

**Planning matter with Navigation Implications:
Article 4 Directions restricting permitted development rights**
Report by Planning Officer

Summary: The Authority has existing Directions which restrict the use of moorings for retail sales from vessels. It is necessary to review these and consider whether to retain, amend or remove them.

Member's views are sought on the proposals.

1 Background

- 1.1 The planning team has been reviewing several of its planning policies, procedures and provisions as it is appropriate to do periodically. Members will be aware of the outcomes of some of this work, for example the ongoing work on the Local Plan, whilst other work will have solely internal impacts.
- 1.2 As part of this work we have been looking at the Article 4s which restrict permitted development rights in the Broads and this report covers this topic. Planning permission is required for any development, with development defined in s55(1) of the Town and Country Planning Act 1990 as:
- “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”.*
- 1.3 The definition of development is very broad, so in order to prevent the planning system getting bogged down dealing with large numbers of applications for very minor development, the law introduces the concept of 'permitted development rights' whereby planning permission is automatically granted for certain types of development. The permitted development rights are set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which explains the rights and the limitations and the conditions which apply.
- 1.4 While permitted development rights automatically allow development subject to certain restrictions/conditions, there is a contrary provision which can remove permitted development rights. This is known as an Article 4 Direction and enables a Local Planning Authority (LPA) to withdraw permitted development rights by serving a Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The effect of this is that the development specified in the Direction which would usually benefit from permitted development rights would now require express planning permission from the LPA.

- 1.5 An Article 4 Direction gives the LPA the ability to manage development which would not otherwise require planning permission and to consider developments in detail, including taking into account the views of the local community and other consultees, before the development can proceed. As permitted development rights are set nationally, there may be particular local circumstances which mean some types of development can have a greater impact in some areas than others. National Parks, the Broads, Areas of Outstanding Natural Beauty and Conservation Areas do benefit from some additional controls and exemptions from permitted development rights. However, Article 4 Directions provide an additional mechanism to respond in the interests of protecting amenities and landscapes.
- 1.6 For a landowner or user, the withdrawal of permitted development rights means that, where Article 4 Directions are served, planning permission is required for the specified development in the specified area when it would not otherwise be required. This does not mean that planning permission will not be granted, but that it is necessary to submit an application and allow the LPA to consider and consult on the proposal. There is currently no fee to pay for such applications or indeed any subsequent appeals following a refusal of planning permission.
- 1.7 There has previously been no comprehensive review of the existing Article 4 Directions. It is good practice to review these periodically and to consider which should be retained and which should be cancelled. It is also appropriate to consider periodically whether any of the existing Directions should be extended and whether any new Directions are necessary.
- 1.8 There are 24 existing Directions within (or partly within) the Broads area and these have mostly been inherited from the constituent district and borough councils prior to the Authority being established. The one which is the subject of this report covers retail sales from moorings and applies to 23 moorings. A summary table of all the Article 4 Directions is attached at Appendix 1.
- 1.9 When reviewing these existing Directions it is necessary to look at each in turn and consider the factors which justified its making, the continued relevance of these and any current factors, plus whether any alternative controls are available. This review is being undertaken in a phased approach and the existing Directions which are proposed to be retained unamended were presented to the Planning Committee on 3 March 2017. At that meeting the Planning Committee resolved to consult the Navigation Committee in the review of the Direction covering retail sales from moorings.

2 Existing position

- 2.1 The nationally set permitted development rights allow for the temporary change of use of land for up to 28 days in a calendar year (with a few exceptions). This would allow for a mooring to be used for a vessel selling goods. If this were to occur for more than 28 days in a calendar year in any location, planning permission would be required.

2.2 The existing Article 4 Direction was served in 1972/73 and removes this permitted development right at the locations listed below, with the precise areas defined on plans. This means that any retail sales from vessels moored at these locations for any length of time (that would constitute development) requires planning permission. In all other parts of the Executive Area, such activity can be undertaken for up to 28 days before a planning application is required. The permitted development right and this associated Direction only covers the planning requirement, other restrictions on use of moorings or the permissions of landowner still apply.

