

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 13 OCTOBER 2011
title: CONSERVATION AREA ARTICLE 4 DIRECTION IMPLEMENTATION
submitted by: DIRECTOR OF COMMUNITY SERVICES
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1 PURPOSE

1.1 To seek Member agreement to the implementation of the Article 4 direction programme recommended by The Conservation Studio consultants and considered by the public in the Conservation Area Review.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – To protect and enhance the existing environmental quality of our area.
- Community Objectives – The Ribble Valley Sustainable Community Strategy 2007-2013 has three relevant strategic objectives – maintain, protect and enhance all natural and built features that contribute to the quality of the environment. Ensure that the design of buildings respects local character and enhances local distinctiveness. Sustainably manage and protect industrial and historical sites.
- Corporate Priorities - Objective 3.3 of the Corporate Plan commits us to maintaining and improving the environmental quality of the Ribble Valley. Objective 3.8 of the corporate plan commits us to conserving and enhancing the local distinctiveness and character of our towns, villages and countryside when considering development proposals.
- Other Considerations – None.

2 BACKGROUND

2.1 Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990, states that it shall be the duty of a local planning authority from time to time to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas.

2.2 Section 72 of the Act states that in the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the planning acts, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

2.3 On 26 May and 15 September 2011 respectively, Article 4 directions restricting some residential permitted development rights of potential harm to the character and appearance of Kirk Mill Conservation Area came into force, at Grove House and 1-5 The Grove, Chipping.

2.4 In June 2010 Members resolved to authorise the Director of Development Services to consult the owners and occupiers of affected properties, and the relevant Parish Councils, in regard to progression with the Article 4 directions recommended by The Conservation Studio consultants in their appraisal of the Borough's conservation areas.

2.5 Planning Policy Statement 5 'Planning for the Historic Environment' (PPS5, March 2010) Policy HE4: Permitted Development and Article 4 Directions states:

"Local planning authorities should consider whether the exercise of permitted development rights would undermine the aims for the historic environment. If it would, local planning authorities should consider the use of an Article 4 direction to ensure any development is given due consideration".

2.6 The draft National Planning Policy Framework (July 2011) paragraph 177 states: *"the Government's objectives for planning for the historic environment are to:*

- *conserve heritage assets in a manner appropriate to their significance ..."*

Paragraph 178 states: *"local planning authorities should set out a strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats".*

2.7 The purpose of Article 4 direction is summarised in "Listed Buildings, Conservation Areas and Monuments" (Mynors C, 2006, page 180 – 189), *"Some buildings are particularly susceptible to harm caused by a succession of small changes – things that might in other circumstances be of no consequence eg a row of traditional cottages might be spoiled if the occupier of one of them replaced the traditional windows with modern ones with crude plastic frames. And what one does, others are likely to copy".* For unlisted buildings in conservation areas, the only protection is through a requirement for planning permission. However, many alterations eg window and door replacement, some boundary wall and chimney demolition, small extensions may be "permitted development". An Article 4 direction restricts the right of the landowners to carry out certain categories of "permitted development". The affect is not that developments within a particular category can never be carried out, but that it is no longer automatically permitted and the local planning authority can control as appropriate development that may otherwise harm the character or integrity of an area.

2.8 The most recent guidance on Article 4 directions is provided at Annex 1 of 'Understanding Place: Conservation Area Designation, Appraisal and Management (English Heritage, March 2011):

"What are Article 4 Directions?

Minor development such as domestic alterations and extensions can normally be carried out without planning permission under the provisions of the General Permitted Development Order (GPDO). Article 4 of the GPDO gives local planning authorities the power to restrict these 'permitted development rights' where they have the potential to undermine protection for the historic environment. Using the provisions of Article 4 of the GPDO brings certain types of development back under the control of a local planning authority so that potentially harmful proposals can be considered on a case by case basis through planning applications.

