

Guildford Borough Council

Report to: Executive committee

Date: 16th of May 2024

Ward(s) affected: Tillingbourne

Report of Joint Strategic Director: Place

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Report Status: Open

Consideration of confirmation for an Article 4 Direction on land on the south and east sides of Chase Cottage, Sutton Place, Abinger Hammer, Dorking, RH5 6RP

1. Executive Summary

In December 2023 a report was written to consider a request for an immediate Article 4 Direction to be placed on the Land. The Council concluded that it was necessary to make the immediate Article 4 Direction to prevent harm to the designated Green Belt and its openness, to the landscape character of the area and the setting of the Grade II* Listed Building, Usherwood, Sutton Place. It was considered that certain permitted developments rights, hereafter referred to in this report and as specified in the Article 4 Direction, would be prejudicial to the proper planning of the area or constitute a threat to the amenities of the area. The Article 4 Direction was introduced with immediate effect and came into force on the 12th of December 2023 and remains in force until the 11th of June 2024 (being six months from the date on which the Direction came into

force) unless confirmed by the Local Planning Authority (LPA) before the end of the six-month period. This report recommends that the Article 4 Direction now be confirmed.

2. Recommendation to Executive

That the Executive delegates authority to the Assistant Director of Planning Development to take all reasonable steps to confirm the Article 4 Direction made on 12 December 2023 in respect of Land on the south and east sides of Chase Cottage, Sutton Place, Abinger Hammer, Dorking, RH5 6RP registered at H.M. Land Registry under Title Number SY739199 (“the Land”) (“the Article 4 Direction”) as shown edged in red on the plan attached to the Article 4 Direction.

3. Reason(s) for Recommendation:

- 3.1. Concern remains about the implications on the openness of the Green Belt, the landscape value of the Surrey Hills National Landscape (SHNL) (formerly Area of Outstanding Natural Beauty) and Area of Great Landscape Value (AGLV) and potential harm to the setting of a Grade II* Listed Building, Usherwood, Sutton Place that would result from the subdivision of the Land. This concern could be realised should permitted development rights under Class A, Part 2 and Class B, Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (henceforth simply “the GPDO”) be exercised.
- 3.2. Part 3 of the Guildford Borough Council Constitution dated 31 January 2024 delegates to the Joint Executive Head of Planning Development the power to make and confirm Article 4 Directions where there are no objections. Should an objection be received the authority to confirm the Article 4 Direction would lie with the Council’s Executive. Since serving the Article 4 Direction one of the registered owners of the Land submitted correspondence including emails dated the 28th of December 2023 and 4th of January 2024 in which they suggest that the actions that caused the Council to serve the Article 4 Direction were undertaken not by the registered owners, but by a potential buyer who pulled out of the sale (a copy of this correspondence is attached to this report at Appendix 5).

Whilst the registered owner has not explicitly stated that they object to the Article 4 Direction, given this correspondence the Executive Head of Planning Development has taken the decision to not use these delegated powers and therefore the report seeks authority to confirm the Article 4 Direction.

- 3.3. Notwithstanding that the action causing concern to officers was perhaps not undertaken by the registered owners, they have provided nothing to allay concerns. For this reason, officers consider that the potential harm by way of sub-dividing the land remains. For the reasons set out in the previous report to make the Article 4 Direction, officers consider that the development which the Article 4 Direction controls, would be prejudicial to the proper planning of the area and constitute a threat to the local amenity of the area by potentially causing harm to the designated Green Belt and its openness, the landscape value of the SHNL, AGLV and the setting of a Grade II* Listed Building. It is considered necessary to confirm the Article 4 Direction in order to continue the protection offered to these important matters. A copy of the Article 4 Direction and previous report are attached to this report at Appendix 1.

4. Exemption from publication

None.

5. Purpose of Report

The purpose of this report is to obtain authority from the Executive to confirm the Article 4 Direction.

6. Strategic Priorities

- 6.1. The Council's Corporate Plan dated 2021-2025 sets out the fundamental themes that support the Council's vision.
- 6.2. One of the values is to put the needs of our community first and put the environment at the heart of our actions and decisions.

7. Background

7.1. A map of the Land can be seen at Appendix 2 and a copy of the Land Registry Title and Plan at Appendix 3. The Land lies within the Green Belt, AGLV, SHNL and lies to the north of a Grade II* Listed Building, Usherwood, Sutton Place.

7.2. At the time of drafting the previous report the Land had been advertised for sale by an estate agent named Wills and Smerdon. Their website described and identified the land for sale and stated:

‘Wills and Smerdon are proud to bring to the market parcels of approximately 0.2 acres of undeveloped land with road access in the prestigious location of Sutton Place, Abinger Hammer, Dorking’

The listing included a guide price and a description of the plots (see Appendix 4).

