

Agenda Item No: 5
Report To: Planning Committee
Date: 22 February 2012
Report Title: **Article 4 Direction
Houses in Multiple Occupation (HMOs)**
Report Author: Martin Vink – Development Control Manager



Summary: An Article 4 Direction to remove permitted development rights for change of use from class C3 to class C4 (small HMOs) is proposed for four Ashford wards. Consultation on the proposal has taken place. This report examines the response to consultation and recommends the Article 4 direction is confirmed

Key Decision: Not applicable
Affected Wards: **Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards**

Recommendation: **The Planning Committee confirm the making of an Article 4 Direction to remove permitted development rights in Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards, for change of use from class C3 to class C4 of the Town and Country Planning Use Classes Order 1987 as amended.**

The Direction to come into effect on 1st December 2012

The area covered by the Direction will be as shown in the maps in annex 1 of this report.

Financial Implications: Little or no effect as there will be no right to compensation. The only additional cost will be the consideration of any planning applications which will not currently attract a fee.

Risk Assessment No

Equalities Impact Assessment There is no impact on equalities from the making of the direction as it will only require planning applications to be made for a change of use to an HMO. Equalities and Human Rights considerations would have to be made at the determination of any subsequent applications.

Other Material Implications: Small scale increase in planning applications probable but may be offset by reduction in enforcement activity.

Background Papers: Responses to consultation - copies available in the members' room

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Agenda Item No. 5

**Report Title: Article 4 Direction
Houses in Multiple Occupation (HMOs) Beaver. South
Willesborough, Little Burton Farm and Aylesford Green
Wards**

Purpose of the Report

1. This report sets out
 - the steps taken to comply with Article 5 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,
 - the representations made to the Local Planning Authority following the giving of notice of the making of a direction under Article 4 (1) of the said GPDO 1995 dated 10 November 2011 and
 - seeks authority to confirm the said direction.

Background

2. The Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2010 came into force on 1st October 2010, which made a change of use from a use falling within class C3 (dwelling houses), to a use falling within class C4 (small houses in multiple occupation) 'permitted development' meaning that planning permission from the council was no longer needed for this kind of development. Planning permission was granted instead by this national legislation.
3. Ashford Borough Council made an Article 4(1) Direction on 10 November 2011, removing those permitted development rights from the Ashford Borough Wards of Aylesford Green, Beaver, Little Burton Farm and South Willesborough with effect from 1 December 2012. The justification for making the Direction was set out in the report of delegated authority dated 26th July 2011 (see annex 1). Once the Direction comes into force planning permission from the council will be required for a change of use from C3 to C4 for a small house in multiple occupation (HMO). There will currently be no fee payable to the Borough Council for this.

Consultation

4. The Council gave notice of the making of the Article 4 Direction on 17 November 2011 and consulted on this from 17 November 2011 – 23 December 2011.
5. Annex 1 contains a copy of the notice attached to the report of delegated authority. Site notices were erected in each of the affected wards and, because of the extent of the Article 4 Directions, it was considered impracticable to serve individual notices on all owners and all occupiers. The notices were also published on the council's website.

6. Four people/organisations made representations of which two were in support and two in objection.

Supporting representations

7. People/organisations who supported the Article 4 direction highlighted the following issues
 - Potential health problems caused by 8 adults living in a house with only one toilet and bathroom
 - Issues with parking – cars being driven onto grass verges, parked on footpaths and verbal abuse - causing friction between neighbours
 - Damage to the local infrastructure lowering the attractiveness and changing the character of the area