Assessing the need

The specific requirement on local authorities under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to carry out a conservation area appraisal provides a robust evidence base on which to assess the need for and scope of an Article 4 direction. Ideally a conservation area management plan developed from a conservation area appraisal will identify areas where removal of 'permitted development rights' is necessary to prevent the loss of characteristic architectural detailing or gradual erosion of the character and appearance of the conservation area through inappropriate development. Historic characterisation approaches such as Historic Area Assessment will also provide evidence for using Article 4 directions outside conservation areas.

Scope

It is only appropriate to remove permitted development rights where there is a real and specific threat and exclude properties where there is no need for the direction to apply. Article 4 directions are most commonly used to control changes to elevations of buildings in conservation areas fronting a highway, waterway or open space but they can also be used to control other forms of development which might harm the significance of heritage assets.

Monitoring and Enforcement:

Article 4 directions are more likely to be effective if:

- there is a dated photographic record of the properties affected for the purposes of tracking any subsequent changes;
- guidance is provided for homeowners on how the direction affects them with advice on appropriate repair and alteration;
- the local authority undertakes regular monitoring for compliance and appropriate enforcement;
- the need for the article 4 direction is reviewed if circumstances change.

Impact on Resources

Increase in planning applications is likely to be minimal as clear, concise controls, backed up by appropriate guidance, tend to encourage like-for-like repair or replacement in matching materials, which do not require planning permission (RPS Planning Research into the use of Article 4 directions on behalf of the English Historic Towns Forum October 2008, paragraphs 3.18-3.19)

Compensation claims have been extremely rare. The RPS 2008 study found no evidence for any compensation payments actually being made (Op cit, paragraphs 3.20-3.21)

Cost of Preparation - integrating proposals for article 4 directions with local plan preparation and conservation area appraisals minimises costs.

- 2.9 English Heritage's "Guidance on the Management of Conservation Areas" (5.13 – 5.22, 2006) provides further discussion of the scope, use and implementation of Article 4 Directions.

"Article 4 Directions can be selective both between and within the categories of development specified. The removal or alteration of a particular type of architectural

feature which is important to the character or appearance of the conservation area, such as distinctive windows, doors and fanlights, or cornices, parapets and other characteristic architectural details, could be specified in the direction.

Directions in conservation areas are more likely to be successful where they are justified by a clear assessment of the area's special architectural and historic interest; where the importance to the special interest of the features in question is established; where the local authority can demonstrate local support for the direction; and where the direction proposes the minimum withdrawal of permitted development rights necessary to achieve its objective. Careful definition and a reasoned argument in support of the proposed direction and its extent are, therefore, essential.

When a direction is proposed, the local authority should consider carefully whether to consult the public at the outset, since, in some cases, a lengthy consultation period may provoke the carrying out of the very works which the direction would control. If this seems likely, the direction should be served and consultation undertaken subsequently".

- 2.10 Article 4 direction procedure was amended in April 2010 and a summary of the implications is contained in a letter from the Communities and Local Government Chief Planner entitled "Implementing Some Key Killian Pretty Recommendations" (16 March 2010).

"The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 which comes into force on 6 April 2010, amends existing statutory provisions in relation to:

- a)
- b) *the procedure for making local directions restricting permitted development.*

..... In summary, these: change the Secretary of State's role in the process from determination (where the Secretary of State's approval is required) to oversight (where the Secretary of State may intervene); require that all directions restricting permitted development rights be made subject to public consultation (whilst retaining the ability for certain directions to be made immediately); and require site notices for all directions, in addition to other notification requirements. We will issue guidance shortly, both in relation to the changes to permitted development and the new article 4 arrangements. The latter will reaffirm the existing policy on the circumstances under which article 4 directions are justified.

In restricting permitted development rights, local authorities may face claims for compensation if they refuse a planning application for development that would formerly have been permitted. Section 189 of the Planning Act 2008, to be commenced in April 2010, limits the time period for which there may be liability for compensation following the restriction of permitted development rights to 12 months, and prevents claims for compensation if 12 months notice of the revocation is given prior to its coming into force....