7.3. Since the Article 4 Direction was made by email dated 28 December 2023 one of the registered owners of the Land contacted the Council and suggested that the act of advertising the land for sale was done by a potential buyer who at some point pulled out of purchasing the Land. However, officers have no evidence to support this claim. The Land does not currently appear for sale online with Wills and Smerdon nor on any of the popular online estate agents, however, the correspondence from the registered owner has not allayed concerns that officers have, nor provided a compelling reason to allow the Article 4 Direction to lapse. Were the Council to not confirm the Article 4 Direction it will fall away on the 12th of June 2024; the owner would be free to plot out the Land as advertised. Class A, Part 2, Schedule 2 of the GPDO provides permission for the erection of fencing/gates/means of enclosure and the Council would have no control over this right being exercised in relation to any plot on the Land. In addition, there is further concern that similarly Class B, Part 4, Schedule 2 of the GPDO could be utilised to provide a variety of temporary buildings and uses which again the Council would have no control over.

- 7.4. The current Article 4 Direction removes the automatic permission granted by both Class A, Part 2 and Class B, Part 4, Schedule 2 of the GPDO, however, unless confirmed the protection will fall away on the 12th of June 2024. The purpose of confirming the Article 4 Direction is to continue the protection offered to the designated Green Belt, AGLV, SHNL and the setting of the Grade II* Listed Building.
- 7.5. Since the Article 4 Direction was made the Council received correspondence from one of the registered owners of the Land. Whilst not an explicit objection to the Council's decision to serve the Article 4 Direction, the Executive Head of Planning Development considers that a cautious approach should be taken and conclude that the comments should be taken as an objection. Part 3 of the Guildford Borough Council Constitution dated 31 January 2024 sets out the responsibility for functions. The power to make and confirm all Article 4 Directions where there are no objections, is delegated to the Joint Executive Head of Planning Development. Therefore, as the correspondence from the registered owner is considered by officers to amount to an objection the decision to confirm the Article 4 Direction lies with the Executive. A copy of the owner's correspondence is attached to this report at Appendix 5 and the relevant pages of the constitution at Appendix 8.

8. Consultations

- 8.1. The Land lies to the north of a Grade II* Listed Building, Usherwood, Sutton Place. The Council's Design and Conservation Planning Policy Officer has been consulted and comments that the sub division of the land would affect the setting of a heritage asset and therefore supports placing an Article 4 Direction on the Land. A copy of the officer's comments are attached to this report at Appendix 6.
- 8.2. The Land lies within the Surrey Hill National Landscape (formally known as the AONB) and the AGLV. Surrey County Council's Surrey Hills AONB (Area of Outstanding Natural Beauty) Planning Adviser has been consulted and supports the Article 4 Direction in the interest of protecting this valued landscape. A copy of the officer's comments are attached to this report at Appendix 7.

- 8.3. The LPA received two relevant pieces of communication from one of the registered owners of the Land. On the 28th of December 2023 an email was received stating that the concerns presented to the Council were based on the actions of a prospective purchaser rather than themselves and that they *'we're not trying to do anything!'*. The owner was advised of the reasons why the Council served the Article 4 Direction by an email from the LPA dated 04 January 2024.
- 8.4. A further email was received by the LPA from the Owner on the 4th of January 2024 asking if the Direction was served on *'Estate and Land Holdings'*. A response was sent by the LPA to the owner by email on 09 January 2024 listing all the parties that the Direction was served on.
- 8.5. Copies of the correspondence between the Council and the owner are attached to this report at Appendix 5.
- 8.6. On the 8th of January 2024 the LPA received correspondence from the Department for Levelling Up, Housing & Communities requesting evidence for the Council's decision in making the Article 4 Direction. In response the Council provided a copy of the report recommending the Article 4 Direction.
- 8.7. On the 12th of January 2024 the LPA received correspondence from the Department for Levelling Up, Housing & Communities advising the correspondence would be passed to their Article 4 Direction policy team. No further contact has been received.

9. Key Risks

- 9.1 Whilst it appears that the Land is no longer for sale concern remains that the Land could be laid out in multiple plots and enclosed with fencing pursuant to Class A, Part 2, Schedule 2 of the GPDO. Concern also remains that Class B, Part 4, Schedule 2 of the GPDO could lead to the potentially plotted land being lawfully used for a variety of purposes for 28 days in any calendar year.
- 9.2 Paragraph 53 of the National Planning Policy Framework (NPPF) is clear that the use of Article 4 Directions should *'be limited to situations where an Article 4 direction is necessary to protect local*

amenity or the well-being of the area' and 'in all cases, be based on robust evidence, and apply to the smallest geographical area'.

