

**14 April 2015**

**Planning and Development Control Committee**

**Urgent Business – Article 4 Directions for Barrack Wood,  
Warley**

**Report of:** *Gordon Glenday*

**Wards Affected:** *Warley*

**This report is:** *Public*

**1. Executive Summary**

- 1.1 Barrack Wood in Warley was purchased in 2014 by Woodland Investment Management Limited. Barrack Wood comprises two sites - one of 55 acres and the other of 8 acres. According to the purchaser's website, Woodlands.co.uk, it sells off plots of woodland so that "people can have a wood of their own". The company is now actively marketing Barrack Wood and Burnt Wood for sale on the open market (see Appendix for site map). There is a SOLD sign erected on the Warley Wood site within Barrack Wood of 4.4 acres.
- 1.2 While the sale of the woodland is perfectly legal, the exercise of the permitted development rights each individual woodland plot owner would be entitled to would harm the woodland's amenity character and bio-diversity. In considering this issue there are national and local policies to consider, in particular whether pro-active measures are justified to withdraw permitted development rights. It is considered that the development under permitted development rights without an express planning permission enabling detailed consideration would be prejudicial to the proper planning of the area and a threat to the amenities.
- 1.3 The Government has consolidated and amended Permitted Development rights (Statutory Instrument 2015 No.596) which comes into effect on the 15th April 2015. In order to ensure the managed stewardship of these precious woodlands, the Council is therefore recommended to authorise an Article 4 Direction so that the permitted development rights are withdrawn. If the recommended Article 4 Direction is agreed, all development works within the woodlands would require planning permission. Approved woodland management agreed by the Forestry Commission would be permitted.
- 1.4 The procedure for Article 4 Directions is set out in Schedule to the 2015 consolidated Order. The Direction relating to the erection of any means of

enclosure within the woodlands, changes of use and temporary uses will have immediate effect . The Direction relating to use as a caravan site and for recreational facilities, agriculture and forestry and development relating to roads will not have effect until confirmed.

- 1.5 The previous owner of Barrack Wood has other woodlands in the Borough with similar characteristics to Barrack Wood. It is recommended that authority be delegated to the Head of Planning after consultation with the Chair of the Committee and Ward Members to issue and serve similar Article 4 directions if those or other comparable woodlands appear to be under similar threat in the future.

## **2. Recommendation(s)**

- 2.1 That the Article 4 Direction shown in the Appendix be authorised and served.
- 2.2 That authority be delegated to Head of Planning, after consultation with the Chair and Ward Members, to issue and serve similar article 4 Directions in relation to other comparable woodlands in the Borough if they appear to be under similar threat in the future.

## **3 Introduction and Background**

- 3.1 Woodlands Investment Management Company is a private company that is now pro-actively selling plots of woodland from both Barrack Wood and Burnt Wood on the open market. According to the company's website, people can purchase almost 4 and a half acres of Barrack Wood for £55,000. The website states that:

***“Because the woodland is so special it has a tree preservation order on it and is protected by the local authority. This simply protects the woodland and does not prevent woodland management - free guidance is available from the Forestry Commission and other organisations”.***

- 3.2 Under the heading Shelter, Sheds and Storage, the company's website declares that:

***“You will enjoy spending days working and socialising in your woodland, but if you go frequently, you will soon find that there are some basic tools and bits of equipment that you would prefer to leave there. And with the British climate, there will inevitably be visits when you need to shelter from a rain storm, if only to eat your sandwiches. In our recent survey of about 150 owners of small***

***woodlands, we found that about half had installed some shelter or storage in their woodland”.***

- 3.3 In relation to staying in the woodland overnight, the company’s website states that:

***“It is also possible to bring a mobile caravan into your woodland and use it for storage, and if you like for overnight stays. There is no need to apply for permission beforehand, but you may not be allowed by the local authority to leave it there permanently and there is a regulation that you are not allowed to sleep there more than 28 nights in the year. If you are doing a lot of work, and need to stay more than that, you can get permission to do so as a “seasonal worker.”***

- 3.4 Much of Brentwood is covered by a large area Tree Preservation Order of long standing. This needs review and eventual replacement. Two specific Tree Preservation Orders have been issued in respect of the Woodlands at Barrack Wood as part of the review process. Barrack Wood itself is an ancient woodland site which has been replanted.. It adjoins a Site of Special Scientific Interest in Hartswood, and may itself have irreplaceable habitat. The public interest requires careful management of the woodland, which must include a precautionary approach to works and management.

- 3.5 Given the statements on the company’s website, and the sensitivity of the woodlands, it is considered appropriate for the Council to consider removing the permitted development rights of owners of the woodland so that planning permission is required for all such development in the woodlands affected. It is important to clarify that applying the Article 4 Directions does not necessarily prevent the works referred to from happening in these woodlands – it simply requires a planning application to be submitted and approved before anything can happen.

