

## Culture, Housing, Environment & Planning Committee

17 March 2021

### **Article 4 Direction to remove permitted development rights to erect, improve or alter gates, fences, walls or other means of enclosure at Seething Wells Filter Beds, Surbiton**

Nazeya Hussain, Executive Director of Place

Relevant Portfolio Holder: Councillor Rebekah Moll, Portfolio Holder for Planning Policy and Culture.

#### **Purpose**

To review the representations received following the recent public consultation on the making of an immediate Article 4 Direction on land at Seething Wells Filter Beds to remove nationally permitted development rights for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure and to determine whether or not to confirm the Direction.

#### **Recommendation that -**

To **resolve** that -

1. The representations received through the public consultation be considered
2. The confirmation of the Article 4 Direction, subject to minor modifications to the wording of the Direction in order to allow the repair, maintenance and 'like for like' replacement of any existing gate, fence, wall or other means of enclosure is approved.

#### **Benefits to the Community:**

The Article 4 Direction has been made in order to protect wildlife on the site.

#### **Key Points**

- A. This report seeks the Committee's approval to confirm the immediate Article 4 Direction relating to Seething Wells Filter Beds which would make the Article 4 Direction permanently effective.
- B. The Article 4 Direction removes the ability to put up fencing, gates and other means of enclosure on the site without planning permission.
- C. A Statement of Consultation setting out the Council's full approach to consultation, and an analysis of the responses received, is set out in Annex 1.
- D. Draft amendments have been made to the Article 4 Direction in response to the public consultation. The draft amended Direction is set out Annex 2 and would allow the repair and like-for-like replacement of any existing gates, fencing, walls or other means of enclosure without the need to apply for planning permission.

## Context

1. The site at Seething Wells currently comprises former filter beds which have been drained. Any form of building would require planning permission. Notwithstanding this, the owner of the site could erect fences (or other means of enclosure) up to two metres in height, or up to one metre where it adjoins a highway, without the need for planning permission, subject to the provisions of Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
2. Article 4 directions can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether but instead it can ensure that development cannot be carried out under the specified permitted development rights and therefore such development would require planning permission. A planning application would need to be submitted that would then be determined in accordance with the development plan and a planning application fee may be payable.
3. The National Planning Policy Framework 2019, paragraph 53, explains that 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.
4. Article 4 directions can either be immediate or non-immediate. Immediate directions can be made where specific permitted development rights present an immediate threat to a local amenity or prejudices the proper planning of an area.
5. The site, which is designated as a Site of Importance for Nature Conservation (SINC) and as Metropolitan Open Land, represents a unique habitat within the borough. The site is of particular importance to wintering wildfowl and bat populations. Previous ecological records demonstrate that the site once supported a species-rich calcareous grassland. Current management practices have resulted in significant ecological degradation and reduced the extent and value of the habitats present. This analysis is supported by a SINC Review that has recently been published.
6. Council officers considered that there was likely potential for the landowners to erect fencing throughout the site which had the potential to cause harm to local biodiversity, which would be prejudicial to the proper planning of the area and constitute a threat to the amenities of that area.
7. Therefore, it was considered appropriate to make an immediate Article 4 direction at Seething Wells Filter Beds on 23 October 2020 to withdraw permitted development rights granted under Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
8. The procedures relating to notification and publication of the Article 4 direction, as set out in Schedule 3 of the GPDO, have been followed.

## Proposal and Options

9. There are three options available to the Council, which are set out below.
10. The first option is for the Council to confirm the Article 4 Direction with the recommended changes to the Direction (the recommended option). This would permanently remove the ability to put up new fencing, gates and other means of enclosure on the site without planning permission. However, it would allow for the

repair or like-for-like replacement of any fencing, gates and other means of enclosure.

11. The second option is for the Council to confirm the Article 4 Direction as originally made. This would permanently remove the ability to put up fencing, gates and other means of enclosure on the site without planning permission, including the ability for the repair or like-for-like replacement of any fencing, gates and other means of enclosure.
12. The third option is for the Council to not to confirm the Article 4 Direction. Should this action be taken, the Article 4 Direction will cease being effective on 20 April 2021. After this date, fencing, gates and other means of enclosure on the site could be erected without planning permission.

### **Justification**

13. The justification to serve the Article 4 Direction is set out in detail in the report on the use of the Urgency Action Procedure Rule 30 dated 22 October 2020, which can be found as a background document to this report. A report on the use of Urgency Action Procedure Rule 30 was taken to the Culture, Housing, Environment and Planning Committee on 11 February 2021.
14. The site, which is of borough grade importance, represents a unique habitat within the borough. The site is of particular importance to wintering wildfowl and bat populations. Previous ecological records demonstrate that the site once supported a species-rich calcareous grassland. Current management practices or lack of, have resulted in significant ecological degradation and reduced the extent and value of the habitats present.
15. The potential harm that the direction is intended to address has been clearly identified and is necessary to protect local amenity or the wellbeing of the area.

