

Report of the Portfolio Holder for Economic Development and Asset Management

Former Beamlight Factory Article 4 Direction

1. Purpose of Report

To consider the removal of certain permitted development rights for dwellings built at the Former Beamlight Factory.

2. Recommendation

Cabinet is asked to RESOLVE that the Broxtowe Borough Council (Former Beamlight Factory) Direction 2025 be made and notified.

3. Detail

The residential development of the Former Beamlight Factory was permitted in outline in May 2015 under reference 14/00335/OUT with details approved in June 2019 under reference 19/00176/REM and varied in October 2019 under reference 19/00520/MMA and February 2020 under reference 19/00726/MMA. Development is now almost complete except for approval and implementation of some elements of surface water drainage and boundary treatments.

The site previously contained a factory and is located adjacent to a former landfill site in an area of coal measures, so a ground investigation was carried out and recommended that gas membranes be installed under houses to eliminate the risk of carbon dioxide or methane build up in under floor or other voids. Whilst a planning condition required their installation, it does not apply to extensions built under the permitted development rights that apply to dwellings.

Whilst permitted development rights can be removed by a planning condition on the permission for the houses themselves, this is a significant step and not taken lightly, as it requires applications to be submitted in future for what is often quite small-scale development, which the Council must then deal with. Whilst this was not considered reasonable at the time, it has become clear since that it serves the public interest to remove the rights for development that would create new floor space in order to ensure that gas membranes are installed.

This would include development permitted by Classes A (enlargement, improvement or other alterations), D (porches) and E (outbuildings and similar) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Because these classes include some development that creates no floor space – for example, the replacement of windows or doors – this is expressly excluded from the scope of the Direction, so that applications will not be required for this.

The draft Direction is attached at the **Appendix** and would be notified by press advert, site notices and in writing to owners and occupiers. Any representations made in response must be considered before the Direction is confirmed and will be the subject of a further report recommending whether to do so.

Only once confirmed will the Direction take effect from the day it specifies, in this case, 31 March 2025, allowing time for the further report to be considered.

It is important to note that, simply because permitted development rights would be removed, permission is unlikely to be refused. Instead, permission is likely to be granted subject to a condition requiring the installation of a gas membrane. In this regard, attention is drawn to the legal advice relating to compensation.

4. Key Decision

This is not a key decision, as it would not result in revenue or savings of £250,000 or more and would not have significant effects on two or more Wards or electoral divisions in the Council's area.

5. Updates from Scrutiny

The proposed Direction has not been through any prior scrutiny and so there are no recommendations or updates to report.

6. Financial Implications

The comments from the Head of Finance Services were as follows:

It is anticipated that additional planning applications will result from the Direction. As no application is required to implement the affected permitted development rights, the Council has no comparative data on how often this happens and, so, how many additional applications might result.

Across the Borough, 391 householder applications are made in a typical year from 52,074 households, a rate of 0.75% per year. If the affected rights are used at four or five times that rate, then six extra householder applications per year might be expected from the 149 households affected by the Direction. This would result in nominal additional fee income for the Planning function.

7. Legal Implications

The comments from the Head of Legal Services were as follows:

In order to comply with The Town and Country Planning (General Permitted Development) (England) Order 2015, once the decision is made to make the Direction, the Council must notify it by (a) press advert, (b) at least two site notices for at least six weeks and (c) in writing to each owner and occupier.

The notice must (a) describe the development and area it relates to and its effect, (b) state that the direction is made under article 4(1) of the Order, (c) name a place where a copy may be inspected, (d) specify a period of at least 21 days within which representations may be made; and (e) specify a date on which it will come into force at least seven days after the end of that period.

A copy of the Direction and notice, including a copy of a map, must be sent to the Secretary of State and County Council on the day the notice is published.

The Direction comes into force on the date specified only if confirmed by the local planning authority, having taken into account any representations received, at least 28 days having elapsed following the last notice being served or published or any longer period that the Secretary of State may specify.

As soon as practicable after a Direction has been confirmed, notice of such and the date it will come into force must be given by (a) press advert, (b) at least two site notices for at least six weeks and (c) in writing to each owner and occupier; and a copy of the direction as confirmed sent to the Secretary of State.

The Town and Country Planning (Compensation) (England) Regulations 2015 contains provisions for the payment of compensation where permitted development rights are removed and permission is subsequently refused, but the likelihood of this occurring is low and the loss of value likely only to equate to that of having to install a gas membrane, which is relatively small.

8. Human Resources Implications

The comments from the Human Resources Manager were as follows:

there will be a small additional demand placed on the Development Management team to deal with the limited number of planning applications that will result. These are likely to be dealt with within current resources.

9. Union Comments

Not applicable.

10. Climate Change Implications

The climate change implications are contained within the report.

11. Data Protection Compliance Implications

This report does not contain any OFFICIAL(SENSITIVE) information and there are no Data Protection issues in relation to this report.

12. Equality Impact Assessment

As this is not a change to a policy or a new policy, an equality impact assessment is not required.

13. Background Papers

Copies of decision notices for outline permission reference 14/00335/OUT granted in May 2015, reserved matters reference 19/00176/REM approved in June 2019 and variations references 19/00520/MMA and 19/00726/MMA made in October 2019 and February 2020 are attached.

The details of each of the applications that led to these permissions, approvals and variations can be found on the Borough Council website as follows:

<https://publicaccess.broxtowe.gov.uk/online-applications/applicationDetails.do?keyVal=N6CG3XDRFLN00&activeTab=summary>

<https://publicaccess.broxtowe.gov.uk/online-applications/applicationDetails.do?keyVal=PO7MQMDRGJC00&activeTab=summary>

<https://publicaccess.broxtowe.gov.uk/online-applications/applicationDetails.do?keyVal=PW6L9EDR15600&activeTab=summary>

<https://publicaccess.broxtowe.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q0UZLIDR04P00>