

# **Town & Country Planning (General Permitted Development) Order 2015 (as amended) (Schedule 3, Article 4)**

## **Delegated Report of Ben Hook, Director – Place and Climate Change**

**To confirm:**

### **Article 4 Directions: (Land at Fairlight Cove, Fairlight) Directions Nos. 1 and 2, 2022**

#### **1 Summary**

- 1.1 On 25<sup>th</sup> July 2022 Cabinet approved the recommendations of a report by the Director of Place and Climate Change in relation to the making of two Article 4 directions at Fairlight Cove (item CB22/21).
- 1.2 The effect of the Article 4 directions at Fairlight Cove will be to remove permitted development rights from specified residential properties close to the cliff edge for certain forms of householder development, in the interests of preventing adverse effects on land stability in the coastal margin.
- 1.3 Article 4 directions do not come into force unless confirmed by the Local Planning Authority. Cabinet granted delegated authority to the Director of Place and Climate Change to confirm the directions, following the statutory consultation period. This period has now passed. This report sets out the issues and considerations and concludes that the directions should now be confirmed.

#### **2 Background**

- 2.1 Fairlight Cove has experienced ongoing problems of coastal erosion and cliff instability that have led to several properties being lost since the 1980s as a result of cliff retreat. Since that time, a phased programme of coastal protection works and drainage has been undertaken, which has helped to slow down the rate of cliff recession. While these engineering works control erosion and land loss they do not prevent it, and it remains prudent to limit development that may have an effect on loading near the cliff or the flow of water in the ground near the cliff edge.
- 2.2 National Planning Practice Guidance (PPG) confirms that the planning system has an important role in considering land stability by: minimising the risk and effects of land stability on property, infrastructure and the public; and helping ensure that development does not occur in unstable locations or without appropriate precautions. The PPG notes that removing “permitted development” rights in specific circumstances is one option that planning authorities may need to consider in planning for land stability.

- 2.3 The effect of Article 4 directions at Fairlight Cove would be to remove permitted development rights from specified residential properties close to the cliff edge for certain forms of householder development. These forms of development include residential extensions and outbuildings, the uncontrolled development of which could have adverse effects on land stability in the coastal margin. The removal of these specific permitted development rights would mean that planning permission would be required. The submission of a planning application would allow such effects to be properly assessed before development is permitted to proceed.
- 2.4 An independent report by a Chartered Geologist and Chartered Civil Engineer specialising in coastal science, coastal risk management and landslide management has been undertaken, to evidence the need for the Article 4 direction and inform its scope and geographical coverage. This found that along some sections of the Fairlight cliff line the top of the cliff has yet to reach a state of equilibrium (balance) and such surcharge may accelerate the instability processes, particularly at, or after, times of rainfall. In view of the greater level of risk and sensitivity of particular properties, largely on the seaward sides of Sea Road, Cliff Way and Rockmead Road, the removal of permitted development rights, in the form of an Article 4 direction, can be justified.

### **3 Cabinet Decision and Consideration of the Article 4 Directions**

- 3.1 At their meeting on 25<sup>th</sup> July 2022 Cabinet approved the recommendations of a report by the Director of Place and Climate Change in relation to the making of two Article 4 directions at Fairlight Cove (item CB22/21).
- 3.2 Cabinet resolved that:
- I. the making of an Article 4 direction in respect of the land and those classes of development described in the report be approved;
  - II. the Director of Place and Climate Change be granted delegated authority to confirm the Article 4 directions following a 21 day consultation period, subject to consideration of any representation response received, so that it comes into effect at the end of a 12 month notice period; and
  - III. the Director of Place and Climate Change be granted delegated authority to make an immediate Article 4 direction within the 12 month period specified in 2) above, if warranted, i.e. if development is identified which constitutes a threat to the amenities of the area.
- 3.3 In respect of resolution (ii) above (confirming the Article 4 direction), the procedures are set out in the Town & Country Planning (General Permitted Development) Order 2015 (as amended) (Schedule 3, Article 4). This notes, amongst other things, that:
- The Article 4 direction does not come into force unless confirmed by the Local Planning Authority;
  - In deciding whether to confirm the Article 4 direction, the local planning authority must take into account any representations received during the representation period;

- The local planning authority must not confirm a direction until after the expiration of—
  - (a) a period of at least 28 days following the latest date on which any notice relating to the direction was served or published; or (b) such longer period as may be specified by the Secretary of State following the notification by the local planning authority to the Secretary of State of the direction.

3.4 The consultation period ran from 12 August 2022 to 30 September 2022. In accordance with the Order, public notices were displayed, letters were sent to all affected properties, and press advertisements were published. No representations were received. Therefore, there are no representation responses to consider. A period of at least 28 days following the date on which any notice was served or published has now passed. The Secretary of State has not specified that a longer period must apply.

3.5 On 11 October 2022 the Council received a letter from the Department for Levelling Up, Housing and Communities (DLUHC) which confirmed that the Article 4 directions had been passed to its policy team for further assessment, to consider whether the directions fulfil national policy and whether there is cause for the Secretary of State to use his powers of intervention under Schedule 3, Paragraph 1(13) of the 2015 Order. On 13 December 2022 the Council received an email from DLUHC which confirms that DLUHC considers that the Article 4 directions comply with Government policy and consequently, DLUHC will not be taking any further action.

#### **4 Decision**

4.1 The Council is now able to proceed and confirm the Article 4 directions, in accordance with the Cabinet decision. The Council's Legal Services team shall be instructed accordingly.

#### **5 Availability of documents**

5.1 The report to Cabinet in relation to the making of the Article 4 directions, together with the background information, the Cabinet minutes and details of the decision can be viewed at: [Agenda for Cabinet on Monday 25th July 2022, 6.30 pm - Rother District Council \(modern.gov.co.uk\)](#)

5.2 For further information, please contact the Planning Policy Team by email at: [planning.strategy@rother.gov.uk](mailto:planning.strategy@rother.gov.uk) or by telephone on: 01424 787000.



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Rother District Council

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