Green Belt

- 9.3 The Land is located within the designated Green Belt. National policy is clear that the Government attaches great importance to Green Belts, their fundamental aim being to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence (paragraph 142, NPPF December 2023). This is replicated in Policy P2 of the adopted Guildford Borough Local Plan: strategy and sites 2015-2034.
- 9.4 Were the Land subdivided into multiple, smaller plots and then enclosed with fencing or similar it would result in harm to the openness of the Green Belt bringing development to what is currently open land. This would be contrary to the fundamental aim of protecting Green Belt land. Furthermore, were the subdivision to occur this could lead to part or all of the Land being used for a number of temporary uses that would otherwise be permitted development. Examples might be using the Land for forest schools, war games and clay pigeon shooting, which typically are accompanied by chattels such as shooting galleries, targets, portable toilets and containers to store equipment. There is concern that the cumulative effect of this could be to the detriment of the designated Green Belt and its openness, contrary to Policy P2 of the Guildford borough Local Plan: strategy and sites 2015-2034 and Chapter 13 of the NPPF.

Peaslake Open Greensand Hills, Area of Great Landscape Value and Surrey Hills National Landscape

- 9.5 The Land is an open green field located within Landscape Character Assessment Area L2: Peaslake Open Greensand Hills. The Peaslake Open Greensand Hills has the key characteristics of rolling landscapes containing predominantly pastoral landscape diversified by areas of mixed woodland, arable farmland, remnant heathland as well as paddocks and caravan parks. The area has a varied field pattern with a mix of semi-regular and medium to large regular

fields bounded by hedgerows with some hedgerow trees. The assessment lists fragmentation of landholdings for horse paddocks with increased number of jumps, fence and poached fields as a past change and a future potential change. The landscape strategy seeks to conserve the pastoral, rural character of the area with its largely intact field patterns.

- 9.6 The Land also lies within the AGLV and SHNL, areas of the countryside considered to have significant landscape value including striking views and access to natural green space. These areas should be conserved and enhanced to maximise their special landscape qualities and scenic beauty. Great weight should be given to the conservation and enhancement of these areas. Policy P1 of the 'Guildford borough Local Plan: strategy and sites 2015-2034' is clear that the AONB *'will be conserved and enhanced to maximise its special landscape qualities and scenic beauty'*. Additionally, development within the AGLV *'will be required to demonstrate that they would not harm the setting of the AONB or the distinctive character of the AGLV'*. The NPPF at paragraph 180 is clear that *'Planning policies and decisions should contribute to and enhance the natural and local environment' by 'protecting and enhancing valued landscapes'*. The NPPF at paragraph 182 specifically states that *'Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty'*. Furthermore that *'the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas'*.
- 9.7 Currently the Land is an open field bounded by trees that is in keeping with the general description set out in the Character Assessment, AGLV and SHNL. The Land is also in keeping with other examples of open land in the immediate vicinity. It is in a prominent location with clear views into the Land and beyond.
- 9.8 Officers remain concerned that the introduction of fencing or other means of enclosure, especially if on small multiple plots of land as a

consequence of subdivision, would be contrary to the strategy of the Landscape Character Assessment. There is also concern that in addition to subdivision and enclosure, temporary uses of these plots and potential chattels that those uses might bring, would result in considerable harm to the open nature of this area and cause serious harm to the valued landscape character of the area. This could individually and cumulatively, be harmful to the open landscape character of the immediate area and the wider Landscape Character Assessment Area. This would also fail to enhance or conserve the SHNL and would harm the distinctive character of the AGLV. Surrey County Council's AONB Planning Adviser remains concerned and supports the confirmation of the Article 4 Direction (see Appendix 7). The potential development would therefore be contrary to Policy P1 of the Guildford borough Local Plan: strategy and sites 2015-2034, Policy D4 of the Guildford Borough Local Plan: Development Management Policies (Adopted on the 22nd of March 2023) and Chapter 15 of the NPPF.