Objecting organisations

8. Organisations which objected to the Article 4 Direction raised the following issues
 - A 'blanket' Article 4 direction was not appropriate as the problems arising from HMOs could be dealt with by other legislation e.g. Anti Social Behaviour Orders, Litter Abatement notices, Powers under the Noise Act 1996, power to require rubbish to be removed etc
 - Landlords do not always manage their properties effectively and should be assisted to develop the required skills and knowledge to improve the sector
 - Trends in future UK housing demographics along with the current state of housing finance and supply of affordable housing point to a greater need for shared housing/HMO type housing in Ashford
 - Changes in the Local Housing Allowance (effective from April 2011) create a greater need for shared accommodation in the Borough. Limiting the number of HMOs will therefore have a significant effect on the provision of good quality, affordable accommodation for young people on low incomes
 - High demand for HMOs has led to the creation of wealth through increasing property prices for local residents (the examples given are in Nottingham and Leeds)
 - Restricting the number of HMOs will lead to rent increases
 - The Article 4 allows the council to engage in social engineering restricting who can live in which local authority area
 - Landlord accreditation should be used to ensure HMO management is of high standard.

9. Of the representations received it is noted that those in support are from a local resident and the local police (people/organisations within the borough/county) whereas those in objection are from organisations representing landlords across the whole of the country.
10. The objections to the Direction do not recognise the specific nature of the local issues which led to four of the wards in the Borough being identified as needing such a limitation imposed.
11. The following comments have also been received from Cllr Clark, one of the Ward Members for Beaver ward:

“I firmly support the Article 4 direction, for the following reasons:

The increase in HMOs has had a profound effect on the residents of this part of South Ashford. It has affected the character of the area with unsightly 'conservatory' extensions springing up all over the ward, fire damage due to poor workmanship at more than one property, and at least one garden being used as a dumping ground for discarded furniture and waste from HMO properties. The increased number of residents has also aggravated existing parking problems in the ward.

Because planning permission is not required, we are in a position where the first I know of a problematic development is when I get a call from a distressed neighbour. By that time, construction of the 'conservatory' is underway; and it is often difficult to ascertain how many people will be residing in the HMO. Putting in place a moratorium on HMOs without prior planning permission will enable a more sustainable approach, and ensure acceptable standards are adhered to - which is in the interests of both existing residents, and people who will be living in any future HMOs in this area.”

Conclusion

12. The evidence set out in the report dated 26 July 2011 justifies the introduction of an Article 4 Direction to remove permitted development rights for a change of use from a use falling within class C3 (dwelling houses), to a use falling within class C4 (houses in multiple occupation) in the Ashford Borough Wards of Aylesford Green, Beaver, Little Burton Farm and South Willesborough.
13. Within the remaining wards in Ashford and the rural areas, small HMOs can still be created without the need for planning permission from the council and this should answer most of the concerns of the objectors. The Direction will also not prevent HMOs being created in the identified wards but they will first require the benefit of planning permission from the council.
14. It is considered that the objections to the Article 4 Direction received by the council do not warrant amending the direction made on 10 November 2011. The recommendation below is seen as a proportionate response to the particular issues arising from HMOs in parts of the Borough. The committee is therefore recommended to confirm the direction without amendment.

15. The legislation allows the council to introduce an Article 4 Direction immediately but if this occurred any person making an application that was subsequently refused could claim compensation from the council. Alternatively if the Direction does not come into force until 12 months after notice of making the Direction has been published then no compensation is payable.
16. To expose the council to this risk is not in the wider public interest and therefore it is proposed that the Article 4 Direction will come into force one year after notice of making the Direction was given, that is 1 December 2012. The Direction will come into force automatically on this date, unless the Council receives a Direction from the Secretary of State cancelling or modifying it.

Recommendation

That the Planning Committee agree the introduction of the published Article 4 Direction.

The Article 4 Direction will come into effect automatically on 1 December 2012. Planning permission will be required for change of use from C3 to C4 in the Ashford Borough Wards of Aylesford Green, Beaver, Little Burton Farm and South Willesborough from that date.

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Appendix 1 Record of Delegated Authority for the making of an Article 4 direction in Aylesford Green, Beaver, Little Burton Farm and South Willesborough wards

Report of: Development Control Manager
Date: 26 July 2011
Report Title: Article 4 Direction
Houses in Multiple Occupation (HMOs)



Summary:

Key Decision: NO

Affected Wards: Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards

Decision: The Development Control Manager authorise the making of an Article 4 Direction to remove permitted development rights in Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards, for change of use from class C3 to class C4 of the Town and Country Planning Use Classes Order 1987 as amended.

