

Title: Consideration of an Article 4 Direction at Castle Pavilion, Castle Road, Kenilworth

Lead Officer: Will Holloway, Planning Enforcement Manager (01926 456064)

Portfolio Holders: Councillor John Cooke,

Wards of the District directly affected: Kenilworth

Summary

The purpose of this report is to seek approval to commence the process of making a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 and to undertake the related required public consultation.

The effect of the Direction, if confirmed would be the removal of certain permitted development rights on the Land known as Castle Pavilion, Castle Road, Kenilworth.

Recommendation(s)

- (1) That Cabinet decides on whether to commence the process of making an Immediate or Non-Immediate Article 4 Direction relating to the site which is shown edged red at Appendix A;**
- (2) That Cabinet requests in the light of the decision to recommendation 1 above, that Officers also commence a public consultation process, the results of which will inform the decision as to whether to confirm the Order; and,**
- (3) That Cabinet requests in the light of the decision to Recommendation 1 above, that Officers bring a further report setting out the results of the public consultation and recommending whether the Order should be confirmed.**

1 Background/Information

- 1.1 Significant concerns have been raised by many residents the MP and Councillors concerning the use of an area of land on the edge of Kenilworth and the resulting effects on neighbouring amenity; traffic and highway safety; impact on the Green Belt, the setting of Kenilworth Castle, a Grade 1 Listed Building; the proximity to the Fishponds Complex, a Scheduled Ancient Monument, and the character of the nearby Kenilworth Conservation Area.
- 1.2 Those concerns arise from the use of the site for recurring temporary events often of a scale, taking place every few weeks and usually at the weekend attracting significant footfall to, and activity at the site over the period of the event. These events have usually involved the provision of food and drink outlets with activities or entertainment also involved typically running from lunchtime to

mid-evening on Saturdays.

- 1.3 The concerns have been raised by residents living nearby and members of Kenilworth Town Council about the use of the site which centre, on its suitability for this type of use; the impact of the recurring events arising from noise and disturbance to nearby residents; and the nature and extent of traffic arriving at the site. This has also taken the form of formal written complaints including to the Chief Executive.
- 1.4 Such use is currently able to take place under national Permitted Development Rights (i.e., as permitted development) meaning that the Council as the Local Planning Authority has no or little control over it. To help address the situation, it is proposed that the Council explores the appropriateness of applying a measure known as an Article 4 Direction, the effect of which would be to remove the right for such uses to be undertaken without planning permission.
- 1.5 The land in question amounts to approximately 5 acres of pastureland including a former pavilion building which was originally used by Kenilworth Golf Club prior to their relocation. Subsequent uses of the pavilion building include as a farm shop and more latterly stabling. This latter permission prohibited other uses by way of condition, but the current use circumvents this restriction by making use of the national permitted development rules.
- 1.6 Permitted Development Rights (PD rights) effectively comprise a national grant of planning permission which allows certain building works or uses of land and buildings to be undertaken without the need for a specific planning application. This is because Government considers that in general terms such works are of a scale or type that wouldn't be likely to be unacceptable.
- 1.7 The General Permitted Development Order (GPDO) 2015 is the principal vehicle by which the classes of development for which a grant of planning permission is automatically given is set out. Schedule 2, Part 4 Class B of the GPDO specifically relates to the matter at hand and, subject to various exceptions and provisos permits:
The use of any land for any purpose for not more than 28 days in total in any calendar year,
- 1.8 Development under PD rights therefore falls outside of the control of the Local Planning Authority, and being set nationally, doesn't take account of local sensitivities or objections.
- 1.9 However, in the circumstances where it is demonstrably justified, legislation does enable a Local Planning Authority to remove PD rights either by means of a condition imposed on a planning permission, or less frequently by means of an Article 4 Direction.
- 1.10 Therefore, following the concerns that have been raised by Councillors, members of Kenilworth Town Council and residents, this report considers the appropriateness of imposing an Article 4 Direction in this case, the effect of which would be that the recurring temporary uses of the land couldn't continue without planning permission being granted.
- 1.11 Government guidance on the use of Article 4 Directions, advises that their use should be limited to situations where it is necessary to protect local amenity or the wellbeing of an area and requires that the potential harm that the Direction is intended to address be clearly identified.

