

North Somerset Council

REPORT TO THE EXECUTIVE MEMBER FOR STRATEGIC PLANNING, HIGHWAYS, ECONOMIC DEVELOPMENT AND HOUSING

DATE OF MEETING: 12 DECEMBER 2016

SUBJECT OF REPORT: Town and Country Planning Act 1990 (as amended) Article 4 Direction to restrict certain permitted development as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 4 Temporary Buildings and Uses, Class B.

TOWN OR PARISH: Backwell, Wrington, Winford and Felton, Dundry, Barrow Gurney, Flax Bourton Brockley, Cleeve, Claverham, Yatton, Congresbury, Regil, Butcombe, Blagdon

OFFICER/MEMBER PRESENTING: Karen Bartlett

KEY DECISION: Yes

RECOMMENDATION

That the Schedule 2 Part 4 Class B Temporary Buildings and Uses Article 4 Direction 2016 decision made by North Somerset Council on 22 August 2016 (Decision No. 16/17 DE162) is cancelled

SUMMARY OF REPORT

The legislation allows the local planning authority, by making a subsequent Direction, to cancel any Direction made under Article 4(1) at any time before or after its confirmation.

The consultation process carried out has identified a number of issues which need to be addressed. Unfortunately the tight timescale before the direction comes into effect on 1 January 2017 does not provide the local planning authority sufficient opportunity to take into account all representations received during the representation period.

This report therefore recommends that the Article 4 Direction made on 22 August 2016 is cancelled. This will enable the council sufficient time to take into account all representations received before moving forward to consider whether to make a further direction.

POLICY

The overall aim of the National Planning Policy Framework (NPPF) is to achieve sustainable development. In practice this means the achievement of economic, social and environmental

gains. The NPPF should be read as a whole; however, core planning principle part 9: Protecting Green Belt land, part 3: supporting a prosperous rural economy, part 4: promoting sustainable transport, part 7 requiring good design and, part 11 conserving and enhancing the natural environment are particularly relevant in this case.

Green Belt

The NPPF attaches great importance to protecting Green Belt land. The fundamental aim is to protect the Green Belt from urban sprawl by keeping land permanently open. The NPPF defines development which is “appropriate” in the Green Belt. Development which falls outside that definition is deemed to be inappropriate development and harmful by definition. Very special circumstances are required to outweigh the harm caused by reason of inappropriateness.

The protection of the Green Belt is carried through in DM12 of the Development Management Policies: Sites and Policies Plan Part 1 and policy CS6 of the North Somerset Core Strategy (NSCS) which protects the alteration of Green Belt boundaries during the plan period. Development should be in accordance with the development plan unless other material considerations indicate otherwise.

Supporting a prosperous rural economy

Part 3 of the NPPF supports economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development by encouraging sustainable growth and expansion of all types of business through the conversion of existing buildings, well designed new buildings, promoting development and diversification of agricultural and other land based rural businesses, supporting sustainable rural tourism and leisure development and promoting the retention and development of local services and community facilities.

This is supported by policies CS20 and CS33 of the NSCS which supports sustainable development in rural areas providing the development is appropriate in scale to the settlement it serves, the character of the area is protected and a locally identified need is established. CS23 of the NSCS and DM50 of the Sites and Policies Plan is also relevant in that it supports proposals for the development of Bristol Airport providing satisfactory resolution of environmental issues, including the impact of growth on surrounding communities and surface access infrastructure.

Promoting sustainable transport

Part 3 of the NPPF encourages sustainable transport modes, giving people a real choice about how they travel.

In preparing local plans, local planning authorities should support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport. Local authorities should work with neighbouring authorities and transport providers to develop

strategies for the growth of ports, airports or other major generators of travel demand in their areas.

All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment and plans and decisions should take into account the opportunities for sustainable transport modes, whether there is safe and suitable access to the site and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development.

When planning for ports, airports and airfields that are not subject to a separate national policy statement, plans should take account of their growth and role in serving business, leisure, training and emergency service needs. Plans should take account of the NPPF as well as the principles set out in the relevant national policy statement and the Government Framework for UK Aviation.

Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. All developments which generate significant amounts of movement should be required to provide a travel plan

CS10 of the NSCS is relevant when considering travel management policies and development proposals and refers to the major schemes set out in the Joint Local Transport Plan (JTLP).

DM24 of the Sites and Policies DPD Part 1 permits development provided it does not prejudice highway safety. Development which gives rise to a significant number of travel movements will only be refused on transport grounds if it severely impacts on traffic congestion or on the character and function of the surrounding area or it is not accessible by non-car modes. DM30: Off-airport car parking is relevant when considering the management of demand for travel by car by ensuring that the provision of car parks is balanced with the need to promote wider travel choices and to protect the Green Belt from off-airport car parking.