The Direction to be made in the terms in 12 months from the date of this decision in the terms set out in appendix 1 of this report.

The area covered by the Direction to be as shown in the maps in appendix 2 of this report.

Financial Implications: By deciding 12 months in advance to make an Article 4 Direction those affected will have no ability to claim compensation. The introduction of the Article 4 Direction may result in a small increase in the number of planning applications submitted which do not require a fee but this will depend upon legislation likely to be introduced into Parliament in the next few months in relation to local fee setting for planning applications.

Risk Assessment No

Equalities Impact Assessment There is no impact on equalities from the making of the direction as it will only require planning applications to be made for a change of use to an HMO. Equalities and Human Rights considerations would have to be made at the determination of any subsequent applications.

Other Material Implications: Small scale increase in planning applications probable but may be offset by reduction in enforcement activity.

Background Papers: None

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Agenda Item No.

Report Title: Article 4 Direction

Houses in Multiple Occupation (HMOs) Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards

Purpose of the Report

1. In recent years local people and councillors have been concerned about the effects on the amenity of certain areas of the town from a concentration of houses in multiple occupation. Whilst some of these houses may not cause harm individually a concentration of them in a particular area can reduce the quality of life for other residents in the area.
2. This report sets out the reasons for introducing an Article 4 Direction to remove permitted development rights in 3 wards for change of use from class C3 to class C4 of the Town and Country Planning Use Classes Order 1987 as amended (UCO). This will mean that any such change would require an explicit planning permission from the council. Currently this permission is given by national legislation.

Issue under consideration

3. Whether to authorise the making of an Article 4 Direction to remove permitted development rights for the change of use from single dwellings (C3) to houses in multiple occupation (C4) which is attached in annex one. The Article 4 Direction to apply to Beaver, South Willesborough, Little Burton Farm and Aylesford Green Wards as defined in the plans attached at annex 2.
4. Whether to introduce any limitation to permitted development rights immediately or in 12 months time to limit any liability for compensation

Background

5. Under the planning acts planning permission is required to make a material change of use of a building. Consequently planning permission is required to change the use of a dwelling in single "family" occupation to one where a group of unrelated people live together sharing facilities, for example a student house. To reduce the number of planning applications that would need to be made and to allow flexibility within the planning system separate legislation (the Town and Country Planning General Permitted Development Order 1995 as amended (GPDO)) grants planning permission at a national level for certain changes from one use class to another.
6. The use classes referred to in the GPDO are set out in the Town and Country Planning Use Classes Order 1987 as amended (UCO). The UCO identifies classes for residential dwellings as follows:

Class C3: Dwellinghouses – this class is formed of 3 parts:

- C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a ‘family’);
- C3(b): those living together as a single household and receiving care, and
- C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

Class C4: Houses in multiple occupation (3-6 occupants)

7. In broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.
8. Planning permission is not required to change the use of a dwelling within a use class and, because of the permission in the GPDO; it is not required to change from a C3 use to a C4 use or from C4 to C3.
9. Large houses in multiple occupation (those with more than 6 people sharing) are unclassified by UCO. In planning terms they are described as being *sui generis* (of their own kind). In consequence, a planning application is now required for a change of use from a dwelling house (C3) to a large house in multiple occupation or from a Class C4 house in multiple occupation to a large house in multiple occupation where a material change of use is considered to have taken place.

Justification for introducing an Article 4 Direction

10. A loss of control over changes of use from C3 to C4 will harm the sustainability of neighbourhoods within Ashford over the long term, which constitutes damage to an interest of acknowledged planning importance. An increase in concentrations of HMOs in an area alters the population mix, impacting on the facilities and services that can be supported, as well as affecting residential amenity and social cohesion; and these issues cannot be addressed successfully by neighbourhood management measures alone. Evidence of the impacts caused by high concentrations of HMOs in these wards is set out in the evidence section below.
11. In recent years HMOs have encroached into areas traditionally characterised by family housing. Where possible the Borough Council has sought to ameliorate the harm caused by these concentrations but neither the licensing system under the Housing Acts nor the Community Safety Unit and our partners can control the impact at source.
12. Local Planning Authorities may make a direction under Article 4(1) of the GPDO 1995, as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, so that a change of use by permitted development must instead require planning

