

North Devon District: Article 4 Direction to remove permitted development rights for mineral working for agricultural purposes  
Location: Codden Hill, Bishop's Tawton, Barnstaple

Report of the Chief Planner

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Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

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**1) Recommendation**

It is recommended that:

- (a) the non-immediate Article 4<sup>1</sup> Direction made on 13 January 2023 is confirmed with effect from 14 January 2024; and
- (b) in the event of any intervention by the Secretary of State for Levelling Up, Housing and Communities requiring amendment of the Article 4 Direction, such amendment be delegated to the Chief Planner in consultation with the Chair and Local Member.

**2) Summary**

2.1 This report seeks the Committee's approval to confirm the non-immediate Article 4 Direction as originally made on 13 January 2023, covering the area shown edged red in Appendix 1, to remove the following permitted development rights within Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ['the GPDO']:

Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry

2.2 In seeking confirmation of the Direction this report considers the representations received as a result of the statutory consultation procedures.

**3) Background/Context**

3.1 An Article 4 Direction allows planning authorities to remove specified permitted development rights, contained within the GPDO, within a defined area.

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<sup>1</sup> Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

3.2 Permitted development rights allow certain works, subject to conditions and limitations, to take place without a planning application having to be submitted. An Article 4 Direction would result in the removal of these rights and a planning application needing to be made to the planning authority. The effect of an Article 4 direction is therefore not to prohibit development but to enable the planning authority to have control over the proposed development.

3.3 An Article 4 Direction should be made only where it is expedient, and it therefore requires justification. In applying the test of expediency, regard should be had to paragraph 53 of the National Planning Policy Framework [NPPF] and the Planning Practice Guidance [PPG]. The NPPF advises that use of an Article 4 Direction should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area and should apply to the smallest geographical area possible. In addition, the PPG is clear that Article 4 Directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty.

3.4 The process for making and confirming a non-immediate Article 4 Direction is as follows:

Stage 1 - The authority decides whether to go ahead and introduce a Direction setting a date in the Notice for when the notice will come into force which must be at least 28 days and no more than two years after representations can first be made, which is usually after the last publication/service date.

Stage 2 - Publication/Consultation stage. The authority:

1. Publishes the notice of direction in a local newspaper;
2. Formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the Direction relates over a period of at least 21 days; and
3. Places notices at the site for six weeks;

Stage 3 - On the same day that notice is given under Stage 2 above, the authority refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction;

Stage 4 - Confirmation stage (current stage) - the authority 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 authority 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.

3.5 The Council has followed stages 1 to 3 as set out above for the non-immediate Direction.

3.6 On 7 December 2022, this Committee considered Report CET/22/78 as to whether there was sufficient justification and expediency to make an Article 4 Direction at Codden Hill. It was proposed that permission granted by Class C - mineral working for agricultural purposes of Part 6 Agricultural and forestry of

Schedule 2 of the GPDO does not apply to development on land at Codden Hill identified in Appendix 1.

- 3.7 Report CET/22/78 can be viewed here, under item 36:  
<https://democracy.devon.gov.uk/ieListDocuments.aspx?CId=131&MId=4516&Ver=4>
- 3.8 Report CET/22/78 outlined the harm that is currently resulting from the permitted development rights being exercised on Codden Hill and which is likely to continue should permitted development rights remain. The report:
- highlighted that, if not adequately controlled, mineral extraction can cause irreparable harm;
  - demonstrated, alongside a report prepared by the County Landscape Officer, that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty as there is potential for mineral working to erode or harm the following key characteristics and special qualities of the area;
  - highlighted that there is no opportunity to assess and consider potential harm to heritage assets, and the proximity of existing extraction areas to the Scheduled Monument means there is a real risk that any extraction will impact upon the setting and significance of that Scheduled Monument;
  - highlighted that a number of complaints have been received by the Mineral Planning Authority [MPA] and, given the proximity to residential properties to the area, there is the potential for adverse impacts upon people's quality of life, health and amenity;
  - highlighted that mineral working presents a risk to valued wildlife and priority habitats by way of dust generation and habitat removal, including changes to the water or air quality; and
  - addressed equality, legal and financial considerations, with consideration of some alternative options.
- 3.9 Following the Committee resolution to make the Article 4 Direction, the Direction was sealed on 13 January 2023 and a public consultation was held, as detailed in Section 4 below.

#### **4) Consultation and Responses**

- 4.1 A detailed summary of responses is contained within the Consultation Outcomes Report in Appendix 2 of this report, and the full representations received are available to view on the Council's website by clicking on the following link:  
<https://www.devon.gov.uk/planning/article4/>.

In summary, notice was given by the MPA in accordance with paragraph 1(1) of Schedule 3 of the GPDO by way of:

- an advertisement in the local newspaper on 19 January 2023;
- site notices displayed at eight locations on 13 January 2023; and
- serving notice on the known owner and occupier of every part of land within the area to which the direction relates via recorded delivery on 13 January 2023.

- 4.2 The notices contained the requirements of paragraph 1(4) of Schedule 3 of the GPDO, and a consultation, welcoming representations, was held from 13 January 2023 to 10 February 2023.
- 4.3 The notice and consultation were also publicised on the Council's website at: <https://www.devon.gov.uk/planning/article4/>.
- 4.4 In addition to these steps, nearby properties and other stakeholders were notified of the Article 4 Direction.
- 4.5 The Secretary of State was notified of the Article 4 Direction on 13 January 2023, and the Department for Levelling Up, Housing & Communities wrote to the MPA on 9 March 2023 acknowledging this notification. The MPA has not heard from the Secretary of State as to whether they consider the Direction fulfils national policy set out in Paragraph 53 of the NPPF on the use of Article 4 directions, and whether there is cause for intervention under Schedule 3, Paragraph 1(13) of the 2015 Order. It is understood that, even though the Article 4 Direction is under consideration, it does not prevent any of the processes associated with introducing the Article 4 Direction from going forward, although it should be noted that the Secretary of State has the power to modify or cancel an Article 4 Direction at any time.
- 4.6 As a result of the consultation, 23 responses were received, of which 16 stated their support for the Article 4 Direction. Nearly all of those supporting the Direction were local residents (14), as well as Landkey Parish Council and North Devon Council's Environmental Protection Team.
- 4.7 Those supporting the Article 4 Direction highlighted impacts that have already taken place from quarrying and raise concerns should quarrying continue. The common themes raised include:
- impacts on living conditions and residential amenity, such as noise, dust, floodlighting and implications on human health;
  - the landscape impact on Codden Hill as a distinctive landmark and a place of beauty, as well as, disruption to the peace and tranquillity of the area;
  - destruction to habitats;
  - surface water runoff contaminating drinking water; blocking drains; potentially causing flooding and land stability issues;
  - unsuitable road networks/junctions and damage to the highway; and
  - the impact upon an area used for walking and tourism.
- 4.8 Whilst not stating their support, a further resident made comments regarding the issues raised above. Some responses also questioned the need for the stone and state that house prices are negatively affected by quarrying.
- 4.9 Natural England stated they had no comments to make. No other responses from other stakeholders were received.
- 4.10 The remaining five responses were from landowners affected by the Article 4 Direction. The concerns raised are outlined and discussed in Section 5 below.

## 5) Comments/Issues

5.1 As set out in the Consultation Outcomes Report (Appendix 2 of this report), it is considered the concerns raised can be grouped into 7 main issues. This section discusses these issues and the Council's view as to whether the Article 4 Direction requires review.

***Issue: The requirement for planning permission is expensive and time consuming, and applications could be refused***

5.2 Paragraphs 3.11-3.12 of the Consultation Outcomes Report summarise the responses that highlight this issue.

5.3 The Council recognises that the need to apply for planning permission will be a new process for landowners that would not be necessary if permitted development rights remained in place. Going through the planning process will take time and result in expense to landowners. This additional cost was highlighted in paragraph 4.39 of Report CET/22/78, however, one response stated that the financial burden on landowners has not been considered.

5.4 Any potential applicant is welcome to engage in pre-application advice with the Council to ensure a proportionate application is made, which could reduce the cost of producing an application and the time for its determination. It may not be necessary for an application to be made for every extraction event, as implied in one response, as mineral permissions typically cover a number of years with an annual tonnage limit; therefore, this could be a one-off process. As is usual with mineral planning permissions, annual monitoring may be undertaken by the MPA and a review of conditions required every 15 years, which would be additional costs.

5.5 Any planning application would be considered on its merits and determined in accordance with the policies and provisions of the development plan.

5.6 Whilst this additional step for landowners is acknowledged, it is considered that the potential harm and the wider public interest which were outlined in Report CET/22/78 balance the financial implications for landowners. On this basis, it is not considered the Article 4 Direction requires amendment.

