 Direction, the Council notified owners and occupiers of the affected properties by letter on 5th July 2019, and notification was made by site display and by advertisement within a local newspaper. Representations on the Direction were also invited between 5th July and 28th July 2019, but no comments were received.
- 3.11 A local planning authority can cancel an Article 4 Direction by making and confirming a subsequent Direction. In the case of Pinewood Park, those affected by the making of a Direction to cancel the existing Direction would have the opportunity to comment. All representations received would be considered when deciding whether to confirm the new Direction. As noted above, the proposed Direction would likely be an immediate Direction and would expire if not confirmed within six months.

4. IMPLICATIONS

Compensation Claims

4.1 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 subsequently:

- Refuses planning permission for development which would otherwise have been permitted development; or
- Grants planning permission subject to more limiting conditions than the General Permitted Development Order.

The grounds for claiming compensation 'are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights'.⁸

4.2 In respect of the Church Circle Article 4 Direction, it is considered that there is a very limited risk of compensation claims being made against the Council. As noted in Cabinet Report No. EPSH1908, the Direction will affect a relatively small number of properties. Moreover, it is not intended to prevent the replacement of windows but rather to exercise appropriate control over their design and appearance. The retention of chimneys and the prevention of hard surfacing of front garden areas are also considered likely to enhance the value of the properties affected.

4.3 In terms of Pinewood Park, the cancelling of the current Article 4 Direction through the implementation of a new Direction would lead to the previously withdrawn permitted development rights being reinstated. It is considered that there would be very little risk of successful compensation claims in this instance because the compensation regulations only make provision for the withdrawal of permitted development rights.

4.4 In the event of a successful compensation claim, it would likely constitute revenue expenditure.

Intervention by the Secretary of State

4.5 The Secretary of State has the power to make a Direction which modifies or cancels an Article 4 Direction made by a local planning authority at any time before or after it is confirmed. However, there is no risk of this arising at Church Circle because the Secretary of State is prohibited from making a Direction that affects any part of a conservation area where a Direction made by a local planning authority relates to development of the type referred to in the Church Circle Article 4 Direction. Moreover, it is considered that the risk of intervention is very low at Pinewood Park, considering that the making and confirming of a new Direction to cancel the existing Direction would restore previously removed permitted development rights to affected properties

⁸ National Planning Practice Guidance (2014) para. 042, ref. ID: 13-042-20140306.

Legal Implications

- 4.6 There is no statutory appeal against the making or confirming of an Article 4 Direction. The proposed Directions at Church Circle and Pinewood Park would therefore be open to challenge by way of judicial review. However, because Rushmoor will follow the prescribed process for making and confirming the Directions, a successful judicial review is considered unlikely. Moreover, the Council would consider applications for the prescribed classes of development at Church Circle on a case-by-case basis, whilst permitted development rights would be restored to properties at Pinewood Park.

Financial and Resource Implications

- 4.7 The principal costs of making and confirming an Article 4 Direction include officers' time, printing notices for site display, advertising notices within a local newspaper and notifying owners and occupiers of affected properties, the County Council and the Secretary of State of Housing, Communities and Local Government by post. The costs of making and confirming the proposed Directions can be absorbed by existing budgets.

Equalities Impact Implications

- 4.8 There are no equalities impact implications associated with the proposal.

5 CONCLUSIONS

- 5.1 The confirming of the Article 4 Direction which affects residential properties at Church Circle in Farnborough will prevent it from expiring in January 2020, thereby enabling it to become permanent. The Article 4 Direction is considered to have considerable long-term benefits in terms of preserving the important and cohesive architectural character of this part of the South Farnborough conservation area.
- 5.2 The Church Circle Article 4 Direction could give rise to queries or requests for Directions to be implemented in Rushmoor's other conservation areas. Although no queries or requests have been received to date, the Planning team is currently undertaking an appraisal of the Borough's conservation areas, and the need for further Article 4 Directions will be identified as part of this work.
- 5.3 The cancelling of the Article 4 Direction at Pinewood Park in Farnborough, which came into force in the late 1970s, would restore previously removed permitted development rights to affected residential properties. As noted above, there is no longer considered to be a strong justification for the removal of the rights. A large amount of householder development has taken place at the estate since the Direction was made, and the conditions and limitations embedded within the rights to control impacts and to protect local amenity are considered adequate.

BACKGROUND DOCUMENTS

Cabinet Report EPSH1908: Article 4 Direction for Church Circle (5th February 2019)

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

CONTACT DETAILS:

Report Author

Jamie Adcock jamie.adcock@rushmoor.gov.uk 01252 398736

Head of Service

Tim Mills tim.mills@rushmoor.gov.uk 01252 398542