

URGENT ITEM

DEVELOPMENT COMMITTEE

21 APRIL 2011

REPORT OF HEAD OF REGULATORY SERVICES

PROPOSED SUB-DIVISION OF AGRICULTURAL LAND OFF WELBY LANE, AB KETTLEBY

1. PURPOSE OF THE REPORT

- 1.1** To seek the approval of the Committee to issue a direction under the provisions of Article 4 of the Town and Country Planning (General Permitted Development Order) 1995, as amended, to remove rights for to carry out certain 'permitted developments' on the land.

2. RECOMMENDATION

- 2.1** **That Members agree to the use of an Article 4 Direction as described removing the 'permitted development rights' detailed in appendix 1 attached to this report.**

3. BACKGROUND

- 3.1** Members will recall the report on 24th February 2011 regarding land being sold off Welby Lane, Ab Kettleby. That land is being sold off in 8 plots of land being of varying sizes between 2.5 and 6 acres, a total of 30.83 acres (12.48 hectares) and are being advertised for equestrian or leisure uses. This Direction has been made and it is anticipated that it will be confirmed on 27th May 2011.
- 3.2** The Council has become aware that a section of land closer to Ab Kettleby has similarly been sold off and these plots have been purchased. We have been approached by the local ward member to see if it would be possible to make a similar Article 4 Direction on this land as has been made on the rest. This has become more of an issue as an unauthorised vehicle access has recently been constructed, which is currently the subject of an enforcement investigation.
- 3.3** Open land carries with it diverse rights to develop it without the need for first being granted a specific planning permission, 'permitted development rights'. These rights can be for means of enclosure, tracks and hardstandings, small buildings and accesses and even the stationing of a caravan, dependent on the use that the land is put to.
- 3.2** An Article 4 Direction is a tool which is available to a local planning authority that can be used to respond to the particular need to withdraw the permitted development rights that would otherwise normally apply by virtue of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the 'GPDO'). An Article 4 direction does not prevent the carrying out of development to which it applies, but instead requires that a specific grant of

planning permission is first obtained for that development to be carried out. As such the local planning authority would have control over the development of the land and be in a position to ensure that development of the land is acceptable and satisfies the policies of the Development Plan.

- 3.3 Guidance advises that a Local Planning Authority should consider making article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. In deciding whether an article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.
- 3.4 For all article 4 directions the legal requirement is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. Additionally, for directions with immediate effect, the legal requirement is that the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenity of their area.

4. APPRAISAL

- 4.1 The subdivision and sale of small plots of agricultural land is a matter of concern. It has been experienced elsewhere in the Borough that the portioning up of agricultural land in such ways can have a serious detrimental impact on the character and appearance of an area with the erection of fences, new accesses, tracks and associated paraphernalia which is attracted by leisure uses of small paddocks and fields.
- 4.2 Experience has shown that there is, on the balance of probabilities, probable justification for concluding that there is an immediate threat of the development of fences or other means of enclosure to sub-divide the land. Officers also anticipate that the normally undisturbed countryside would be seriously adversely affected by the inappropriate exercise of permitted development rights to physically subdivide the land into plots, creation of hard-standings, accesses, possible temporary changes of use for up to 28 days and the stationing caravans for amenity purposes on that land.
- 4.3 Policy OS2 of the Adopted Local Plan seeks to protect the countryside from inappropriate development. Officers take the view that it is expedient that these interests are protected in the circumstances of this case in the public interest.
- 4.4 It is considered that is appropriate to urgently bring permitted development rights for development on this land including the construction of gates, walls, fences, hard-standings, temporary uses and stationing of caravans on this land within full planning control. It is considered that it is in the public interest to require such development on this land to be subject of full planning consideration and control enabling the Council, where appropriate, to grant permission with or without such conditions as may be appropriate or to refuse permission on the merits of a particular application.

5.0 POLICY AND CORPORATE IMPLICATIONS

5.1 There are no significant corporate implications arising from this proposal.

6.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

6.1 The direction may result in additional applications which will require consideration and determination by the Development Control Team and the Committee. These would not attract a fee because applications generated by the removal of permitted development rights are exempt. However, it is considered that the number will not be significant when weighed against overall workload, and there may be a compensatory benefit in avoiding detailed enforcement complaints and investigations.

7.0 LEGAL IMPLICATIONS/POWERS

7.1 An Article 4 Direction can be used to withdraw the permitted development rights that would otherwise normally apply by virtue of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the 'GPDO'). An article 4 direction does not prevent the carrying out of development to which it applies, but instead requires that a specific grant of planning permission is first obtained for that development to be carried out.

8.0 COMMUNITY SAFETY

8.1 There are no direct community safety implications, although the Direction would enable the Council to control the formation of accesses onto Welby Lane, which could be a source of danger.

9.0 EQUALITIES

9.1 There are no direct equality implications.

10.0 RISKS

10.1 There are circumstances in which the Local Planning Authority may be liable to pay compensation having made an article 4 direction, although the potential liability is limited in many cases by the time limits that apply.

10.2 Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn 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 GPDO would normally allow, as a result of an article 4 direction being in place.

10.3. Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

- 10.4. 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 GPDO).
- 10.5. Specific compensation provisions apply in relation to statutory undertakers, who may additionally claim for loss of profits.
- 10.6 It is the understanding of Officers that successful claims for compensation are extremely rare.

11.0 CLIMATE CHANGE

- 11.1 There are no climate change implications.

12.0 CONSULTATION

- 12.1 The issue has arisen from representations received from the Local Ward Member.