***Issue: The GPDO already includes controls; mineral extraction for permitted development has been and is limited; and in any case, other methods of controls exist***

5.7 Paragraphs 3.13-3.15, 3.19, 3.25 and 3.27 of the Consultation Outcomes Report summarise the responses that raise this issue.

5.8 Report CET/22/78 stated that: "mineral working with no control can be intrusive and cause harm to living conditions of neighbouring residents". One response said that it is incorrect as the GPDO that grants permitted development rights limits their extent.

- 5.9 Paragraph 2.5 of report CET/22/78 includes the limitations of the relevant permitted development rights (namely that mineral extraction should be reasonably necessary for agricultural purposes; only for use on that agricultural unit; and excavation cannot take place within 25m of a metalled part of a trunk or classified road). The Council has found that there can be ambiguity over the definition of these limitations, while it can also be difficult to distinguish between stone extracted for legitimate agricultural purposes on the same holding and stone that is intended for sale to third parties. Aside from these limitations, as stated in paragraph 2.6 of Report CET/22/78, there are no other conditions for mineral development carried out under Class C. It is not considered that these limitations offer any protection to the local amenity, landscape or environment that would typically be included on mineral planning permissions, such as restoration requirements, hours of working and noise limits.
- 5.10 It is only by use of the Article 4 Direction, and through the requirement to seek planning permission, that the Council can have regard to the relevant policies within the Devon Minerals Plan which would allow for the protection to the local amenity, landscape or environment to be considered and secured through condition.
- 5.11 The responses from landowners imply that working is infrequent, and that it is unlikely that level of extraction is realistically going to be repeated given the existence of Enforcement Notices. It is correct that the extant Enforcement Notices for Overton Quarry and Horswell Quarry, and the Interim Injunction, which covers Codden Hill and is relevant to one landowner, are currently limiting some mineral working in certain locations taking place on Codden Hill. Given the existence of the Enforcement Notices, it is also correct that the County Council considers that permitted development rights do not exist at Overton Quarry and Horswell Quarry. In this sense, it is correct for one response to state that there is no uncontrolled working in these areas. It is, therefore, suggested by a landowner that the claim previously made by the Council that “should permitted development rights remain, uncontrolled expansion could take place and new sites could appear” is clearly unfounded. However, this matter is subject to separate appeal and court proceedings and, therefore, the outcome is uncertain and the Council still consider the Article 4 Direction is required across the full extent of Codden Hill.
- 5.12 One landowner response implies other processes provide adequate control, such as Environmental Impact Assessment regulations and Environmental Health legislation. Should development be considered ‘EIA’ development, in that it will have significant environmental effects, permitted development rights would not exist. Even development that is not EIA development could have adverse impacts on residential amenity and the local environment. For this reason, reliance on this process would not be considered effective.
- 5.13 Reliance on Environmental Health legislation is considered reactive. Development would not be required to put in mitigation measures in advance of taking place; control would be enforced following the event taking place. This allows adverse impacts to take place, rather than positively managing any impacts. Overall, it is considered the planning process would be the most effective way to managing mineral development for agricultural purposes.

***Issue: The Article 4 Direction is not necessary for landscape protection***

- 5.14 Paragraphs 3.18 – 3.21 of the Consultation Outcomes Report, Appendix 2, summarise the comments raised as to why the Article 4 Direction is not necessary for landscape protection.
- 5.15 The landowner responses generally suggest that amending the red line to exclude existing quarries would adequately address landscape and visual concerns and that some quarries do not justify inclusion in the Article 4 area given they have more limited visual impact than other more prominent ones.
- 5.16 The County Landscape Officer's report attached to Report CET/22/78 highlighted the exceptional landscape quality and characteristics of Codden Hill. It demonstrated that existing quarries on the south side of Codden Hill have resulted in substantial visual impacts on the landscape, and that future visual harm could arise from uncontrolled quarry extension of these. It is true that the visual impact of one quarry is likely to differ from another, along with scope to mitigate such adverse impacts to acceptable levels.
- 5.17 However, the analysis is that Codden Hill is perceived as a distinct feature in the landscape, and its quality and value can be appreciated through the network of rights of way and highways in and around it. The Article 4 Direction would help maintain its landscape and visual integrity. In addition, the effects of uncontrolled quarrying on the landscape are not just about visual impact. If it were, then amending the red line boundary to exclude existing quarries would be worth considering. However, this ignores the potential for uncontrolled quarrying operations to harm Codden Hill's "*strong sense of peacefulness with locally high levels of tranquillity*" which is enjoyed by people from publicly accessible areas and routes, and which is a key characteristic and valued attribute of the landscape noted in landscape character assessments and highlighted in the County Landscape Officer's report. The effects (and cumulative effects) of continued quarrying operations across this valued landscape could be substantial - including floodlighting, noise, and movement of quarrying vehicles. No contrary expert evidence has been provided. It is therefore maintained that such activity should be subject to planning control from a landscape and visual amenity perspective.

***Issue: The Article 4 Direction is not necessary for protecting local amenity***

- 5.18 Paragraphs 3.24 – 3.27 of the Consultation Outcomes Report, Appendix 2, summarise the comments raised as to why the Article 4 Direction is not necessary for the protection of local amenity, specifically residential amenity. These comments were made in the context of paragraph 53 of the NPPF which advises that Article 4 Directions should "be limited to situations where...necessary to protect local amenity or the wellbeing of the area".
- 5.19 Residential properties are scattered around the perimeter of the Article 4 Direction boundary, with a number of properties within 50m of excavations. The MPA has been contacted on numerous occasions with reports of activity taking place, predominantly at Overton Quarry, highlighting that working at this site is

noticeable; for example, the MPA received reports of 16 days of working between 9 February 2021 and 8 March 2021 (inclusive) at Overton Quarry. These reports were first identifying activity, but later indicated the impacts of quarrying on local residents; for example, one phone call stated the working was causing them “significant harassment and nuisance”, affecting their “peace and tranquillity”. They also referred to working late at night and early in the morning, and on weekends. At present, there are no planning controls to protect residents from noise or dust emissions.

- 5.20 The North Devon Council Environmental Protection Team responded to the Article 4 Direction consultation stating “the proximity of existing properties to the Article 4 Direction boundary is such that mineral working within the boundary could significantly impact the living conditions of residential neighbours”, and the proposed removal of permitted development rights is supported.
- 5.21 North Devon Council has served an Abatement Notice in relation to dust at Overton Quarry. It is understood that this Notice requires the submission of a dust management plan, demonstrating that dust is an issue that requires control.
- 5.22 It is only by use of the Article 4 Direction, and through the requirement to seek planning permission, that the Council as MPA can have regard to the relevant policies relating to residential amenity within the Devon Minerals Plan.
- 5.23 Whilst it is appreciated that some excavation areas are not immediately adjacent to residential properties, there are other factors that justify the area’s protection.
- 5.24 Other sections of this report cover local amenity in terms of local environment.

***Issue: The Article 4 Direction is not necessary for protecting biodiversity***

- 5.25 Paragraphs 3.22 – 3.23 of the Consultation Outcomes Report, Appendix 2, summarise the comments raised as to why the Article 4 Direction is not necessary for protecting biodiversity. In a report accompanying Report CET/22/78, the DCC Ecologist stated the potential effects of allowing minerals working for agricultural purposes. This referred to direct and indirect impacts from the expansion of existing quarries or the opening of new quarries upon locally designated sites, as well as priority habitats and protected species.
- 5.26 The exclusion of existing extraction areas has been proposed by landowners. It is agreed that direct impacts upon habitats and species would be less likely should mineral working only continue on disturbed ground. However, all working could result in indirect impacts, for example noise, level changes, vehicle movements and dust could cause changes to water or air quality, impacting surrounding habitats and species. The expansion of existing areas would be inevitable once resources were exhausted, and then direct impacts would be seen. The inclusion of existing quarries within the Direction boundary also guards against incremental growth of those quarries that could harm adjacent habitats and allows for the consideration of biodiversity net gain and achieving enhancements through restoration, the benefits of which would be lost without the submission of a planning application.



***Issue: If material has to be imported, it is unsustainable***

- 5.27 It is acknowledged that, should material become unavailable through permitted development, landowners may have to import material from elsewhere, potentially from a further distance, should they not wish to apply for planning permission and/or it is not granted.
- 5.28 The stone used from the quarries on Codden Hill is typically an aggregate used for hardcore, and it has limited special properties for building purposes. There is ample availability of crushed rock in North Devon from permitted land-won sources, as well as recycled aggregates available. These sites have been through the planning process to ensure impacts upon the environment are acceptable.
- 5.29 The benefits of utilising material close to the source of extraction would be a consideration in any planning application for extraction. However, the advantage of sourcing material from a shorter distance must be balanced against the need to protect the amenity of local residents and environment from the impacts of mineral working. The Article 4 Direction is therefore justified as a means of enabling this balancing to be undertaken through a planning application. Given this, it is not considered necessary to amend the Article 4 Direction.

