



To: Executive Councillor for Planning and Climate
Change: Councillor Tim Ward
Report by: Head of Planning Services
Relevant scrutiny Environment
committee: Scrutiny 11/6/13
Committee
Wards affected: All

CONSIDERATION OF THE USE OF ARTICLE 4 DIRECTIONS Non-Key Decision

1. Executive summary

- 1.1 The matter of how to protect significant uses and buildings/areas in the City has recently been raised by several issues: the protection of public houses from demolition or change of use; recommendations arising from appraisals of conservation area which point out incremental harm; and a request from the Accordia Community Residents Association (ACRA) for measures to more closely control changes to the external appearance of dwellings at Accordia via an Article 4 Direction.
- 1.2 The Council has the option to use Article 4 Directions - a tool available to Local Planning Authorities in responding to the particular needs of their area. An Article 4 Direction withdraws certain Permitted Development rights and the effect is to require a planning application for development that would not otherwise need one. This report assesses the potential use of Article 4 Directions as it applies to public houses; to conservation areas; to Accordia; and more generally, to Buildings of Local Interest.
- 1.3 Options include no use at all of the power to make Article 4 Directions; its limited use; or comprehensive use. Comprehensive on a city wide basis would not be justified as there are differences across conservation areas. No use of Directions at all would be to ignore that extra protection would benefit some areas/buildings. The report concludes that limited use of Article 4 Directions should be made in the interests of protecting the historic environment.

2. Recommendations

- 2.1 The Executive Councillor is recommended:
- a) to require that the scheme of delegation allows for making Article 4 Directions (in consultation with the executive Councillor for Planning & Climate Change, ESC chair and spokes) in respect of public houses and BLI's (Local Heritage Assets) where evidence suggests significant harm is possible through the exercise of permitted development rights.
 - b) that the City Council Conservation team's Pro-active Conservation programme include a phased programme (one per year starting post 2013/14) of introducing focussed Article 4 Directions for certain Conservation Areas where already adopted appraisals have evidenced harm to these areas character or appearance.
 - c) to consider whether an Article 4 Direction should be made affecting the Accordia estate in the light of the extent of evident need and harm; and the range of works to be covered by any Direction.

3. Background

- 3.1 Many changes to buildings and changes of use of land or buildings can be made without express planning permission as "permitted development". Where local circumstances justify it, a Local Planning Authority may withdraw particular permitted development rights by issuing an Article 4 Direction. This would mean that a planning application is needed for development which normally does not need one, and thus the Local Planning Authority gains the ability to consider whether to approve the development concerned.
- Responsibility for making an article 4 Direction is a decision for the Executive Councillor for Planning and Climate Change - there is currently no delegation to officer level.

Government guidance given in the *National Planning Policy Framework* directs that there must be a clear justification for removing national permitted development rights:

200. The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Additionally, government guidance states that provided there is justification for both its purpose and extent, an Article 4 Direction may be made covering:

Any geographic area from a specific site to a local authority wide;

Permitted development rights related to operational development or change in the use of land;

Permitted development rights with temporary or permanent effect.

An Article 4 Direction may cover several classes of permitted development or be focused down to a particular class, or a particular operation within any class. It may cover a whole (eg conservation) area or any specified part of one. In other words, a Direction can be closely tailored to a given aim.

3.2 DCLG guidance (Replacement Appendix D to Circular 9/95 (June 2012)) states:

“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.

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.

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;
- Undermine local objectives to create or maintain mixed communities;..... “

3.4 Whereas before April 2010 the Secretary of State had to confirm certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation.

