

REPORT TO CABINET

Title: **PETITION: REQUEST FOR DIRECTIONS RESTRICTING DEVELOPMENT IN WRAYSBURY**

Date: 24 September 2009

Member Reporting: Councillor Mrs Knight

Contact Officer: Graham Stallwood, Development Control Manager
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Wards affected: Horton and Wraysbury

The Mayor's consent has been requested and given under Part 4E 16(i) of the Constitution. The grounds for this are that any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests in that the Directions are urgently needed to give the Council necessary control over works. Therefore call in does not apply to this decision.

1. SUMMARY

- 1.1.1 The petition received relates to two areas in Wraysbury known as Coppice Field and Thamesfield. The petition calls for the Council to use its powers to take away normal rights for landowners, tenants and others to construct fences and walls on these areas of land. Residents wish "to help prevent fragmentation and potential overall change in the landscape". The areas are shown in Appendix A.
- 1.1.2 The land is being marketed for sale in small parcels of 200m². It is within the Green Belt and is liable to flood. The construction of most buildings on the land or changing its use from agriculture would need planning permission. However, national legislation permits the physical enclosure of the plots by fences and walls up to 2m high without planning permission from the Council.
- 1.1.3 The Council has powers to take away these rights to enclose land in exceptional circumstances where there is a real and specific threat. Such a Direction would be effective as soon as it is made and must be confirmed by the Secretary of State within six months otherwise it ceases to have effect. Some plots have now been fenced and the making of a Direction is now considered necessary.
- 1.1.4 Where such a Direction results in aborted expenditure or depreciation in the value of the affected land the landowner may claim compensation. The potential absence of fencing is unlikely to have major implications for land value, but there is some risk of claims for abortive expenditure from anyone who has commissioned enclosure works that have not yet occurred and that the Directions prevent. This is outweighed by the need to protect the intrinsic character of the sites.

2. RECOMMENDATION

That the Council makes Directions under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) in respect of Thamesfield and Coppice Field, Wraysbury to withdraw “permitted development” rights for:

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

What will be different for residents as a result of this decision?
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The Council will gain control over fences and walls in these two areas so it can protect the open character of the Green Belt in this part of Wraysbury for the benefit of residents.

3. SUPPORTING INFORMATION

3.1 Background

3.1.1 Both areas of land are open in character and mainly long grassed, though some areas are naturally overgrown and there are some trees. Paths are visible through the vegetation on Thamesfield and horses graze part of Coppice Field. Despite each area being partially bordered by houses, they have the visual characteristics of countryside and provide an important setting and amenity to the nearby houses. Both sites are within the Green Belt and are liable to flood. The land has being marketed for sale since early summer 2008 in small parcels of about 200m².

3.1.2 Officers from Development Control, Trading Standards and Public Rights of Way have provided advice to individuals, groups of local residents and the Parish Council over that period as necessary. Claimed established Public Rights of Way and a claim for Village Green status are separately being considered under their respective legal processes. The legal process for Village Green status could take six months or more, whilst that for the Public Rights of Way could take considerably longer.

3.1.3 Planning permission is required to construct most buildings on the land or to change its use from agriculture. However, national legislation permits the physical enclosure of the plots by fences and walls up to 2m high without planning permission from the Council.

3.1.4 The petition calls on the Council to use its powers to make an “Article 4(1) Direction”. The effect of such a Direction is to remove normal rights to undertake works without planning permission. In this case it is asked that the Direction removes rights for fences, walls and other means of enclosure to be constructed on the land. Under Article 5(4) such a Direction would be effective as soon as it is served, but it must be confirmed by the Secretary of State within six months otherwise it ceases to have effect.

3.1.5 An Article 4(1) Direction can only be made in exceptional circumstances where the

Council is satisfied the development likely to take place would be “prejudicial to the proper planning of their area or constitute a threat to the amenities of their area”. The *exceptional circumstances* test, alongside the test that it will rarely be justified unless there is a *real and specific threat* with reliable evidence in support is crucial. As with all planning matters, there is the accompanying public interest test which should take into account all considerations, implications and risks.