### **Consultations and Engagement**

16. A six week consultation was held between 5 November 2020 and 18 December 2020. As part of the consultation process the following methods were used to raise awareness:
  - Emails were sent to 575 consultees informing them about the consultation and how to respond.
  - Press release and Public Notice
  - Online portal and targeted social media campaign.
17. A more complete summary of the consultation responses and observations is contained in the Statement of Consultation (Annex 1).
18. In summary 103 submissions were received via Kingston's on-line engagement platform; 17 submissions were received via email, totaling 120 formal responses submitted.
19. Of the respondents to the online platform, 90% of respondents agreed with the Article 4 Direction at Seething Wells being made permanent.
20. Issues raised through respondent's submission are summarised in the Statement of Consultation, however particular concerns raised were;
  - Impact on biodiversity and the natural environment
  - Previous damage to the site
  - Industrial heritage on the site

21. In response to concerns raised by the Landowners of Seething Wells Filter Beds, changes have been made to the Article 4 Direction to allow for the maintenance, repair and 'like for like' replacement of gates, fences, walls and other means of enclosure.

### **Timescale**

22. The Article 4 Direction needs to be confirmed by 20 April 2021 for it to become permanent. If after this date the Direction is not confirmed, fencing, gates and other means of enclosure on the site could be erected without planning permission.

### **Financial Context**

23. The council is operating in an increasingly challenging financial environment. Kingston faced a number of financial challenges in the medium to longer term - even before the COVID-19 outbreak, which has further added to these challenges. The economic and financial consequences of the pandemic, growing demand for services, and limited government grant funding make it difficult to find adequate funds to meet the borough's needs.
24. The future of local government finance faces a significant level of uncertainty. The impact of the Fair Funding Review and a future review of business rates is currently unknown, and the lasting effects of COVID-19 on our residents, local businesses and the Council itself remain uncertain.
25. Despite these challenges the council has a drive and commitment to ensure it is doing the best for residents and communities

### **Resource Implications**

26. There are minimal costs associated with notifying consultees if the Article 4 Direction is confirmed. These costs have been covered by the Strategic Planning budget to date and will continue to be upon confirmation.

### **Legal Implications**

27. An Article 4 Direction removes nationally permitted development rights.
28. The Council is allowed to serve an Article 4 Direction with immediate effect in accordance with Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) where they are satisfied that the type of development set out in the Schedule should not be carried out unless permission is granted for it on application, because it would be prejudicial to the proper planning of the area and constitute a threat to the amenities of that area.
29. Schedule 3 of the GPDO advises that an immediate Article 4 Direction takes effect upon publication and service of the notice, and remains in force for six months from the date it is given, until it is confirmed by the Council, having taken into account any representations received. The Council must notify the Secretary of State on the same day the notice is served.
30. Schedule 3 of the GPDO explains that the Council must consult on a non-immediate Article 4 Direction by (a) local advertisement, (b) site display at no fewer than two locations within the area to which the direction relates for a period of no less than six weeks and (c) by serving the notice on the owner and

occupier of every part of the land within the area to which the direction relates, unless this is impractical.

31. Owners and occupiers of the land should note that the Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the Council for that development. There is no fee for such planning applications.

### **Risk Assessment**

32. The serving of an immediate Article 4 Direction could carry the risk of compensation if the Direction removes the ability to repair or replace any gates, fences, walls or other means of enclosure through damage without the need for planning permission. An amended Direction that would allow the maintenance, repair and 'like for like' replacement of existing gates, fences and means enclosure is recommended for approval in order to address this risk.
33. The alternative is a non-immediate Article 4 Direction, but this takes one year to come into effect, and will not therefore serve the urgent need to protect biodiversity on the land.

### **Equalities Analysis**

34. An Equalities Impact Assessment was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

### **Health Implications**

35. There are not any health implications associated with the Article 4 Direction.

### **Road Network Implications**

36. There are not any road network implications associated with the Article 4 Direction.

### **Sustainability Implications**

37. The potential for causing harm to biodiversity through the erection of gates, fences, walls or other means of enclosure on site has been reduced. The Landowner is now required to submit a planning application should they wish to erect gates, fences, walls or other means of enclosure. The Council can now refuse application for fencing, walls and other means of enclosure unless appropriate measures have been taken to mitigate any potential harm to biodiversity.

### **Annexes**

- Annex 1 - Statement of Consultation
- Annex 2 - Draft amended Article 4 Direction

### **Background papers -**

- Urgency Action Procedure 20 Report (22 October 2020)
- SINC Review by LUC (January 2021)

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