

## Cambridge City Council Environment Scrutiny Committee Meeting January 14, 2014

### Addendum to Item 18 – Report regarding use of Article 4 Directions: Public Houses and Building of Local Interest

1. This note provides additional information to the officer report about the subject of compensation in respect of the making of Article 4 Directions by the Council. Officers have cited under the “financial implications” section of the report that there are circumstances that the Council may be liable to pay compensation having made an Article 4 Direction (in this case there will be seventeen individual directions for the seventeen pubs noted in the report).
2. The relevant guidance on the matter of compensation is contained in the “Replacement Appendix D to the Department of the Environment Circular 9/95: General Development Consolidation Order 1995 (June 2012, Department for Communities and Local Government). The relevant part of the guidance, quoted in full, is as follows:

#### **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 *Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:*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 *Additionally, for certain permitted development rights withdrawn by an article 4 direction, compensation may only be claimed if an application for planning permission is submitted within 12 months following the effective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 currently set out in Statutory Instrument 2012/749, but may apply to permitted development rights subsequently introduced.*

6.6. *Specific compensation provisions apply in relation to statutory undertakers, who may additionally claim for loss of profits.*

3. The relevant part of Circular guidance is contained in section 6.2 above. The “trigger” of risk to the Council commences in the event the Council refuses planning permission for an application to demolish a pub building (whether vacant or not) whereas it otherwise would have been permitted under the GPDO. The Circular then notes that compensation may be claimed in the event of planning approval but with more limiting conditions than the GPDO would normally allow. It also notes that “*compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights*”. It should be noted that compensation claims against the removal of demolition rights does not expire within 12 months of the making of the Article 4 Direction e.g. it is not subject to the reference made in paragraph 6.5 above, but rather compensation claims can be made within 12 months following the date on which the planning application was rejected or approved with conditions.
4. Preceding this report and the proposal to make directions for 17 pubs on the IPPG/Draft Local Plan 2014 protected public houses list currently outside of Conservation Areas in Cambridge, the Council prepared Interim Planning Policy Guidance (or “IPPG”) which was adopted by the Council’s Environment Scrutiny Committee on October 9, 2012. The principal recommendation from the IPPG is to require evidence that, amongst other measures, a pub has been marketed for 12 months as a public house; that all reasonable efforts have been made to preserve the facility; and that it has been demonstrated that the local community no longer needs the public house. It also states that loss of a part of a public house, including garden space, may be permitted in certain circumstances e.g. that it does not adversely impact on the viability of the pub or character of the area. This guidance, while not prepared to Supplementary Planning Document status, was prepared with a high level of detail and backed up by a professional report by GVA Humberts Leisure titled “Cambridge Public House Study” (April 2012) so carries weight as a material consideration in the determination of planning applications submitted on or after October 9, 2012. The recommendations from the IPPG, having been adopted, have since been included as part of the Cambridge Local Plan 2014: Draft Submission (Policy 76: Protection of Public Houses). Draft Policy 76 equally is a material consideration in the determination of a planning application for demolition of a safeguarded pub and its site, though this policy does not yet have the weight of a policy finally adopted after government Inspector examination. It is also worth noting that the IPPG was the subject of a request for Judicial Review by the British Beer and Pub Association which was subsequently rejected.
5. As the report already notes, the removal of demolition rights for the 17 pubs denoted in the Committee report does not constitute an absolute removal of the possibility of an owner demolishing a pub; rather it obligates an owner of a pub to submit a planning application to do so. In the event the Council either

refuses planning permission for demolition of one of the 17 pubs proposed for the making of an Article 4 Direction, or approves same but with conditions, then there is a risk to the Council of compensation. As already set out in the report, it is considered that there is evidence and policy justification for the making of directions and so overall the risk of financial compensation for the Council against that background is likely to be low, for the following reasons:

- a) There is considerable recent planning policy background, and now some emerging weight, for the protection of pubs in Cambridge. Both the IPPG and its supporting study as well as draft Policy 76 in the Cambridge Local Plan 2014: Draft Submission, lend weight to protection from loss of a safeguarded public house. The National Planning Policy Framework (or "NPPF") which states at paragraph 70 that "...planning policies and decisions should...guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs" also provides for the protection of pubs in appropriate circumstances.
- b) If an applicant can fully meet the tests set out in Policy 76 of the draft plan then it follows that officers should be able to recommend approval of an application for demolition of a public house in a Conservation Area or covered by an Article 4 Direction. In the event the application is approved by a Committee of Council, providing it is approved without conditions there is no financial risk to the Council.
- c) If an applicant cannot fully meet the tests set out in Policy 76 of the draft plan then it follows that it is appropriate for the Council to refuse planning permission. While Policy 76 does not carry the weight of a full Local Plan to date and likely will not for some 14 months, it is a material consideration in the event of the refusal of planning permission to demolish a pub outside of a Conservation Area which is the subject of an Article 4 Direction. The council is also able to rely on the NPPF and the IPPG as an evidence background to paragraph 70 of the NPPF. This means that in the event of a claim for compensation from the owner of a protected pub, the Council is not without an evidenced planning policy to back up its decision.
- d) It is unlikely that there will be more than a few owners of pub sites who would challenge the refusal of the demolition of a pub covered under an Article 4 Direction. Firstly, many of the pubs to be covered by an Article 4 Direction are "going concerns" e.g. they are not currently closed and are a valuable community facility, so the Council is unlikely to receive an application for demolition on most of the pubs covered by an article. Second, in the event of a proposal for demolition, it is more likely to be for a pub which is no longer operational and closed. If the owner makes an application for demolition, the Council will be able to guide them through the requirements of the IPPG/Policy 76 of the draft plan and help them evidence the requirements set out therein. In the event the requirements are met, an application for demolition is likely to be supported, and if approved (without conditions) there is no claim possible for compensation. In the limited number of cases likely which could give rise to a claim for compensation e.g. refusal of a planning application to demolish a pub outside of a Conservation Area or approval but with conditions attached, the combined evidence of the pubs study, the IPPG

and draft Policy 76, along with the national level planning policies in the NPPF e.g. at Paragraph 70, all lend strength to the Council's case for making the Article 4 Directions set out in the report.

- e) Replacement Appendix D to Circular 9/95 states that in deciding whether to use Article 4 Directions, Local Planning Authority's may want to consider whether permitted development rights would "undermine the visual amenity of the area or damage the historic environment" or "undermine local objectives to create or maintain mixed communities". The IPPG/Policy 76 specifically relates to the second text quoted, but issues of visual amenity/historic environment as referred to in the first text quoted is also considered relevant. The strongest example of this issues is one of a public house which is a Building of Local Interest. Though not designated, some pubs listed for Article 4 Directions are 19<sup>th</sup>/early 20<sup>th</sup> century buildings that, for example, mark a corner position or are part of a nineteenth century streetscape and significant to the visual amenity of the local area. Some are later buildings sharing the visual character of the local centre they are part of, or are contemporary with a housing estate around them. Thus, many of the pubs proposed to become subject to Article 4 Directions are considered to "qualify" under both the Appendix D criteria in Circular 9/95 denoted above, further strengthening the justification for use of Article 4 Directions.