- 1.12 In this case the area of land is within the Green Belt, the objective of which is to keep clear and open from development; it is also adjacent to the Kenilworth Conservation Area, the objective of which is to maintain or enhance the character of the area so designated. This can include open land as is the case here. In addition, the setting of this site includes issues of historic importance - that of Kenilworth Castle, a Grade 1 Listed Building; the Fishponds Complex, a Scheduled Ancient Monument, both of which are near the site and the activity taking place and which would otherwise be material considerations were there to be a planning application to be determined.
- 1.13 In addition, residents and Councillors have made significant complaints regarding impact on amenity in relation to noise and to the impact of traffic generated by the events on the immediate highway network. None of these issues can be tested for impact under the PD rights currently being exercised on this site.
- 1.14 Such Directions enable the Secretary of State or a Local Planning Authority to withdraw specified permitted development rights across a defined area if they are satisfied that it is expedient to do so. Provided that there is justification for both its purpose and extent, an Article 4 Direction can:
- (i) Cover an area of any geographic size, from a specific site to a local authority-wide area;
 - (ii) Remove specified permitted development rights related to operational development or uses of land and buildings;
 - (iii) Remove permitted development rights with either temporary or permanent effect.
- 1.15 It should be noted that the making of a Direction does not mean that a use or activity may not be able to take place. Rather, it requires that such use or activity may not take place unless planning permission has been granted.
- 1.16 In doing so, the Direction brings the use or activity in question under the control of the Local Planning Authority by providing the opportunity to consider a proposal in more detail as part of a planning application.
- 1.17 Article 4 Directions can either be made with immediate or non-immediate effect. However, where the former approach is employed, the development must present an immediate demonstrable threat to local amenity or prejudice the proper planning of the area.
- 1.18 In the circumstances where a Direction is to be made immediately, the process is that:-
- i. The Direction is made and publicised and the Secretary of State is notified.
 - ii. Confirmation of the Order: the Direction comes into force on the date on which notice is served on the owners/occupiers of the land.
 - iii. The Council has up to 6 months to determine whether to confirm the Direction more permanently, considering any representations which have been received. In the absence of that happening, the Direction will lapse.
- 1.19 In the circumstances where a Direction is **not** to be made immediately, the process is that:-
- i. The date on which a Direction will come into force is set and the intention to make such a direction is publicised and the Secretary of State is notified.
 - ii. Confirmation or otherwise of the Order following any representations received having been considered.

- iii. A copy of the Direction as confirmed is also sent to the Secretary of State.
- 1.20 An Article 4 Direction can remain in place permanently once it has been confirmed. It is expected however that Local Planning Authorities will regularly monitor any Directions in place to satisfy themselves that the original justification for such Order remains valid.

2 Alternative Options available to Cabinet

- 2.1. Members need to decide whether to authorise that Officers proceed with the making of an Immediate or a Non – Immediate Article 4 Direction.
- 2.2 The issue here is that a Non-Immediate Direction will allow for more evidence to be collected and so represent a more robust position for the Council to defend its position and to resist challenge legal or financial. However, the activities on the site have been going on for a long while already and taking the non-immediate approach would mean that there is no more control exercised for a longer period which could extend beyond the Christmas and New Year period where other events may be held and so further potential disturbance to residents.
- 2.3 The progression towards a Non-Immediate Direction would enable the requisite publicity and consultation within the local area to take place and a more detailed assessment made of the extent of harm arising from the recurring use, therefore informing the consideration of the appropriateness of confirming a Direction.
- 2.4 Such a consultation would enable residents to expand further on the way that the use of the site is affecting their amenities. It would also enable views to be sought from Warwickshire County Council in their role as the Highways Authority on the highway and traffic impacts of the use and from the WDC Environmental Health Team as to the extent and nature on any associated noise and disturbance being experienced in the locality.
- 2.5 Following the receipt of those views and expert advice, Officers would be in a stronger position to fully assess the effects of the ongoing use and recommend to Cabinet whether there were sufficient grounds to confirm an Order without unduly exposing the Council to the risk of that decision being challenged.
- 2.7 Members are asked to note that in coming to the current recommendation, Officers are mindful that the Secretary of State can dismiss the Direction at any stage, a proposition that may be increasingly likely where a Direction is without sufficient justification.
- 2.8 Alternatively Members could authorise the making of an Immediate Order if the development to which the direction relates is considered to be prejudicial to the proper planning of the area or constitutes an immediate threat to local amenity. This would have the benefit to residents of bringing control over activity immediately so providing a relief to them. If this proved not to be a sustainable position Members need to be aware there is the risk of being liable for compensation in certain circumstances were the person involved could demonstrate the Direction had caused adverse financial consequence.
- 2.9 Further, Members could also resolve not to progress the making of an Article 4 Direction which would be contrary to the level of concern being raised in the local area about the activities concerned.

3 Consultation and Member's comments

- 3.1 The Portfolio Holder for Planning and Place is supportive of the recommendation.

