

Report to:	Cabinet	Date of Meeting:	1 November 2018
Subject:	The Cottages, 1-3 Chapel Lane, Netherton		
Report of:	Chief Planning Officer	Wards Affected:	Park
Cabinet Portfolio:	Planning and Building Control		
Is this a Key Decision:	No	Included in Forward Plan:	No
Exempt / Confidential Report:	No		

Summary:

To inform the Cabinet of the Leader's decision, following a request by the Planning Committee at the meeting held 17 October 2018, to the removal of further permitted development rights at a property in Park Ward following revocation of Lawful Development Certificate DC/2014/01497 for the '*proposed development for the erection of proposed buildings and means of enclosure incidental to the enjoyment of the dwellinghouse*'.

Recommendation(s):

That Cabinet notes the Leader's decision.

Reasons for the Recommendation(s):

The removal of permitted development rights via Article 4 direction is necessary to prevent any further or alternative buildings being erected at the above premises following the removal of that existing, causing continued public concern over harm to amenity.

Alternative Options Considered and Rejected: (including any Risk Implications)

The alternative is to not serve an Article 4 direction, which would allow the landowner to erect further buildings potentially injurious to amenity whilst undermining the steps taken to revoke a Lawful Development Certificate for the erection of buildings and means of enclosure incidental to the enjoyment of the dwellinghouse (ref. DC/2014/01497).

What will it cost and how will it be financed?

(A) Revenue Costs

If the Article 4 (1) Direction is approved there is a risk of a claim for compensation being made.

(B) Capital Costs

None

Implications of the Proposals:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Resource Implications (Financial, IT, Staffing and Assets): Potential compensation payable in the event of an Article 4(1) Direction being issued
Legal Implications: The Leader of the Council has delegated authority to take urgent decisions on matters which fall within the Executive functions of the Cabinet, subject to any such decisions being reported to the next Cabinet meeting. Chapter 5 – “Matters Delegated to the Leader of the Council” paragraph 2 of the Council’s constitution refers.
Equality Implications: There are no equality implications

Contribution to the Council’s Core Purpose:

Protect the most vulnerable: N/A
Facilitate confident and resilient communities: N/A
Commission, broker and provide core services: N/A
Place – leadership and influencer: N/A
Drivers of change and reform: N/A
Facilitate sustainable economic prosperity: N/A
Greater income for social investment: N/A
Cleaner Greener N/A

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Head of Corporate Resources has been consulted (FD5303 /18) and notes the report indicates at this stage no direct financial implications for the Authority. It is hoped to avoid any legal costs, or keep them to a small sum which can be met from the Planning budget. In the event of these costs becoming significant, members will be appropriately informed.

The Chief Legal and Democratic Officer has been consulted (FD 4528) and comments have been incorporated into the report.

(B) External Consultations

None applicable.

Implementation Date for the Decision

Already implemented following the decision of the Leader.

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Appendices:

There are no appendices to this report

Background Papers:

There are no background papers available for inspection.

1. Purpose of Report

- 1.1 To inform the Cabinet of the Leader's decision to issue an Article 4(1) direction removing permitted development rights available to the premises known as The Cottages, 1-3 Chapel Lane, Netherton, under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended.

2. Background

- 2.1 A Certificate of Lawful Use of Development (LDC) application was submitted to the Council on 28 July 2014 by the owner of the land, for the *'proposed development for the erection of proposed buildings and means of enclosure incidental to the enjoyment of the dwellinghouse'*.
- 2.2 The LDC was duly issued by notice dated 23 September 2014.
- 2.3 It was later established that a breach of planning control had occurred in that the landowner, was, in addition to keeping his own dogs, using the premises for the training, daycare and boarding of dogs and had also erected a static caravan on the land for staffing and accommodation whilst the dwelling on the land was being refurbished.
- 2.4 A retrospective planning application *'to use the premises for the training, daycare and boarding of dogs in addition to dogs incidental to the enjoyment of the occupier authorised by lawful development certificate ref DC/2014/01497, including the positioning of a static caravan for use as staff facilities and for the accommodation during the renovation of the dwelling'* was refused by notice dated 22 June 2015.
- 2.5 Enforcement notices were duly issued on 18 August 2015, requiring the cessation of the ongoing breaches, the planning refusal was dismissed at appeal, and the enforcement notices upheld. It was determined by the Planning Inspector that breaches of planning control had occurred as a matter of fact, and that the construction of buildings and use of the land for commercial kenneling was inappropriate development in the Green Belt, causing significant disturbance for the residents of nearby dwellings, referenced in paragraph 17 of his decision letter as "possibly serious".
- 2.6 Although the appeals were dismissed, the LDC still permits the development being the erection of the proposed buildings and means of enclosure incidental to the enjoyment of the dwelling house in accordance with Plan Nos. 920/01, 920/02, 920/03, 920/04.
- 2.7 Plan No. 920/01 shows the position of the buildings. Plan No. 920/02 shows the detail of buildings No. 1 and 5. Building No. 1 is shown as 15 kennels with a preparation room.
- 2.8 Complaints in respect of dog-related activity remain ongoing, and subsequent inspections of the premises have led to the owner being prosecuted for the unauthorised use of the building for the keeping of more than six dogs. However,

the physical removal of the building, as required within the enforcement notice (and confirmed at appeal), is countered by the existence of the LDC.

2.9 Information supplied to the Council would indicate that the LDC was obtained as a result of information supplied to the Council which was false in a material particular, it is legitimate for the Council to revoke the certificate in accordance with the provisions of Section 193(7) of the Town and Country Planning Act 1990 (as amended), in which case, there will be no ability to rely on the LDC to prevent removal of the building, as the enforcement notice requires.

