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AUDIT TRAIL 23

Meeting Name:	Planning Committee (Major Applications) A
Date:	26 November 2024
Report title:	Proposed Article 4(1) Direction to withdraw Permitted Development Rights for operations within part of the Dulwich Wood Conservation Area, within and adjacent to Ancient Woodland
Ward(s) or groups affected:	Dulwich Wood
Classification:	Open
Reason for lateness (if applicable):	Not Applicable
From:	Director of Planning and Growth

RECOMMENDATIONS

That planning committee:

1. Approves a non-immediate Article 4(1) direction as set out in Appendix A to withdraw the permitted development right granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), hereafter, "GPDO".
2. Approves consultations be undertaken for a period of 6 weeks in relation to the non-immediate Article 4(1) direction.
3. Notes the Equality Impact and Needs Analysis (EINA) of the proposed Article 4(1) direction (Appendix D).

EXECUTIVE SUMMARY

4. The area affected by the proposed Article 4 Directive includes domestic and non-domestic premises immediately adjacent to the extent of Ancient Woodland, within Dulwich Wood Ward; as identified by Natural England (site identified in Appendix B).
5. Permitted development rights allow householders to undertake a broad range of works to improve, extend and alter their homes without the need to submit a planning application, some provisions are also available for owners of non-domestic properties. The rights are subject to limitations and conditions to control impacts and protect local amenity. Similarly certain rights have been extended to non-domestic premises. Permitted development rights are set out in Schedule 2 of the GPDO (as amended).

6. An Article 4(1) direction (Appendix A) would withdraw certain permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), within part of the Dulwich Wood conservation area, which would otherwise permit operations within the buffer zone to Ancient Woodland (site identified in Appendix B) which has been identified as a heritage asset.
7. Standing Advice from Natural England is that unless there are wholly exceptional grounds and that adequate mitigation can be provided, development proposals within the Buffer Zone, should not be approved.
8. A list of premises and stakeholders is contained within Appendix C.

BACKGROUND INFORMATION

Site location and description

The Great North Wood

9. For centuries the Great North Wood stretched, more or less unbroken, from Deptford in the north to Selhurst in the south and at its widest point spanned from Streatham in the west to what is now Woodside in the east.
10. Today the Great North Wood consists of several ancient woodland fragments, including Dulwich & Sydenham Hill Woods and Biggin Wood, as well as recent woodland that has developed on cleared land such as on One Tree Hill and New Cross Gate Cutting. The woodland habitat of the Great North Wood stands within a wider network of greenspaces including allotments, cemeteries, gardens, parks, nature reserves, and playing fields.
11. Ancient woodland takes hundreds of years to establish and is defined as an irreplaceable habitat. It's any area that's been wooded continuously since at least 1600 AD. It includes:
 - ancient semi-natural woodland mainly made up of trees and shrubs native to the site, usually arising from natural regeneration
 - plantations on ancient woodland sites - replanted with conifer or broadleaved trees that retain ancient woodland features, such as undisturbed soil, ground flora and fungi
12. The area impacted by the proposed Article 4 (1) Directive includes domestic and non-domestic premises immediately adjacent to the extent of Ancient Woodland, within Dulwich Wood Ward; as identified by Natural England.