The Town and Country Planning (Compensation) (England) Regulations 2010 apply section 189 to directions made in relation to certain householder permitted development rights (consulted upon in 2007) and those extensions to non domestic permitted

development rights proposed in the improving permitted development consultation paper.

The new guidance we will issue shortly will cover changes to arrangements for payment of compensation where permitted development rights are withdrawn ...”

2.11 The guidance referred to at 2.11 was published by the Department for Communities and Local Government in November 2010. I note that:

2.1. *Local planning authorities should consider making article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.*

2.2. *In deciding whether an article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.*

2.3. *In deciding whether an article 4 direction might be appropriate, local planning authorities may want to consider whether the exercise of permitted development rights would:*

- *Undermine the visual amenity of the area or damage the historic environment ...*

3.2. *In procedural terms there are two main types of article 4 direction:*

- *Non-immediate directions (permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation); and*
- *Immediate directions (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse).*

See Annex A for a step-by-step guide summarising the process of making an article 4 direction (appended).

3.5. *Immediate directions can only be used to withdraw a small number of permitted development rights ie development permitted by Parts 1-4 of Schedule 2 to the GPDO (development within the curtilage of a dwellinghouse, minor operations, changes of use, temporary buildings and uses, and demolition of buildings).*

3.6. *Non-immediate directions can be used where the threat from the exercise of permitted development rights is not immediate, or where permitted development rights cannot be withdrawn by an immediate direction.*

- 3.7. *Local planning authorities could elect to make a non-immediate direction in instances where it would be legally possible to make an immediate direction- i.e. although there are only certain types of permitted development rights that may be restricted by an immediate direction, it does not follow that these rights must be restricted by an immediate direction. The immediacy of the threat and potential compensation liability may be considerations in determining whether to use a non-immediate or immediate direction.*
- 3.8. *Article 4 directions cannot be used in relation to any type of development other than those explicitly granted permitted development rights through the GPDO, nor can they be applied retrospectively to development undertaken before a direction comes into force, or to development that has been commenced at the time that a direction comes into force.*
- 3.9. *Any planning application required as a consequence of an article 4 direction is exempt from the usual planning application fee.*

6. *Compensation*

- 6.1. *There are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction, although the potential liability is limited in many cases by the time limits that apply.*
- 6.2. *Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:*
- *Refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or*
 - *Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an article 4 direction being in place.*
- 6.3. *Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.*
- 6.4. *All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).*
- 6.5. *Additionally, for certain permitted development rights withdrawn by an article 4 direction, compensation may only be claimed if an application for planning permission is submitted within 12 months following the effective date of the direction (and, if 12 months prior notice of the withdrawal of permitted development rights is given, there is no ability to claim compensation.) These specified permitted development rights are:*
- *Development permitted by Part 1 of Schedule 2 to the GPDO (development within the curtilage of a dwellinghouse).*

- *Development permitted by Class 1 of Part 3 of Schedule 2 of the GPDO (changes of use relating to dwelling houses and houses in multiple occupation).*
- *Development permitted by class A of Part 8 of Schedule 2 of the GPDO (the erection, extension or alteration of an industrial building or a warehouse).*
- *Development permitted by Part 32 of Schedule 2 of the GPDO (schools, colleges, universities and hospitals).*
- *Development permitted by Part 41 of Schedule 2 of the GPDO (office buildings).*
- *Development permitted by Part 42 of Schedule 2 of the GPDO (shops or catering, financial or professional service establishments)."*

3 ISSUES

3.1 In April 2007, Committee designated four new conservation areas and a number of conservation area extensions and adopted conservation area appraisals produced by The Conservation Studio consultants. The appraisals included the recommendation of Article 4 directions for specific properties within the Borough's conservation areas (those contributing significantly to character and which retained their traditional features) as illustrated on the associated appraisal maps appended. The appraisals were subject to public consultation and five comments were received in respect of the consultant's suggestion of Article 4 directions. No objections were received but two responses asked for the owners/occupiers of the properties to be individually consulted on any proposed Article 4 directions.