2.3 The existing Direction covers defined areas at the following locations:

- Wayford Bridge
- Stalham and Sutton Staithes
- Barton Turf
- Limekiln Dyke
- Ludham Bridge
- Hickling Staithe
- Martham
- Potter Heigham Bridge
- Womack Water
- Thurne Dyke
- Belaugh
- Coltishall
- Wroxham/Hoveton
- Horning
- Ranworth
- South Walsham Broad
- Acle Bridge
- Acle Dyke
- Stokesby
- Thorpe St Andrew
- Chedgrave and Loddon
- Reedham Ferry
- Reedham

2.4 These are generally around staithes and visitor moorings, including some Broads Authority 24 hour moorings.

3 Navigation Issues

3.1 The origins of the Direction, issued over 40 years ago, are unknown. There is no current issue with retail sales from moored vessels, however this may be as a result of the Direction as around 5 or 6 enquiries about trading from moorings are received each year and the enquirers are normally discouraged by the need to apply for planning permission. There are no byelaws which specifically cover this matter, although the operators would need to demonstrate how they would trade safely and without impacting on

navigation; they would also be bound by the 24 hour restriction at Broads Authority moorings.

- 3.2 In accordance with the *Town and Country Planning (General Permitted Development) Order 1995* (GPDO), Article 4 Directions can only be served if it is expedient that the specified development should only take place if planning permission is granted for it on application. The Planning Practice Guidance goes on to say that the use of Article 4 Directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area.
- 3.3 The sale of goods from moored vessels for up to 28 days in a calendar year is unlikely to present any specific planning issues and it needs to be considered whether the Town and Country Planning legislation is the appropriate means by which to manage this activity. Guidance on the use of Article 4 Directions emphasises that their use should be limited to situations where it is necessary to protect the local amenity or wellbeing of the area and that regular reviews should make certain the reasons for the Direction are still valid and unnecessary Directions should be cancelled.
- 3.4 Officers consider this Direction to be an important mechanism in dealing with sales at moorings and ensuring the availability of moorings for visiting boats. There is concern that if this Direction were to be removed in total or from some of the individual sites, there would be no other means to manage this. However, there are some sites where this is less of an issue and the ability to temporarily allow sales from moored vessels may be of some benefit to visitors.

4 Consultation

- 4.1 Members' views are requested on whether the existing Direction removing permitted development rights for retail sales from the moorings listed at paragraph 2.3 should be removed or retained.
- 4.2 Removing the existing Direction would have the effect of reinstating the permitted development right and allowing retail sales from these moorings for up to 28 days in a calendar year. The use of the moorings would remain subject to any other planning or land owner/manager provisions. Any proposal to remove the Direction would be subject to a public consultation process.
- 4.3 Retaining the Direction would maintain the status quo and there must be justifiable planning reasons for doing so.

5 Conclusions

- 5.1 Members views are sought on whether to remove or retain the existing Article 4 Direction; a planning mechanism which prevents retail sales from 23 mooring sites throughout the Broads.

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Broads Plan Objectives: None

Appendices: Appendix 1 – Existing Article 4 Directions in the Broads Authority Area

APPENDIX 1

Existing Article 4 Directions in the Broads Authority area

	<u>Direction</u>	<u>Area</u>
i	Retail sales from moored vessels	23 moorings
ii	Householder permitted development rights, including outbuildings and boundary treatments	Beccles
		Bungay
iii	Temporary uses of land	Brundall Riverside
iv	Holding of markets, motor and motorcycle racing and clay pigeon shooting	Haddiscoe Marshes
		Church Road, Hoveton
		Gillingham Swan Motel
v	Erection of boundary treatments	Crabbetts Marsh, Horning
		Boathouse Lane, Oulton
		Anchor Street, Coltishall
		Nobbs Loke, Wayford
		Oulton Marsh
		Riverside Park, St Olaves
		Holly Lodge in Wroxham
Surlingham and Bramerton		
vi	Caravans, camping and temporary uses	Horsey, Winterton and Sea Palling
		Crabbetts Marsh, Horning
		Anchor Street, Coltishall
		Smallburgh
vii	Agricultural development	Limpenhoe
		Gillingham Dam
viii	Works to unadopted streets	Anchor Street, Coltishall
ix	Forestry development	Laundry Cottages, Bramerton
x	Travelling shows and camping	Halvergate