Heritage Assets

- 9.9 The Listed Building, Usherwood, lies approximately 43 metres to the south of the land. Policy D3: Historic environment, of the 'Guildford Borough Local Plan: Strategy and Sites 2015-2034' document is clear that as a designated heritage asset any new development must conserve heritage assets in a manner appropriate to their significance. The NPPF defines significance as *'the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic'*.
- 9.10 Policy D18: Designated Heritage Assets of the 'Guildford Borough Local Plan: Development Management Policies' (Adopted on the 22nd of March 2023) states that *'Positive action will be sought for those heritage assets at risk through neglect, decay, vacancy or other threats where appropriate'*.
- 9.11 Policy D19: Listed Buildings of the 'Guildford Borough Local Plan: Development Management Policies' (Adopted on the 22nd of March 2023) seeks to ensure that development proposals conserve,

enhance and where appropriate better reveal the significance of listed buildings and their settings.

9.12 Local and national policy seeks to ensure that the historic environment will be conserved and enhanced in a manner appropriate to its significance. Development of the highest design quality that will sustain and, where appropriate, enhance the special interest, character and significance of the borough's heritage assets and their settings and make a positive contribution to local character and distinctiveness will be supported. The impact of development proposals on the significance of heritage assets and their settings should be considered in accordance with case law, legislation, local and national policies. Development proposals are expected to conserve, enhance and where appropriate better reveal the significance of listed buildings and their settings.

9.13 Usherwood is designated at Grade II* for the following principal reasons:

- It is an externally unaltered Moderne style single storey house of 1934-6 by Basil Ward and Amyas Connell who, later joined by Colin Lucas, formed the most important architectural practice designing Modern Movement houses between 1930-9. It is the only single storey house designed by this firm and the only known house by this firm with a semi-circular glazed staircase tower.
- The interior retains the original staircase, original fireplace with built-in bookcase, radiators, internal doors and two built-in wardrobes.
- The plan form of open plan kitchen, dining room and lounge, two bedrooms and staircase tower leading to sunroof with part concrete canopy is intact.
- A pioneering system of four inch concrete blocks was used which in this case was experimentally aligned with the insulating boards. Not even Le Corbusier used this technique.
- It compares well with other houses by this firm designated at Grade II* for intactness, lack of extensions and early date. It compares well with other houses by this firm designated at Grade II* for intactness, lack of extensions and early date.

- 9.14 Officers remain concerned that the subdivision of the Land into smaller plots would undermine the prevailing pastoral character that surrounds Usherwood which has prevailed since the 1930's with limited change or alteration. The plots that were advertised were of a size that is contrary to any prevailing land divisions that characterise the heritage assets setting, and these would be emphasised significantly by the introduction of fences or other means of enclosure. If sold into multiple plots the result could lead to a patchwork and un-cohesive nature of character which would likely have an impact on the heritage asset's setting. The development would therefore be contrary to Policy D3 of the Guildford borough Local Plan: strategy and sites 2015-2034, Policies D18 and D19 of the Guildford Borough Local Plan: Development Management Policies (Adopted on the 22nd of March 2023) and Chapter 16 of the NPPF.
- 9.15 For the reasons set out above at paragraphs 9.1 to 9.14 officers remain concerned that should some or all of the Land be subdivided there is a real possibility that fencing may be erected around each plot and, in addition, that part or all the site could be used for a number of temporary uses that would otherwise be permitted development.
- 9.16 The development which the Article 4 Direction targets would be prejudicial to the proper planning and constitute a threat to the amenity of the area by potentially causing harm to the designated Green Belt and its openness, the landscape value of the SHNL, AGLV, The Peaslake Open Greensand Hills and the setting of a Grade II* Listed Building, Usherwood.
- 9.17 The Council's Design and Conservation Officer presented their concerns at the time the Article 4 Direction was initially made and there has been no material change in circumstances since that time. The original comments of the Design and Conservation officer are attached to this report at Appendix 6.
- 9.18 Confirming the Article 4 Direction would enable the LPA to retain greater control of development on the site and control development that could be contrary to Policies P1, P2 and D3 of

adopted Guildford Borough Local Plan: strategy and sites 2015 – 2034, Policies D4, D18 and D19 of the Guildford Borough Local Plan: Development Management Policies (Adopted on the 22nd of March 2023), and also contrary to principles within Chapters 13, 15 and 16 of the NPPF and the Peaslake Open Greensand Hills Landscape Character Assessment.

- 9.19 Unless confirmed, the Article 4 Direction will end on the 11th of June 2024 and the protection offered to the Land will be lost. Due to continued concerns about the harm to the local amenity of the area, this report recommends that the Article 4 Direction be confirmed to continue protecting against this potential harm.

Recommendation

- 9.20 To delegate authority to the Executive Head of Planning Development to take all necessary steps to confirm the Article 4 Direction, currently in effect on land known as Land on the south and east sides of Chase Cottage, Sutton Place, Abinger Hammer, Dorking, RH5 6RP which removes permission granted by Class A, Part 2 (Minor Operations) and Class B, Part 4 (Temporary Buildings and Uses), Schedule 2 of the GDPO).