- 3.5 The withdrawal of development rights does not necessarily mean that planning consent would not be granted. It merely means that an application has to be submitted, so that the planning authority can examine the proposed plans in detail.
- 3.6 Buildings of Local Interest/Local Heritage Assets.
Demolition of a building that is not a dwelling house now also falls within the definition of “development” as a result of the recent SAVE/Mitchell’s Brewery case. Article 4 Directions may therefore be used to require planning permission for the demolition of a non-designated heritage asset (such as a Building of Local Interest) where the building/asset is *outside* a conservation area, by removing the demolition rights under part 31 of the Order. This is a tool that gives greater “teeth” to Local Plan policy on BLIs and may strengthen the Councils protection of these heritage assets (eg buildings such as Meadowcroft, Trumpington Road (demolished c. 2004); Milton Road Junior School (demolished 2007); and Romsey Junior School (demolished c.2005). It is open to the Council to use this option where it considers the guidelines above are met in relation to a BLI building or buildings. A Direction may also be made that applies to significant alterations to such a building rather than to demolition.
- 3.7 Public houses** in Cambridge were recently considered via the Cambridge Pubs Study and policy set out in an Interim Planning Policy Guidance (IPPG). A list of pub sites to which the IPPG relates, includes some 21 non-city centre pubs (one of which is a BLI) in the IPPG list that are not subject to existing controls on demolition applying to Listed Buildings or in Conservation Areas. Even if (notwithstanding further examination) only the one BLI merited protection on historic/architectural grounds, the others might be considered in relation to the “create or maintain mixed communities” criterion. Consequently, options for applying an Article 4 Direction include covering a number of buildings under one Direction or making a Direction address a particular building if/when required. Accordingly, the basis for justifying the Direction would be either general or specific.
- 3.8 CAMRA Cambridge District (letter to the Chief Planning Officer 27/2/13) is promoting the use of Article 4 Directions to protect pubs from both conversion to other uses and from demolition.

3.9 Change of use of public houses.

Planning permission is not required to convert a pub from its A4 use class to an A3 restaurant, A2 professional services office or A1 shop as this would be “permitted development”. If it was deemed desirable however, and evidence of harm existed, such changes of use could be made subject to a Planning application by the use of an Article 4 Direction.

3.10 The Cambridge Pubs Study recommended a flexible policy that allows for the change of use of public houses within the ‘A’ use class. Similarly, paragraph 4.11 of the IPPG states, “The council considers it is important to allow the flexibility for pubs to pass in and out of pub use according to market conditions....”. Also, at 4.13 the criteria within IPPG, should “allow flexibility in the re-use of pubs for alternative commercial community leisure, retail and business uses falling within ‘A’ use classes as market circumstances dictate or as a community facility”.

3.11 The Council’s position regarding change of use has been expressed by the IPPG as to resist change of use of public houses to uses outside of ‘A’ use classes or of a community facility falling within ‘D1’ use class. Such change of use is not permitted development and is subject to Local Plan policy.

3.12 Emerging Local Plan draft policy 59 on “Protection of Public Houses” seeks to retain public house sites (and those buildings of note) in a community use.

3.13 In view of the policy position established, this report does not recommend an Article 4 Direction in respect of change of use of pubs.

Conservation Areas.

3.14 Article 4 Directions are most commonly applied in conservation areas. Research into the use of Article 4 Directions in 2008/9 by the EHTF (English Historic Towns Forum), showed that 81% of Councils surveyed had Directions in place in one or more of their conservation areas.

3.15 In the historic core of Cambridge, the appearance of many houses for instance, at New Square, is generally consistent as there are a large number of Listed buildings and, many are owned by the University of Cambridge or Cambridge Colleges. There is no evident need for the additional measures to protect the appearance of buildings via an Article 4 Direction. However, in other areas there is not such unified maintenance or management of alterations and conservation area

controls alone do not prevent gradual adverse impact on the historic environment. Over several years now, recent appraisals of Cambridge conservation areas have suggested in their “issues” sections that some small-scale permitted development works are having an adverse impact and these appraisals have therefore recommended the use of Article 4 Directions. As an example, the Mill Road Area Conservation Area Appraisal approved by the Council in June 2011, states loss of original roof materials, loss of front boundaries and gardens to create car parking hardstandings, and painting of brickwork as being amongst the principal issues. It should be noted that not all the conservation areas have such problems.

3.16 Examples of the unattractive, incremental changes that can be avoided via an Article 4 Direction are shown at appendix 1.

3.17 Clearly, the conservation areas across the city bring different issues depending on the number and nature of properties they contain. A Direction for Newnham Croft for example, might apply to some 280 dwelling houses. A Direction covering the residential streets within the Mill Road Area Conservation Area may affect a larger number of dwelling houses - the Ely (East Cambs DC) example below would be a comparison.

3.18 Permitted development rights withdrawn by the Ely Article 4 Direction: (Applies to those parts of a dwelling house which “front a highway, waterway, or open space”):

- Class A The enlargement, improvement or other alteration of a dwellinghouse.
- Class C Any other alteration to the roof of a dwellinghouse.
- Class D The erection or construction of a porch outside any external door of a dwellinghouse.
- Class F(a) The provision within the curtilage of a dwellinghouse of a hard surface for the purpose incidental to the enjoyment of the dwellinghouse.

