

Meeting Name:	Planning Committee (Major Applications) A
Date:	8 October 2024
Report title:	Proposed Article 4 Direction for the withdrawal of Part 16 permitted development rights (Communications Development) at the junction of Croxted Road and Norwood Road, London SE24 9DA.
Ward(s) or groups affected:	Dulwich Village
Classification:	Open
Reason for lateness (if applicable):	N/a
From:	Director of Planning and Growth

RECOMMENDATIONS

That the Planning Committee:

1. Approves the making of an Article 4 Direction (without immediate effect) to withdraw the permitted development rights granted by Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for Communications Development.
2. Delegates to the director of planning and growth the arrangements for making the Article 4 Directions including compliance with the notification requirements under the GPDO.

BACKGROUND INFORMATION

3. At 294 Croxted Road, at the junction with Norwood Road is the Umana Yana Caribbean Restaurant and Takeaway. It has a frontage with the street of just over 5 metres. The footway of Croxted Road in front of 294 has been progressively filled with communications apparatus, such as cabinets and a mast, details of which are set out below.
4. The junction of Croxted and Norwood Road is at the southwest proximity of the borough on the border with Lambeth. The red line of the site includes 294 Croxted Road and 85 & 87 Norwood Road. To the west of the site is Brockwell Park and to the east the railway viaduct linking Herne Hill Station to Tulse Hill Station.

Photo 1 – Junction of Croxted Road and Norwood Road



Wide shot of the corner of Croxted Road and Norwood Road, showing the communications equipment in front of number 294 Croxted Road (outlined in red).

5. The Junction is a prominent location, as both roads are A roads (Norwood A215, Croxted A2199). The buildings on the corner are single storey comprising food retailers and takeaway outlets.
6. The impact of the installed communications apparatus is such that the premises is not visible to traffic travelling north along Norwood Road.
7. The proliferation of communication equipment has had a detrimental impact on the streetscene at this location and the ability of this business to announce and advertise itself in the way that the majority of commercial premises on a shopping parade do.
8. Access to the business in this location is not affected by the communications equipment as the highway is subject to double yellow line parking protection.
9. Attempts to mitigate the impact of the communication development have not been successful. Officers have contacted the relevant communication companies by email and telephone calls to attempt to remove, consolidate or conceal the equipment, but no responses have been received.
10. The installation of the apparatus is believed to have been lawfully installed by communication companies exercising their statutory right to install certain

equipment on the public highway pursuant the GPDO. The council therefore has no ability to require the removal of the apparatus under planning powers.

11. The council can seek to remove permitted development rights so that any further development would need to go through a planning application process to be lawful. Whilst the council is not aware of any proposed further development, it is possible that some equipment may need to be renewed at some stage in the future and would be required to go through a planning application process.
12. 294 Croxted Road is the only site at present in the borough that the council is aware of where the concentration of communication apparatus has such a pronounced impact on one property.

Photo 2 – Annotated photo of equipment



Detail of each piece of equipment:

1. Cabinet installed between May 2018 and March 2019
2. Cabinet installed between June 2014 and April 2015
3. Cabinet installed between May 2018 and October 2016
4. Cabinet installed between prior to 2008
5. Cabinet installed between prior to 2008
6. Monopole installed between prior to 2008

13. The council is not aware why this location is so attractive to mobile communication and internet providing companies. It may be that the presence of the park and nearby conservation areas restricts other sites. The low-rise nature of the development possibly gives a mast particularly good coverage at this location. It is also possible that it is convenient for telecoms companies to group equipment together.
14. The Article 4 Direction is proposed to encompass the two adjoining properties at 85 and 87 Norwood Road. Currently there is one piece of equipment outside of 85 Norwood Road. The council is aware that the smallest area possible

should be selected for an Article 4 Direction. However, there is a risk that equipment could be installed outside number 85 and 87 Norwood Road if an Article 4 Direction is limited to the area immediately outside of 294 Croxted Road. Officers consider that further installations outside of 85 and 87 Norwood Road would exacerbate the situation and have a further detrimental impact on the streetscene at this location and the ability of this businesses at this junction to announce and advertise themselves in the way that the majority of commercial premises on a shopping parade do. The intention of the proposed Article 4 Direction is to return control to the council for this development type at this particular location. The council is therefore limiting the direction to the corner of Croxted and Norwood Road, which in its assessment no 85 and 87 Norwood Road forms a part of.

15. The NPPF was updated in December 2023, paragraph 53 which deals with Article 4 Directions reads:

“The use of Article 4 directions to remove national permitted development rights should:

...
...

