



Development Control Committee – 19 October 2011

Proposed Article 4 direction - The Riverside, Bluebell Lakes, Fotheringhay Road, Tansor

Purpose of report

An area of land known as "The Riverside" at Bluebell Lakes Fotheringhay Road Tansor has recently been advertised for sale in the form of six leasehold riverside frontage plots with private mooring and fishing rights. Prospective purchasers have already contacted Development Control officers regarding the provision of hard standings, landing stages, buildings for storage and the siting of caravans at the site. The purpose of this report is to seek Members agreement to the imposition of an article 4 direction in respect of the land in question.

Attachment(s)

Annex 1 - Model for an immediate article 4 direction

Annex 2 - Sales details as advertised by Woodford & Co

Annex 3 – Plan showing the area of land in question.

1.0 Background

- 1.1 On 13 July 2010 the Council received a complaint regarding the laying of an access road to the site now identified as The Riverside. A site visit was made on the same day by the Compliance and Monitoring Officer. He established from the owner, Mr Andrew Woods that the works in progress were for access to the fishery. Mr Woods was advised to cease all works and to provide details of the requirement of the access road. All works ceased at that time.
- 1.2 On 22 July 2010 pre-application advice was sought by A and M Woods for a change of use of the site from agricultural land to paddocks. A response sent under reference EN/10/01362/QRV on 19 August 2010 stated that the site was not suitable as it was in open countryside. The letter included advice regarding subdivision of the land in that this would be resisted in principle, due mainly to the adverse impact on the open appearance of the countryside. Also that amenity issues were a particular concern in this location, due to the leisure value of the area and its proximity to the River Nene, its valley and the adjacent lakes. Finally, the applicants were informed that any future requests for structures, shelters, storage buildings or fencing would be likely to be resisted.
- 1.3 The potential sale of the leasehold plots has already given rise to queries from potential purchasers with regard to the erection of structures as referred to in the pre-application advice and, although most of these structures would require planning permission, some would be permitted development under the GPDO. The subdivision into six plots may therefore lead to permitted development rights being implemented six times over which would intensify the harm to the amenity of the area.
- 1.4 The sales literature implies that an access road to the site has already been laid. This was not the case when the original planning enforcement file was closed, and at the time it was not considered expedient to take action due to the minimal works which had taken place. This matter is now being re-investigated and an update on the current position will be provided at the meeting.

2.0 Site and Surroundings

- 2.1 The site is situated in the open countryside, to the south of the River Nene, between Tansor and Fotheringhay and offers, at present, an uninterrupted view of the riverbank and surrounding countryside for boat users on the river. It is therefore of particular importance to the leisure value of the area in conjunction with the history of Fotheringhay in attracting tourists to the area.
- 2.2 The site lies within Flood Zone 3 which means it is at most serious risk of flooding. This would be a material consideration for any future planning application but could not be applied to any structures erected using permitted development rights. This matter would be subject to control under separate Environment Agency legislation.

3.0 Use of Article 4 Direction

- 3.1 Article 4 directions allow local planning authorities to withdraw "permitted development" rights that would otherwise apply by virtue of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the "GPDO"). Article 4 directions should only be considered in exceptional circumstances, including where potential harm to visual amenity and damage to an historic environment may result.
- 3.2 Prior to April 2010, the Secretary of State was responsible for confirming all article 4 directions. A replacement Appendix D to the Department of the Environment Circular 9/95 was published in November 2010 and it is now for local planning authorities to undertake confirmation of such directions albeit the Secretary of State still has the power to make an article 4 direction, or to modify or cancel a direction at any point in time/dependant upon the particular circumstances.
- 3.3 Local planning authorities should consider making an article 4 direction only in exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity. In this case, potential purchasers of the six plots have already indicated that they would be exercising these rights.
- 3.4 In deciding whether an article 4 direction is appropriate, the local planning authority should clearly identify the potential harm that the direction is intended to address. It is considered the potential provision of fencing to subdivide the plots, the provision of means of access and temporary buildings or uses at the site would not only undermine the visual amenity of the area and damage the historic environment but also have a direct and significant adverse effect on a flood risk area. These are both circumstances which are deemed appropriate for an article 4 direction within Appendix D to Circular 9/95.
- 3.5 Members should be aware that the withdrawal of permitted development rights relating to leisure plots and uses requires particularly strong justification and must satisfy themselves that the reasons listed above are adequate in this case.