***Issue: The Article 4 Direction boundary requires amendment***

- 5.30 In making an Article 4 Direction, the Council must have regard to paragraph 53 of the NPPF which states that “the use of Article 4 directions to remove permitted development rights should...in all cases, be based on robust evidence, and apply to the smallest geographical area possible”.
- 5.31 The Article 4 Direction boundary is based on the extent of existing quarrying known in the area together with consideration of the clearly defined landscape feature of Codden Hill where any further quarrying would be likely to cause harm to the landscape and local amenity, as outlined in the evidence presented with Report CET/22/78.
- 5.32 One response highlighted that the previous report did not consider a smaller boundary but, for the reasons above, the area included within the Direction was already limited to the smallest geographical area considered necessary to prevent harm in line with the requirements of paragraph 53 of the NPPF.
- 5.33 However, three landowners consider quarries on their land should not form part of the Article 4 Direction. These include Codden Hill Quarry; Overton Quarry; Horswell Quarry; and the quarry located north of Hearson Cross. The inclusion of each quarry within the Article 4 boundary will be considered in turn.
- 5.34 **Codden Hill Quarry:** The face of this quarry is approximately 50m away from residential properties, meaning harm to local amenity, including from noise and dust emissions, is likely should operations not be adequately controlled. The site is visible from the A377 (when travelling southbound) and forms part of the distinct landscape feature of Codden Hill. As Codden Hill steeply rises above

the properties, the quarry face is cut into the hillside, and further mineral extraction could increase this visual impact. The site is surrounded by a County Wildlife Site designated predominately due to the existence of lowland heath, a priority habitat that is sensitive to atmospheric pollution.

- 5.35 **Overton Quarry:** It is accepted that Overton Quarry is long established in the landscape; however, as extraction has increased, so has its visibility. Operations have previously altered the extent of quarrying, and permitted development rights do not prevent a quarry from extending further towards the skyline, or altering the current landform within the existing extraction area. In any case, the consideration of landscape extends beyond visual impacts, to impacts upon peace and tranquillity, as discussed in paragraph 5.17 of this report. This site is also in close proximity to residential properties, and the presence of an Abatement Notice for dust highlights the impacts from quarrying.
- 5.36 **Horswell Quarry:** As with Overton Quarry, it is accepted that Horswell Quarry is long established in the landscape, albeit it has grown in scale, but the impacts of extraction on the landscape extend beyond visibility. This site also has the potential to impact upon the setting and significance of Codden Beacon Scheduled Monument, as detailed in Report CET/22/78, which is a prominent feature in the landscape.
- 5.37 **Hearson Cross Quarry:** It is agreed that this quarry is more visually screened than other existing extraction areas on Codden Hill, with the closest residential property approximately 180m to the southwest of the site. From aerial imagery, it appears the extent of the quarry has grown over the past four years, removing vegetation. Further expansion will result to the loss of further mature trees, which could alter the landscape character of the area, with the peace and tranquillity also being affected by quarrying. Hearson Hill County Wildlife Site is also to the east (with the road separating the site and CWS), designated for its interesting mix of upland, lowland and wet woodland communities. There is also some woodland considered ancient within this area. The value of the woodland habitat surrounding the extraction area is unknown and could be of value given the neighbouring woodland. As highlighted in 5.26, there could also be indirect air quality or hydrological impacts.
- 5.38 It is considered that, even if working takes place within the existing quarries' boundaries, when considering the impacts as a whole across Codden Hill there is still the potential to cause harm to the local amenity and landscape. On this basis, it is considered that the boundary is based on robust evidence and applies to the smallest geographical area possible, in accordance with paragraph 53 of the NPPF, and does not require amendment.

## 6) Strategic Plan

- 6.1 Due to the nature of this proposal, it is not considered relevant to the Council's Plan 2021-2025.

## **7) Financial Considerations**

- 7.1 In certain circumstances, compensation may be payable by the Council. Section 108 of The Town and Country Planning Act 1990 contains compensation arrangements and is applicable to a situation where permitted development rights are removed. Section 108(3C)(c) states that at least 12 months' notice of the withdrawal is required to avoid the ability for compensation claims to be made and, therefore, a non-immediate Article 4 Direction has removed this risk.
- 7.2 One response asserted that the financial implications for the landowners had not been considered. Confirming the Article 4 Direction would result in the need for landowners to apply for planning permission after the date on which the Article 4 takes effect (i.e. 12 months after the notice is first published of the intended direction) if they wish to undertake mineral extraction. This would require the landowner to prepare the documentation considered necessary to accompany planning applications, and the relevant fee to be paid to the MPA on submission of the application. The administrative cost of processing these applications for the Council will be met from existing revenue budgets. Depending on the nature of the application, monitoring may also be undertaken and charged for by the MPA, and conditions may need to be reviewed every 15 years. Should planning permission be refused, landowners may have to import material from other sources.
- 7.3 Whilst additional expense would be placed on the landowners, it is considered that the financial implications of the proposed recommendation are proportionate to the potential harm that may be caused under the permitted development rights.

## **8) Legal Considerations**

- 8.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission to a number of specified forms of development. The forms of development for which permission is granted are set out in Schedule 2 of the GPDO. Article 4 of the GPDO allows the local planning authority to make a direction that removes specified permitted development rights within a defined area if those rights would be prejudicial to proper planning of their area or constitute a threat to the amenities of the area. Schedule 3 of the GPDO describes the process by which these Article 4 directions are made. Paragraph 1 of Schedule 3 deals with non-immediate directions.
- 8.2 Schedule 3 of the GPDO advises that an Article 4 Direction must take effect between 28 days and two years after it is made. It must only be confirmed by the Council after the notification period has passed, having taken into account any representations received during the public consultation. The Council must notify the Secretary of State on the same day the notice is made. Appendix 2 and paragraphs 4.1, 4.2 and 4.5 of this report outline how the Council has followed the advertising and notification requirements required under Schedule 3 GPDO.

- 8.3 In addition to following the correct procedure, the Council must provide sufficient evidence and justification to support the Article 4 Direction. A failure to do so, or incorrect procedure, may lead to a judicial review of the decision or intervention by the Secretary of State. The Article 4 direction may be modified, cancelled or quashed as a result.
- 8.4 It should be noted that one response considers there to be inadequate justification for the Article 4 Direction and it is, therefore, vulnerable to judicial review.
- 8.5 However, the Council considers sufficient evidence has been provided to make an informed decision, and that the Council has followed the process outlined in Schedule 3 of the GPDO.
- 8.6 Notice of confirmation of the Article 4 Direction must be published and served in accordance with the requirements of the GPDO.

## **9) Equality Considerations**

- 9.1 In making its decision the Council must also have regard to its public sector equality duty (PSED) under s.149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:
- a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - b) advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - c) foster good relations between people who share a protected characteristic and those who do not.
- 9.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.3 The PSED must be considered as a relevant factor when considering its decision but does not impose a duty to achieve the outcomes in s.149. The level of consideration required (i.e. due regard) will vary with the decision including such factors as the importance of the decision and the severity of the impact on the Council's ability to meet its PSED, and the likelihood of discriminatory effect or that it could eliminate existing discrimination.
- 9.4 The Council should give greater consideration to decisions that have a disproportionately adverse impact on a protected characteristic and this impact may be unintentional. In appropriate cases, this may involve an understanding of the practical impact on individuals so affected by the decision. Regard should be had to the effect of mitigation taken to reduce any adverse impact.
- 9.5 Further, 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 is also entitled to take 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.

- 9.6 As set out in the previous report, CET/22/78, it is not considered the removal of permitted development rights will have any implications relating to equality issues or groups with protected characteristics. No person with protected characteristics has come to the attention of the Council during the consultation period, or since the publication of the previous report, CET/22/78. However, if it subsequently comes to the attention of the Council that a person with protected characteristics is affected, the appropriate adjustments can be made.

## **10) Risk Management Considerations**

- 10.1 It is considered that the Article 4 Direction has been managed in accordance with statutory requirements and, therefore, there are limited legal and financial risks to the Council in its role as Mineral Planning Authority are likely to arise. However, as mentioned previously, one respondent considers the Article 4 Direction is vulnerable to judicial review.
- 10.2 The Secretary of State retains the option of intervening following the confirmation of the Article 4 Direction. Officers will continue to engage with the Department for Levelling Up, Housing and Communities to seek clarification on whether it is the Secretary of State's intention to intervene and, if necessary, will seek to provide any information that may be required.
- 10.3 No additional risks have been identified.