- (b) in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities) (c) in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*

16. The Government’s Planning Practice Guidance (Paragraph: 038 Reference ID: 13-038-20210820) advises that Article 4 directions should be very carefully targeted, applying only to those locations where they are necessary to avoid wholly unacceptable adverse impacts. The geographical coverage of all Article 4 directions should be the smallest area possible to achieve the aim of the Article 4 direction.
17. Part 16 is a broad category of permitted development rights covering all electronic forms of communication radio and microwave, as well as driver information systems and post boxes. To remove the part in its entirety is rare.
18. The reason for removal is because the site is currently saturated with apparatus. It is perhaps conceivable that a post box outside No 85 might be acceptable, however, on this particular corner control over infrastructure of this nature has been lost. The purpose of the Article 4 Direction is not to thwart all future development, but to regain control.

KEY ISSUES FOR CONSIDERATION

Article 4 direction process

19. An Article 4 Direction can be used to remove specific permitted development rights in all or parts of the local authority’s area. It would not restrict development altogether, but instead ensures that development requires a planning application to be submitted to the council for assessment. Such a planning application would

need to be submitted and be determined in accordance with the development plan, which include the council's planning policies, unless material considerations indicate otherwise.

20. The Government's Planning Practice Guidance (Paragraph: 038 Reference ID: 13-038-20210820) states that an Article 4 Direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It also states that in deciding whether an Article 4 Direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.
21. Article 4 Directions can either be made with immediate effect or made without immediate effect. The Article 4 direction proposed in this report will be made without immediate effect because it does not fall within the circumstances which allow for immediate effect (paragraph 2, Schedule 3, GPDO).
22. The process for making an Article 4 Direction without immediate effect is set out at, paragraph 1, Schedule 3, GPDO) and is summarised as follows:
 - Stage 1 - The council makes (drafts) an Article 4 Direction withdrawing permitted development rights;
 - Stage 2 – Publication/Consultation stage. The council:
 - publishes notice of the Article 4 Direction in a local newspaper;
 - places no fewer than 2 site notices within the area to which the direction relates for not less than six weeks; and
 - notifies the owners and occupiers of every part of the land within the area or site to which the Article 4 Direction relates over a period of 21 days.

The notice must specify (amongst other things) a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the council; and specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than 2 years after the start of the 21 day period.
 - Stage 3 – Notification to the Secretary of State: On the same day that the first notice is given under Stage 2, the council must send a copy of the Article 4 Direction to the Secretary of State (who does not have to approve the article 4 direction, and will only intervene when there are clear reasons for doing so).
 - Stage 4 – Confirmation Stage - The proposed Article 4 Direction comes into force on the date specified in the notice but does not come into force unless confirmed by the council. Confirmation of the direction cannot take place until after the expiration of a period of at least 28 days following the latest date on which any notice relating to the direction was served or published or such longer period as may be specified by the Secretary of State.
23. In deciding whether to confirm the Article 4 direction the council must take into account any representations received during the 21 day consultation period (Stage 2). Once the Article 4 direction has been confirmed the council shall give

notice of such confirmation to owners/occupiers, display site notices and advertise in a local newspaper; and send a copy to the Secretary of State.

Summary of evidence to support making the article 4 direction

24. As set out earlier in the report, the NPPF sets out that the use of Article 4 Directions to remove permitted development rights should be based on robust evidence and apply to the smallest geographical area possible.
25. Article 4 Directions can be made if the council is satisfied that it is expedient that development should not be carried out unless planning permission is granted on application.
26. The use of an Article 4 Direction would not restrict development altogether, but instead ensure that development requires permission planning application is submitted to the council. Planning permissions for communication installations and apparatus would ensure no further harm is caused to the streetscene and the ability of businesses on this corner to announce and advertise themselves through traditional forms of announcement such as a fascia sign, awning and shop window display without this being obscured by such poorly positioned development.
27. Permitted development rights for communication development are intended to assist with digital development and ensure that the infrastructure needed to support modern communication can be provided without undue delay and regulation. In many instances this provision operates smoothly without objection, but in this particular, limited and hopefully isolated instance the system has clearly failed and allowed a wholly unintended outcome of obscuration of part of a shopping parade contrary to the council's design policies and potentially to the detriment and viability of commercial units at this location.
28. No consultation beyond the consultation required by Schedule 3 of the GPDO is proposed at this stage lest it prompt a further exercise of permitted development rights during the consultation period.