Image 1: Scheduled Ancient Woodland: Source: Natural England

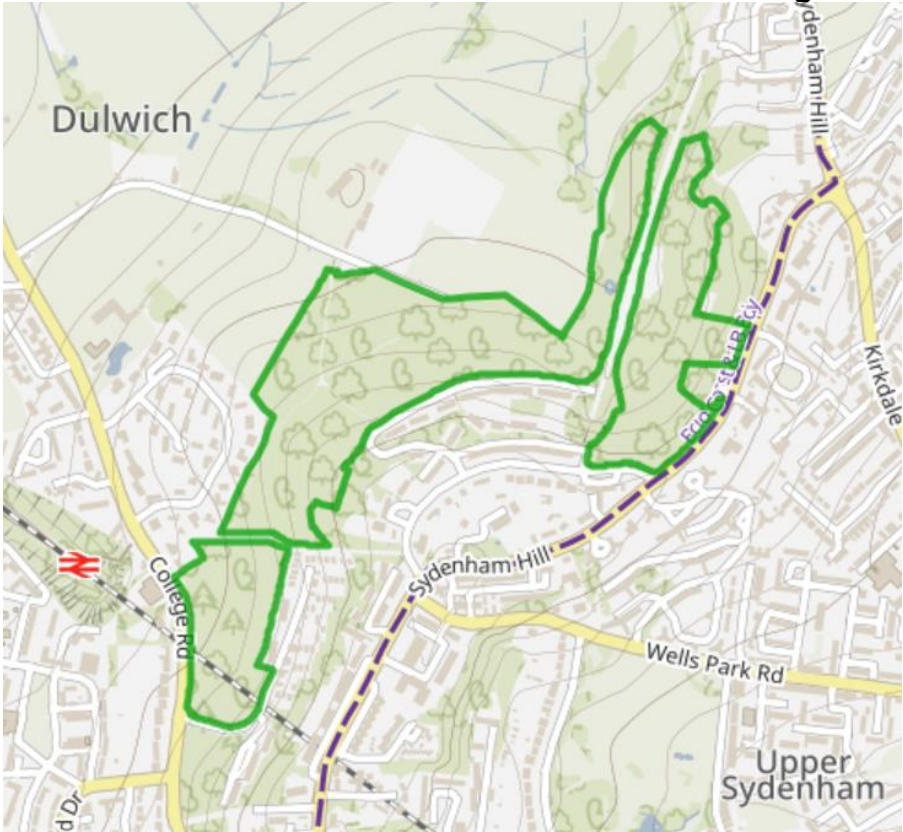
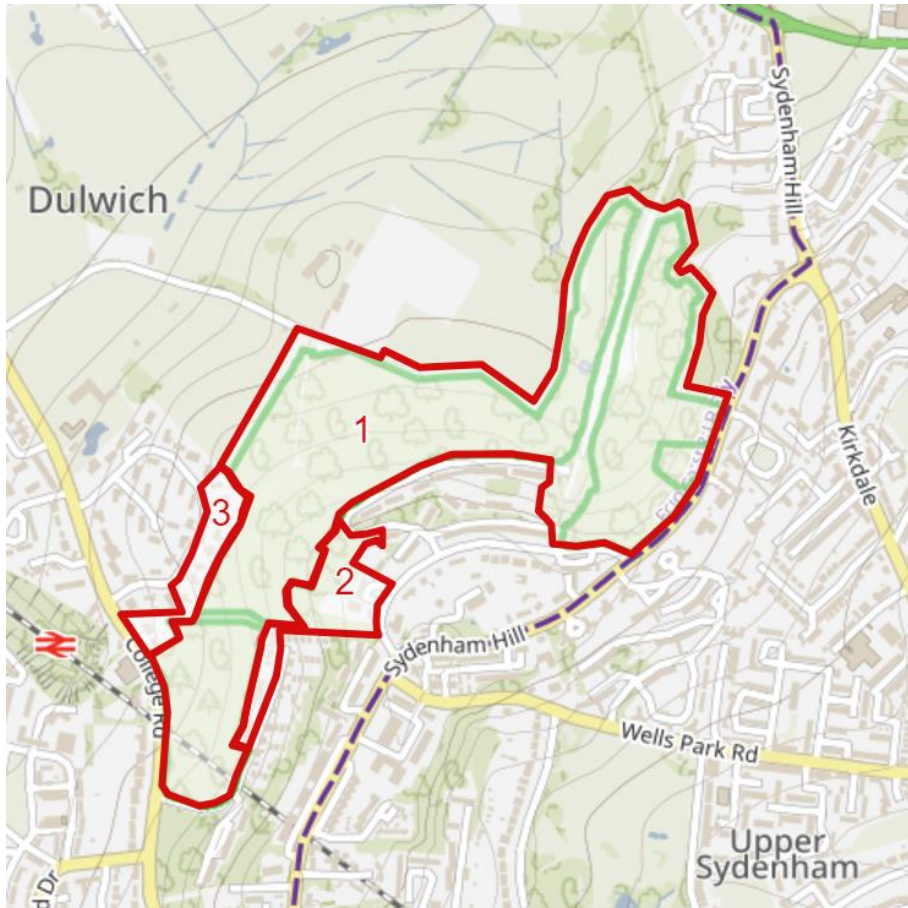
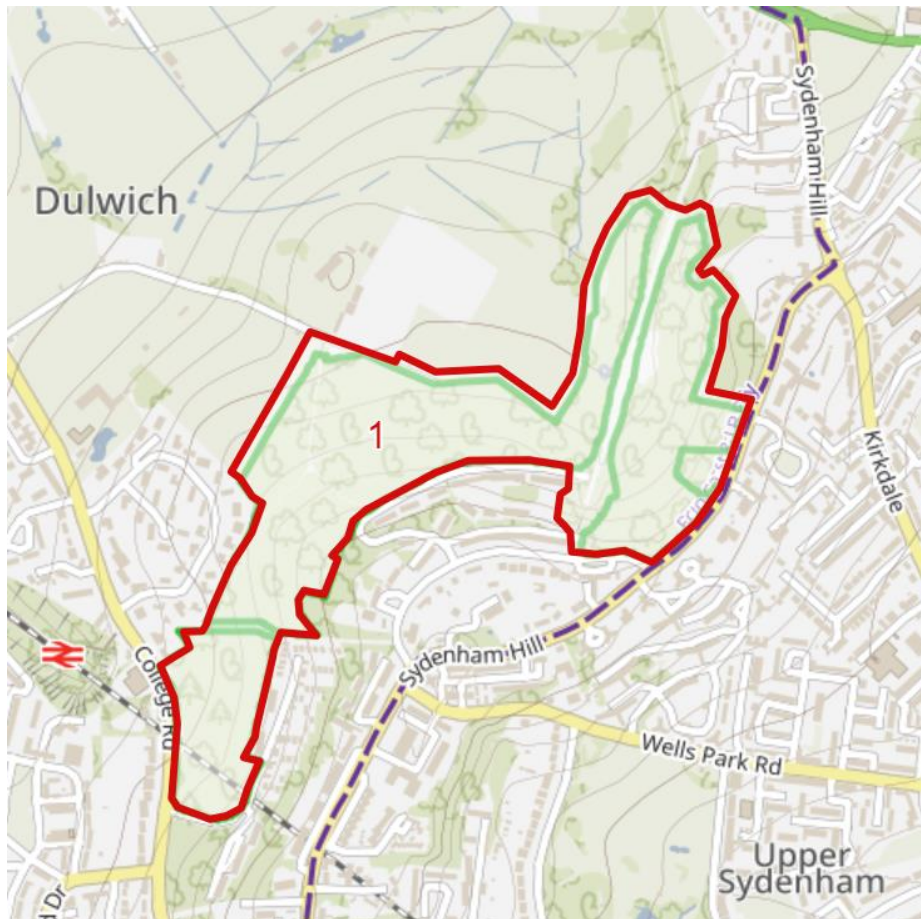