## **11) Reasons for Recommendation/Alternative Options Considered**

- 11.1 The Committee has the option of confirming or not confirming the Article 4 Direction.
- 11.2 The Article 4 Direction can be confirmed by the Council in accordance with the recommendation in this report having taken into account all representations received during the public consultation. If confirmed, it will come into effect on 14 January 2024, and the Council must, as soon as practicable, notify the Secretary of State and publicise the Direction in the same way that the public consultation was carried out.
- 11.3 Should the Council decide not to confirm the Direction, all persons previously consulted will be notified of this decision and mineral extraction under Class C can continue without the need for a planning application.
- 11.4 Any amendment to the boundaries to decrease or increase the geographic scope of the areas covered by the Direction may result in delay in the Direction coming into effect, which would mean a period where Codden Hill is not protected, therefore it is recommended that the Direction be confirmed as originally made. Nonetheless, the Secretary of State also retains the option of intervening in the Direction.

- 11.5 On 11 November 2020, the Council issued Enforcement Notices under s172 of the Town and Country Planning Act 1990 in respect of Horswell Quarry and Overton Quarry, both of which fall within the area covered by the Article 4 Direction. These notices required compliance by 26 April 2021 by ceasing extraction and export of minerals from the two quarries and to remove all plant and machinery associated with the same. These notices were not complied with which caused the Council to secure an interim injunction to prevent further extraction and mining of minerals at the two quarries. The injunction proceedings and associated appeal to the Planning Inspectorate of the Council's refusal to grant a Certificate of Lawfulness are ongoing.
- 11.6 Whilst the Enforcement Notices and interim injunction provide some control with respect to Horswell Quarry and Overton Quarry, the injunction proceedings and associated appeal to the Planning Inspectorate remain ongoing with final determinations yet to be made. In any event, those proceedings only pertain to Horswell Quarry and Overton Quarry and not the larger area under the Article 4 Direction.
- 11.7 Without the Article 4 Direction, there are no/inadequate controls other than the limitations within the GPDO to mitigate any of the impacts detailed in Report CET/22/78, and it is considered likely that mineral working for agricultural purposes will continue given the history of mineral development in the area. It is considered that the impacts upon the landscape, living conditions, biodiversity and the historic environment when taken as a whole would be unacceptable, without being subject to the planning application process, should permitted development rights be maintained and mineral working for agricultural purposes continue on Codden Hill. It is only by use of the Article 4 Direction, and through the requirement to seek planning permission, that the Council can have regard to the relevant policies within the Devon Minerals Plan and secure mitigation for the impacts of mineral working.
- 11.8 It is considered this report and Report CET/22/78 demonstrates that the Article 4 Direction as proposed is necessary to protect local amenity, and that permitted development rights pose a serious threat to a landscape of exceptional beauty, Codden Hill.
- 11.9 The objections that have been raised are not considered to warrant any changes to the Article 4 Direction; the existing excavation areas contribute, or have the potential to contribute, to harming local amenity and the landscape and should be included in the Direction area.
- 11.10 In conclusion, it is considered that the Article 4 Direction, which is supported by local residents, represents an appropriate balance between the rights of the landowners (to enjoy land subject to the reasonable and proportionate control by a public authority) and the interests of those affected by the matter and the wider public interest. On this basis, the Article 4 Direction should be confirmed.

**Mike Deaton**  
Chief Planner

**Electoral Division: Chulmleigh & Landkey**

**Local Government Act 1972: List of background papers**

Background Paper Casework File Nil

**Contact for enquiries:**

Name: Emily Harper

Telephone: 01392 383000

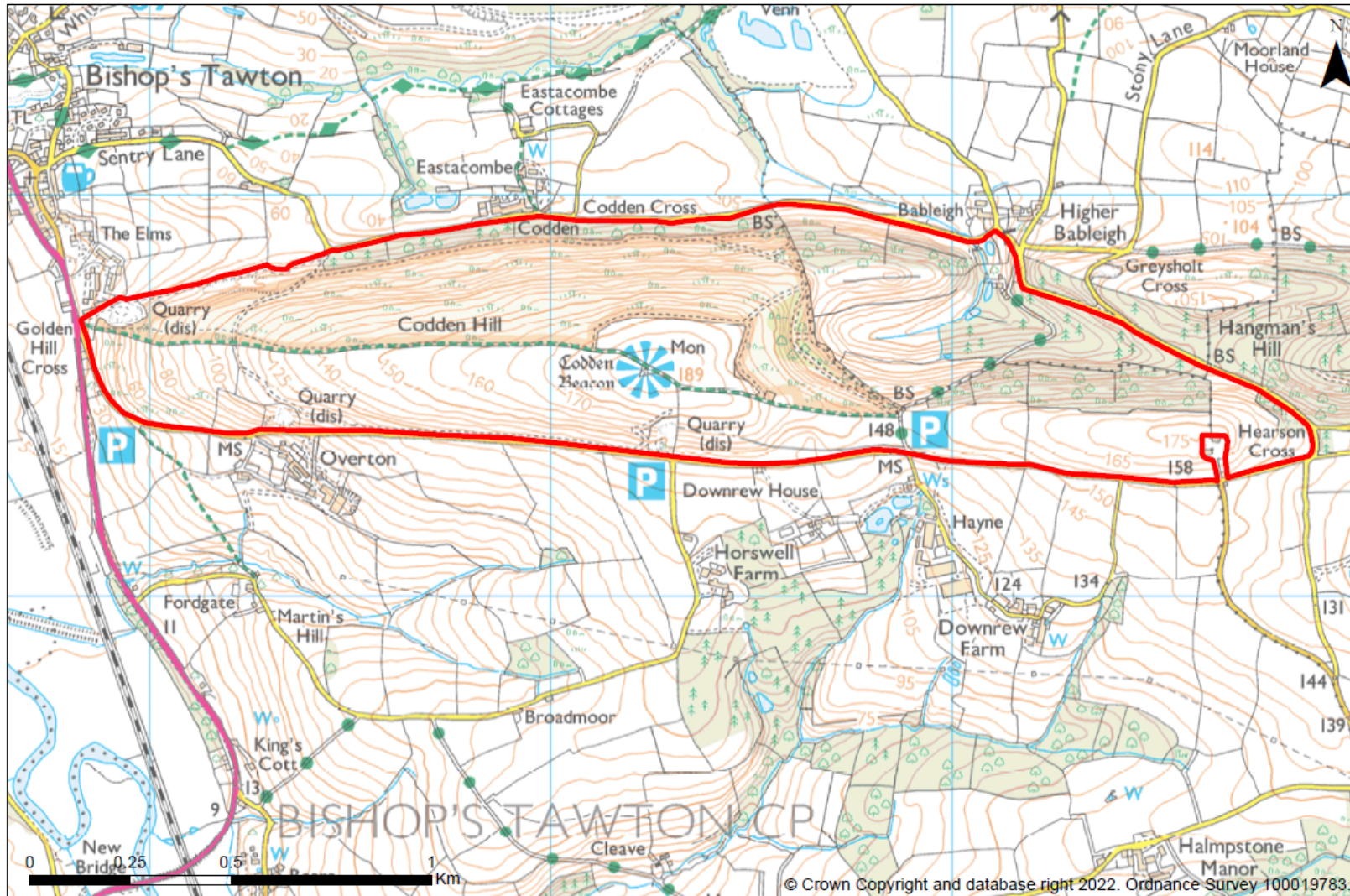
Address: Room 120, County Hall, Exeter

eh151123dma

sc/cr/Article 4 Direction Codden Hill Bishop's Tawton Barnstaple  
03 271123

Appendix 1 to CET/23/105 – Article 4 Direction Boundary

Land at Codden Hill - Proposed Article 4 Direction Boundary





**Appendix 2 to CET/23/105 – Consultation Outcomes Report**

**Codden Hill Article 4 Direction  
Consultation Outcomes Report**

**November 2023**



## 1. Introduction

- 1.1. Devon County Council is the Mineral Planning Authority [MPA] for Devon, excluding Plymouth, Torbay, Dartmoor National Park and Exmoor National Park. The Council is responsible for producing the Devon Minerals Plan and also determining planning applications for mineral development, ensuring development complies with planning policy and minimises impacts upon the local community and environment.
- 1.2. Class C of Part 6 within Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO] allows for mineral working for agricultural purposes to take place without the need for a planning application, providing it meets the conditions and limitations of the Order. Devon County Council considered the need for an Article 4 Direction to control this type of development at the Development Management Committee on 7 December 2022 given the existing and potential harm that further mineral working may cause to the local environment and amenity of the area. The Committee agreed to make an Article 4 Direction which would remove these permitted development rights and require a planning application for mineral working for agricultural purposes [*minute 36*].
- 1.3. A consultation was held from 13 January 2023 – 10 February 2023 for representations on the Article 4 Direction to be made to the Mineral Planning Authority in accordance with paragraph 1(4)(d) of Schedule 3 Procedures for Article 4 Directions of the GPDO. A Consultation Statement was published in January 2023 setting out how the consultation would be carried out. The Statement can be viewed here: <https://www.devon.gov.uk/planning/article4/>
- 1.4. This report sets out how the Council met the requirements of Schedule 3 Procedures for Article 4 Directions of the GPDO and summarises the responses received by the Mineral Planning Authority during the consultation period, identifying the main issues for further consideration.