permission, where the local authority is satisfied that this is expedient. It is considered that the evidence (set out below) in these 3 wards shows that high concentrations of HMOs have a detrimental effect on their local neighbourhood. This amounts to a compelling reason for and justifies HMOs being brought within planning control in the public interest. This amounts to circumstances which are sufficiently exceptional as to warrant the use of a direction in these wards, and it is intended to use the Article 4 Direction attached in annex 1 to do this. From the date when the direction comes into force all changes of use from C3 to C4 will require planning permission.

Evidence of the impact of high concentrations of houses in multiple occupation

13. The problems associated with high concentrations of HMOs have been recognised nationally, by residents and organisations, the press and by the government. The study "Evidence Gathering-Housing In Multiple Occupation And Possible Planning Responses" carried out by Ecotec for the government in 2008 summarise the impacts as including:-

- antisocial behaviour, noise and nuisance
- imbalanced and unsustainable communities
- negative impacts on the physical environment and streetscape
- pressures upon parking provision
- increased crime
- growth in private rented sector at the expense of owner-occupation
- pressure upon local community facilities, and
- restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population.

Evidence in Ashford

14. The principal impacts in Ashford have been from noise and disturbance, impact on the environment from neglected gardens, litter, overflowing bins etc and pressure on parking due to more people living in HMO than would generally live in the same size house. Higher levels of transience also mean that people feel less commitment to maintaining the area in which they live. Some landlords also do not maintain their properties to the same level as owner occupiers or longer term tenants.

15. The principal areas of concern are

- South Ashford where there has been a concentration of conversion to HMO of three storey properties in Beaver Ward. Some also have the ground floor garage converted into a separate flat. This has resulted in issues of noise, antisocial behaviour and parking pressures.

- Bushy Royds where there has been increased pressure on parking on street,
- Little Burton Farm which has similar issues around pressure on parking, and
- Drummond Grove, Adams Drive, Billington Grove, Rayworth Court and Stroudley Close where if applications for new HMO licences under the Housing Act are received could lead to some of the issues identified above.

Scope of the Article 4 Direction

16. The Direction is proposed to cover the wards where the greatest concentrations occur, where the evidence or risk of harm is greatest. Once the Article 4 Direction comes into force it does not mean that all applications for change of use to an HMO will be refused: the Council will have to determine such applications in accordance with the Development Plan and taking account of other material planning considerations.

Procedure for introducing the Article 4 Direction

17. This report authorises the making of the Article 4 Direction attached in appendix 1. The Borough Council will give notice of the Direction and representations will be sought in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 1995, as amended. It is considered that because of the extent of the Article 4 Direction it is impracticable to serve individual notices on all owners and all occupiers, as permitted by Article 5 (2) of the above.
18. Following consideration of any representations, the next stage will be for the Council to confirm the Direction which will be done through a report to the Planning Committee or using delegated powers as appropriate and advertised as necessary.
19. The legislation allows the council to introduce Direction immediately but if this occurred any person making an application that was subsequently refused could claim compensation from the council. Alternatively if the Direction does not come into force until 12 months after notice of making the Direction has been published then no compensation is payable.
20. The risk of compensation claims if the Direction comes into force immediately is high. Owners of properties who have no intention of converting properties could apply for planning permission, which under the current fee regime does not attract a planning fee, and if the application is refused seek compensation. To expose the council to this risk is not in the wider public interest and therefore it is proposed that the Article 4 Direction will come into force one year after notice of making the Direction is given. The Direction will come into force automatically on this date, unless the Council receives a Direction from the Secretary of State cancelling or modifying it.

Equalities Impact Assessment

21. There is no impact on equalities from the making of the direction as it will only require planning applications to be made for a change of use to an HMO. Equalities and Human Rights considerations would have to be made at the determination of any subsequent applications.