Image 2: Proposed Article 4 Map and Sub Areas



Article 4 (1) Sub Areas

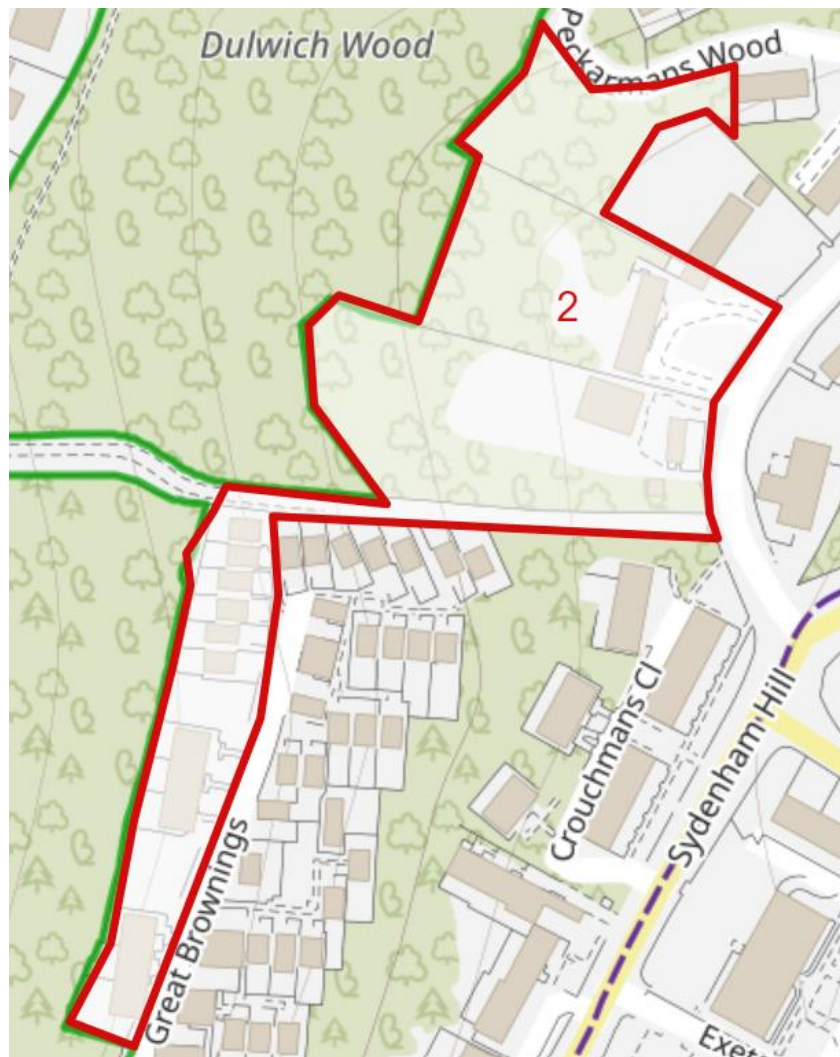
Image 3: Sub Area 1



Sub Area 1: Cox’s Walk, Sydenham Hill and the Woodland, the Golf Course, and the Allotments

- 13. Sub Area 1 runs the entire length of the woodland and includes public highway, woodland managed by the London Wildlife Trust (LWT) and the Dulwich Estate and land on non-domestic premises which comprises allotments and the Golf Course. Whilst the area designation is the largest and encompasses the entirety of the land titles for these sites the Article 4 is intended only to preserve the woodland and its nominal Buffer Zone. In respect of planning policy, these sites are located on Metropolitan Open Land for which there are already certain limitations as to scope of development.
- 14. Works within this sub area are particularly sensitive to local wildlife and the fabric of the woodland, its soils, vegetation and fauna. Management of the woodlands should be subject to an approved management plan. The Council recognises its ongoing relationship with the Estate and LWT. Officers have worked diligently with colleagues in Highways to deliver the Cox’s walk Footbridge renewal. There are currently no outstanding applications in this sub area.