10. Financial Implications

- 10.1 There is no right of appeal against an Article 4 Direction but the decision to confirm a Direction can be subject to Judicial Review proceedings. If these are pursued, there will be financial implications for the Council.
- 10.2 The withdrawal of PD rights by an Article 4 Direction may give rise to a liability to compensate. Any person interested in the Land may seek compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development rights. The Town and Country Planning Act 1990 (TCPA) does first require 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.

11. Legal Implications

- 11.1 By making and confirming an Article 4 Direction, an LPA can restrict the scope of permitted development rights in relation to defined areas. The effect of withdrawing such rights is that affected owners will need to seek express planning permission. If that permission is refused or granted subject to conditions other than those in the GPDO within twelve months of the Direction taking effect, the landowner is entitled under s108 of the TCPA to claim compensation for abortive expenditure and any loss or damage caused by the loss of rights.
- 11.2 The procedure for making Article 4 Directions is set out in Schedule 3 of the GDPO and delegated authority is given to the Joint Executive Head of Planning Development to make and confirm all Article 4 Directions where no objections are received.
- 11.3 When considering whether to confirm an Article 4 Direction the LPA must consider any representations received during the representation period. As the representations received are considered to amount to an objection the confirmation cannot take place under delegated authority.
- 11.4 Having reviewed the Council's Constitution, the decision to confirm an opposed Article 4 Direction has not been delegated and as such the decision falls to the Executive.

12. Human Resource Implications

Once the Article 4 Direction has been made and subsequently confirmed, the Local Planning Authority may receive more planning applications for development on the Land, which is normally considered permitted development. Further, it is possible the Local Planning Authority will receive more enforcement complaints about breaches of the Article 4 Direction. Both will have a human resource implication.

13. Equality and Diversity Implications

- 13.1 The confirmation of an Article 4 Direction will affect the landowner's property rights and engage Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998, which indicates that every natural or legal person is entitled to the peaceful enjoyment of their possessions. However, this is a qualified right and it is considered that the exercise of these planning powers, for the reasons stated above, is not inconsistent with the protection of property given the aggrieved persons have recourse to the law and the right to claim compensation in certain cases.
- 13.2 Further, it is considered that the implementation of the proposal in this report will not adversely affect persons with any of the protected characteristics specified in section 149 of the Equality Act 2010. Accordingly, it is considered that in approving this report, the LPA will be acting in compliance with the public sector equality duty.

14. Climate Change/Sustainability Implications

There are no Climate Change or sustainability implications arising from this report.

15. Summary of Options

- 17.1. To confirm the Article 4 Direction as recommended in this report.
- 17.2. Not to confirm the Article 4 Direction. Unless confirmed, the Article 4 Direction will end on the 11th of June 2024 and the protection offered to the Land will be lost. Due to continued concerns about the harm to the local amenity of the area, this report recommends that the Article 4 Direction be confirmed to continue protecting against this potential harm.

16. Conclusion

- 16.1 Having regard to the strong justification for making the Article 4 Direction, and in weighing up the objections received during the consultation period against the potential harm to the designated Green Belt, the landscape value of the SHNL, AGLV and the setting of a Grade II* Listed Building, the confirmation of the Article 4

Direction is considered necessary to continue offering greater protection to the Land and local amenity and well-being of the area.

- 16.2 It remains considered that the need for the Article 4 Direction is based on robust evidence, given the contents of the advertisement for sale of the Land by Wills and Smerdon, and the lack of evidence provided by the owners of the Land in their response to the Article 4 Direction. It also remains considered that the Article 4 Direction is limited to the smallest possible geographical location, as it is limited to the land that was advertised for sale.
- 16.3 It is therefore recommended that officers are authorised to take all necessary steps to confirm the Article 4 Direction, currently in effect to remove permission granted by Class A, Part 2 (Minor Operations) and Class B, Part 4 (Temporary Buildings and Uses), Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

17. Background Papers

None.

18. Appendices

- 20.1. Appendix 1: Article 4 Direction and report
- 20.2. Appendix 2: Land plan
- 20.3. Appendix 3: HM Title and Plan
- 20.4. Appendix 4: Sales particulars
- 20.5. Appendix 5: Correspondence from owner
- 20.6. Appendix 6: Correspondence from Design & Conservation from November 2023
- 20.7. Appendix 7: Correspondence from SCC AONB Adviser from March 2024
- 20.8. Appendix 8: Relevant pages from the Council's Constitution