Other Options Considered

22. The other option is to do nothing and leave the current GPDO allowances in place. The consequences of this will be to allow concentrations of HMO to build up with no ability from the council to control the concentration in any area.

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Appendix 1

ASHFORD BOROUGH COUNCIL

**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
ORDER 1995 as amended (“the GPDO”)**

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS Ashford Borough Council being the appropriate local planning authority within the meaning of Article 4(4) of the GPDO, are satisfied that it is expedient that the development of the description set out in the Schedule below should not be carried out on land shown edged black on the attached plans unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by Article 4(1) of the GPDO hereby direct that the permission granted by Article 3 of the GPDO shall not apply to development on the said land of the descriptions set out in the Schedule below:

SCHEDULE

The change of use from a use within Class C3 (dwelling houses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 to a use falling within Class C4 (houses in multiple occupation) being development comprised within Class I of Part 3 of Schedule 2 of the GPDO and not being development within any other class.

This Direction shall come into force on 1st December 2012

Dated this 10th day of November 2011

Made under the Common Seal of ASHFORD BOROUGH COUNCIL
affixed this 10th day of November 2011

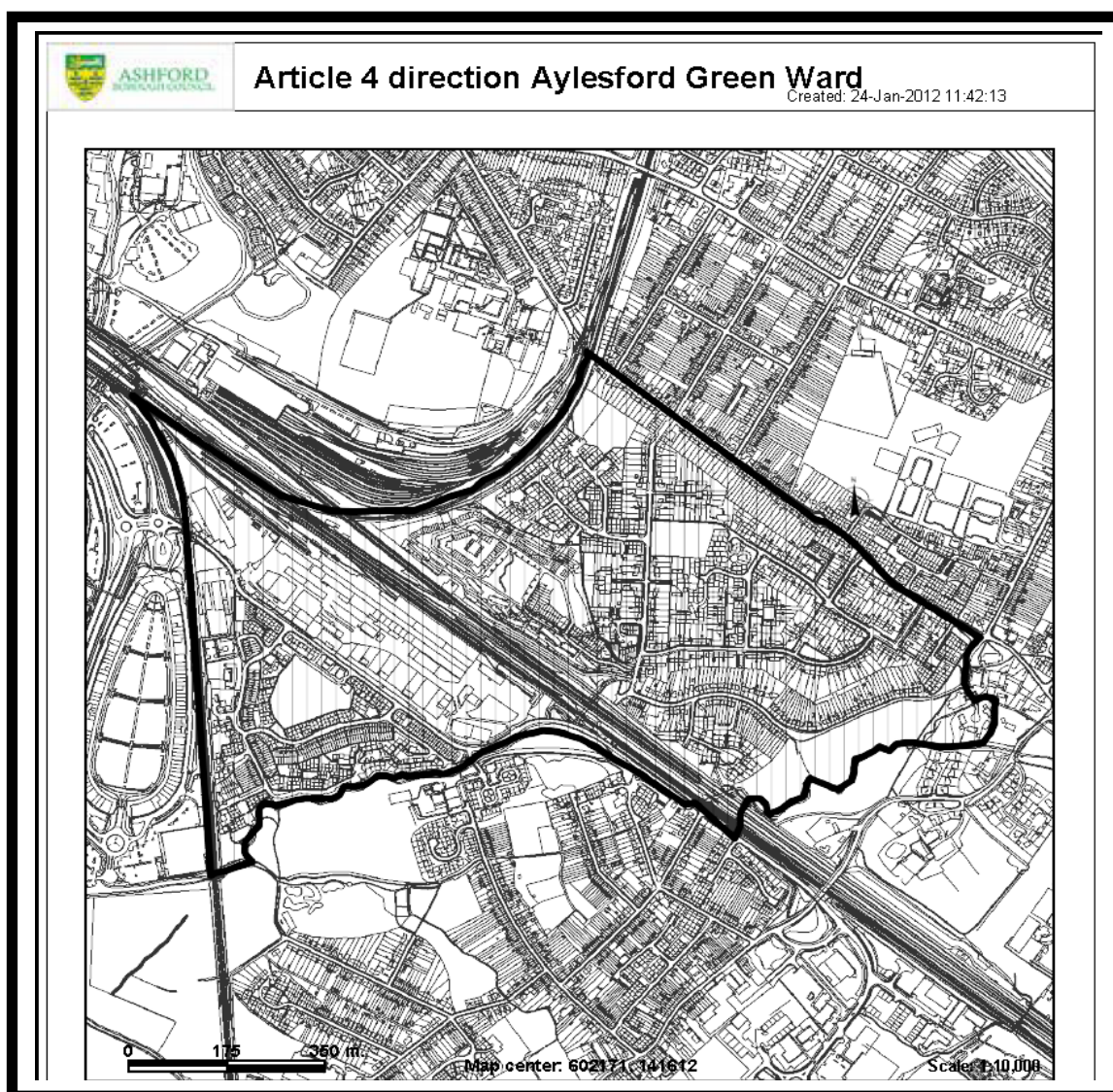
..... Mayor
..... For Head of Legal & Democratic Services