Conserving and enhancing the natural environment

The NPPF recognises that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and the aim should be to minimise pollution and other adverse effects on the local and natural environment. Planning policies and decisions should encourage the re-use of land that has been previously developed. CS5 of the Sites and Policies DPD: is relevant when considering the impact off-site airport parking has on the various landscape areas identified in the North Somerset Landscape Character Assessment SPD.

Requiring good design

Part 7 of the NPPF identifies good design as a key aspect of sustainable development and contributes positively to making places better for people. Planning policies and decisions

should aim to ensure all development functions well and adds to the overall quality of the area. Good design is more than aesthetic considerations and therefore policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

CS3 of the Sites and Policies Plan Part 1 is relevant when considering if development causes harm to amenity and in consideration of the impact of development on the living conditions of local residents.

Other material considerations

Joint Local Transport Plan

The Airport Surface Access Strategy (ASAS) forms part of the JLTP and is a requirement of a section 106 agreement for the development of Bristol Airport. The purpose of the ASAS is to improve access to Bristol Airport and to increase the use of public transport.

DETAILS

Background

A decision to make an Article 4 direction was made on 22 August 2016 to remove permitted development rights to control the temporary use of any land for not more than 28 days in total in any calendar year. It was specifically targeted at removing the use of land for the storage, parking, cleaning, maintenance or repair of any motor vehicle of any description providing it was not used in association with the authorised use of the land.

'Permitted development rights' under the Town and Country Planning (General Permitted Development) (England) Order 2015 [GPDO] Schedule 2, Part 4 Temporary Buildings and Uses, Class B grants a general planning permission (known as "permitted development") for various more minor development. This means that an application for planning permission is not required for the development, provided the development does not breach any restrictions in the Order. Class B permits

"The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of—

(a) The holding of a market;

(b) Motor car and motorcycle racing including trials of speed, and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use."

The restrictions where development is not permitted by Class B is if

(b) The land in question is a building or is within the curtilage of a building;

(c) The use of the land is for a caravan site;

(d) The land is, or is within, a site of special scientific interest and the use of the land is for—

(i) Motor car and motorcycle racing including trials of speed or other motor sports, and practising for these activities;

(ii) Clay pigeon shooting; or

(iii) Any war game, or

(e) The use of the land is for the display of an advertisement.

An Article 4 Direction under the GPDO provides if the Secretary of State or the local planning authority is satisfied that it is expedient that development described in any Part, Class or paragraph in Schedule 2, other than Class K[, KA] or M of Part 17, should not be carried out unless permission is granted for it on an application, they may make an Article 4 Direction that the permission granted by the GPDO does not apply to (a) all or any development of the Part, Class or paragraph in question in an area specified in the Direction; or (b) any particular development, falling within that Part, Class or paragraph, which is specified in the Direction.

There is also Government Guidance on the making of an Article 4 Direction that provides some of the following advice:

What can an Article 4 Direction do?

Provided that there is justification for both its purpose and extent, an Article 4 Direction can:

- cover an area of any geographic size, from a specific site to a local authority-wide area
- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect

When is it appropriate to use Article 4 Directions?

The use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the Direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- a wide area (eg those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)
- agriculture and forestry development. Article 4 Directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty
- cases where prior approval powers are available to control permitted development
- leisure plots and uses

- the installation of microgeneration equipment

Does an Article 4 Direction mean that development is not allowed?

An Article 4 Direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail.

Is compensation payable where permitted development rights have been withdrawn?

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 then 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 on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

There are two types of Article 4 Directions that can be made, immediate and non-immediate. The Article 4 Direction made was a non-immediate Article 4 Direction to control the particular development described. The practical effect of an Article 4 Direction, when in force, is not to automatically prevent development which would otherwise have been permitted, but to require an application for planning permission for that development. The existence of a Direction does not convey any more restrictive policy approach to the determination of such applications. Where permitted development rights have been removed, any applications for development which would otherwise have been permitted development do not attract a fee, therefore the work undertaken by the Council in respect of such applications would not generate any income.

A constraint on the use of Article 4 Directions is a possible claim of compensation for abortive expenditure or loss of income directly attributed to the withdrawal of permitted development rights, if permission is later refused or granted subject to more limiting conditions. There are also time limits to paying compensation.

