
Meeting: Development Management Committee
Date: 10 November 2010
Subject: Agreement of Article 4 Direction for Wrest Park Estate, Silsoe
Report of: Director of Sustainable Communities
Summary: To seek agreement to make an Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 and as amended by the Town and Country Planning (General Permitted Development (Amendment) (England) Order 2010 removing permitted development rights under Schedule 2, Class B of Part 3 for the units within the Wrest Park Estate, Silsoe (identified on the attached plan). This would remove the permitted change (without requiring planning permission) from Use Class B1 (Business) to Use Class B8 (Storage and Distribution) in cases where it involves less than 235 square metres of floor space.

Contact Officer: Lisa Newlands, Senior Planning Officer (Tel: 0300 300 4185)
Public/Exempt: Public
Wards Affected: Silsoe and Shillington
Ward Members: Councillor R Drinkwater and Councillor A Graham
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

The Article 4 Direction would remove the permitted development of the change of use from Use Class B1 (Business) to Use Class B8 (Storage and Distribution) where the floor space in the building is under 235 square metres. It would not rule out change per se but would require a planning application to be submitted, which would allow the proposal to be considered fully by the Local Planning Authority.

Financial:

There is a right to compensation should an application be submitted on the area covered by the Article 4 Direction and then refused by the Local Planning Authority, or at appeal, or conditions imposed on the grant of planning permission within the first 12 months of the Direction coming into force. Any person with an interest in the land, or in any mineral in the land, may seek compensation for abortive expenditure, or other loss or damage directly attributable to the withdrawal of the permitted development rights. This compensation would be payable in relation to each individual building/ application and therefore may result in a number of payments. Compensation would relate to administrative costs which can be quantified, and the effect on land value. This would be assessed in terms of the cost of the land/ building at Use Class B1/B8 value against the cost of the land/ building at Use Class B1 value.

Legal:

None

Risk Management:

None

Staffing (including Trades Unions):

None

Equalities/Human Rights:

The Direction would remove the permitted development right to change the use of no more than 235 square metres of floor space in a building from Class B1 (Business) to Class B8 (Storage and Distribution).

Community Safety:

None

Sustainability:

None

RECOMMENDATION(S):

That the Committee agree to the making of an Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995, and as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 for land and buildings known as Wrest Park Estate, Silsoe (as identified on the attached plan).

Background

1. Wrest Park Estate lies within the extensive grounds of Wrest Park, Silsoe. It lies to the east of Wrest House, a Grade I listed building. It also lies within the Silsoe Conservation Area.
2. An application for a Lawful Development Certificate for the existing use of the following buildings 31, 42, 45, 46, 47, 48, 50, 51, 52, 55, 59, 66, 68, and 69 as B1 use in connection with the use as a research institute was submitted in December 2009.
3. The Lawful Development Certificate for the existing use was granted in July 2010 on the grounds that the information received in the application and during the application process had demonstrated that the lawful use of the site was a 'research institution' because, there is a case to say that the material change of use of the land occurred before the 1st July 1948 and/or because the development was undertaken by or on behalf of the Crown and therefore benefitted from Crown Immunity. Further it was considered that the lawful use had not been abandoned, nor had any material change of use occurred in respect of the site since the lawful use commenced. Therefore, the use of the site/ buildings for any purpose within Class B1 would not require planning permission as it would not involve development by virtue of section 55(2)(F) of the 1990 Act and the Town and Country Planning (Use Classes) Order 1987.

4. Following the grant of the Lawful Development Certificate concern has been raised by local residents and the Parish Council, in terms of the potential permitted change from Use Class B1 (Business) to Use Class B8 (Storage and Distribution) under Class B of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(Amendment) Order 2006. Under this legislation a change of use of a building from Class B1 (Business) to Class B8 (Storage and Distribution) would not require planning permission provided that the change of use relates to no more than 235 square metres of floor space in the building.
5. This potential permitted change of use is of concern because of the number of buildings within the site that could make use of this permitted change. The cumulative effect of such an uncontrolled B8 use within this area may cause harm to the amenities of the local residents, and a detrimental impact on the character and appearance of the surrounding area and conservation area as a whole. It is therefore suggested that an Article 4 Direction should be used to prevent this permitted change of use and bring it under planning control.

What is an Article 4 Direction

4. Article 4 Directions can take away all or some of permitted development rights given by Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended in 2008. These can relate to any land and can remove any development covered by a Part, Class or Paragraph of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, except Class B of Parts 22 and 23. Circular 9/95 advises that the boundaries of land subject to directions, should be drawn as tightly as possible having regard to the circumstances of the case.
5. A Direction brings prescribed works normally deemed as 'permitted development' under planning control. It does not rule out change per se, and if a planning application required solely due to the Direction is refused, it is open to the normal rights of appeal. Additionally if the owner is prevented from undertaking the work through the decision of the Council or at appeal there is a right to compensation (this is discussed in further detail in paragraph 16 of the report). This used to be unrestricted, but is now limited to the first 12 months of the Direction coming into force.
6. Circular 9/95 provides guidance on making Article 4 Directions. This circular makes it clear that 'permitted development' rights should not be withdrawn locally without a compelling reason. Generally there should be exceptional circumstances and it is only justified if there is a real and specific threat to interests of acknowledged importance.