## **2. Consultation Summary**

- 2.1. The Article 4 Direction was advertised in accordance with the statutory requirements as set out under Schedule 3, Procedures for Article 4 Directions of the GPDO. Devon County Council's Consultation Statement set out how the Article 4 Direction consultation would meet these requirements, including how the consultation would take place, and who would be consulted.
- 2.2. Paragraph 1(1) of Schedule 3 of the GPDO states that "*notice of any direction made under article 4(1) of this Order must, as soon as practicable after the direction has been made, be given by the local planning authority—*
- (a) by local advertisement;*
  - (b) by site display at no fewer than 2 locations within the area to which the direction relates, or, if the direction is made under article [4\(1\)\(b\)](#), on the site of the particular development to which the direction relates, for a period of not less than 6 weeks; and*
  - (c) subject to sub-paragraph [\(2\)](#), by serving the notice on the owner and occupier of every part of the land within the area or site to which the direction relates.*
- 2.3. Paragraph 2 continues "*the local planning authority need not serve notice on an owner or occupier in accordance with sub-paragraph (1)(c), if they consider that—*
- (a) individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person or*
  - (b) the number of owners or occupiers within the area to which the direction relates makes individual service impracticable".*

### **The Notice**

- 2.4. Paragraph (4) states that "*the notice referred to in sub-paragraph (1) must—*
- (a) include a description of the development and the area to which the direction relates, or the site to which it relates, as the case may be, and a statement of the effect of the direction;*
  - (b) specify that the direction is made under article 4(1) of this Order;*
  - (c) name a place where a copy of the direction, and a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, may be seen at all reasonable hours;*

(d) *specify 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 local planning authority; and*

(e) *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 date referred to in paragraph (d)*

2.5. The notice given by the Mineral Planning Authority in accordance with paragraph 4 can be found in Appendix A. The notice specified a 28-day period for representations.

### **Consultation**

2.6. In summary, notice was given by the MPA as soon as reasonably practicable after the direction being made on 7 December 2022<sup>2</sup> by way of:

- an advertisement in the local newspaper on 19 January 2023;
- site notices displayed at eight locations on 13 January 2023; and
- serving notice on the owner and occupier of every part of land, unless impractical, within the area to which the direction relates via recorded delivery on 13 January 2023.

2.7. In addition, a dedicated webpage was created, and local residents and other stakeholders were notified of the direction.

### **Local Advertisement**

2.8. A local advertisement was published in the Western Morning News on 19 January 2023. A copy of this advertisement can be found in Appendix B.

### **Site displays**

2.9. Site notices were displayed in 8 locations on Codden Hill on 13 January 2023. These locations were considered to reflect known existing mineral working areas and areas of public access and are shown in Appendix C.

2.10. Paragraph 1(5) of Schedule 3 of the GPDO states:

*Where a notice given by site display is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period referred to in sub-paragraph (4)(d) [21 days] has elapsed, the authority is treated as having complied with the requirements of that*

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<sup>2</sup> The Mineral Planning Authority considered a consultation over the Christmas period would not allow for any questions or contact by interested persons.

*paragraph if they have taken reasonable steps for the protection of the notice, including, if need be, its replacement.*

- 2.11. Given this, on 3 February 2023, an Officer checked the site notices and found 3 were missing (at locations 2, 5, & 7 as shown in Appendix C); these were replaced, with one further notice being reattached (at location 4 as shown in Appendix C). The remaining notices were found to be intact.

### **Digital publicity**

- 2.12. A dedicated webpage was created:  
<https://www.devon.gov.uk/planning/article4/>

### **Written notice**

#### Owners and occupiers

- 2.13. 15 notices were sent by recorded delivery on 13 January 2023 to the known owners and occupiers of land within the Article 4 Direction boundary. These notices included information on an Article 4 Direction. An example notification letter and notice can be found in Appendix D. Where previous correspondence was had with landowners or their agents, a courtesy email was sent with the information.

#### Neighbouring properties

- 2.14. 45 properties close to the Article 4 Direction boundary were notified of the proposal by letter sent on 13 January 2023.

#### Other stakeholders

- 2.15. Notifications were also sent by email on 13 January 2023 to:

- Bishop's Tawton Parish Council;
- Landkey Parish Council;
- Swimbridge Parish Council;
- Devon County Council Local Member;
- North Devon Council Local Members;
- Historic England;
- North Devon Environmental Protection;
- DCC Landscape;
- DCC Ecology;
- Natural England; and
- Environment Agency

- 2.16. An example notification sent to neighbours and stakeholders is contained within Appendix E.

### **Other notifications**

- 2.17. In accordance with paragraph 1(6) of the GPDO, the Secretary of State was notified on 13 January 2023. See Appendix F.
- 2.18. In accordance with paragraph 1(8) of the GPDO, North Devon Council, the district planning authority, was notified on 13 January 2023.

### **3. Summary of Responses**

- 3.1. As a result of the consultation, 23 written responses were received from landowners, local residents and some of the other stakeholders listed in paragraph 2.15. Full copies of the responses can be found here: <https://www.devon.gov.uk/planning/article4/>
- 3.2. Out of the 23 responses received, 16 state that they **support** the Article 4 Direction. The majority (14) of this support is from local residents, who highlight impacts that have already taken place from previous mineral extraction at Codden Hill and, therefore, state concerns should uncontrolled mineral working continue. The common themes raised when supporting the Article 4 Direction include:
- Impacts on living conditions and residential amenity:
    - Noise - Previous mineral extraction generated traffic, sometimes all day, with machinery working as early as 6am and as late as 10pm; Working took place at the weekends and on bank holidays;
    - Dust – generation of dust, which is stated to contain silica;
    - Use of floodlights;
    - Implications on human health from the above;
  - Landscape – Highlight Codden Hill as a distinctive landmark and a place of beauty. Quarrying is said to be impacting upon this and disrupting the peace and tranquillity of the area.
  - Ecology – Destruction to habitats.
  - Water – Concerns that surface water runoff is contaminating drinking water; blocking drains; causing fields to become waterlogged; and may cause land stability issues.
  - Highways – Existing operations have damaged the road surface/verges. The road to the A377 is unsuitable for large vehicles – it is narrow, inadequate passing places and vehicles provide hazard to other road users, e.g. pedestrians, cyclists. Junction onto A377 is unsafe.
  - Recreation – Highlight the area as an important accessible green space, for walking and tourism.

Other responses question the need for the stone and state that house prices are negatively affected.

- 3.3. Whilst not stating their support, a further resident made comments regarding the issues raised above.
- 3.4. Of the stakeholders that responded, Landkey Parish Council stated their support for the Article 4 Direction, as did the North Devon Council Environmental Protection Team who note that “the proximity of existing properties to the Article 4 Direction boundary is such that mineral working within the boundary could significantly impact the living conditions of residential neighbours”.
- 3.5. The response continues to detail that North Devon Council investigated a complaint in December 2021 and issued an abatement notice in June 2022 in respect of the likely recurrence of statutory dust nuisance. They consider the findings of North Devon Council’s nuisance investigations and subsequent service of an abatement notice confirms that mineral working in this area can give rise to significant impacts on living conditions of residents in the vicinity. The response notes the removal of permitted development rights would create opportunities to control future potential impacts through the planning regime.
- 3.6. Natural England stated they had no comments to make. No other responses from other stakeholders were received.
- 3.7. The remaining five responses were from landowners affected by the Article 4 Direction. One stated that they had no objection and had disposed of the service reservoir, however, all other landowners objected or requested changes to the Article 4 Direction.
- 3.8. One landowner commented that there was a quarry missing on the plan<sup>3</sup>. The response identified this quarry as the extraction area north of Hearson Cross and stated that it has almost doubled in size over the last 24 months. The landowner expresses disappointment that the current decision is not to entirely stop any further extraction from all quarries<sup>4</sup>.
- 3.9. The three remaining landowners raise similar concerns; in short, they consider there to be insufficient justification for the inclusion of their quarries within the Article 4 Direction. These quarries are Codden Hill Quarry; Overton Quarry; Horswell Quarry; and the quarry north of Hearson Cross. The Mineral Planning Authority is aware that mineral extraction has taken place at these sites reportedly under Class C,

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<sup>3</sup> The MPA is aware of this quarry which is identified in Appendix II of Report CET/22/78.

