

## Item Number 7

### P and EP Committee Meeting 10 November 2015

**Proposal:** Article 4 (1) Directions (non-immediate) to remove permitted development rights for the installation of solar photovoltaic and thermal equipment at specific properties in the Ailsworth conservation area

**Location:** Ailsworth Conservation Area

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**Recommendation:** That committee approves the making and serving of non-immediate Directions under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 to withdraw the 'permitted development' right of development within Part 14 Class A of the Order for the installation of solar photovoltaic and thermal equipment to preserve the character and appearance of the Ailsworth conservation area and delegates authority to the Director of Growth and Regeneration to confirm those Directions as appropriate following public consultation.

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## 1 Explanation

Ailsworth is an historic village where many buildings and their roofscapes add to the special character and appearance of the Ailsworth Conservation Area. That special character is described in the adopted Ailsworth Conservation Area Appraisal (2008).

In 2014 solar panels were installed on a prominent roof in the Ailsworth conservation area. The panels were highly visible and resulted in substantial harm to the character and appearance of the conservation area. Following significant local objection they were removed by the owner Cross Keys Homes.

Under the Town and Country Planning (General Permitted Development) Order 2015 as amended (the 'GPDO') (Part 14 Class A) the installation of solar photovoltaic and thermal equipment to roofs, including roofs in conservation areas is permitted development, subject to some limited conditions to minimise their effect on the external appearance of a building and amenity of the area.

In view of the impact of the previously installed solar panels, it is considered appropriate to withdraw 'permitted development' rights for their installation at other prominent roof slopes in the Ailsworth conservation area in the interests of the proper planning of the area and the avoidance of significant harm to its character and appearance.

The Planning (Listed Buildings and Conservation Areas) Act 1990 states that conservation areas are 'areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance'. The Local Planning Authority has a responsibility in respect of issues within its control to protect the historic environment in accordance with the adopted policies of the Peterborough Core Strategy DPD 2011, Peterborough Planning Policies DPD 2012 and the above act.

Article 4 (1) Directions are an additional planning tool which can be used to remove permitted development rights that would otherwise apply by virtue of the 'GPDO' where the quality of the Conservation Area warrants such additional protection. An Article 4 direction does not prevent the installation of solar equipment but instead introduces the requirement that planning permission is first obtained for it.

Guidance on the use of Article 4 Directions was issued by the Department for Communities and Local Government (DCLG) in June 2012 in the form of a replacement Appendix D to Circular 09/95. This includes the general statement that local planning authorities should consider making Article 4 Directions only in those exceptional circumstances **where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.** It also states that in deciding whether an Article 4 Direction might be appropriate LPA's should **identify clearly the potential harm that the direction is intended to address and where the exercise of permitted development rights would undermine the visual amenity of the area or damage the historic environment.**

As stated in Paragraph 2.4 of the Circular 9/95 of the General Development Consolidation Order 1995 in relation to Article 4 Directions removing existing permitted development right, "there should be a particularly strong justification for the withdrawal of permitted development rights relating to: the installation of microgeneration equipment".

The Council's Conservation Officers, as well as Ailsworth Parish Council believe that the threat to prominent roofscapes visible in longer views within the Ailsworth conservation area, from roof mounted photovoltaic (solar/thermal) panel's results in particularly strong justification for their control by way of an Article 4 Direction. It should be noted that the proposed direction does not restrict other permitted development rights.

Two types of Article 4 Direction can remove 'permitted development' rights. Firstly, an Article 4 Direction may take effect immediately but this must be confirmed by the LPA following consultation within six months or it will lapse. Secondly, a non-immediate Article 4 Direction may be made which results in development rights being withdrawn only on confirmation of the Direction following local consultation.

DCLG guidance states that the immediacy of the threat and potential compensation liability may be considered in determining whether to use a non-immediate or immediate direction.

The ability to make and confirm a Direction lies with the Council. There is no right of appeal however a direction that was not properly justified or was unreasonably made could be quashed by way of Judicial Review. The Article 4 Directions would be prepared in full accordance with current legislative requirements and national guidance.

The following properties have been agreed with Ailsworth Parish Council where the withdrawal of 'permitted development' rights for the installation of solar equipment to roofslopes would be appropriate to protect the character and appearance of the conservation area: - (see Appendix A). Ward members have been informed.

- 76 & 78 Peterborough Road
- 1-4 Kings Acre
- 1 Helpston Road
- 3 Helpston Road
- 1-6 Barn Cottages, Main Street
- 1,3,5,7,9 & 11 Main Street
- 17a Main Street
- Outbuildings at 37 Main Street
- 37a Main Street
- 63a Main Street
- 59 Main Street
- 15 Maffit Road
- 4 Maffit Road
- 2a Maffit Road

Photographs and reasons for their inclusion in relation to the above properties is set out in Appendix B below.

Letters were sent to owners of the above properties on 27 August 2015 for informal comment on the proposal. Three responses were received, all in support. A letter was sent to owners on 16 October 2015 informing that the proposal will be considered by this committee

If the non-immediate Directions are approved they would be subject to local consultation via public notices on display in the area and in the Peterborough Telegraph, and a letter and notice to owners giving time (6 weeks) to make representations. This is somewhat longer than the statutory 28 day consultation period, in order to ensure owners have time to respond

There are circumstances in which the LPA may be liable to pay compensation having made an article 4 direction. LPA's may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:

- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
- Grant planning permission subject to more limiting conditions than the General Permitted Development Order would normally allow, as a result of an article 4 direction being in place.

Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. It is the understanding of Officers that successful claims for compensation are rare.

## **6 Conclusions**

The properties listed in this proposal for Article 4 Directions are considered to have the potential to result in significant impact on the Ailsworth Conservation Area by way of unrestricted installation of photovoltaic (solar/thermal) panels, by virtue of their location, prominence and visibility in longer views within the locality. It is considered that making the installation of such equipment at certain prominent properties the subject of planning control through the use of Article 4 Directions is in the interests of the proper planning of the area.

## **7 Recommendation**

That committee approves:-

1. The making and serving of non-immediate Directions under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 to withdraw the 'permitted development' right of development within Part 14 Class A of the Order for the installation of solar photovoltaic and thermal equipment to preserve the character and appearance of the Ailsworth conservation area, and
2. Gives delegated authority to the Director of Growth and Regeneration to confirm those Directions as appropriate following public consultation.

Copy to Cllr Holdich and Cllr Lamb

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