



To: Executive Councillor for Planning and Climate
Change: Councillor Tim Ward
Report by: Head of Planning Services
Relevant committee: Environment
Scrutiny 14/01/14
Committee
Wards affected: All

ARTICLE 4 DIRECTIONS – Public Houses & Buildings of Local Interest Non-Key Decision

1. Executive summary

1.1 This report seeks a decision on the designation of Article 4 Directions in relation to the demolition of public houses in the City Council area. The report recommends the adoption of Article 4 Directions in the form attached at the appendix and which has the effect of withdrawing permitted development rights relating to the demolition of those public houses within the Cambridge City Council area that are not in a conservation area.

2. Recommendations

2.1 The Executive Councillor is recommended to:

- a) authorise the making of Article 4 Directions withdrawing permitted development rights for the demolition of the public houses specified in appendix 2 to this report.
- b) note the need at a later date to confirm or not confirm the Article 4 Directions, taking into account representations made during the consultation period.
- c) require that the more vulnerable BLIs outside conservation areas be brought forward for Article 4 Directions under delegated authority by the Head of Planning in consultation with the Executive Councillor for Planning & Climate Change and Environment Scrutiny Chair and Spokes.

3. Background

- 3.1 The Environment Scrutiny Committee (ESC) at its meeting on the 11th June 2013 agreed the recommendation, “That the scheme of delegation is amended to enable the Head of Planning (in consultation with the Executive Councillor for Planning & Climate Change, ESC chair and spokes) to make Article 4 Directions in respect of public houses and BLI’s where evidence suggests significant harm is possible through the exercise of permitted development rights.
- 3.2 The closure of public houses (PHs) in recent years has become a local concern. A number have subsequently been demolished and rebuilt as flats or student accommodation, others have been converted into dwellings while retaining their existing structure. A number have changed into restaurants and have lost their appearance and usage as a public house and some have just been closed.
- 3.3 The case for regarding public houses as community assets is made in the Council’s Interim Planning Policy Guidance (IPPG) on the protection of public houses.

The IPPG states:

“2.4 The NPPF sets the achievement of sustainable development as its key focus. Sustainable development encompasses economic, social and environmental factors. Public houses contribute to and support all three of these factors and as such they have an essential role to play in the building and maintaining of a strong, responsive and competitive local economy. Cambridge’s pubs contribute strongly to attracting students, academics, young workers and tourists that its economy and future growth depend upon. Moreover, pubs help to support social and cultural well-being by providing a place for social interaction within a community. Many pubs are also integral to the physical and cultural heritage of the city. A thriving local pub sector is therefore important to achieving sustainable development. Given these significant economic and social benefits, it is vital to consider safeguarding pubs in order to ensure sustainable development as per the NPPF.”

- 3.4 Notwithstanding the IPPG a number of public houses have been lost as a result of demolition. In conservation areas a planning application for demolition has to be made but unless an Article 4 Direction is made, outside conservation areas no planning permission is required.
- 3.5 Paragraph 70 of the NPPF (National Planning Policy Framework) states that planning policies and decisions should plan positively for the provision and use of community facilities (including public houses)

and guard against the unnecessary loss of valued facilities and services.

Planning Policy Position:

- 3.6 The current Cambridge Local Plan 2006 does not contain a policy specific to public houses. Policy 5/11 of the Local Plan concerns other community facilities. It is likely that when this 2006 Local Plan was being prepared public houses were not considered to be at high risk of demolition with a view to achieving their replacement by other forms of development, particularly residential development. However, in October 2012 the IPPG was adopted. Although this provides guidance to help determine planning applications relating to the loss of a current or former public house to alternative uses, it does not have the weight of a policy document. The draft Local Plan 2014 notes the particular problems associated with the loss of public houses (which is considered to be a type of community facility) to alternative forms of development. Draft policy 76 will make the change of use of a public house subject to evidence being demonstrated that the site is no longer needed as a public house or other community facility and to diversification options having been explored. However the draft Local Plan 2014 is unlikely to be adopted for some 14 months and the draft policy is to be tested at the Local Plan examination. Also, once in place, the new policy will control changes of use where an application is required, but it cannot control demolition under permitted development rights.
- 3.7 It is instructive that in a recent planning appeal decision the Planning Inspector decided that following demolition of all buildings on the site, the land fell into a nil use (Former St Colette's School, Cambridge appeal ref APP/Q0505/A/12/2176501). The appeal decision illustrates the fact that a site's former use may prove difficult to protect where the building on the site is demolished. The benefit of an Article 4 Direction would be to require an application to be made for demolition of a public house where it is not in a conservation area. The IPPG or new Local Plan policy on public houses as community assets would then be applied in the determination of such an application.