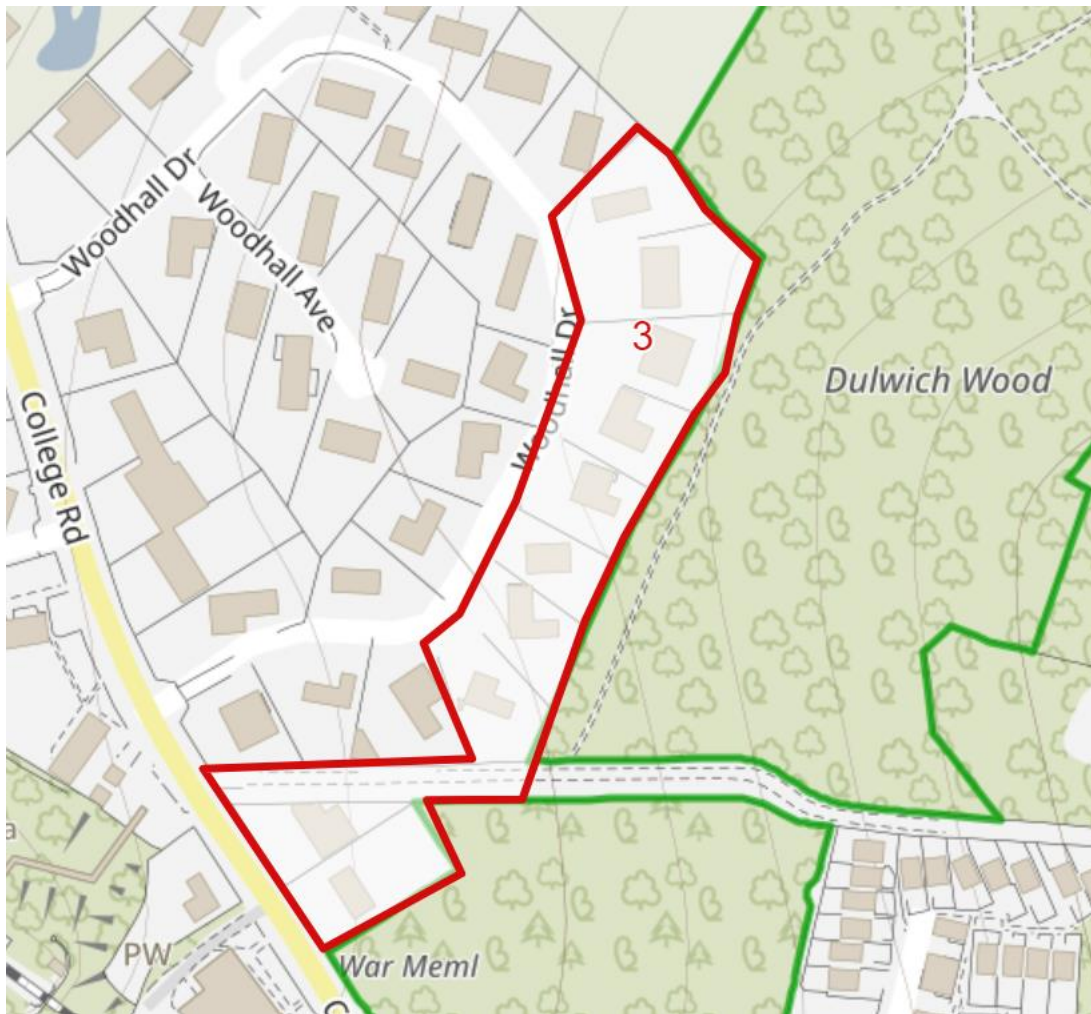
Image 4: Sub Area 2



Sub Area 2: Crescent Wood Road and Great Brownings

15. Comprising mid 1960s developments by the Dulwich Estate on land developed in the 1890s, adjacent to the woodland; and some older, retained, Victorian Villas. Great Brownings was designed by architects Vernon and Partners in 1966 and has an active Resident's Association. Works within the area covered by the Scheme of Management may also require the permission of the Dulwich Estate. All freehold property on the Estate is bound by the Scheme of Management and all property, freehold and leasehold, must be managed and maintained in line with this. The sub area includes the greatest density of private housing in proximity to the woodland. Light pollution, hardstanding, inappropriate planting, level changes and new structures are of primary concern in this area. There are currently no outstanding applications in this sub area.

Image 5: Sub Area 3



Sub Area 3: Woodhall Drive and College Road

16. Woodhall Drive. A Wates development of the original Woodhall Estate. Private Gardens have a direct boundary with the woodland. The sub area also includes 2 properties on College Road. As with Sub Areas 2 and 3, light pollution, hardstanding, inappropriate planting, level changes and new structures are primary concerns in this area. Many of the properties have already been extended or otherwise improved. There are currently no outstanding applications in this sub area.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

17. The categorisation of land as an ancient woodland does not itself provide any statutory protection. However, some features in ancient woods are protected and sites can also be designated for their wildlife value. Development, including construction and operational activities can affect ancient woodland, ancient and veteran trees, and the wildlife they support on the site or nearby.
18. Buffer zones can protect ancient woodland and individual ancient and veteran

trees and provide valuable habitat for woodland wildlife, such as feeding bats and birds. The size and type of buffer zone is variable depending on the:

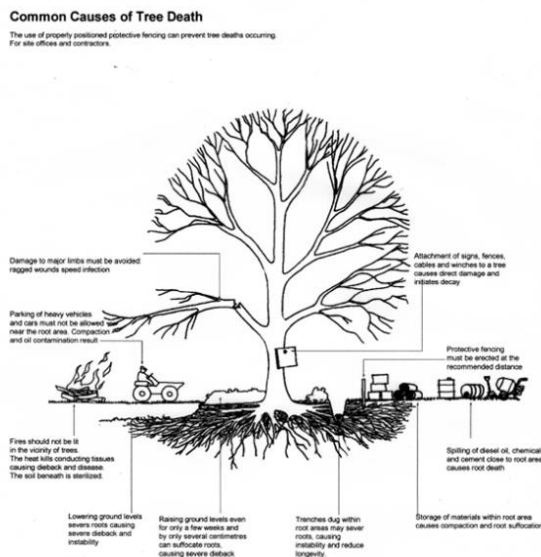
- scale and type of development and its effect on ancient woodland, ancient and veteran trees
- character of the surrounding area

19. For example, larger buffer zones are more likely to be needed if the surrounding area is:
 - less densely wooded
 - close to residential areas
 - steeply sloped
20. For ancient woodlands, a buffer zone of at least 15 metres from the boundary of the woodland is advised (source: Natural England).
21. Standing Advice from Natural England is that unless there are wholly exceptional grounds and that adequate mitigation can be provided, development proposals within the Buffer Zone, should not be approved.

Image 6: Inconsiderate damage to trees



Image 7: Common Causes of Tree Death



22. For these reasons, and those as set out in detail in paragraphs [50] to [64]

below, it is considered appropriate to implement a non-immediate Article 4(1) Direction to remove the permitted development rights from the domestic and non-domestic properties located in the area identified on the plan set out after paragraph [12] above headed 'Great North Wood Article 4'.

23. The Article 4 Direction would have the effect of removing the following permitted development rights set out in Schedule 2 of the GPDO.

In respect of Non-Domestic Premises:

SCHEDULE A

PART 4 Temporary buildings and uses

Class A – temporary buildings and structures

Development consisting of the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

PART 6 Agricultural and Forestry

Class E – forestry developments

Development comprising the carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of—

(a) works for the erection, extension or alteration of a building;

(b) the formation, alteration or maintenance of private ways;

(c) operations on that land, or on land held or occupied with that land, to obtain the materials required for the formation, alteration or maintenance of such ways;

(d) other operations (not including engineering or mining operations).