4.0 Powers to make Article 4 Directions

- 4.1 Provided there is justification for both its purpose and extent, it is possible to make an article 4 direction covering:
- Any geographic area.
 - Permitted development rights related to operational development or change of use of the land.
 - permitted development rights with temporary or permanent effect.
- 4.2 In procedural terms there are two main types of article 4 direction:

- Non-immediate directions (permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following consultation); and
- Immediate directions (permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following public consultation within six months, or the direction will lapse).

4.3 Immediate directions can only be used to withdraw development permitted by parts 1-4 and 31 of Schedule 2 of the GDPO, which would apply in this case.

5.0 Compensation

5.1 The withdrawal of permitted development rights by an article 4 direction may give rise to liability for compensation. Any person interested in the land may seek compensation for unnecessary expenditure or other losses or damage directly attributed to the withdrawal of permitted development rights. However, the Act requires that a planning application should first have been made, and permission refused, or only granted subject to conditions other than those previously imposed by the development order.

6.0 Fees for Subsequent Applications

6.1 No fee is payable for a planning application made in respect of what would have been permitted development had there been no article 4 direction in place.

7.0 Permitted Development Rights which may impact the Riverside site

7.1 These are as follows, the erection of gates, fences, walls and other means of enclosure which would impact on the visual amenity and the open appearance of the countryside.

The clearance of tracks, through the disruption to the landscape and the erosion of the rural character. The erection of temporary buildings or moveable structures through visual impact, and the erection of temporary buildings for recreational use. due to visual impact and noise and disturbance.

8.0 Conclusion

8.1 The division of the land identified as The Riverside, Bluebell Lakes, Fotheringhay Road, Tansor into separate parcels of land could lead to harmful development and harmful impact on the visual amenity of the area and the open countryside and could damage the historic environment unless certain permitted development rights are restricted. It is therefore considered appropriate that an Article 4 direction should be served.

9.0 Equality and Diversity Implications

9.1 There are no equality and diversity implications arising from the proposals.

10.0 Legal Implications

10.1 Once a direction under Article 4 has been made, if development is undertaken in breach of the provisions of the direction, then the local planning authority will need to consider whether any enforcement action is expedient in regard to that breach.

11.0 Risk Management

11.1 There are risks that if a direction is not served that individual plots will be sold off and permitted development rights exercised to the detriment of the amenities and character of the area.

12.0 Financial Implications

- 12.1 There are no financial implications arising from the making of an Article 4 direction however if permission is sought and subsequently refused there could be claims for compensation.
- 12.2 The Solicitor to the council has considered the issue of what compensation would be likely to be paid if the Article 4 Direction was made. He has concluded that, having regard to the very restricted nature of what development would be permitted on this site if the Article 4 Direction was not in place, then it is difficult to see that the level of compensation would be anything more than nominal, or at the worst extent, minimal. For example, permanent buildings would not be permitted and, under the terms of what would be permitted under the GPDO, temporary buildings are restricted, having regard to the purpose for which they are required.

13.0 Corporate Outcomes

- 13.1 The key corporate outcomes relevant to this decision are the protection and enhancement of the built and natural environment in the interests of the quality of life of both visitors and our residents.

14.0 Recommendations

- 14.1 The Committee is recommended to:-

1) Give an immediate direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("GPDO") that the permission granted by Article 3 of the GDPO shall not apply to all or any development listed in Schedule 1 within the areas of land shown edged in red on the plan in Schedule 2.

2) That following the confirmation of the immediate article 4 direction, a period of public consultation shall take place and confirmation of the original direction be made by the Solicitor to the council within a period of six months.

Permitted Development Rights to be withdrawn (Schedule 2)

Part 2 Class A - Minor Operations: The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Part 2 Class B - Minor Operations: The formation, laying out and construction of a means of access.

Part 4 Class A - Temporary Buildings or Uses: The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over land or on land adjoining that land.

Part 4 Class B - Temporary Buildings or Uses: The use of any land for any purpose for not more than 28 days for any total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B.2, and the provision on the land of any moveable structure for the purposes of the permitted use.

(Reason: In the interests of protecting the amenities and historic character of the area from inappropriate development)

Legal	Power: Town and Country Planning Act 1990
	Other considerations:

Background Papers:					
Person Originating Report: Susan Scott, Planning Enforcement Officer. sscott@east-northamptonshire.gov.uk					
Date: 5 October 2011					
CFO		MO		CX	

(Committee Report Normal Rev. 22)