Justification.

- 3.8 Department for Communities & Local Government guidance (Replacement Appendix D to Circular 9/95 (June 2012)) states that:

“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;“

Local planning authorities (LPAs) should identify clearly the potential harm that the direction is intended to address.

- 3.9 Circumstances particular to Cambridge include that the Cambridge Public Houses Study (2012) found there are 713 working age adults per pub in England but by comparison, there are 824 adults of working age in Cambridge per pub - one of the highest ratios of adults to pub among similar historic university towns and cities. Benchmarking appeared to indicate that Cambridge has a relative under-supply of pubs compared to other historic university towns and cities which are also strong tourist destinations.
- 3.10 A background of Cambridge having one of the fastest growing populations of UK cities (2011 census) and the city making provision for additional substantial housing and employment is likely to reinforce the trend of under-supply of public houses.
- 3.11 That Cambridge is one of most prosperous cities in the UK puts pressure on a housing supply restricted by the Green Belt that surrounds the city. In many cases, therefore, the value of a public house site for residential purposes can be greater than its value as a viable pub business.
- 3.12 A problem of demolition is illustrated by the case in 2013 of the Rosemary Branch Public House which was demolished under permitted development rights, after an application for planning permission for residential redevelopment had been made and an appeal dismissed. Again, with the former Dog & Pheasant Public House, High St, Chesterton (ref 12/0705/FUL), planning permission for residential redevelopment was refused (the IPPG had recently been issued) and following submission of an appeal but before its being held, the building was demolished under permitted development rights. Though the appeal inspector stated that the length of time since the last use of the premises as a public house (it had since been in restaurant use for some 10 years and then closed for a period) was such that it should no longer be considered as a community facility, his view on this matter was also coupled with the removal of the building resulting in an empty site. Neither of these public house sites is within a conservation area. Demolition in effect, pre-empt

alternative outcomes being reached via solutions negotiated through the planning system.

- 3.13 In considering the DCLG guidance regarding the use of article 4 Directions as noted earlier, the harm resulting from the demolition is the loss of needed community facilities in the form of public houses in the city to alternative forms of development, for example residential development. Where demolition takes place, there is also an impact on the visual amenity or historic environment of the area if the public house concerned is of local interest in these respects. For instance, public houses are often a long established and prominent feature of a local area and help define its character. They may be a feature contemporary with the development of the surrounding area.
- 3.14 The Local Planning Authority (LPA) must be satisfied that it is expedient that demolition of public houses may not be carried out unless permission is granted for the demolition on approval of an application. An Article 4 Direction would not totally prohibit demolition of public houses rather it would enable the LPA to have some control over the proposed demolition. The application for demolition would be considered on its merits and assessed against the applicable Local Plan policies and other material considerations.
- 3.15 An Article 4 Direction removing permitted development rights under Part 31: Demolition of Buildings, General Permitted Development Order 1995 may take the form of:
- (i) a non-immediate Article 4 Direction, where permitted development rights are only withdrawn upon confirmation of the Article 4 Direction by the LPA following local consultation; or
 - (ii) an immediate Article 4 Direction where permitted development rights are withdrawn with immediate effect, and confirmed by the LPA following local consultation within six months of the Article 4 Direction coming into effect . The failure to confirm the Direction within the six months will result in it lapsing. An immediate Article 4 Direction should only be made where the LPA considers it necessary to remove certain permitted development rights quickly and where such rights would be prejudicial to the proper planning of their area or constitute a threat to the amenities in their area.
- 3.16 There is no right to appeal against an Article 4 Direction. However, Guidance in Circular 9/95 states that LPAs should consider making them 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 and in the case of an immediate Direction would be a threat to or prejudicial to these matters.