13.0 WARDS AFFECTED

- 13.1 The site lies within the Old Dalby Ward

Background Documents:

Contact Officer:

Mr A Dudley – Enforcement Officer

Mr J Worley - Head of Regulatory Services

Appendix 1

Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended

PART 2 - MINOR OPERATIONS

Class A

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Class B

Permitted development

B. The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

PART 4 - TEMPORARY BUILDINGS AND USES

Class A

Permitted development

A. 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 that land or on land adjoining that land.

Class B

Permitted development

B. 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 referred to in paragraph B.2, and the provision on the land of any moveable structure for the purposes of the permitted use.

PART 5 - CARAVAN SITES

Class A

Permitted development

A. The use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2.

Interpretation of Class A

A.2 The circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required), but in relation to those mentioned in paragraph 10 do not include use for winter quarters.

PART 6 - AGRICULTURAL BUILDINGS AND OPERATIONS

Class A - Development on units of 5 hectares or more

Permitted development

A. The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of—

- (a) works for the erection, extension or alteration of a building; or
 - (b) any excavation or engineering operations,
- which are reasonably necessary for the purposes of agriculture within that unit.

Class B - Development on units of less than 5 hectares

Permitted development

B. The carrying out on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares in area of development consisting of—

- (a) the extension or alteration of an agricultural building;
- (b) the installation of additional or replacement plant or machinery;
- (c) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus;
- (d) the provision, rearrangement or replacement of a private way;
- (e) the provision of a hard surface;
- (f) the deposit of waste; or
- (g) the carrying out of any of the following operations in connection with fish farming, namely, repairing ponds and raceways; the installation of grading machinery, aeration equipment or flow meters and any associated channel; the dredging of ponds; and the replacement of tanks and nets,

where the development is reasonably necessary for the purposes of agriculture within the unit.

Appendix 2 – Article 4 Direction Process

<p>1. Check whether an article 4 direction is appropriate, and whether the direction should come into force following consultation or immediately</p>	
<p>2. Draft an article 4 direction</p> <p>Annex B provides a model for non-immediate directions, Annex C a model for directions with immediate effect. A local model may be used, but it must contain all the information set out in the appropriate model in this guidance.</p>	
<p>3. Serve notice locally and notify the Secretary of State as soon as practicable after the direction has been made, adhering to requirements of details to be contained in the notice.</p>	
<p>3.1. Local notification procedure</p> <p>Notice of an article 4 direction shall be given by the local planning authority:</p> <ul style="list-style-type: none"> - by local advertisement (as defined in article 1(2) of the GPDO) - by site display at no fewer than two locations within the area to which the direction relates (or if the direction relates to a particular development, on that site) for a period of not less than six weeks); - individually on every owner and occupier of every part of the land within the area or site to which the direction relates (unless it is impracticable because it is difficult to identify or locate them, or the number of owners or occupiers within the area to which the direction relates would make individual service impracticable- this exemption from individual service of notice does not apply, however, when the owner/occupier is a statutory undertaker or the Crown); - between County planning authorities and district/ local authorities within whose county or district the area/ site to which the direction relates is situated (where both tiers exist). 	<p>3.2. Notifying the Secretary of State</p> <p>On the same day that notice of an article 4 direction is first published or displayed locally, the local planning authority shall notify the Secretary of State. A copy of the direction (and a map defining the area/ site to which it relates) as well as a copy of the local consultation notices should be sent to:</p> <p>Government Office West Midlands (email: wmplanning@gowm.gsi.gov.uk)</p> <p>or post to:</p> <p>Government Office for East Midlands, Planning, Sustainable Futures Directorate,</p> <p>It may not be possible to send a copy of the local publicity notices themselves on the same day as those affected by the direction are notified- it is therefore acceptable to send a copy of the notices as will be published.</p>

4. Determine whether to confirm the direction

Any representations received during consultation must be taken into account by the local planning authority in determining whether to confirm a direction (see paragraphs (9) and (10) of article 5 of the GPDO). Material changes to the direction resulting from consultation will require re-consultation. Immediate directions will expire six months after they come into force, unless confirmed. The local planning authority shall not confirm a direction until after the expiration of either a period of at least 28 days following the latest date on which any notice relating to the direction was served or published, or such longer period as may be specified by the Secretary of State (after having been notified by the local planning authority of making a direction).

5. Direction comes into force

If confirmed by the local planning authority, a non-immediate direction will come into force on the date specified in the notice that the local planning authority served originally on those that would be affected (see article 5(7) of the GPDO). Taking into account representations received during consultation may require that the direction comes into force later than specified in the initial notice of the direction. Once confirmed both non-immediate and immediate directions permanent (unless cancelled by the local planning authority or Secretary of State).

6. Serve notice locally and notify the Secretary of State as soon as practicable after the direction has been confirmed, adhering to requirements of details to be contained in the notice. This requirement neither applies to immediate directions related exclusively to Conservation Areas where the development is specified in 6(3) (a) to (j) of the GPDO, nor to directions related exclusively to listed buildings where permitted development rights withdrawn are in Parts 1-4 and 31 of Schedule 2 to the GPDO.

6.1. Local notification procedure

See stage 3.1 in advice

6.2. Notifying the Secretary of State

As soon as practicable after the direction has been confirmed the local planning authority shall send a copy of the confirmed direction to the Secretary of State (see stage 3.2. in advice).

In all cases notice of an article 4 direction must:

- Include a description of the development and the area/site to which the direction relates (as the case may be);
- Include a statement of the effect of the direction;
- Specify that the direction is made under article 4(1) of the GPDO;
- Name a place where a copy of the direction and a copy of a map defining the area/ site to which it relates (as the case may be) can be seen at all reasonable hours;

Where notice is of the making of any article 4 direction the notice must additionally:

- Specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority

Where notice is of the making of a non-immediate article 4 direction, the notice must additionally;

- Specify a date on which it is proposed that the direction will come into force (which must be at least 28 days later, but no longer than two years after, the date upon which the consultation period begins)