PART 9 Development relating to roads

Class A – development by highways authorities

The carrying out by a highway authority—

(b) on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway.

Development comprising of any works required for the maintenance or improvement of the road but which are outside of the boundaries of the road.

PART 14 Renewable energy

Class L – installation or alteration etc of ground source heat pump on non-domestic premises

Development comprising the installation of ground source heat pumps, and, in particular; horizontal, pond/lake and open loop systems.

PART 18 Miscellaneous development

Class A – development under local or private Acts or Order

Development authorised by—

(a) a local or private Act of Parliament,

(b) an order approved by both Houses of Parliament

Development related to rights under acts of parliament and similar to undertake certain works and to Local Development Orders.

In respect of Domestic Premises:

SCHEDULE B

PART 1 Development within the curtilage of a dwellinghouse

Class A – enlargement, improvement or other alteration of a dwellinghouse

Development consisting of the enlargement, improvement or other alteration of a house.

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

Development within the curtilage of a house for the construction of: (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

Class F – hard surfaces incidental to the enjoyment of a dwellinghouse

Development within the curtilage of a house for - (a) the provision of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such or (b) the replacement in whole or in part of such a surface.

PART 2 Minor operations

Class A – gates, fences, walls etc

Development consisting of the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

PART 4 Temporary buildings and uses

Class A – temporary buildings and structures

Development consisting of the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

PART 14 Renewable energy

Class C – installation or alteration etc of ground source heat pumps on domestic premises

Development comprising the installation of ground source heat pumps, and, in particular; horizontal, pond/lake and open loop systems.

Legal Context

Article 4 Directions

24. An Article 4 direction can be used to remove specific permitted development rights in all or parts of a local authority's area. It does not restrict development altogether, but instead ensures that development requires planning permission. A planning application for the operations outlined in paragraph [18] of this report would need to be submitted and that would then be determined in accordance with the development plan. Development could only be undertaken lawfully with express planning consent and would otherwise be a breach of planning control and subject to enforcement action.
25. The government's national planning practice guidance (NPPG entitled 'When is permission required?') sets out guidance on the use of Article 4 directions. The NPPG 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 well-being 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 (NPPG, paragraph 038).
26. An Article 4 direction can be either immediate or non-immediate depending upon the date given within the notice as to when it is to come into force.
27. In the case of this report, the council is proposing to make a non-immediate Article 4(1) direction, the procedure for which is set out in Schedule 3 of the GPDO and can be summarised as follows:

Stage 1 Direction-making (current)

The Council decides whether to go ahead and introduce a Direction setting a date in the Notice for when the Direction will come into force which must be at least 28 days and no more than 2 years after representations can first be made, which is usually after the last publication/service date;

Stage 2 Publication/Consultation stage.

The council:

- i) publishes the notice of the direction in a local newspaper;
- ii) serves notice on the site owner and occupier, where practicable;
- iii) displays notices on site for a period of not less than 6 weeks; and
- iv) specifies a period of at least 21 days during which representations may be made.

Stage 3 SoS Notification

On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction;

Stage 4 Confirmation Stage

The council cannot confirm the Direction until after a period of at least 28 days from publication/service of the Notice. Once a Direction has been confirmed, the council must give notice of the confirmation in the same way as it gave notice of the initial Direction, and must specify the date that the Direction comes into force. A copy of the Direction as confirmed must also be sent to the Secretary of State.

Compensation

28. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 directions. Under sections 107 and 108 of the Town and Country Planning Act 1990 Local planning authorities are liable to pay compensation to landowners 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, as a result of an Article 4 direction being in place.
29. The compensation may 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.
30. Loss or damage directly attributable to the withdrawal of permitted development rights can 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.

Planning applications

31. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise.

32. The policy context is set out below.

Policy Context

The National Planning Policy Framework (2023)

33. The NPPF, the country's overarching framework for planning policy, provides that LPAs should refuse applications for "*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) ... unless there are wholly exceptional reasons and a suitable compensation strategy exists*".
34. On 26 January 2024, the Government introduced a new duty requiring local planning authorities to consult the Secretary of State regarding developments that impact ancient woodland. However, it is highly unlikely that this will apply to household applications.
35. The National Planning Policy Framework (NPPF) identifies that heritage assets contribute to the social and environmental roles of sustainable development. Southwark's Ancient Woodland is at risk from encroachment, indirect and direct harm without planning permission or an assessment of its heritage value. In the instance of this Article 4(1) direction, the requirement of removing permitted development rights for part of the Dulwich Wood Conservation Area seeks to comply with the social and environmental role of the NPPF.
36. The social role: Removing the permitted development rights will ensure that the contribution to the cultural well-being and amenity that the Ancient Woodland provides to the community can be considered within a planning application and it is not lost without consideration without the assessment for any forthcoming scheme.
37. The environmental role: the NPPF supports the conservation and enhancement of the historic environment, recognising that heritage assets are an irreplaceable resource.
38. Paragraph 180 of the NPPF states: Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
39. Not all heritage assets are designated. Nonetheless, the NPPF expects the local planning authority to take into account the effect of an application on the significance of a non-designated heritage asset when determining a planning application.

The London Plan (March 2021)

40. The London Plan (March 2021) believes London's diverse range of designated and non-designated heritage assets contributes to its status as a world-class city. It therefore advocates the identification and sensitive management of London's heritage assets, in tandem with promoting the highest standard of architecture. This, it regards, as 'essential to maintaining the blend of old and new that contributes to the capital's unique character.' (para 7.13). It supports the creative re-use of heritage assets and the historic environment, requiring development proposals to conserve a heritage asset's significance and to promote the effective integration of London's heritage in regenerative change (policy HC1).
41. Policy G7 Trees and woodlands (A) London's urban forest and woodlands should be protected and maintained, and new trees and woodlands should be planted in appropriate locations in order to increase the extent of London's urban forest – the area of London under the canopy of trees. (B) In their Development Plans, boroughs should: 1) protect 'veteran' trees and ancient woodland where these are not already part of a protected site.