#### **4. Issue, Options and Analysis of Options**

##### **4.1 National legal and policy position**

Substantial changes have been made to the national scheme of permitted development. The Town and Country Planning (General Permitted Development) Order 2015 comes into force on 15th April 2015. As well as consolidating a number of previous amending orders, the 2015 Order makes the following main alterations:

- For 3 years there will be a right to change from B8 use to C3, subject to prior approval;
- The previous time limit for larger rear extensions to dwelling houses has been extended to May 2019;
- Change of use from A1 and A2 uses to C3 will be permitted, with limited rights to build extensions subject to prior approval. Shops

also will have a right to erect 'click and collect' facilities, and modify existing loading bays. Changes of use from A1 and A2 to D2 (Assembly and leisure will also be permitted;

- Amusement arcades and casinos will be able to change to C3. Betting offices and pay day loan shops will be removed from the use classes order;
- Permitted development rights are introduced for temporary filming;
- New permitted development rights are created for the installation of solar panels on non-domestic buildings;
- The existing time limited rights to extend shops, offices and warehouse buildings will be made permanent;
- New rights are introduced to replace plant and machinery on existing waste management sites, and there are new permitted development rights for sewerage undertakers.

The new order is generally more permissive subject to detailed limitations and requirements. The general position on Article 4 directions introduced in 2010 is maintained - there are two types of procedure: Orders which take immediate effect and those which only take effect after confirmation, and taking into account representations made in a period of at least 28 days. The immediate effect orders may be limited to minor works including fencing to ensure a consistency of appearance. Uncontrolled varieties of permitted enclosures - walls, fences or other structures - might otherwise result in a gollimaufry of different styles, heights designs and colours, with foundation works. Other orders would be more proportionate if owners are given an opportunity to make representations. .

## **Policy**

Paragraph 118 of the National Planning Policy Framework provides that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss

National on-line Planning Guidance provides that the planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;

The Replacement Local Plan policy GB 28 provides that where proposals are made to the Council in the Green belt they should safeguard the ecological value of the site and include measures for habitat creation.

National Guidance provides that the use of Article 4 Directions should be limited to situations where this is necessary to protect local amenity or the well being of the area, and identifying clearly the potential harm intended to be addressed. Guidance states that there should be particularly strong

justification for the withdrawal of permitted development rights for leisure plots and uses and in the case of forestry that a serious threat is posed.

### **Analysis of options**

The site adjoins classified roads so there is no need to consider removal of the permitted development to create a means of access to a highway as planning permission will already be required for such development. The immediate issue is the matter of fencing and means of enclosure - fragmentation with different types of fencing or walls of possibly different heights could destroy the amenity value of the woodland.

The permitted development rights to erect temporary buildings and carry on temporary uses of land, to use as a caravan site or camp site are proposed to be included. The fragmentation of the Woodlands by ownership is not necessarily of serious consequence provided that the soils, habitat, trees and special amenity value of the site are respected. Consultation with the Forestry Commission and Natural England as well as the owners will enable the public interest to be balanced with the private interests of landowners

The provisions of the Article 4 Direction shown in Appendix will have immediate effect. These relate to the erection of any fence, wall, path or building in the woodland. The need for this to be implemented immediately is so that these form of development are considered to be the most likely to occur in the shorter term and so immediate powers are necessary to manage the issue. 4.3 The provisions in the Article 4 Direction which do not have immediate effect are shown in the Appendix. These provisions are subject to public consultation for 28 days to allow the landowner and others to comment on the proposals within the Direction. Following this consultation, a report will be brought back to the Planning Committee for its consideration

## **5. Reasons for Recommendation**

- 5.1 Given the potential immediate threat to the integrity of the woodlands affected, it is deemed necessary to issue the two Article 4 Directions, one of which should take immediate effect due to the potential risk of inappropriate works.

## **6. References to Corporate Plan**

- 6.1 The protection of our woodlands and green open spaces is a key priority for the Council to develop a Prosperous Borough for the future.

## **7. Implications**

### **Financial Implications**

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7.1 There is no fee payable for planning applications where the only reason for the application is the withdrawal of PD rights by a Article 4 Direction.

- The Local Planning Authority can be liable to pay compensation to those whose permitted development rights have been withdrawn but only if it subsequently: refuses planning consent for development which would otherwise be permitted development; or
- grants planning permission subject to more limiting conditions than contained in the order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights

#### **Legal Implications**

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7.2 While Article 4 Directions are confirmed by local planning authorities, the Secretary of State must be notified and has wide powers to modify or cancel most Article 4 Directions. The County Council must also be notified. There is no requirement for completely separate Orders with different Directions on the same land. Accordingly, the Order has been drafted to incorporate separate directions.

7.3 The withdrawal of development rights does not necessarily mean that planning permission will be refused. It means only that applications have to be submitted so that the local planning authority can consider the proposals in detail and can then only determine the applications after consultation.

8. **Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

8.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. Various Convention rights may be engaged in making and considering Article 4 directions including under Articles 1 and 8 of the First Protocol. The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole".

8.2 It is considered, in the instance the development by erection of walls, fences and other means of enclosures, temporary buildings and uses within individual lots of Barrack Wood either sold or being offered for sale, substantial harm could be caused very quickly. That risk is considered in the circumstances of woodlands with special sensitivities to justify an Article 4 Direction which takes immediate effect.

**9. Background Papers** (include their location and identify whether any are exempt or protected by copyright)

9.1 The Town and Country Planning (General Permitted Development ) (England) Order 2015, Statutory Instrument 2015 no.596

National Planning on-line Policy Guidance

Web site Woodlands.co.uk

**10. Appendices to this report**

- Appendix A – Directions pursuant to Article 4 and Schedule 3 of the Order.

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