- 3.1.6 Although other areas of the Borough have been sold in small plots in this way in recent years, in those instances visual harm through physical subdivision has not occurred.
- 3.1.7 This is no longer the case at these two sites. Only a small proportion of the plots have been sold, however some of these are now being enclosed causing significant visual harm to the character of the area and a loss to its openness. Openness is the intrinsic quality of the Green Belt. An immediate threat is now therefore occurring, which has not previously occurred.
- 3.1.8 It is important to note that an Article 4(1) Direction does not give the Council increased enforcement powers, it only makes more forms of development need planning permission. If fencing development occurred without the necessary planning permission the normal process of considering expediency of enforcement action and, if appropriate, serving and Enforcement Notice would still need to occur.
- 3.1.9 A similar Direction under this power’s predecessor is already in place from 1950 across the whole of the former Eton Rural District (including these sites). It removes rights for temporary uses of land for caravans and other moveable structures. They therefore already need planning permission and the permanent siting of caravans would need permission in any case.

4. OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

	Option	Comments	Financial Implications
1.	Make a Direction in respect of both sites under Article 4(1) to remove rights for fences, walls and other means of enclosure without planning permission	Recommended	Revenue: Officer time of around £1000 to make Directions, which could be covered from approved budget. Risk of compensation claims as described in 4.2.2 and 4.2.3. Fencing costs up to around £500 per 10m stretch and each claim could be in the range of £1000 - £3000. Any claims could not be

	Option	Comments	Financial Implications
			<p>paid from existing approved budgets.</p> <p>Resulting planning applications would not need a fee for consideration.</p> <p>Capital: none</p>
2.	Make a Direction in respect of one of the sites under Article 4(1) to remove rights for fences, walls and other means of enclosure without planning permission	Not recommended	<p>Revenue: Officer time of around £1000 to make Direction, which could be covered from approved budget.</p> <p>Resulting planning applications would not need a fee for consideration.</p> <p>Capital: None</p>
3.	Do not make an Article 4(1) Direction and continue to make potential purchasers aware of the limited uses for the land	Not recommended	<p>Revenue: None</p> <p>Capital: None</p>

4.2 Risk assessment

- 4.2.1 **Option 1** is recommended. There is now a demonstrable harm to the openness of the Green Belt occurring as a result of enclosures being constructed on these previously open fields. A real and immediate threat exists that if a Direction is not made, the openness of the fields and their intrinsic character will be lost or seriously degraded. As an area liable to flood, the construction of considerable amounts of additional fences and walls similar to those recently constructed could also reduce the capacity of the fields to store water and obstruct the flow of floodwater.
- 4.2.2 The withdrawal of rights by an Article 4(1) Direction may give rise to liability to compensate a claimant for any aborted expenditure or for any depreciation in the value of the affected land. In Carter v Windsor and Maidenhead Royal Borough Council (1988) 3 PLR 6, the Lands Tribunal considered a claim for compensation where the applicant had sub-divided agricultural land into 15 parcels. The Council withdrew “permitted development” rights for agricultural buildings, subsequently refused permission for the planning applications and the Lands Tribunal ordered the Council to pay compensation of £135,450 (at the time) on the basis of land value

depreciation.

- 4.2.3 In reality it is unlikely the absence of fencing or walling could prevent an acceptable use of the land from occurring on this land: Risks in this respect are therefore limited compared to the Carter case. There is however the greater possibility that anyone who had commissioned fencing prior to any Direction being made, and who can no longer construct it because of the Direction, may suffer loss for which the Council could be liable. This would only apply where planning permission is refused. The likelihood that large numbers of landowners have already commissioned works and will suffer loss is limited. The risk can be minimised by asking landowners of their intentions, but such an enquiry could well encourage fencing to be undertaken in advance of any Direction thus defeating its purpose.
- 4.2.4 **Option 2** is not recommended. Both sites have comparable overall value in their present site and at are similar risk from development.
- 4.2.5 **Option 3** is not recommended. Although there would be no financial risk from this, there is a high risk of the character of the area being eroded. As a result the local community would be disappointed the Council did not use the powers available, even when plots started to be enclosed and the immediate threat was apparent.

5. CONSULTATIONS CARRIED OUT

5.1.1 None

6. COMMENTS FROM THE OVERVIEW AND SCRUTINY PANEL

6.1.1 The Panel is supportive of the recommendation and made no other comments.

7. IMPLICATIONS

7.1.1 The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
✓	✓	✓	✓	✓	N/A

Background Papers:

Department of the Environment Circular 9/95 *General Development Order Consolidation*
RBWM Local Plan
Planning Policy Guidance Note 2 *Green Belts*