

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

Approvals required	Date	Name
Portfolio Holder	22/02/23	
Finance	22/02/23	
Legal Services	Various	
Chief Executive	22/02/23	
Head of Service(s)	22/02/23	
Section 151 Officer		
Monitoring Officer		
Leadership Co-ordination Group	23/02/23	
Final decision by this Committee or rec to another Cttee / Council?	Yes Recommendation to: Cabinet	
Contrary to Policy / Budget framework?	No/Yes	
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?	Yes/No	

Summary

The purpose of this report is to seek approval to confirm the Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to remove certain permitted development rights on the Land known as Castle Pavilion, Castle Road, Kenilworth. This report summarises responses received from affected residents since the implementation of the Direction on 7th October 2022

Recommendation(s)

- (1) That Cabinet authorises the confirmation of a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to permanently remove the permitted development rights under Schedule 2, Part 4, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 and to serve letters upon all owners confirming the Direction relating to the site which is shown edged red at Appendix A.**
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1 Reasons for the Recommendation

- 1.1 Permitted Development Rights (PD 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. Some development and uses under PD rights therefore fall outside of the control of the Local Planning Authority. The rights set out in the legislation are the same across England and so inevitably cannot take account of local sensitivities.
- 1.2 While there are some exceptions within the legislation for specifically defined areas that are recognised for their intrinsic value, these are limited. However, the legislation does enable the removal of PD rights with sufficient justification by a Local Planning Authority, either by means of a condition on a planning permission, or by means of an Article 4 Direction.
- 1.3 Responding to concerns raised by Councillors, Kenilworth Town Council and local residents, the Council served an Immediate Article 4 Direction to remove permitted development rights under Schedule 2, Part 4 Class B of the GPDO 2015. An Immediate Direction was authorised at Cabinet on 29th September 2022 and came into force on 7th October 2022.
- 1.4 The Council undertook a consultation as part of the service of the Article 4 Direction which concluded on 28th November 2022. The results of this consultation and the related findings are discussed below.
- 1.5 Certain works that would normally require planning permission are permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended. As a result, the developer (typically the owner of the property or land) does not have to make a planning application to the Local Planning Authority to seek permission to carry out certain building works, provided they comply with specific limitations and the small number of conditions set out in the Order. More details regarding this legislation and its context in relation to Conservation Areas is set out in the 29th September 2022 report to Cabinet which can be accessed at: [Item 07 - Consideration of an Article 4 Direction at Castle Pavilion, Castle Road, Kenilworth.pdf](#). For the sake of brevity, that detail is not repeated here.
- 1.6 A Direction under Article 4(1) of the GPDO 2015 enables the Secretary of State or a Local Planning Authority (LPA) to withdraw specified PD rights across a

defined area. Again, more details regarding this process are set out in the 29 September 2022 report to Cabinet and will not be repeated here. As set out in that report, a Direction comes into force on the date on which the Notice is served on the owners/occupiers of the land. The LPA then has between 28 days and six months from the date the Direction comes into effect, to decide whether to go ahead and confirm the Direction, considering any representations that have been received. If not confirmed within six months, the Direction will lapse. Therefore, for the LPA to confirm the Article 4 Direction in this case thereby enabling the Direction to remain in place, it must be confirmed prior to 7th April 2023.

- 1.7 The owners of the site ceased all uses at the location following the service of the Article 4 Direction on 7th October 2022. The LPA is of the view that even though the use has ceased the Article 4 should be confirmed. This is due to the representations received and the importance of bringing any future events under planning control in order to protect residential amenity, the Green Belt, and potential highway safety.

2 Alternative Options

Members are recommended to authorise confirmation of the Article 4 Direction as served on 7th October 2022.

- 2.2 There are alternative options available to Cabinet namely: -
 - a) The Cabinet decides that the Council shall not confirm the Article 4 Direction subject of this report at this time: or
 - b) The Cabinet decides that the Council should modify the served Article 4 Direction.
- 2.3 Were the Council to decide to proceed with modifications to the served Article 4 Direction, procedurally the Direction would have to be cancelled and a new Direction served.

3 Legal Implications

- 3.1 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 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 taken into account 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.
- 3.2 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.
- 3.3 Though the use has ceased, without confirmation of the Article 4 Direction it could recommence. Matters relating to potential income have been carefully assessed.

4 Financial

- 4.1 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 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.

5 Business Strategy

- 5.1 Health, Homes, Communities, People - Health, Homes, Communities – The consideration of a Direction has arisen because of local concerns regarding the potential for further events on the land and related impacts including traffic levels and residential amenity on health and wellbeing within the area.
- 5.2 Green, Clean, Safe – The confirmation of a Direction includes the assessment of the potential recommencement of uses on the landscape and open space characteristics of the area.
- 5.3 Infrastructure, Enterprise, Employment – The confirmation of a Direction includes the benefits arising from the use of the land to the local economy.
- 5.4 Effective Staff, the confirmation of the Article 4 Direction may lead to further pre application advice or planning applications being considered which will increase officer case load having a possible negative impact.
- 5.5 Maintain or Improve Services – The confirmation 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.
- 5.6 Firm Financial Footing over the Longer Term – 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.