Planning applications

29. If permitted development rights are withdrawn through an Article 4 Direction, planning permission is required, the Council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. The development plan for Southwark includes the London Plan 2021 the Southwark Plan 2022 and adopted area action plans.

Community, equalities (including socio-economic) and health impacts

Community impact statement

30. The council is working to improve the economic wellbeing of residents and to ensure that Southwark has a strong local economy with opportunities for employment, vibrant centers to do business in and residents equipped with skills and knowledge to access employment. The Article 4 Direction seeks to protect a

very discrete part of the borough and in particular local businesses from suffering from excessive communication apparatus.

Equalities (including socio-economic) impact statement

31. The Public Sector Equality Duty (“PSED”) is set out in section 149 of the Equality Act 2010 which requires the council, in the exercise of its functions, to have due regard to the need to:
 - (a) eliminate discrimination, harassment and victimisation;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it.
32. The protected characteristics identified in the 2010 Act include race, disability, age and religion or belief.
33. Officers have considered the PSED in light of the proposed Article 4 direction. The owners of the current business negatively affected by the communication apparatuses are understood to be Caribbean and race is a protected characteristic.
34. Officers consider it is unlikely that the introduction of the Article 4 Direction will undermine any of the three needs set out in the PSED. It is likely that there will be some minor positive equalities impact as a result of the introduction of the Article 4 Direction - in particular advancing equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it.
35. Whilst officers accept that there is already proliferation of communication equipment impacting the businesses at this location, the proposed Article 4 Direction will bring control of any further proposals to install equipment at this location back to the council and require them to be subject to the full planning application process including consultation, mitigation, and equalities assessment and conditions where appropriate.

Climate change implications

36. Officer consider that there are no climate change considerations as a result of this recommendation.

Financial implications

37. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 Directions. Local planning authorities are liable to pay compensation to those who would have been able to develop under the permitted development rights that an Article 4 Direction withdraws, 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 GPDO would normally allow.
38. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 'Abortive expenditure' includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
39. Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.
40. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended). In cases such as these, compensation is not payable if the following procedure is followed, as set out in section 108 of the Town and Country Planning Act:
- The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2015 (as amended).
 - The permitted development right is withdrawn in the prescribed manner.
 - Notice of withdrawal is given in the prescribed manner:
 - Not less than 12 months before it takes effect.
 - Not more than the prescribed period of two years.
41. Permitted development rights granted by Schedule 2, Part 16 are prescribed development, which means that compensation may be payable for 12 months from the date that the direction comes into force. If more than 12 months' notice of the withdrawal were given no compensation would be payable.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

42. Planning Committee is being asked to confirm a non-immediate Article 4 Direction to withdraw the permitted development rights granted by Schedule 2, Part 16 of the Town and Country (General Permitted Development) Order 2015 for communications development and to delegate to the Director of Planning and Growth the arrangements for making the Article 4 Direction including compliance with the notification requirements under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

43. The council's constitution (Part 3F, 'matters reserved by the Planning Committee,' at paragraph 10) reserves to the Planning Committee any authorisation under Article 4 of the Town and Country (General Permitted Development) Order 2015. This confirms Planning Committee has the authority to take the decisions as set out in the proposed recommendations above.
44. Officers have considered the council's PSED under section 149 of the 2010 Act at paragraphs 31 to 35 of this report and have concluded that the proposals are not considered to have any adverse impacts on persons with protected characteristics, and will not undermine the three needs in the PSED.
45. In addition, the Human Rights Act 1988 imposed a duty on the council as a public authority to apply the European Convention on Human Rights; as a result the council must not act in a way which is incompatible with these rights. The most important rights for planning purposes are Article 8 (respect for homes), Article 6 (natural justice) and Article 1 of the First Protocol (peaceful enjoyment of property). It is important to note that few rights are absolute in the sense that they cannot be interfered with under any circumstances. 'Qualified' rights including Article 8 and the First Protocol can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by a local planning authority in the policy making process against the potential interference with individual human rights. In this case, it is considered proportionate to remove permitted development rights in order to protect a discrete part of the council from excessive communications apparatus.
46. Council Assembly on 14 July 2021 approved a change to the council's Constitution to confirm that all decisions made by the council will consider climate and equality (including socio-economic disadvantage and health inequality) consequences of taking the decision have been considered at paragraph 30 above.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Site map

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Matthew Lambert, Planning Officer	
Dated	25 September 2024	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director, Resources	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	25 September 2024	