The numbers of planning applications in Ely Conservation Area arising from the Article 4 Direction made in 2009 (affecting some 630 dwellings):

2012 - 10 applications

2011 - 9 applications

2010 - 13 applications

2009 - 5 applications

3.19 In the Ely example, the classes of development affected are fairly broad. It would also be possible to focus a Direction to affect only the minimum necessary withdrawal of permitted development rights ie a specific operation or only part of a Class such as “The enlargement, improvement or other alteration of a dwellinghouse *where this consists of the replacement of a front door*”.

3.20 A programme of considering Directions based on the work and recommendations already within conservation area appraisals would help ensure that the visual quality and character of these areas is conserved for the future. This programme might be spread over an extended period with the dwelling houses in say the Mill Road; Riverside & Stourbridge Common, and Castle & Victoria Rd Appraisal areas as priorities. The Directions should be based on the principles of applying to the minimum necessary areas of a CA and on withdrawing the minimum necessary elements of permitted development. The programme, consultation, and Inclusion of any other areas would need to be detailed within the Conservation teams work. If the Directions were to work effectively, a photographic survey, publicity, and monitoring would be needed. There is an option to give 12 months notice of the taking effect of a Direction.

Accordia

3.21 It is being proposed to extend the Brooklands Avenue Conservation Area to include Accordia. The Accordia Community Residents Association (ACRA) has requested conservation area status and an Article 4 Direction to protect the architectural character of the development which they feel is being eroded by incremental changes to the external appearance of some dwellings and which could set an undesirable precedent for further change. The quality of the development at Accordia has been applauded via several architectural awards and the residents are keen to maintain its current appearance. ACRA are understood to have asked English Heritage to consider statutory listing of the entire development but English Heritage did not consider this appropriate given its relatively recent age. However, English Heritage has informally supported the use of an Article 4 Direction to help protect the architectural integrity of the development.

3.22 Irrespective of any Direction, control of certain development already exists via a planning condition (no.28) placed on the original application that removes the permitted development rights for extensions and additions;

28. *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no extension, or additions or garages shall be erected other than those expressly authorised by this permission.*

Reason: To protect the amenity of adjoining properties, and to prevent over development of the site.

The types of building on the site are varied – many are flats and so in any case, do not have the permitted development rights of dwelling houses.

The number of dwelling houses (not flats) at Accordia is some 238.

3.23 Some alterations that have occurred at Accordia have been pointed out to officers by the Residents Association (see appendix 2) to illustrate their case for an Article 4 Direction. For example, photos 001-004 in the attached appendix show a void being in-filled to create internal rooms; and photos 014-015 show white solid screens to balconies. Both these changes are subject to current enforcement action as either contrary to Planning condition 28 or are considered to be “development” not falling within Permitted Development rights. The consensus amongst Officers is that condition 28 controls enclosure of the open terrace elements of the dwelling houses here. This would not apply to the conversion of existing “internal” garages.

3.24 The small number of instances of application of varying colour of wood stain (photos 008-009) and replacement of missing rainwater downpipes in different colour/material (photos 010-011,013) occur on dwellings within the management of the Wherry Housing Association. Recent discussion with Wherry Housing Association has indicated that control of the items concerned may be dealt with via inclusion in regular maintenance schedules (with agreed materials) or via restrictions being placed in tenancy agreements.

3.25 Some changes could not be covered by an Article 4 Direction and would simply fall outside the scope of control because they are not considered to amount to “development” under Planning legislation. This would include many maintenance activities such as painting (in the same colour) and staining woodwork.

3.26 Changes to Wherry HA properties are currently also subject to a restrictive covenant which may provide some model provisions for design guidance (see extract at Appendix 3). Such covenants however are time limited so do not provide permanent protection to changes to dwellings.

3.27 The Residents Association has produced a long list (reflected in the table at appendix 4) of items that could potentially affect the appearance of the development. The small number of instances where changes have occurred to date are either being enforced against; have occurred on Wherry Housing properties and so could be controlled by that body; or are relatively minor and not considered “exceptional circumstances”. Additionally, the development is relatively “young” and materials, doors, windows, etc. ought not to be at high risk of failure or in need of replacement as yet. However, Residents Association reps point out that some components (eg windows) are not robust.