6 Environmental/Climate Change Implications

- 6.1 The preservation of the openness of the Green Belt and the landscape characteristics of the area are considerations in this matter.

7 Analysis of the effects on Equality

- 7.1 The Council has given consideration to all of 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.
- 7.2 The nature of the proposed Article 4 Direction is such that there is not considered to be any implications on these rights.

8 Data Protection

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

9 Health and Wellbeing

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

10 Risk Assessment

- 10.1 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, as a result of an Article 4 Direction being in place.
- 10.2 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.
- 10.3 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 so as to avoid any enhanced risk of a challenge being made to that decision.
- 10.4 Though there is risk in the confirming of the Article 4 Direction it is considered by Officers that the risk is minimal.

11 Consultation

- 11.1 The Portfolio Holder for Planning and Place is supportive of the recommendation.
- 11.2 During the consultation period, 20 emails were received in support of the Article 4 Direction and 5 emails received against the Article 4 Direction.
- 11.3 In summary those in support of the Article 4 Direction raised several key issues
- A) 12 respondents wanted to protect the green belt and setting.
 - B) 11 respondents raised concerns over increased traffic.
 - C) 11 respondents raised issues with the noise generated by the events.
 - D) 5 respondents raised concerns with bonfires at the site.

In summary those against the Article 4 Direction raised the following concerns

- a) 5 respondents stated that the events supported local small businesses.
 - b) 5 respondents stated that the events supported local employment.
- 11.4 Warwickshire County Council Highways were also consulted, however, due to the events ceasing upon service of the Article 4 Direction, no traffic could be monitored.
- 11.5 Environmental Health at Warwick District Council were also consulted, in summary there were 24 complaints received by the service between the dates of 26th May 2021 and 17th October 2022.

The nature of the complaints raised were as follows

- a) 4 complaints concerning primarily on traffic
- b) 8 complaints concerning bonfires/smoke
- c) 16 complaints concerning noise generated

11.6 Environmental Health have further commented: -

The Castle Pavilion site first came to the attention of Environmental Health (EH), and Licensing in 2021, when a notification for a temporary event (TEN) was submitted. Between 26 May 2021 to October 2022, multiple TENs were applied, and following the events, numerous complaints were received from members of the public (some incidents involved several complainants). The concerns were in relation to nuisance, caused by the frequent temporary licensable events, and private events operating on the site. Complaints were about smoke and bonfires, noise from persons attending public and private events, drunkenness and rowdiness of persons, noise from traffic entering and leaving the site, nuisance parking, loud music (recorded and live), noise and fumes from a generator, invasion of privacy, noise impact on local animals (for example nearby horses) and general impact on wildlife, and odour from frying food.

Environmental Health initiated several investigations for statutory nuisance, however, due to a combination of factors no action could be taken. For example, activities off the main site but in connection with its use, noise from moving traffic and persons, or impact on animals and wildlife, invasion of privacy, are all matters that can't be considered as statutory nuisances under the Environmental Protection Act 1990. In addition, when officers monitored the noise, fumes and smoke levels coming from the site, in all but one patrol, the level of disturbance witnessed by officers was not significant enough to be considered as either prejudicial to health or a statutory nuisance, so again no action under the 1990 Act could be taken. Environmental Health were eventually able to object to TENs, as the evidence collated, supported the theory that the licensing objective for a public nuisance could be undermined. Public nuisance has a much lower bar than statutory nuisance, so whilst this helped control nuisance from licensed activities, it could not be utilised to control nuisance from the private events on site.

Since October 2022, while the site has no longer been used for events, or marketed as an outside bar (The Pavilion Garden Bar, as advertised on Facebook, and as per the signage erected on the main road) complaints have ceased. If the bar was able to operate again, Environmental Health would consider the additional noise and related nuisance emanating on and off the site, would have a negative impact on those living in the locality, particularly in relation to their quality of life. In addition, because of the sheer number of complaints attributed to events on site, this also resulted in a disproportionate amount of officer time, and resource having to be diverted to dealing with these matters, such resources are much better utilised in other service areas.

11.7 Confirmation of receipt of the Council's notification regarding the Article 4 Direction was also received from the Ministry of Housing, Communities and Local Government.

Background papers:

Appendix A – Copy of the Area Plan

Supporting documents:


ANNEX 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: 
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Development Services: Riverside House, Milverton Hill, Royal Leamington Spa. CV32 5QH

None