4 Implications of the proposal

4.1 Legal/Human Rights Implications

- 4.1.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making and considering an Article 4 Direction, including under Article 1 of the First Protocol (Protection of property) and Article 8 (Right to respect for a private and family life). The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be considered in the exercise of the Council's powers and duties as Local Planning Authority. Any interference with a Convention Right must be necessary and proportionate.
- 4.1.2 Officers have carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4 Direction have been assessed under the Human Rights Act 1998 and it is considered that any interference with the owner's human rights would be necessary for the protection of the amenities of the area in the wider public interest.
- 4.1.3 In view of the ongoing nature of the use proposed to be the subject of a Direction from which the landowner may be deriving income, these matters have been very carefully assessed.
- 4.1.4 Such considerations, need to in part to inform the decision to proceed either as a non-immediate or an immediate Direction, the latter potentially raising increased human rights impacts.
- 4.1.5 Should members support the recommendation, there will be an opportunity for the owner of the land to make representations as part of the consultation process when all the comments received including any further potential human rights matters will be considered further.

4.2 Financial

- 4.2.1 Amendments to the relevant Regulations in January 2017 now require that a planning fee is payable for planning applications required where an Article 4 Direction is in place.
- 4.2.2 Compensation for abortive expenditure or other loss or damage directly contributable to the withdrawal of permitted development rights may be payable to persons affected by the Article 4 Direction in certain circumstances.

4.3 Council Business Plan

- 4.3.1 The proposal relates to the following themes: -

4.3.2 External impacts of proposal

- 4.3.3 People - Health, Homes, Communities – The consideration of a Direction has arisen because of local concerns regarding the ongoing events on the land and related impacts including traffic levels and residential amenity on health and wellbeing within the area.
- 4.3.4 Services - Green, Clean, Safe – The consideration of a Direction includes the

assessment of the ongoing uses on the landscape and open space characteristics of the area.

- 4.3.5 Money - Infrastructure, Enterprise, Employment – The consideration of a Direction includes the benefits arising from the use of the land to the local economy.

4.3.6 **Internal impacts of the proposal(s)**

- 4.3.7 People - Effective Staff – N/A.

- 4.3.8 Services - Maintain or Improve Services – The consideration of the Direction is a response to the issues that have been raised concerning the use of land in question as part of an ongoing planning enforcement investigation.

- 4.3.9 Money – As indicated above, planning applications arising from Article 4 Directions attract a fee which is payable to the Council and there is also a risk of potential compensation payments.

4.4 **Environmental/Climate Change Implications**

- 4.4.1 The preservation of the openness of the Green Belt and the landscape characteristics of the area are considerations in this matter as are the impact of this site being used that attracts private vehicle movements and that no active travel arrangements are offered alongside.

4.5 **Analysis of the effects on Equality**

- 4.5.1 The Council has considered all the protected characteristics in the Equality Act 2010 and the characteristic of social deprivation, to ensure that any potential impacts of the proposed Article 4 Direction on these groups of people have been considered and, where possible, mitigated.
- 4.5.2 The nature of the proposed Article 4 Direction is such that there is not considered to be any implications on these rights.

4.6 **Data Protection**

- 4.6.1 There are not considered to be any data protection issues arising from this report.

4.7 **Health and Wellbeing**

- 4.7.1 The health and wellbeing of local people in relation to their amenity and the appropriate use of this land are considerations is the assessment of the need for the proposed Direction.

5 Risk Assessment

- 5.1 As stated above, the making of an Article 4 Direction may result in compensation claims. Local Planning Authorities may be liable to pay compensation if they:
- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
 - Grant planning permission subject to more limiting conditions than the GDPO would normally allow, because of an Article 4 Direction being in place.
- 5.2 Compensation claims are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. This includes the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, and loss or damage directly attributable to the withdrawal of permitted development rights that would include the

depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.

- 5.3 In addition, it is important to ensure that any decision to make an Article 4 Direction is sufficiently justified, firstly because that is the right approach to take and secondly to avoid any enhanced risk of a challenge being made to that decision.

6 Conclusion/Reasons for the Recommendation

- 6.1 This report sets out the options available to Members for the service of an Article 4 Direction to remove specific permitted development rights on a parcel of land.