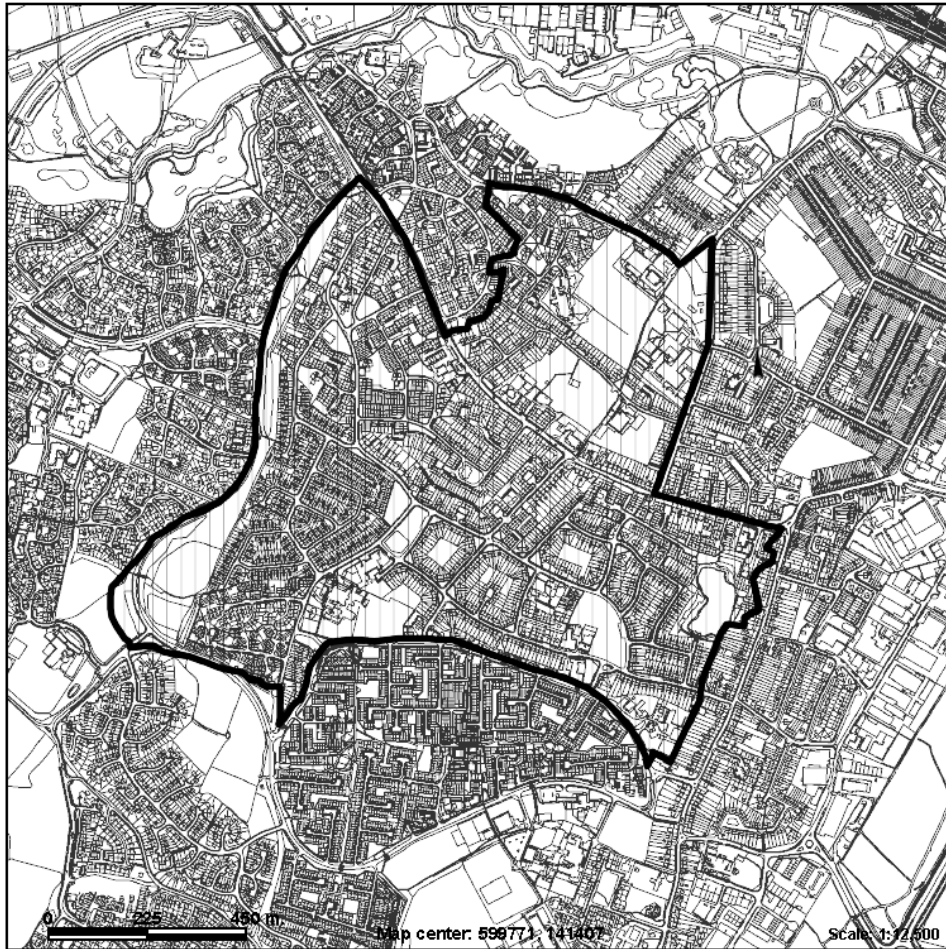
Confirmed under the Common Seal of ASHFORD BOROUGH COUNCIL
affixed this day of 20