The Southwark Plan (2022)

42. The Southwark Plan requires development to conserve and enhance the significance of designated and non-designated heritage assets and their settings, and to enable the viable use of the heritage asset that is consistent with its on-going and long-term conservation (Policy P21).
43. For Ancient Woodland, Policies P60 and P61 also apply:
44. P60 Biodiversity
1.2. Protecting and avoiding damage to SINC, LNRs, populations of protected species and priority habitats / species;
45. P61 Trees
2. Development must retain and protect significant existing trees including:
2.4. Veteran, ancient and notable trees
46. The council considers The Great North Wood to be an irreplaceable habitat. This Article 4 direction is necessary to allow a full assessment of any subsequent planning application, and thereby ensuring proper protection of the site.

Policy framework implications

47. The Southwark Plan (February 2022)
 - Policy P21 - Conservation of the historic environment and natural heritage
 - Policy P60 – Biodiversity
 - Policy P61 - Trees

48. The London Plan (March 2021)
 - Policy HC1 - Heritage conservation and growth.
 - Policy G7 – Trees and woodlands
49. The National Planning Policy Framework (NPPF) 2023

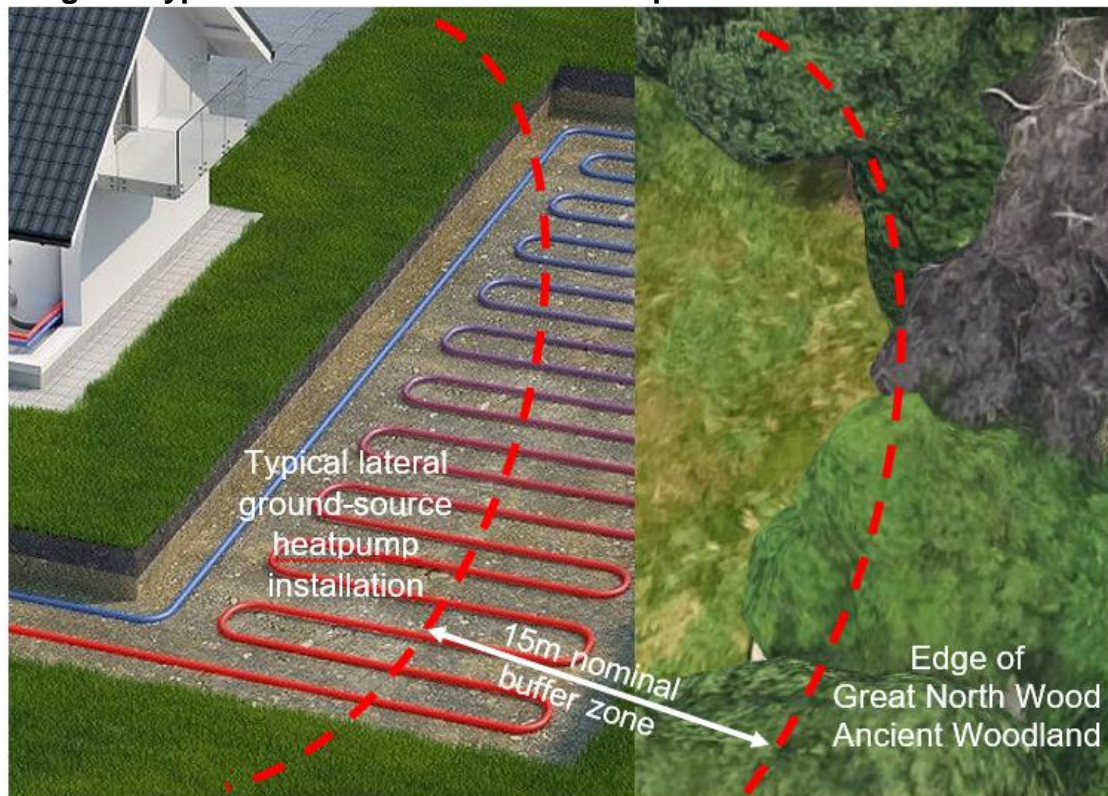
ASSESSMENT

50. An Article 4(1) direction can be made if the council is satisfied that it is expedient that development should not be carried out unless planning permission is granted, particularly if it contends that there is a threat to local amenity or prejudices the proper planning of an area.
51. The NPPF advises in paragraph 53 that the use of Article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the NPPG, which also states local planning authorities should identify clearly the potential harm that the direction is intended to address.
52. Officers consider The Great North Wood, comprising Sydenham Hill Woods and Dulwich Wood to constitute irreplaceable habitat which makes a significant contribution to the historic interest and visual impact of the area.
53. For ancient woodlands, a buffer zone of at least 15 metres from the boundary of the woodland is advised (source: Natural England).
54. Standing Advice from Natural England states that unless there are wholly exceptional grounds and that adequate mitigation can be provided, development proposals within the Buffer Zone, should not be approved. The categorisation of land as an ancient woodland does not itself provide any statutory protection. However, some features in ancient woods are protected and sites can also be designated for their wildlife value.
55. The NPPG 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. For the reasons outlined above it is considered this Article 4 direction should relate only to those operations and for those premises within Dulwich Wood Conservation Area which are directly adjacent or within the Woodland proper and its nominal buffer zone (15m) to the Ancient Woodland building (extent illustrated at Appendix B) due to the heritage significance as outlined above.
56. This report sets out the proposal to consider an Article 4(1) direction for part of the Dulwich Wood conservation area, which would otherwise permit operations within the Woodland and the buffer zone to Ancient Woodland without first gaining express consent from the council as the local planning authority.
57. Under the current GPDO, potentially damaging operations could be undertaken with direct or indirect impacts to, and the loss of, irreplaceable habitat; prior to the submission of or during the processing of a planning application. As such, operations could be undertaken without any consideration of local natural heritage value and standing advice from Natural England. The Article 4(1)

direction seeks to avoid this. In effect, it requires applications to consider actively whether and how the Ancient Woodland may be impacted and both its heritage and amenity contribution conserved.

