

REPORT



REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	DEVELOPMENT MANAGEMENT COMMITTEE	1 OCTOBER 2014	

LYTHAM QUAYS: ARTICLE 4 DIRECTION

EXEMPT ITEM

This item contains exempt information under paragraph 6 of schedule 12A to the Local Government Act 1972 and is likely to be considered in a part of the meeting not open to the public.

SUMMARY

The report considers the possibility of the council making a direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove certain permitted development rights in respect of the land known as the Lytham Green Extension Transitional Zone, which forms part of the Lytham Quays development.

The report sets out the legislative background for article 4 directions and considers whether it is expedient that developments of the kind described in this report should not be carried out unless permission is granted on application and therefore that permitted development rights granted by article 3 should not apply. It also considers that such a direction may give rise to a compensation liability.

RECOMMENDATIONS

1. Make a direction under article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 to remove the permitted development rights granted by paragraph A of part 2 of schedule 2 to the order in respect of the land known as the Lytham Green Extension Transitional Zone, shown hatched in the plan to this report.
2. Make the direction with immediate effect as set out in article 6 of the order.

CABINET PORTFOLIO

This item falls within the following cabinet portfolio(s):

Planning and development: Councillor Trevor Fiddler

SUMMARY OF PREVIOUS DECISIONS

A brief summary of the previous decisions on this item.

REPORT

INTRODUCTION

1. This report requests the committee to authorise making an article 4 direction to remove certain permitted development of land at Lytham Quays, Lytham.
2. Lytham Quays is a residential development consisting of over 260 dwellings. It was granted outline planning permission in March 2003 (application 02/0641) with approval of reserved matters being granted in July 2006 (application 06/0073). The plan below shows the area covered by the planning permission edged in a bold black line and the area to be comprised in the proposed article 4 direction hatched.

[PLAN]

3. The hatched area is known as the Lytham Green Extension Transitional Zone and was intended to be retained as communal open space for the benefit of occupiers of the site. This provision was secured by condition 7 on application 02/0641 and conditions 3 & 14 on application 06/0073, which required the provision of landscaping and public open space.
4. Officers understand that, rather than being disposed of to a management company to be managed for the benefit of all of the residents of Lytham Quays, the hatched land has been or is in the process of being transferred to the owners of individual properties abutting the land. This fragmentation of ownership will make it much more likely that the individual owners will seek to enclose their own portions of the hatched land and use it as private domestic garden land.
5. The Head of Planning and Regeneration considers that incorporation of the hatched land into individual gardens in this way is undesirable because it will erode the open nature of this part of the site, which was intended to remain open in order to provide a setting for the villas along the estuary frontage.

PERMITTED DEVELOPMENT

6. Paragraph A of part 2 of schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 grants planning permission for the erection, improvement or alteration of a gate, fence, wall, or other means of enclosure. In the hatched area, the permitted development rights granted in this part of the schedule would allow a fence or wall of up to 2m in height.

SCOPE OF ARTICLE 4 DIRECTIONS

7. Article 4(1) of the order allows a local planning authority ("LPA") to make a direction that development described in any part, class or paragraph of schedule 2 to the Order should not be carried out unless permission is granted for it on application. There are certain exceptions, which are not relevant to this report.

POLICY

8. Government guidance on the use of article 4 directions is given in paragraph 038 of the Government's Planning Practice Guidance. So far as relevant to Lytham Quays, the guidance says:

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...leisure plots and uses.

Officers do not consider that the rights to be restricted fall within the description of “leisure plots” or uses or any of the other descriptions of circumstances where a particularly strong justification is required, which are not reproduced here.

PROCEDURE

9. An article 4 direction does not normally come into force until it is confirmed. The procedure requires the order to be made by the LPA and served and publicised in conformity with detailed requirements. The LPA may then confirm the direction. If there are objections to the direction, the LPA can only confirm it after taking the objections into account
10. The LPA can use an accelerated procedure if they consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. Under this procedure, the direction comes into force immediately upon service, but automatically expires after six months unless they confirm it before then.
11. The Secretary of State does not need to confirm a direction, but has the power to cancel one.