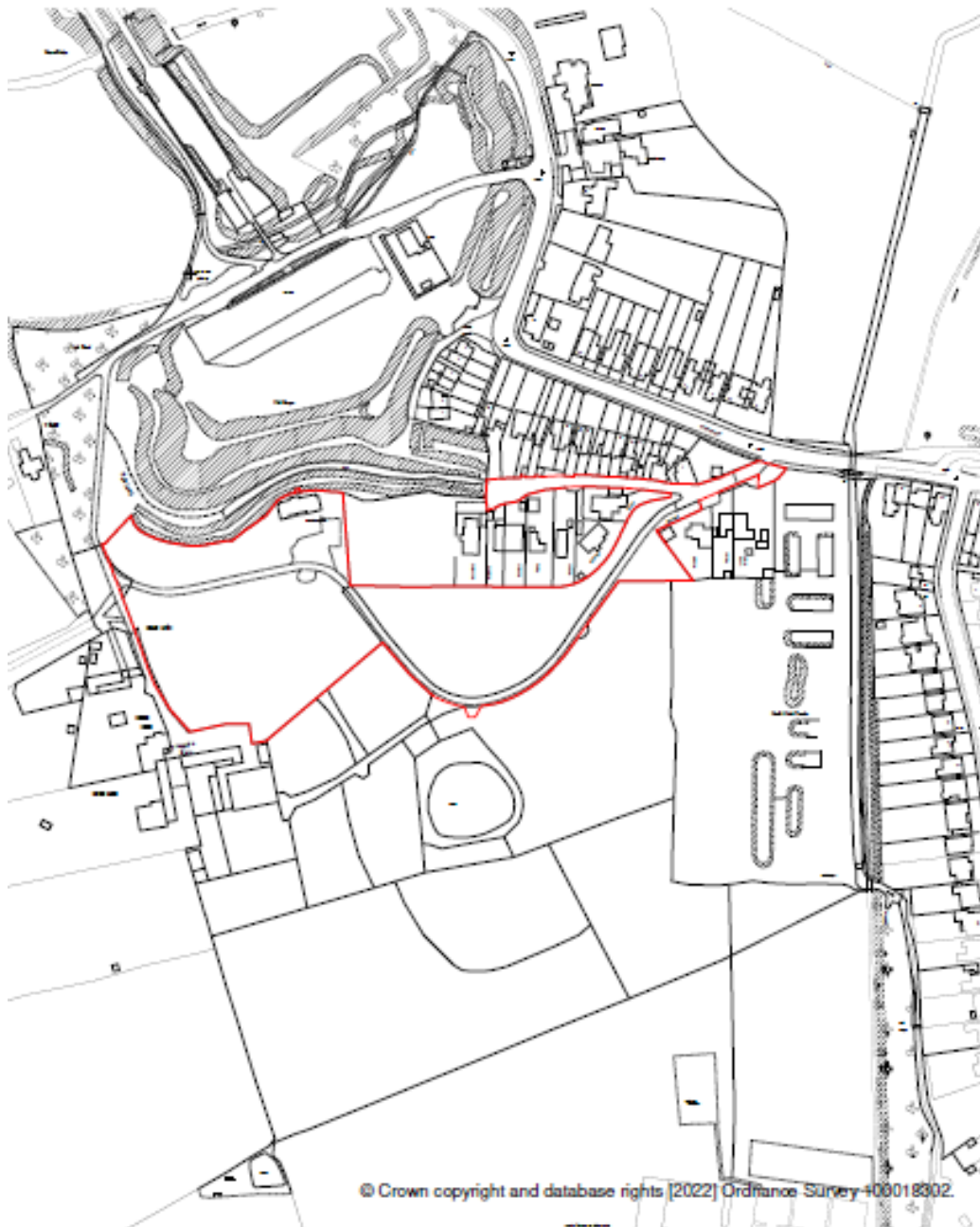
Background papers:



Appendix A – Copy of the Area Plan

Supporting documents:

None.

Appendix A



	ARTICLE 4 DIRECTION					
	Castle Pavilion, Castle Road, Kenilworth					
	LOCATION PLAN					
Scale: 1:2500	Plan: 1	Drawn By: WH/SW	Date: 20 July 2022	File No. ACT/147/18	North: 	
Development Services: Riverside House, Milverton Hill, Royal Leamington Spa. CV32 5QH						

Report Information Sheet

Please complete and submit to Democratic Services with draft report

Committee/Date	Cabinet 29 September 2022	
Title of report	Article 4 Direction	
Consultations undertaken		
Consultee *required	Date	Details of consultation /comments received
Ward Member(s)	N/A	
Portfolio Holder WDC	29/8/22	
Financial Services *	29/8/22	
Legal Services *	Various	
Other Services	N/A	
Chief Executive(s)	29/8/22	
Head of Service(s)	29/8/22	
Section 151 Officer	29/8/22	
Monitoring Officer	29/8/22	
CMT (WDC)	30/8/22	
Leadership Co-ordination Group (WDC)	5/9/22	
Other organisations	N/A	
Final decision by this Committee or rec to another Ctte/Council?		Recommendation to Cabinet
Contrary to Policy/Budget framework		No
Does this report contain exempt info/Confidential? If so, which paragraph(s)?		No
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	No	
Accessibility Checked?		File/Info/Inspect Document/Check Accessibility