<sup>4</sup> An Article 4 Direction only results in the withdrawal of permitted development rights. It does not fully prohibit development.

Part 6 in the past, however, the sites do not have extant planning permission<sup>5</sup>.

- 3.10. The landowner of Codden Hill Quarry stated that stone from this quarry has not been sold and has only been used on land that is within their ownership, and that the actions of one person should not be reflected on those who have used their quarries correctly<sup>6</sup>. The response continues that the quarry is small and has not grown hugely in size over the 100 years it has been in use. It has also been used for storage.
- 3.11. Questions are raised in relation how they would, and how long it would take to, get planning permission. An example was given of new gas and water pipes serving the village going through their land which may require stone to reinstate the land. It is stated that sometimes stone is needed as a matter of urgency and that planning permission cannot be gained quickly.
- 3.12. Another landowner also raises the issue of gaining planning permission. It is stated this is a time consuming and expensive process, with the financial burden on landowners not considered in Report CET/22/78. A lack of faith in getting planning permission is also raised given the landowner's previous requests to extract material using permitted development rights under the terms of the interim injunction being refused<sup>7</sup>. One response highlights that if it becomes impossible for the landowner to use stone, it will have to be imported using the road network to the farm, which is unsustainable.
- 3.13. One response implies that there are other measures that provide sufficient control to the Mineral Planning Authority. Report CET/22/78 stated that: "mineral working with no control can be intrusive and cause harm to living conditions of neighbouring residents". The response states that it is incorrect that there would be no control as the GPDO that grants permitted development rights limits their extent.
- 3.14. It continues that the current Enforcement Notices do not allow for working to take place at Overton Quarry and Horswell Quarry so there can be no uncontrolled working. Therefore, it is suggested that the claim previously made by the Council that "should permitted development rights remain, uncontrolled expansion could take place and new sites could appear" is clearly unfounded.

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<sup>5</sup> Note Codden Hill Quarry has a Dormant mineral permission (a mineral permission that was inactive from February 1982 to June 1995, as defined by the Environment Act 1995. However, it cannot be worked under this permission until a new scheme of working conditions has been submitted to and approved by the MPA.

<sup>6</sup> The need for the Article 4 Direction has been assessed in terms of environmental harm and harm to amenity of neighbouring properties

<sup>7</sup> These requests were made under the terms of the High Court Injunction Order of 26 May 2022, not as a planning application



- 3.15. Continuing with this issue, one response addresses the potential cumulative effects of operations, in that if they become significant in terms of landscape, then the works would fall within the scope of the Environmental Impact Assessment Regulations. Therefore, as limits and processes already exist for controlling damaging activity, the removal of permitted development rights is unnecessary.
- 3.16. Two of the landowners consider for their quarries, Overton Quarry, Horswell Quarry, and the quarry north of Hearson Cross, there is no landscape justification for them to be included in the Article 4 Direction.
- 3.17. The responses highlight that Article 4 Directions should cover the smallest geographical area possible and that the removal of agricultural permitted development rights needs to demonstrate that those permitted development rights pose a serious threat to areas or landscapes of exceptional beauty.
- 3.18. It is argued that the quarries are long established features in the landscape, originating in the 18<sup>th</sup> or 19<sup>th</sup> century. The response also highlights that one landowner maintains, and facilitates the use of, land for public access surrounding Overton Quarry and Horswell Quarry; to spoil enjoyment of this tranquil landscape would be contradictory.
- 3.19. It is implied that concerns from the DCC Landscape Officer appear to relate to the expansion of existing sites and new sites, however, the use of the quarries for permitted development purposes is unlikely to lead to any significant change to the extent of quarrying; there is an Enforcement Notice restricting working at Overton Quarry and Horswell Quarry; the figures of extraction quoted in the report (CET/22/78) pre-date the issue of the Notice so are not realistically going to be repeated; the number of prior approval applications where the landowner could realistically use the stone is in single figures in the last 5 years; and the MPA has argued that permitted development rights don't exist in other proceedings. The response, therefore, implies that if it is the expansion of the quarries that is considered to challenge the integrity of the landscape, less draconian measures, could prevent the expansion of the quarries to any unacceptable degree without imposing a disproportionately high administrative and cost burden on the landowner.
- 3.20. One landowner considers that the area around the quarry north of Hearson Cross is low lying and not visible, with no public access.
- 3.21. Both responses conclude that the quarries should be removed from the boundary, and that the Article 4 Direction would still achieve the landscape protection desired if these areas were excluded.

- 3.22. The responses consider that the ecological concerns outlined in Report CET/22/78 could also be addressed by redrawing the boundary of the Article 4 Direction, given the DCC Ecologist's concerns appear to only be surrounding the expansion of existing, or new, quarries, and the conclusion does not address whether a more restricted area being covered, i.e. removing existing working areas from the Article 4 Direction, would provide the necessary degree of protection for habitat and species.
- 3.23. One response states that the grassland surrounding the quarry north of Hearson Cross is normal, with imported grass seeds that are not native and, therefore, the reasons for the Article 4 Direction do not apply. In addition, it is stated that County Wildlife Sites are not protected by statute, and in any case, Overton and Horswell Quarries fall outside of the CWS designation. A response also considers that as the GPDO does not contain any restrictions for ecological reasons, it implies that the Government do not see the exercise of such rights as detrimental to biodiversity.
- 3.24. Article 4 Directions can also be used to protect local amenity. However, two landowners consider the potential impacts of their quarries on neighbouring amenity are minimal. The landowner of the quarry north of Hearson Cross considers that there are no houses in close proximity and the quarry is used very intermittently, causing little or no disturbance.
- 3.25. Infrequent working is also mentioned by another landowner. As well as previous extraction limitations mentioned in paragraphs 3.13 and 3.19, it is stated that material would only be removed if necessary for the purposes of agriculture on an associated agricultural unit. Such occasions will be limited. Extraction comes at a cost and will not be undertaken unless necessary.
- 3.26. It is suggested that this infrequent working would cause minor levels of noise or dust to neighbouring properties, that only two unsubstantiated complaints have been received by North Devon Council, with no formal action taken, and that there are no records of complaints to the Parish Council. The response references North Devon Council's letter accompanying Report CET/22/78; it is stated that whilst they considered uncontrolled mineral working would increase the risk of disturbance to local residents, they merely observe that allowing development to be controlled through the planning process would minimise the risk of disturbance. It is not advised that removal of PD rights is necessary to ensure reasonable safeguarding of the amenities of neighbours.
- 3.27. Again, an alternative control for this impact is highlighted. North Devon's Environmental Health Department is said to have the

necessary powers to deal with any nuisance that may arise; an Article 4 Direction is therefore not required or justified.

- 3.28. As indicated throughout the responses, the landowners consider amending the boundary would resolve their concerns but also ensure an adequate level of protection to the landscape, biodiversity and neighbouring residents. One response states the option of reducing the extent of the boundary to not include these quarries was not considered or given a balanced view in Report CET/22/78.
- 3.29. Overall, one response states that inadequate justification has been provided for the Article 4 Direction and is vulnerable to judicial review.

#### **4. Secretary of State**

- 4.1. The Department for Levelling Up, Housing & Communities wrote to the MPA on 9 March 2023 acknowledging the notification for the Article 4 Direction made on 13 January 2023. The letter stated the Article 4 Direction has been passed to the policy team for further assessment. They will consider whether the Direction fulfils national policy set out in Paragraph 53 of the National Planning Policy Framework on the use of Article 4 directions, and whether there is cause for the Secretary of State to use his powers of intervention under Schedule 3, Paragraph 1(13) of the 2015 Order. The letter stated that the MPA should not assume that the Article 4 Direction has met the policy tests until we are notified by the Department.
- 4.2. Further discussion with the Department has established that, even though the Article 4 Direction is under consideration, it does not prevent any of the processes associated with introducing the Article 4 direction from going forward, although it should be noted that the Secretary of State has the power to modify or cancel an Article 4 direction at any time.

#### **5. Conclusions**

- 5.1. Despite the concerns raised by landowners, the majority of responses show support for the Article 4 Direction for various reasons. Some of the reasons reflect the reasons put forward in Report CET/22/78. The other reasons highlight the impacts of mineral development but have not been put forward by the MPA as a reason for the Article 4 Direction given the scope and purpose of Article 4 Directions. The MPA considers that no reasons of support that have been put forward require an amendment to the Article 4 Direction.
- 5.2. The responses from landowners, however, raise common themes that require further attention:
- the requirement for planning permission is expensive and time consuming, and applications could be refused;

- the GPDO already includes controls; mineral extraction for permitted development has been and is limited; and in any case, other methods of controls exist;
- the Article 4 Direction is not necessary for landscape protection;
- the Article 4 Direction is not necessary for protecting local amenity;
- the Article 4 Direction is not necessary for protecting biodiversity;
- if material has to be imported, it is unsustainable; and
- the Article 4 Direction boundary requires amendment.