2.10 Section 193(7) confirms as follows:

“A local planning authority may revoke a certificate under either of those sections if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.”

2.11 At Planning Committee on 17 October 2018, members agreed to approve the revocation of the LDC. However, the Planning Committee have also requested that, in order to ensure that the revocation of the LDC is fully effective, an Article 4(1) Direction is served on the land, removing the right to erect any further buildings with immediate effect.

3. Expediency of issuing an Article 4(1) Direction

3.1 There remains a possibility of the landowner re-erecting Building no 1 using the permitted development rights currently available to him. It is therefore necessary to progress an Article 4(1) Direction which removes these rights.

3.2 The basis for such a direction is set out by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The application of an Article 4(1) Direction removes 'permitted development' rights and enables control over building works and changes of use which would ordinarily be 'permitted development'. Once an Article 4(1) Direction comes into force, planning permission must be sought for any further works.

3.3 There are two types of Article 4(1) Directions that can be imposed on buildings or land within an area:

Non-immediate Article 4(1) Direction - This means that the Article 4(1) Direction is only imposed following a consultation period of, usually, 28 days and with at least 12 months' notice of it coming into force. Any objections will be considered by the Council before it considers whether to confirm the Direction, or not. A non-immediate Article 4(1) Direction is used where there is not an urgent requirement to remove permitted development rights.

Immediate Article 4(1) Direction - This means that permitted development rights are removed with immediate effect and then consulted on. The Article 4(1) Direction will lapse after 6 months from when it was made unless it is confirmed beforehand. Any objections will be considered by the Council before it considered

whether to confirm the Direction, or not. An immediate Article 4(1) Direction is used where there is an urgent, justified requirement for protection. Once confirmed, an immediate Article 4(1) Direction becomes permanent.

- 3.4 An immediate direction can be served in the circumstance where, as set out by Schedule 3 Paragraph 2(1) (b) of the GPDO, it is considered that *“the development to which the direction relates would be prejudicial to the proper planning of their area or constitute(s) a threat to the amenities of their area...”*
- 3.5 It is a requirement of both processes that notice of any direction must be given by local advertisement, a minimum of two site notices displayed for a minimum of six weeks, and notice on the owner/occupier of the land, allowing 21 days for comment.
- 3.6 Given the circumstances of this case as set out above, it is recommended that the immediate direction is pursued, as the need for action is clearly urgent to prevent new buildings being erected prior to a non-immediate direction being confirmed. The risk of this is heightened considerably in view of the fact that the next Cabinet meeting is not scheduled until 1 November 2018 by which time further works may have legitimately commenced.
- 3.7 The Direction would immediately remove the opportunity for the landowner to erect any further buildings and subsequently claim, whether correctly or otherwise, that they are to be incidental to the enjoyment of the dwellinghouse. The Direction must then be confirmed prior to the expiry of six months from the date on which the notice is served on the owner or occupier as set out by the above paragraph.
- 3.8 In the event of an Article 4(1) notice being served, the landowner could still apply for planning permission for a building for the housing of his own dogs, which would need to be assessed having regard to its own individual merits and residents would have the opportunity to comment on any such proposal.
- 3.9 In accordance with Sections 107 and 108 of the Town and Country Planning Act 1990 (as amended), Article 4(1) also gives rise to implications in respect of compensation payable to an applicant, and typically this can ensue when planning permission is refused for a development which would have been permitted development if it were not for an Article 4 Direction; or where planning permission is granted subject to more limiting conditions than the GPDO would normally allow.
- 3.10 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, and is available to an applicant should they pursue an appeal process in the event of a refusal.
- 3.11 All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the General Permitted Development Order).
- 3.12 Additionally, for certain permitted development rights withdrawn by an Article 4 Direction, compensation may only be claimed if an application for planning

permission is submitted within 12 months following the effective date of the Direction.

- 3.13 Given that the removal of rights would only connect to the landowner's ability to construct a building for purposes incidental to the enjoyment of the dwellinghouse, following compliance with the enforcement notice, the level of compensation likely to be payable in such circumstances is considered to be low, and is substantially outweighed by the public interest of serving the Direction, notably, in resolving amenity concerns in the local area whilst reducing the burden on Council resources.
- 3.14 The Leader has now confirmed his agreement to the serving of an Article 4 Direction on this basis.

4. Conclusion

- 4.1 It is considered for the above reasons, chiefly, in the interest of the proper planning of Sefton Borough, that the public interest is well served by issuing an Article 4(1) Direction to remove all permitted development rights. The Chief Planning Officer will exercise powers delegated to him to instigate all of the above matters following the Leader's decision.
- 4.2 The Chief Planning Officer would therefore make the following formal recommendations:
1. That Cabinet notes the Leader's decision to serve an immediate Article 4(1) Direction removing permitted development rights available to the premises under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
 2. That it be noted that the Leader of the Council and the Chair of the Overview and Scrutiny Committee, Councillor John Sayers, had given his/her consent under Rule 46 of the Overview and Scrutiny Procedure Rules for this decision to be treated as urgent and not subject to "call in" on the basis that it cannot be reasonably deferred because any delay in the serving of the Direction until the Cabinet meeting of 1 November 2018 will result in the risk of additional further outbuildings being erected without planning permission that may not be subject to planning controls resulting in harm to the amenity of adjoining neighbouring properties. The Direction is required as a matter of urgency.