EXPRESS CONSENT

12. It is worth emphasising that an article 4 direction does not prohibit development. It merely means that there must be an application for express planning permission to the LPA for development that would otherwise be permitted development under the General Permitted Development Order.
13. An application for development such as the erection of a low wall to enclose part of the site would need to be considered by the council against the background of the development plan and national policy. The application would need to be decided in accordance with the development plan unless material considerations indicate otherwise.
14. This suggests that there needs to be some consideration of the likely outcome of any such planning application. There would be little point in making a direction if it appears that the council as LPA would be unlikely to be able to refuse the anticipated developments or significantly influence them by the use of conditions or planning obligations. That does not seem to be the case here, as discussed in paragraphs 15 to 18 below.
15. The transitional area of open space was originally envisaged as forming part of the open space serving this development. To this end, although access to the area by members of the public was not intended, the transitional zone was identified as providing 1.147 Ha of the total 4.843 Ha of Public Open Space set out in the applicant’s schedule submitted in discharge of the conditions attached to the outline planning permission and subsequent approval of reserved matters.
16. The subdivision of the transitional zone into individual plots of land and their enclosure would, in the opinion of your officers, erode the open setting of the villas and detract from the originally

intended provision of this area of land. At the time permission was granted, it was expected that this area of land would have remained in the ownership and management of the management company responsible for the care and maintenance of the open space on this estate. However, the subdivision of ownerships is considered to have increased the potential for future applications to enclose these areas of land.

17. Furthermore, the conditions that require the open space to be retained as approved are time limited and on the expiry of a 10-year period, the conditions could no longer be enforced to protect the open nature of the land. As a result of the land being ceded to the adjacent property owners, it is considered appropriate to put in place and Article 4 direction in the interests of the long term maintenance of this area of open space.
18. This analysis suggests that an article 4 direction would be a valuable tool to enable the council to restrict or control proposed development intended to enclose parts of the hatched area. Further, it suggests that the enclosure of parts of the hatched area would be prejudicial to the proper planning of the council's area, such that it would be appropriate to use the accelerated procedure to bring the article 4 direction into effect.

COMPENSATION

19. Compensation is payable where planning permission is refused if permitted development rights for the development have been removed by an article 4 direction.
20. Compensation is assessed under section 107 of the Town and Country Planning Act 1990. It covers abortive expenditure and depreciation in the value of land directly attributable to the withdrawal of consent by the direction. The Lands Tribunal assesses compensation if agreement cannot be reached. In this case, the nature of the land and other restrictions that apply to its use indicate that potential compensation liability would be very small.

CONCLUSION

21. It appears that it would be possible to make an article 4 direction to withdraw permitted development rights to erect gates, fences, walls or other means of enclosure in respect of the land shown identified as part of the Lytham Green Extension Transitional Zone. The direction could ensure that only development compatible with the preservation of the landscaping of the LGETZ is permitted. However, if the Council took the view that any enclosure of that area was unacceptable then the council could refuse planning permission for it and in that event, the council is likely to have to pay compensation which would have to be assessed if it could not be agreed.

IMPLICATIONS	
Finance	If the Council were to make an article 4 direction to withdraw permitted development rights as described in the body of this report the Council could, at some point in the future, be required to pay compensation should planning permission be refused in respect of permitted development rights that have been rescinded by the Council's actions in this regard. There is currently no approved budget for any such compensation payments should they become payable.

Legal	Covered in the body of the report
Community Safety	
Human Rights and Equalities	Article 8 of the European Convention rights is engaged, as it is by the wider restrictions imposed by the planning system as a whole. However, any interference with article 8 rights would be justified and proportionate because of the need to achieve the proper planning of the area.
Sustainability and Environmental Impact	
Health & Safety and Risk Management	

REPORT AUTHOR	TEL	DATE	DOC ID
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LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		