3.2 It is noted that with the exception of Downham and Slaidburn the conservation area appraisal "SWOT" (Strengths, Weaknesses, Opportunities, Threats) analysis found in all conservation areas the:

Weakness of "insensitive alterations to historic buildings spoiling the conservation area's strong historic character and appearance"; and the

Threat of "the continuing loss of original architectural details and use of inappropriate modern materials or details".

The Downham and Slaidburn conservation area appraisals state that: "responsible management by the current landowner obviates the need to control development by means of Article 4 directions".

3.3 The gradual erosion of the character and appearance of conservation areas at the national level has resulted in English Heritage incorporating conservation areas within its yearly "Heritage at Risk" report and indicators. The initiating 2008 report in this regard formed part of a campaign to redress the 1 in 7 conservation areas found to be at risk (ie deteriorated over last 3 years or expected to do so over the next 3 years). The report states that "*the problems fall into two categories: what owners and residents do or fail to do to their properties and how the council maintains the streets and public spaces...*".

The report indicated that the top 10 threats facing conservation areas are:

1. *Unsympathetic replacement doors and windows (83% of conservation areas).*

The English House Condition Survey (2006) found that 40% of houses built between 1850 and 1899 now have PVCu double glazed windows and all the evidence suggests that the proportion of historic houses with PVCu windows will continue to rise significantly.

2. *Poorly maintained roads and pavements (60%).*
3. *The amount of street clutter (45%).*
4. *Loss of boundary walls, fences or hedges (43%).*
5. *Unsightly satellite dishes (38%).*
6. *The effects of traffic calming or traffic management (36%).*
7. *Alterations to front elevations, roofs and chimneys (34%).*
8. *Unsympathetic new extensions (31%).*
9. *The impact of advertisements (23%).*
10. *Neglected green spaces (18%).*

Dr Simon Thurley, Chief Executive, English Heritage commented:

“If we were to ask for just two things from this campaign, they would be these. First, that councils use the powers they already have to apply Article 4 directions in conservation areas, giving them control over small changes to things like doors, windows, roofs and fences, which, unchecked, lead to slow but irreversible decline. Does a row of Victorian villas with plastic windows lift your spirits? I doubt it. Second, that councils pay more attention to the public elements. Cluttered streets, patchwork pavements, intrusive traffic calming, abandoned buildings, an unkempt park, these soon add up to a pervasive air of neglect...”

Everyone must work together – the council and the community as a whole. Article 4 directions need local community backing and dealing with streets and open spaces should involve all parts of the council, not just planning teams, but the highways, environmental services, health and education departments whose buildings and maintenance programmes are crucial to the appearance of conservation areas.

Conservation areas help to underpin community cohesion. They are the local heritage that local people pass on. Join our campaign to improve England’s conservation areas and you will be helping not only yourselves, but your neighbours, your children and your children’s children.”

The report also refers to a recent survey of estate agents which reveals that:

- “1. *Unsympathetic replacement windows and doors, particularly plastic/PVCu, is the single biggest threat to property values in conservation areas;*

2. *Poorly maintained highways or paving and unsympathetic extensions and alterations are also considered to be particular problems;*
3. *82% feel that original features tend to add financial value to properties and 78% think they help a property to sell more quickly;*
4. *Three quarters believe that a well maintained conservation area adds to the value of the properties within it. Confidence in the area keeping its character and the attractive environment are the two key reasons;*
5. *Residential properties within conservation areas sell for more than equivalent properties not in a conservation area;*
6. *82% of estate agents feel that only a minority of their clients have a reasonable understanding of the additional controls in conservation areas”.*

3.4 The continued erosion of the historic and architectural character and appearance of the Ribble Valley’s conservation areas, the limited progress made in implementing Committee’s resolution of 17 June 2010 (to pursue the Article 4 directions advocated by The Conservation Studio) and the legislative changes referred to above have led officers to review the efficacy of the current Article 4 direction programme. In my opinion, the originally intended non-statutory consultation of residents affected by the proposed Article 4 directions would now appear to be unnecessary duplication (the consultation of owners/occupiers, the general public, the Secretary of State and Lancashire County Council is a fundamental element of the statutory procedure).