..... Mayor
..... For Head of Legal & Democratic Services

The Plans

Aylesford Green Ward, Beaver Ward, Little Burton Farm Ward and South Willesborough Ward

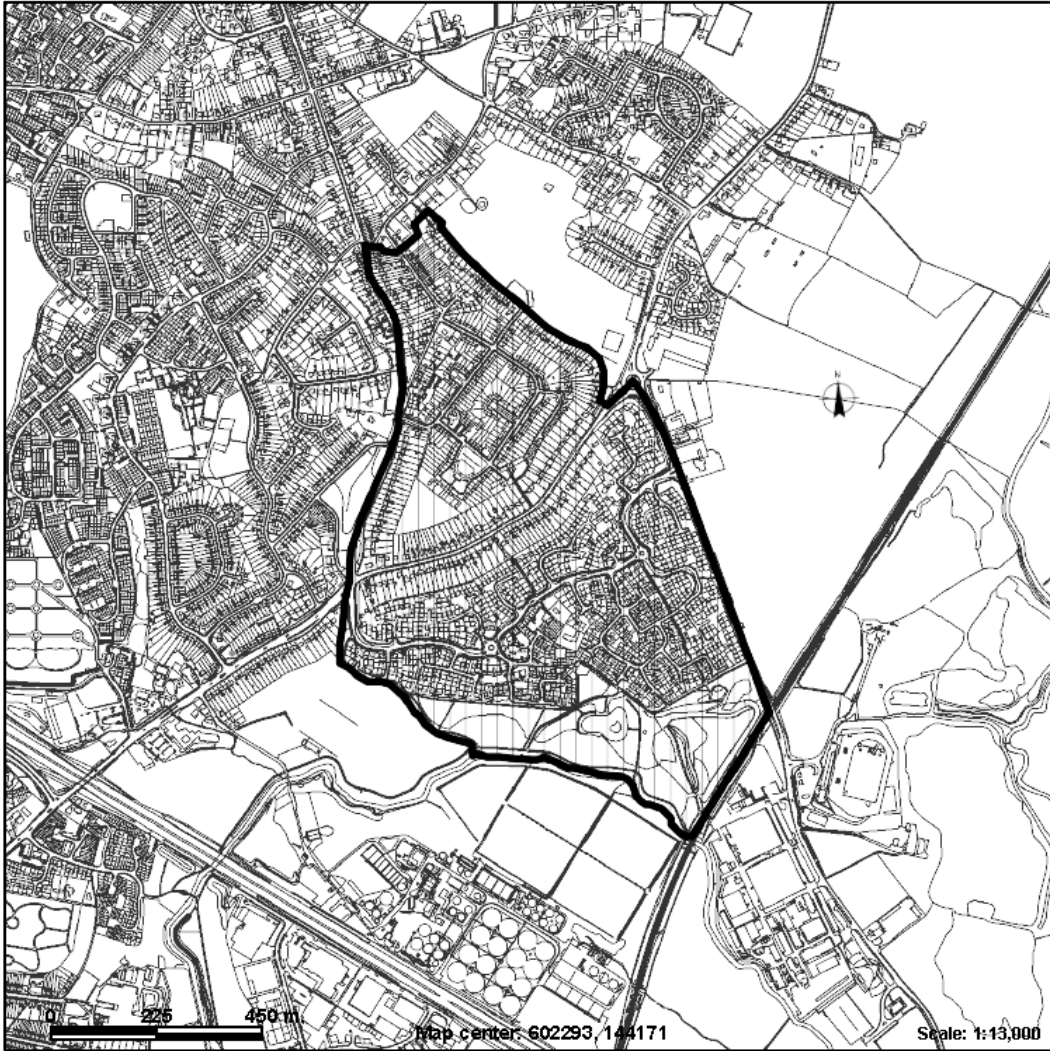






Article 4 direction Little Burton Farm Ward

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Article 4 direction South Willesborough Ward

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