5.3. It is recommended that these issues are examined further when Devon County Council considers whether to confirm the Article 4 Direction.

## Appendix A – Notice

# DEVON COUNTY COUNCIL

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)  
(ENGLAND) ORDER 2015 (AS AMENDED)

## NOTICE OF MAKING A DIRECTION WITHOUT IMMEDIATE EFFECT UNDER ARTICLE 4(1)

NOTICE IS GIVEN that Devon County Council made an Article 4(1) Direction ('the Direction') on 13 January 2023 under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').

The Direction withdraws the permitted development rights granted by Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry of Schedule 2 of the Order.

The Direction applies to land and properties within the area shown by the red line on the plan accompanying the Direction, known as Codden Hill.

The effect of the Direction is that, once it comes into force, the permitted development rights for this type of development are withdrawn within the area specified. Such development shall not be carried out within the area outlined in red on the plan accompanying the Direction unless planning permission is granted by Devon County Council pursuant to a planning application made to that Council under Part III of the Town and Country Planning Act 1990 (as amended).

**The Direction was made by Devon County Council on 13 January 2023 and, subject to confirmation by Devon County Council, shall come into force on 14 January 2024.** A copy of the Direction, including the accompanying plan defining the area covered, is available for inspection at County Hall, Topsham Road, Exeter, EX2 4QD

The Direction and plan can also be viewed on Devon County Council's website:  
[www.devon.gov.uk/planning/article4](http://www.devon.gov.uk/planning/article4)

**Representations may be made concerning the Direction between 13 January 2023 and 10 February 2023.** If you wish to make representations, you may do so by email to [planning@devon.gov.uk](mailto:planning@devon.gov.uk) or by post addressed to:

Planning - Article 4 Consultation  
Devon County Council  
Room 120  
Topsham Road  
Exeter  
EX2 4QD

Any representations must be received by **10 February 2023**.

For enquiries or to request printed copies or an alternative format, please email [planning@devon.gov.uk](mailto:planning@devon.gov.uk)

## Appendix B – Newspaper Advert

Thursday, January 19, 2023 **WESTERN MORNING NEWS**

# Public Notices

## Planning

**TOWN AND COUNTRY PLANNING  
(GENERAL PERMITTED DEVELOPMENT) (ENGLAND)  
ORDER 2015 (AS AMENDED)  
NOTICE OF MAKING A DIRECTION WITHOUT IMMEDIATE EFFECT  
UNDER ARTICLE 4(1)**

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Any representations must be received by **10 February 2023**.

For enquiries or to request printed copies or an alternative format, please email [planning@devon.gov.uk](mailto:planning@devon.gov.uk)

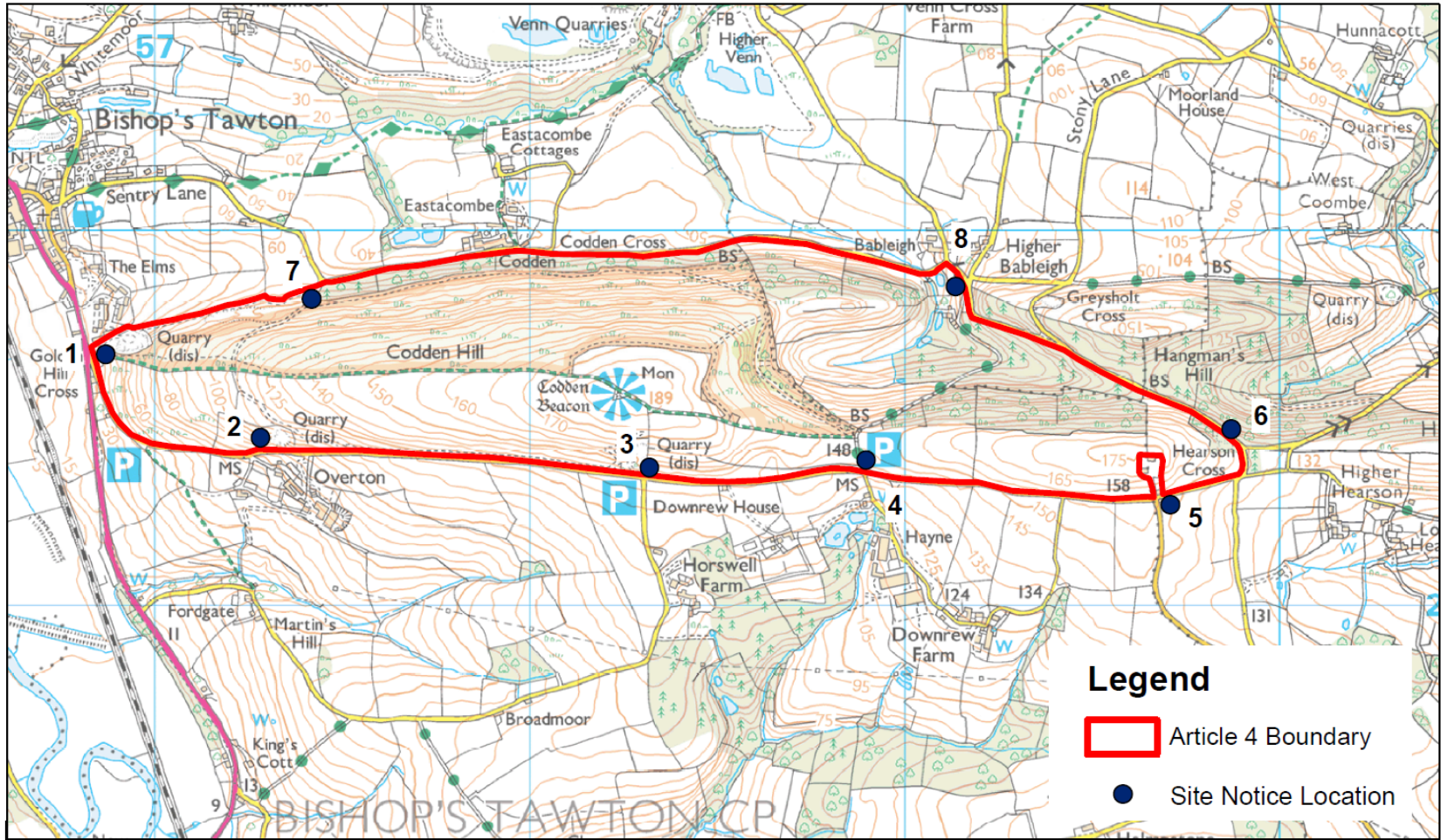


The best place  
to **sell** your  
brick-a-brack

**marketplace**live.co.uk  
Your local place to **buy** and **sell**



# Appendix C – Location of site displays



**Legend**

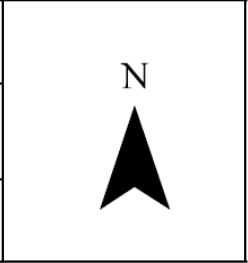
- Article 4 Boundary
- Site Notice Location



**Site Notice Locations**

© Crown Copyright and database right 2023.  
Ordnance Survey 100019783

0                      0.75                      1.5  
Km



## Appendix D – Example of notification sent to Landowners

**Climate Change, Environment and  
Transport**  
County Hall  
Topsham Road  
Exeter  
EX2 4QD

Tel: 01392 383894

Email: [Planning@devon.gov.uk](mailto:Planning@devon.gov.uk)

13 January 2023

### **IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**

Dear Sir/Madam,

**Article 4 Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development consisting of mineral working for agricultural purposes (Class C, Part 6 of Schedule 2) at Codden Hill, Bishop's Tawton, Barnstaple, Devon.**

On 7 December 2022, Devon County Council's Development Management Committee resolved to make a non-immediate Article 4 Direction to remove permitted development rights under Class C – mineral working for agricultural purposes of Part 6 – Agricultural and Forestry of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Codden Hill, Bishop's Tawton, Barnstaple.

The effect of the Direction would be that development set out by Class C – mineral working for agricultural purposes could not be undertaken without a planning application being submitted to Devon County Council for consideration and planning permission being granted.

The Article 4 Direction at Codden Hill is proposed to come into force on **14 January 2024**. This would need to be confirmed by the Development Management Committee after considering any representations received.

It is understood that you are either an owner or occupier of land subject to the proposed Article 4 direction and, therefore, please find enclosed a Notice of the Article 4 direction, including a plan showing the area affected.

If you have any comments on the above proposal, representations may be made to Devon County Council between 13 January 2023 and 10 February 2023.