58. For example, the GPDO does not distinguish between the 4 types of ground source heat pumps commonly installed in the UK. Of these, it is the vertical ground source system which is least damaging. An example of a horizontal system and how this may impact upon the root protection of ancient woodland trees is set out below.

Image 8: Typical Ground Source Heat Pump installation



59. Here, Officers note that the Council fully recognises the impacts of fuel poverty and remains supportive of the aims of the NPPF and the Local Plan to further adaptations towards renewable energies and commitments towards Net Zero whilst ensuring that these are designed and installed with due regard to the very special nature of local irreplaceable habitat.
60. Further, the Council also acknowledges that access requirements relating to mobility needs requiring changes in levels and hardstanding could be considered wholly exceptional grounds and so likely to be acceptable, subject to mitigation. For older disabled people and disabled children and adults who may need home adaptations/ and additional build requirements, these will still be possible subject to any requisite mitigations which preserve the Ancient Woodland. This is set out in Appendix D: Equality Impact and Needs Analysis.
61. The use of an Article 4 direction would not restrict development altogether, but instead ensure that development proposals in and adjacent to Ancient Woodland would actively form a material consideration in determining the planning application.

62. Whilst development within Ancient Woodland is generally assumed to be strictly controlled, the limitations of the Conservation Area provisions are insufficient to guarantee that development would not adversely impact upon the woodland(s), nor adequately provide for strict adherence to standing advice from Natural England pertaining to the provision of a Buffer Zone as the categorisation of land as an ancient woodland does not itself provide any statutory protection. It should be noted, however, that some features in ancient woods are protected and sites can also be designated for their wildlife value.
63. Officers have carefully considered all of the potential operations which may be undertaken in respect of the GPDO and restricted the recommendation for the Article 4 (1) Direction to those activities which have been deemed to have the potential to be most damaging to the woodland.
64. The authorisation is therefore recommended, in the absence of alternative statutory provisions, to implement an Article 4(1) Direction, without immediate effect; to remove the highlighted permitted development rights from the particular domestic and non-domestic properties, as identified by the map (site identified in Appendix B).

Other matters

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

65. Southwark Council is committed to achieving the best quality of life for its residents. This includes maintaining a strong local economy and revitalised neighbourhoods for the communities within Southwark. It is vital that a strong policy framework ensures the borough's heritage and community values continue to be protected for the benefit of local residents. The Article 4(1) direction seeks to protect Southwark's Ancient Woodland via a robust analysis through the planning process.

Equalities (including socio-economic) impact statement

66. 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 (ECHR). Various Convention rights may be engaged in the process of making and considering this Article 4 direction, including under Article 1 of the First Protocol (Protection of property) and Article 8 (Right to respect for a private and family life). 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". Both public and private interests are to be taken into account in the exercise of the council's powers and duties as a local planning authority. Any interference with a Convention Right must be necessary and proportionate.
67. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4 direction have been considered under the Human Rights Act 1998 and it has been determined that the Articles will not be triggered.

68. In consulting the Council's Legal and Equalities Teams upon the introduction of the Article 4 direction the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010.
69. The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.
70. The council has given consideration to all the protected characteristics in the Equality Act 2010 to ensure that any potential impacts of the proposed Article 4 direction on these groups of people have been considered and where possible mitigated.
71. Generally, greenspaces express a positive impact for those experiencing socio-economic disadvantage, as the EINA demonstrates that those experiencing socio-economic disadvantage are less likely to have access to green spaces in the immediate vicinity.
72. Overall, the Directive will have no negative impacts on the equalities of residents, including groups with protected characteristics, in the Article 4 (1) area. The Direction encourages applicants to be more considerate of the very special character and setting of the Great North Wood.
73. A full and comprehensive Equalities Impacts and Needs Analysis (EINA) has been undertaken and is provided as Appendix D to this report. Following consultation, the EINA will be revised and updated, as necessary.

Health Impact Statement

74. The Article 4 direction is a legal matter in requiring planning permission first be obtained for development otherwise permitted. It does not preclude development *per se* but would allow for due consideration of the impacts and any exceptional grounds, which could in themselves present health concerns and would require careful control.

Climate change implications

75. The Article 4 direction recommendation is in keeping with Priority 3 of the Council's Climate Change Strategy and with particular reference to the Southwark Nature Action Plan (SNAP) (2020) which sets out the vision and strategy for the continued protection, conservation and enhancement of nature in the borough. Southwark will continue to ensure protection of trees and woodlands subject to Tree Preservation Orders, in Conservation Areas and Sites of Importance for Nature Conservation, with trees to be retained on development sites and to require high standards of replacement tree planting. (1.18 Biodiversity and Trees (SNAP) (2020)).

Resource implications

76. The notification and public consultation process will not result in resource implications for the staffing of the department of the chief executive. Such undertakings are part of the management of the historic environment and as such will be carried out by the department's conservation and design team within its existing staffing resources.
77. Other resource implications will be the cost of advertising the Article 4 direction for the purposes of public consultations, which can met within the department's revenue budget. The cost is a standard charge.
78. The Article 4 direction may generate some additional planning casework however this is seen as a necessity in safeguarding the Woodland, in accordance with nationally recognised advice.