Public consultation on the proposed Article 4 Direction took place between 20 October 2016 and 30 November 2016 on the Article 4 Direction made on 22 August 2016. Comments were received by 81 respondents. The comments are attached to this report.

A number of issues have been raised which need to be addressed in some detail. The timescales before the direction takes effect does not provide the council with sufficient time to take into account the representations received and it is therefore considered appropriate to cancel the direction decision made on 22 August 2016.

CONSULTATION

The Article 4 Direction decision made on 22 August 2016 was widely advertised both in the local press, by site notices and on the council's website. Responses were requested for the period 20 October 2016 until 30 November 2016. The consultation carried out was over and above the statutory requirement.

The consultation process attracted 81 responses of which:

46 supported the proposal

24 objected to the proposal

11 made neutral comments (defined as having no strongly marked view either way)

A copy of the comments and the council's response are appended to this document in full. Because it is proposed to cancel the Direction to enable full consideration of the responses no individual comments to the responses have been made.

In summary, representations received which supported the making of the Article 4 Direction highlighted the following issues created by unauthorised off-airport parking sites:

- They are an eyesore and a blight on the countryside
- They are an encroachment in the Green Belt
- Excessive vehicle movements on country lanes
- Increasing traffic congestion
- The impact on highway safety from poorly accessed unauthorised sites.
- Noise and disturbance especially at night.

The following issues/objections were raised by a number of respondents.

- No background information
- The council is creating a monopoly on car parking for the airport and restricting competition.
- The process should be subject to a sustainability appraisal/strategic environmental assessment.
- The officer's report does not state the relevant statutory test has been satisfied which is required by Article 4(1).
- The map which defines the area to be covered by the Article 4 Direction is unclear and there is no justification for the area proposed to be covered by the Article 4 Direction.
- The Article 4 Direction will result in displacement of these sites to other areas and therefore should be extended.
- Why is the council not enforcing against the unauthorised sites as soon as the Article 4 Direction comes into effect?
- Will the Article 4 Direction effect works carried out by statutory undertakers.
- The officer's report does not set out any evidence which satisfies the requirement that Article 4 Directions related to agriculture and forestry "demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty" (PPG reference ID: 13-038-20140306). There is no mention of landscapes of exceptional beauty in the report. This test is not satisfied: the

areas in question are agricultural fields adjacent a major airport that are not exceptionally beautiful.

- The council should produce a supplementary planning document to release alternative and for off-site airport parking operators.
- More public transport should be provided
- The expensive cost of the on-site airport parking including the charge of dropping off and picking up is creating this issue.
- There is a loss of rural employment.
- There is no impact on residents because there is little housing in the immediate area of the airport where most of these car parks are based.

To cancel the Article 4 Direction decision made 22 August 2016 there is a procedural requirement to carry out the same process as that undertaken when making the direction. This means the requisite advertisements and site notices etc. will be posted again notifying the decision to cancel the Article 4 Direction.

FINANCIAL IMPLICATIONS

The cancelling of the Article 4 Direction gives no rights to compensation. .

RISK MANAGEMENT

The cancelling of the Article 4 Direction made on 22 August 2016 to enable the council to take into account all representations it has received does not create any risks at present.

EQUALITY IMPLICATIONS

The cancelling of the Article 4 Direction decision made on 22 August 2016 to enable the council to take into account all representations it has received does not provide any equality implications.

CORPORATE IMPLICATIONS

The cancelling of the Article 4 Direction decision made on 22 August 2016 to enable the council to take into account all representations it has received does not provide any corporate implications.

OPTIONS CONSIDERED

1. The Article 4 Direction decision made on 22 August 2016 cannot come into force on the date specified unless it is confirmed by the local planning authority. If the council were to confirm the direction without taking into account any representations it received during the representation period it could lead to a legal challenge. Confirming the Article 4 Direction in these circumstances is not recommended.

2. Cancelling the Article 4 Direction decision made on 22 August 2016 will enable the local planning authority to take into account all representations received during the representation period before considering whether to make any new direction. This option is recommended.

Conclusion

It is recommended that the Direction decision made under Article 4 on 22 August 2016 is cancelled. This will enable the council sufficient time to take into account all representations received before proposing to move forward with the making of a further Article 4 direction.

AUTHOR

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BACKGROUND PAPERS

Decision 16/17 DE162

Representations received 20 October 2016 – 30 November 2016

National Planning Policy Framework:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60777/2116950.pdf

National Planning Practice Guidance:

http://planningguidance.planningportal.gov.uk/blog/guidance/when-is-permission-required/what-are-permitted-development-rights/#paragraph_034