Please email any comments to [planning@devon.gov.uk](mailto:planning@devon.gov.uk) or post to:



Planning – Article 4 Consultation  
Devon County Council  
Room 120  
Topsham Road  
Exeter  
EX2 4QD

Anonymous representations will not be considered, so your name and address should be included on any representation made. Please note your response will be made publicly available (with personal details removed).

I have included some background information within this letter but, for further information on the proposal, please visit [www.devon.gov.uk/planning/article4](http://www.devon.gov.uk/planning/article4)

Should you have any questions, please do not hesitate to contact me using the details above.

Yours faithfully,

Emily Harper

**Emily Harper**  
**Climate Change, Environment and Transport**

## **What are permitted development rights?**

Permitted development rights allow certain types of development to commence without the need to submit a planning application. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO].

## **What is an Article 4 direction?**

A planning authority has the power to remove specified permitted development rights within a defined area. This is known as an Article 4 direction. An Article 4 direction does not stop development, but requires a planning application to be submitted for the development.

## **Why protect Codden Hill?**

Devon County Council considers that Codden Hill is a distinct feature of the North Devon landscape that is highly visible with protected features, such as Codden Beacon Scheduled Monument, located centrally on Codden Hill. It also has valuable habitats and offers recreational routes for the public to enjoy and we want to protect this.

There are also a number of residents in close proximity to Codden Hill, and at present, we have no control to mitigate the impacts of mineral extraction for these residents, including noise, dust, and highway movements.

We consider that mineral working for agricultural purposes in the area has already caused a degree of harm to the local environment and we want to ensure that we can manage any future mineral extraction by requiring a planning application to be submitted.

## **How could this effect you?**

Should the Article 4 direction be confirmed on 14 January 2024 as proposed, planning applications will be required for any mineral working on Codden Hill. You will no longer be able to extract minerals for agricultural purposes without submitted a planning application to Devon County Council for consideration and planning permission being granted.

# DEVON COUNTY COUNCIL

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND)  
ORDER 2015 (AS AMENDED)

## NOTICE OF MAKING A DIRECTION WITHOUT IMMEDIATE EFFECT UNDER ARTICLE 4(1)

NOTICE IS GIVEN that Devon County Council made an Article 4(1) Direction ('the Direction') on 13 January 2023 under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order').

The Direction withdraws the permitted development rights granted by Class C - mineral working for agricultural purposes, of Part 6 Agricultural and forestry of Schedule 2 of the Order.

The Direction applies to land and properties within the area shown by the red line on the plan accompanying the Direction, known as Codden Hill.

The effect of the Direction is that, once it comes into force, the permitted development rights for this type of development are withdrawn within the area specified. Such development shall not be carried out within the area outlined in red on the plan accompanying the Direction unless planning permission is granted by Devon County Council pursuant to a planning application made to that Council under Part III of the Town and Country Planning Act 1990 (as amended).

**The Direction was made by Devon County Council on 13 January 2023 and, subject to confirmation by Devon County Council, shall come into force on 14 January 2024.** A copy of the Direction, including the accompanying plan defining the area covered, is available for inspection at County Hall, Topsham Road, Exeter, EX2 4QD

The Direction and plan can also be viewed on Devon County Council's website:  
[www.devon.gov.uk/planning/article4](http://www.devon.gov.uk/planning/article4)

**Representations may be made concerning the Direction between 13 January 2023 and 10 February 2023.** If you wish to make representations, you may do so by email to

[planning@devon.gov.uk](mailto:planning@devon.gov.uk) or by post addressed to:

Planning - Article 4 Consultation

Devon County Council

Room 120

Topsham Road

Exeter

EX2 4QD

Any representations must be received by **10 February 2023**.

For enquiries or to request printed copies or an alternative format, please email  
[planning@devon.gov.uk](mailto:planning@devon.gov.uk)

## Appendix E – Example of notification sent to neighbours and stakeholders

**Climate Change, Environment and  
Transport**  
County Hall  
Topsham Road  
Exeter  
EX2 4QD

Tel: 01392 383894

Email: [Planning@devon.gov.uk](mailto:Planning@devon.gov.uk)

13 January 2023

Dear Sir/Madam,

**Article 4 Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development consisting of mineral working for agricultural purposes (Class C, Part 6 of Schedule 2) at Codden Hill, Bishop's Tawton, Barnstaple, Devon.**

Devon County Council is proposing to remove the permitted development rights that currently allow for mineral working for agricultural purposes to take place without the need to submit a planning application at Codden Hill.

We are consulting you because we believe you may have an interest in the above matter, and we would welcome your feedback.

### **What are permitted development rights?**

Permitted development rights allow certain types of development to commence without the need to submit a planning application. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [GPDO].

### **What is an Article 4 direction?**

A planning authority has the power to remove specified permitted development rights within a defined area. This is known as an Article 4 direction. An Article 4 direction does not stop development, but requires a planning application to be submitted for the development.

### **What are we proposing?**

On 7 December 2022, Devon County Council's Development Management Committee resolved to pursue an Article 4 direction to remove the permitted development rights under Class C – mineral working for agricultural purposes of Part 6 – Agricultural and Forestry of Schedule 2 of the GPDO at Codden Hill, Bishop's Tawton, Barnstaple.

The effect of the direction would be that development set out by Class C (mineral working for agricultural purposes) could not be undertaken without a planning application being submitted to Devon County Council for consideration and planning permission being granted.

The Article 4 direction at Codden Hill is proposed to come into force on **14 January 2024**. This would need to be confirmed by the Development Management Committee after considering any representations received.

### **Why protect Codden Hill?**

Devon County Council considers that Codden Hill is a distinct feature of the North Devon landscape that is highly visible with protected features, such as Codden Beacon Scheduled Monument, located centrally on Codden Hill. It also has valuable habitats and offers recreational routes for the public to enjoy and we want to protect this.

There are also a number of residents in close proximity to Codden Hill and, at present, we have no control to mitigate the impacts of mineral extraction for these residents, including noise, dust, and highway movements.

We consider that mineral working for agricultural purposes in the area has already caused a degree of harm to the local environment and we want to ensure that we can manage any future mineral extraction by requiring a planning application to be submitted.

### **How could this effect you?**

Should the Article 4 direction be confirmed on 14 January 2024 as proposed, planning applications will be required for any mineral working on Codden Hill. If you are a resident near to Codden Hill or have an interest in Codden Hill, then you may be consulted on any future planning applications that are received by Devon County Council.

### **Have your say**

If you have any comments on the above proposal, representations may be made to Devon County Council between 13 January 2023 and 10 February 2023.

Please email any comments to [planning@devon.gov.uk](mailto:planning@devon.gov.uk) or post to:  
Planning – Article 4 Consultation  
Devon County Council  
Room 120  
Topsham Road  
Exeter  
EX2 4QD

Please include your name and address on any representation made. Please note your response will be made publicly available (with personal details removed). Anonymous representations will not be considered.

For more information and background on the proposal, please visit [www.devon.gov.uk/planning/article4](http://www.devon.gov.uk/planning/article4)

Should you have any questions, please do not hesitate to contact me using the details above.

Yours faithfully,

Emily Harper

**Emily Harper**  
**Climate Change, Environment and Transport**

## Appendix F – Notification to the Secretary of State

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**From:** Planning Development Management - Mailbox <[planningdevelopmentmanagement-mailbox@devon.gov.uk](mailto:planningdevelopmentmanagement-mailbox@devon.gov.uk)>  
**Sent:** 13 January 2023 15:14  
**To:** PCU <[PCU@levellingup.gov.uk](mailto:PCU@levellingup.gov.uk)>  
**Subject:** Devon County Council - Copy of non-immediate Article 4 Direction at Codden Hill, Bishop's Tawton, Devon

Dear Planning Casework Unit,

On 7 December 2022, Devon County Council's Development Management Committee resolved to make a non-immediate Article 4 Direction to remove permitted development rights under Class C – mineral working for agricultural purposes of Part 6 – Agricultural and Forestry of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Codden Hill, Bishop's Tawton, Barnstaple, Devon.

In accordance with Article 4(6), please find a copy of the Direction and the Notice made under Article 4(1), including a copy of the map defining the area to which it relates. The Notice has been first displayed and published today. The Article 4 Direction at Codden Hill is proposed to come into force on **14 January 2024**. We are currently holding a period for representations.

Information on the Article 4 Direction can be found here: [www.devon.gov.uk/planning/article4](http://www.devon.gov.uk/planning/article4)

Please let me know if I should direct this notification elsewhere, you require further information or if you have any questions.

Thanks  
Emily

Emily Harper (*she/her*)  
Principal Planning Officer  
Climate Change, Environment and Transport  
Devon County Council  
Room 120, County Hall, Exeter, EX2 4QD

Tel. 01392 383000  
Mobile: 07980 751528  
Email: [emily.harper@devon.gov.uk](mailto:emily.harper@devon.gov.uk)

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