3.28 Given the commitment of ACRA and Wherry HA to protect the integrity of the architectural character of the development, it may be possible to minimise adverse change to the development through the production of a design guide. Such guidance would provide advice on appropriate materials and products to maintain the appearance of the development, including why the retention of external building materials matters, how they should be maintained, and where materials could be sourced if replacement parts are required. The residents association have already drafted such a brochure and this could be further developed in collaboration with Council officers and be referenced in any future Conservation Area Appraisal covering Accordia. Officers propose that consideration of an Article 4 Direction for Accordia is made in the light of all the above information.

4.0 Implications

(a) Financial Implications

4.1 No planning fee is payable in respect of a planning application made for what would have been permitted development had there been no article 4 direction. The Planning Advisory Service recently carried out a benchmarking exercise that found the average householder application costs a local authority £330. This may therefore be used to get a rough gauge of the potential costs to the Council that may incur as a result of the imposition of Article 4 Directions.

4.2 With regard to Public Houses or Buildings of Local Interest, the event of an application being made for demolition of a BLI outside a conservation area would only be occasional given the wide coverage of conservation areas across the city. The direct costs would therefore be minimal and seldom incurred.

4.3 Peterborough City Council has Article 4 Directions on 304 properties. Over a 4 year period from 2009–2012 the average number of applications Peterborough City Council received due to the Article 4 Directions was nearly 10 per annum.

4.4 As a very approximate estimate using the Peterborough and Ely experience, if 10 Planning applications per 600 dwelling houses were submitted per year for planning permission as a result of an Article 4 Direction being introduced, the total cost of applications per annum to the Council would be £3,300. Some duty officer time would be taken up to respond to resident questions about whether works they would undertake require planning permission but ongoing publicity and design guidance would help with this. Enforcement action would be necessary for specific works from time to time. It is more difficult to estimate these latter costs and in any case, some of the enforcement costs may be incurred in the same areas even without a Direction in place (eg at Accordia).

Compensation.

4.5 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.

None of the LPAs contacted in the EHTF research reported any claims against their Authorities. The EHTF research author's experience of dealing with Article 4 Directions over 30 years had not brought to light a single case of compensation being paid in respect of the withdrawal of permitted development within a conservation area. In practice it is extremely rare for compensation to be claimed.

Since the research, Section 189 of the Planning Act 2008, commenced in April 2010, has limited 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 altogether if 12 months notice of the revocation is given prior to its coming into force.

(b) Staffing Implications

These would depend on the number and range of Article 4 Directions made. The more focused the withdrawal of permitted development, the more limited the staffing implications. Keeping the Directions well publicised so that people are aware of them is also imperative. A Direction framed to be all encompassing (all of the permitted development for a dwelling house for instance) would be more resource intensive than one aimed at say retaining front boundary walls.

(c) **Equal Opportunities Implications**

Article 4 Directions are specific to types of external works to the buildings specified. The types of buildings being considered are "dwelling houses" (not eg flats or houses in multiple occupation - due to the structure of Planning "permitted development"), some public houses, and other Buildings of Local Interest. As the ownership/occupancy of such buildings is wide ranging, a negative impact on equality is unlikely.

(d) **Environmental Implications**

The environmental implications are considered to be highly positive as it supports the quality and continuity of the city's historic environment which is positive for residents, business and tourism alike.

(e) **Procurement**

None

(f) **Consultation and communication**

Directions restricting permitted development rights are subject to public consultation (whilst retaining the ability for certain directions to come into effect immediately); and require site notices and local advertisement, in addition to other notification requirements.

(g) **Community Safety**

There are no direct community safety implications.

5. Background papers

These background papers were used in the preparation of this report:

Town and Country Planning (General Permitted Development) Order 1995 (as amended)

UCO: Town & Country Planning Use Classes Order 1987

Replacement Appendix D to Circular 9/95 (June 2012)

IPPG: Interim Planning Policy Guidance on The Protection of Public Houses in the City of Cambridge 2012.

Cambridge Public House Study 2012

6. Appendices

1. Examples of changes in conservation areas that could be addressed via an Article 4 Direction
2. Alterations at Accordia pointed out to officers by ACRA
3. Wherry HA properties restrictive covenant
4. Items potentially affecting the appearance of Accordia

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

Author's Name: Christian Brady
Author's Phone Number: Ext 7160
Author's Email: Christian.brady@cambridge.gov.uk