Legal implications

79. The legal implications that arise from the Article 4 direction relate to the requirements to consider impacts to the Ancient Woodland as part of the direction-making process; and in the outcome of the Article 4 direction itself. The latter would legally require the applicant to obtain express planning consent for development, otherwise permitted, prior to the commencement any such works. The council would consider the case for development as part of the application decision-making process, weighing the planning benefits and dis-benefits of the scheme, including proximity to Ancient Woodland. There would be no additional legal implications for the council beyond these statutory processes.

Financial implications

80. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by the GPDO (or grant planning permission but with more onerous conditions than would have the case under the GPDO) the council has a potential liability for compensation. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning permission or to abortive expenditure. Therefore, there is a risk that the proposed direction will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims.
81. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the planning division's budget. This position will be monitored and if the award cannot be contained within existing departmental revenue budgets will be reflected in the council's revenue budget monitoring arrangements for funding from council reserves.
82. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.

83. Staffing and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

Public Consultation

84. No public consultations have been carried out to date. Consultations will be undertaken as part of the Article 4(1) direction process, complying with provisions set out in the GPDO. Notice of the direction will be made by:
- Local advertisement in the press;
 - Site notices placed outside all entrances to the Ancient Woodland for a period of at least 6 weeks; and
 - Written notification sent to every owner/ occupier, specifying a period of at least 21 days in which representations can be made.
85. Following the representation period and within 6 months of the direction being notified and coming into effect, a report recommending whether the direction should be confirmed will be reported back to planning committee. Similarly, following consultation, the EINA will be revised and updated, as necessary.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

86. Planning Committee is being asked to approve the making of an Article 4(1) direction to withdraw the permitted development rights granted by Schedule 2, of the GPDO to restrict certain operations without planning permission, to approve a public consultation in respect of the Article 4(1) direction and to note the equalities analysis annexed to this report.
87. Part 3F of the council’s Constitution entitled “Matters reserved for decision by the planning committee” at paragraph 3 reserves to Planning Committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This confirms Planning Committee has the authority to take the decisions being asked of it.
88. The Equality Act 2010 introduced the public sector equality duty, which merged existing race, sex and disability equality duties and extended them to include other protected characteristics; namely age, gender reassignment, pregnancy and maternity, religion and belief and sex and sexual orientation, including marriage and civil partnership. In summary those subject to the equality duty, which includes the council, must in the exercise of their functions: (i) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and (ii) foster good relations between people who share a protected characteristic and those who do not. This report notes the conclusion in the equalities analysis that the Article 4 direction is anticipated to have a positive impact on equalities. The report should however be considered in full.

89. In addition, the Human Rights Act 1998 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 the buffer zone to Southwark's Ancient Woodland.

Strategic Director of Resources

90. This report is requesting the planning committee to approve the Article 4(1) direction (Appendix A) to withdraw the permitted development rights for development granted by the General Permitted Development Order 2015 (as amended). Full details and background is provided within the main body of the report.
91. This report is also requesting the planning committee to approve consultation for 6 weeks in relation to the Article 4(1) direction and notes the equalities impact and needs analysis of the proposed Article 4(1) direction (Appendix D).
92. The strategic director of resources notes that the proposed Article 4 direction may lead to potential compensation claims but it is not possible to gauge the magnitude of such claims. It is noted that any claim for compensation will be dealt through the council's official complaints procedure and sanctioned by the relevant cabinet member under the council's constitution as reflected in the report.
93. It is also noted that any agreed claims for compensation would be contained within the existing departmental revenue budgets where possible before funding from council's reserves are requested.
94. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

Other officers

95. The Planning Policy Team and the Borough Ecologist have provided guidance throughout the drafting of this report.

CONCLUSION

96. For the reasons set out within the body of this report, it is hereby recommended that an Article 4(1) direction preventing certain permitted development rights, as outlined; be agreed.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Local Development Framework and Development Plan Documents	Planning and Growth Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 020 7525 0254 Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix A	Draft Article 4(1) Direction
Appendix B	Article 4 (1) Map
Appendix C	List of Premises and Stakeholders
Appendix D	Equalities Impact and Needs Analysis
Appendix E	Photos and Photomontages

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Liam Bullen, Senior Planner – Urban Forester	
Version	Final	
Dated	15 October 2024	
Key Decision	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director, Resources	Yes	Yes
Date final report sent to Constitutional Team	15 November 2024	

References:

Permitted development rights for householders , Technical Guidance MHCLG, 2019

[Ancient woodland, ancient trees and veteran trees: advice for making planning decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/ancient-woodland-ancient-trees-and-veteran-trees-advice-for-making-planning-decisions)

[Planner's Manual for Ancient Woodland - Woodland Trust](#)

[Habitats Regulations advice for LPAs | Local Government Association](#)

[GNW Toolkit.pdf \(wildlondon.org.uk\)](#)

CONSULTATION

Stakeholders and Consultees

INTERNAL: - Pre publication

Cabinet Lead

Cllr Dennis

Ward Members: Dulwich Wood

Cllr Rose

Cllr Simmons

Planning Committee (Major Applications) A

LBS Policy

LBS Legal

LBS Finance

INTERNAL & EXTERNAL: Post adoption

Secretary of State PCU@levellingup.gov.uk

Local News em@southwarknews.co.uk

LBS GIS

LBS Land Charges

LBS Highways

LBS Environment & Leisure

Natural England enquiries@naturalengland.gov.uk

LTOA executive.officer@ltoa.org.uk

Forestry Commission nationalenquiries@forestrycommission.gov.uk

Woodland Trust: governmentaffairs@woodlandtrust.org.uk

SHINE: laura.hampden@historicengland.org.uk