

Report of the Portfolio Holder for Economic Development and Asset Management

Former Beamlight Factory Article 4 Direction

1. Purpose of Report

To consider whether to confirm the Article 4 Direction to remove specific permitted development rights following the completion of the consultation period. This is in accordance with the Council's Corporate Priority to create a safe place for everyone and to protect the environment for the future.

2. Recommendation

Cabinet is asked to RESOLVE that Broxtowe Borough Council (Former Beamlight Factory) Article 4 Direction 2025 be approved.

3. Detail

On 3 December 2024, Cabinet resolved that an Article 4 Direction at the Former Beamlight Factory site should be 'made and notified'. The Article 4 Direction would apply to:

"Development within the curtilage of a dwellinghouse being that comprised within Classes A, D and E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, but excluding that which creates no floor space."

This has now been subject to a period of public consultation which is required prior to the Council confirming whether to implement the Article 4 Direction. Further details regarding the background to the planning permission on the site and the need for the Article 4 Direction are contained within the December Cabinet report which is included as an **Appendix**.

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. This must include a period of at least 21 days within which representations may be made. 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.

This notification period has now been completed and included letters to all properties within the Article 4 area and site notices displayed. The Planning Casework Unit confirmed notification to the Secretary of State had been received and that the Council should continue with any processes associated with introducing the Article 4 direction. They stated to note that the Secretary of State

has the power to modify or cancel an Article 4 direction at any time before or after it is confirmed.

Nottinghamshire County Council state that the purpose of the Article 4 Direction is considered necessary given the requirement for the dwellings as built to have a gas membrane and the potential damage to these from the creation of other floor space and the need for this to be provided in any additional new floor space. They note that the rights being removed are the minimum necessary to deliver this objective.

The Council's Environmental Health Department states they fully support the Article 4 Direction to remove permitted development rights in accordance with the proposal. The site in question has a history of past industrial uses as well as underlying coal measures and being adjacent to historical landfill sites. As part of the assessment process to determine suitability for residential development, a number of measures were identified to ensure such development would be safe. These measures included gas membranes (and associated works), sub floor ventilation, anti-dig membranes and clean capping. Additional development that creates extra floor space requires the same degree of protection from the ingress of hazardous ground gases as the properties were required to have as part of the planning permission and be installed, verified and maintained as appropriate. The removal of permitted development rights as proposed is a necessary step to protect the residents at this development.

One resident has responded to the consultation stating they are against the introduction of the Article 4 due to losing the rights to make alterations to their property and that planning permission can be expensive and will also have an impact on property values. They consider a clause requiring the installation of a gas membrane and educating and communicating residents would be more appropriate.

Based on the responses, there is support for introduction of the Article 4 from Nottinghamshire County Council and Broxtowe's Environmental Health Department. The concerns of the resident are noted. However, it is important to have measures in place to ensure the appropriate mitigation measures are installed to protect the health of existing and future residents. It would not be possible to secure these via other clauses or through education, particularly as residents within the properties will change over time. As stated in the previous Cabinet report, 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 and/or other appropriate mitigation measures.

It is therefore considered appropriate to recommend that the Article 4 Direction is introduced and should come into force on 31 March 2025.

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 Monitoring Officer / 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

There are no climate change implications related to this 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

Proposed Article 4 Direction:

<https://www.broxtowe.gov.uk/media/qtzdibqw/beamlight-article-4.pdf>

Proposed Article 4 Area: <https://www.broxtowe.gov.uk/media/0dzu1bpb/beamlight-article-4-map.jpg>

Appendix:

3 December 2024 Cabinet Report: Former Beamlight Factory Article 4 Direction

<https://democracy.broxtowe.gov.uk/documents/s35333/Former%20Beamlight%20Factory%20Article%204%20Direction.pdf>