The new ‘non-immediate’ procedure can be applied in all cases (see 2.11 above) allowing Committee to consider all consultation responses before consideration of Article 4 direction confirmation and their bringing into force.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – Planning applications generated by the making of an Article 4 direction are not fee earning. Where an application for planning permission is made following an Article 4 direction compensation may be payable if permission is refused. English Heritage advise that the most significant factor in the effectiveness of Article 4 directions is their monitoring and the undertaking of prompt enforcement action if breaches occur. Whilst the statutory Article 4 direction procedure requires expenditure on consultation, this will be mitigated in part by the deletion of the non-statutory procedure.
- Technical, Environmental and Legal – The Council has a statutory duty to keep conservation area designations under review and to prepare and monitor management proposals.
- Political – N/A.
- Reputation – N/A.

5 CONCLUSIONS

- 5.1 Conservation area designation provides limited additional planning control on development. A lot of work potentially having a dramatic and negative impact upon the character and appearance of conservation areas, is “permitted development”. This worrying situation is compounded by the limited applicability of Conservation Area Consent controls following the judgement in Shimizu (UK) Ltd v Westminster CC (1996). Mynors (2006, page 353) concludes on this decision that:

“Conservation area consent will only be needed for the carrying out of works in a conservation area provided that they are, as a matter of fact, carried out on such a scale as to amount to the ‘demolition’ of a whole building. This would include, for example, the removal of an entire building; or the removal of all of it except the façade; or the removal of an entire front garden wall. But it would not include the removal of a single window, or a whole shop front; nor the removal of one wall of a building, prior to adding on an extension (even before consent had been granted for the new work); nor the removal of a porch, or the knocking of a hole into a wall; nor the removal of architectural details such as finials, gate-piers and so on. These would all be ‘alterations’.”

The results and consequences are to be found nationally (see English Heritage’s ‘Conservation Areas at Risk’ report and the appeal decision DCS number 100-073-333 reported elsewhere in this agenda) and locally.

- 5.2 Article 4 directions are an opportunity to redress this situation and their use would appear to be encouraged by Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the duty of local planning authorities “to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas”, PPS5 Policy HE4 and the need to consider whether the exercise of permitted development rights would undermine the aims for the historic environment and paragraph 178 of the draft National Planning Policy Framework and the requirement for local authorities to have ‘a strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats’.
- 5.3 The overall outcome of the Borough Council’s 2006-2007 public consultation on proposed new conservation areas, proposed extension of existing conservation areas, appraisal (which included explicit reference to locations where Article 4 direction restriction was considered necessary) and management guidance was supportive. No adverse comment was received in respect to the principle of Article 4 directions.
- 5.4 The Article 4 directions suggested by The Conservation Studio relate to a minority of properties within the Borough’s conservation areas (some conservation areas have no suggested Article 4 directions) and are only those which retain their historic and architectural significance and contribute directly to conservation area character and appearance. The suggested Article 4 directions arise from the consultant’s careful and detailed appraisal of the conservation areas and production of management guidance (which includes information for householders on the conservation of traditional features). In my opinion this provides strong justification and support for this measure.

Furthermore, in establishing the Article 4 directions at The Grove and Grove House, Chipping, the Borough Council has produced an Article 4 direction guidance note for

owners/occupants of properties affected. This guidance can be tailored for use in future programmes.

- 5.5 If Members concur with the Director of Community Services' recommendation, officer's will subsequently bring draft Article 4 directions to Committee for authorisation. Any comments received during the Article 4 direction statutory consultation will be reported to Committee alongside recommendations for confirmation of the directions.

6 RECOMMENDED THAT COMMITTEE

- 6.1 Authorise the Director of Community Services to progress according to the statutory 'non-immediate' procedure with the Article 4 directions recommended by The Conservation Studio consultants in their appraisal of the Borough's conservation areas.

DIRECTOR OF COMMUNITY SERVICES

For further information please ask for Adrian Dowd, extension 4513.