Reason for Article 4 Direction

7. Concern has been raised by local residents and the Parish Council in terms of the potential permitted development of change of use from Use Class B1 to Use Class B8 where the floor space in the building is under 235 square metres.
8. This concern is due to the nature of Class B8 (storage and distribution) uses and the cumulative impact if all the buildings involved were to make use of the permitted development may have on the residential amenities of the surrounding properties and the character and appearance of the surrounding area. The vehicles used in relation to this kind of activity are by nature relatively large and local residents consider the highway network and junction into Wrest Park is not sufficient to cope with this type of activity.

9. It is therefore considered that by making an Article 4 Direction to remove this permitted development, it would bring the change of use under planning control and could therefore be given the proper consideration in terms of the impact on the residential amenities and the character and appearance of the surrounding area.

Procedure for making an Article 4 Direction

10. An Article 4 Direction may be made under Article 4(1) of The Town and Country Planning (General Permitted Development) Order 1995, as amended by The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010. This would come into effect 28 days after making the Order.
11. In order to make the direction, as soon as practicable after the direction has been made, notice by the Local Planning Authority must be given by-
- local advertisement;
 - by site notice at no fewer than two locations within the area to which the direction relates;
 - by serving notice on the owner and occupier of every part of the land within the area or site to which the direction relates.
12. The notice referred to in paragraph 10 must-
- include a description of the development and the site to which it relates, and a statement of the effect of the direction;
 - specify that the direction is made under article 4(1) of the Order;
 - name a place where a copy of the direction, and a copy of the map defining the site to which it relates, may be seen at all reasonable hours;
 - specify a period of at least 21 days, stating the date on which that period begins, within which representations regarding the direction may be made to the Local Planning Authority.
 - Specify the date on which it is proposed that the direction will come in force, this must be at least 28 days after the 21 day representation period.
 - Send a copy of the direction and the notice referred to above, to the Secretary of State on the same day as the notice of the direction is first published.
13. On deciding whether to confirm the direction, the Local Planning Authority must take into account any representations received during the period specified in the notice referred to in paragraph 11.
14. The Local Planning Authority must not confirm a direction until-
- 28 days after the latest date on which notice relating to the direction was served or published; or
 - such longer period as may be specified by the Secretary of State following the notification of the direction.
15. On confirmation of the direction, the Local Planning Authority must as soon as practicable give notice of its confirmation; and send a copy of the direction as confirmed to the Secretary of State.

Compensation

16. The result of an Article 4 Direction is such that should the Local Planning Authority refuse, or impose conditions on a planning application that was required solely due to the Direction, it is open to the normal right of appeal. As stated in paragraph 5, if the owner is prevented from undertaking the work through the decision of the Council or at appeal, there is a right to compensation. This used to be open-ended, but is now limited to the first 12 months of the Direction coming into force.
17. Any person with an interest in the land, or in any mineral in the land, may seek compensation for abortive expenditure, or other loss or damage directly attributable to the withdrawal of the permitted development rights. This compensation would be payable on each of the buildings should an application be submitted. Therefore, the compensation is not limited to one payment. Compensation relates to administrative costs in preparing the application, which can be quantified, and the effect on the value of the land. This would be assessed in relation to the value of the land with B1/B8 use against purely B1 use. To give an indication of costs, the Land Tribunal considered a case in 1988 where the applicant had sub-divided agricultural land into 15 parcels of between one and 10 acres each. The Local Planning Authority had made a direction under article 4 of the 1977 General Development Order withdrawing the permitted development rights for agricultural purposes. The applicant then submitted 15 applications for planning permission, for an agricultural building on each parcel. Permission was refused. The Tribunal accepted that the appropriate basis for valuation of land was as 15 parcels, rejecting the case for the local planning authority that assessment should be on the basis of one parcel of land. This resulted in an overall compensation payment of £135,000. This illustrates that compensation would be payable for each of the buildings should an application for the change of use of them from B1 to B8 be refused or planning permission be granted subject to conditions, and not just one compensation payment for the site as a whole.

Conclusion

18. Wrest Park Estate is made up of a number of buildings, which all presently have the permitted development right to change the use of no more than 235 square metres of floor space in the building to Class B8 (Storage and Distribution). It is the cumulative impact of this that may have a detrimental impact on the character and appearance of the surrounding area, the Grade I listed building, the amenities of the neighbouring properties and the Silsoe Conservation Area. It is therefore considered that the Article 4 direction is required to remove the permitted development right to enable the Local Planning Authority to fully consider the potential impacts of any proposal of this nature.

Appendices:

Appendix A – (site location plan showing the Wrest Park Estate)