- 3.17 In considering whether to make an Article 4 Direction as referred to above it should be noted that buildings within conservation areas are subject to the requirement for planning permission before demolition may be approved. Making an Article 4 Direction on public houses in conservation areas would simply be duplication of the control that already exists. It is therefore expedient that the buildings affected by an Article 4 Direction should only be those located within the boundaries of the City of Cambridge outside of conservation areas.
- 3.18 The IPPG and emerging Cambridge Local Plan 2014 contain a list of “protected public houses” (policy 76). It is proposed that any Article 4 Direction should apply to those buildings on this list (outside conservation areas) other than the few already having planning permission for re-development, or already demolished, or already out of PH use for many years.
- 3.19 In considering Article 4 Directions for particular public houses, it is proposed that the following factors should be taken into account:
- importance to the visual amenity or the historic environment of the area
 - a catchment with lack of other (or similar) PHs within reasonable walking distance (a 5 minute walk (400m) is a generally accepted measure) .
 - the character of PH / facility. Size, location, car parking, food, music are some of the factors which mean that although PHs may be located close to each other, they can be serving different markets or communities.
 - vulnerability eg the building being closed and boarded-up
 - whether part of a local centre (eg within or next to a parade of local shops)
 - a large site contributes to the vulnerability of the building

These factors refer back to both the visual amenity/historic environment and maintaining mixed communities strands of DCLG guidance referred to above and to accessibility.

The resultant list is represented in the table at appendix 2. The right hand column indicates whether a Direction is proposed.

Buildings of Local Interest.

- 3.20 Though this report concerns public houses primarily, the background on Article 4 Directions is generally applicable and would apply to Buildings of Local Interest (BLIs). BLIs outside conservation areas are also affected by GPDO permitted development. Some buildings are more vulnerable than others as has been evidenced by demolitions. As a strategy to avoid the unnecessary loss of high quality BLIs, it is proposed to report a list of the more vulnerable BLIs outside conservation areas for consideration of individual Article 4 Directions under delegated authority by the Head of Planning in consultation with the Executive Councillor for Planning & Climate Change and Environment Scrutiny Chair and Spokes.

Conclusion.

- 3.21 Article 4 Directions are considered expedient because Cambridge already has an undersupply of public houses, which is likely to be exacerbated by a growing population. Examples of the demolition of public houses that have already occurred as noted in this report. While the loss of public houses as community facilities is addressed via the Cambridge interim guidance and the emerging Local Plan, neither the interim guidance nor Local Plan policy can of itself, require a planning application to be made for the demolition of a public house under permitted development rights.
- 3.22 It is possible to make either immediate or non-immediate Directions (see paragraphs 3.15 and 4.0). An immediate Direction would be appropriate where it is necessary for it to come into force immediately rather than after consultation. Two of the public houses on the attached appendix 2 are already closed and vacant. It is proposed that the directions take the form of an immediate direction, as noted later in this report (following confirmation of the ownership of all sites). It is considered that immediate directions offer the best protection of public houses outside conservation areas from potential demolition.

Other options considered:

- 3.23 A local authority wide Direction. This would represent duplication of controls that already exist in Conservation Areas and would be difficult to justify. In addition, Circular 9/95 states that there should be a particularly strong justification for the withdrawal of permitted development rights covering the entire area of a local planning authority.
- 3.24 A specific Article 4 Direction if there was specific information that a particular public house was under threat of demolition. For instance, if

a determination for prior approval had been sought as is required under the conditions for permitted development rights for demolition (GPDO Part 31). This would depend on information about a threat being given. The prior approval system depends on such an application actually being made, for which there is no certainty that this would happen.

3.25 Restriction of Change of Use. The Council is putting in place via the IPPG and draft Local Plan Review, a policy of protecting pubs as community facilities whilst allowing flexibility in the re-use of a PH for alternative commercial community leisure, retail and business uses falling within 'A' use classes. Restricting change of use within these classes via an Article 4 Direction would be inconsistent with this policy approach. Additional, temporary permitted development rights were recently introduced in May 2013. Under these provisions, a site retains its established use class from before the temporary change and reverts to its lawful use at the end of the 2 year temporary period. In view of these provisions and the policy position established, this report does not recommend Article 4 Directions in respect of the change of use of pubs.

3.26 Stages in the Article 4 process and indicative timeline:
(Post Committee/Exec Councillor resolution)

1. Confirm ownerships and occupiers – beginning of month one.
2. "Make" the Directions – end of month one.
3. Serve notice locally and notify the Secretary of State – End of month one as soon as practicable after the Direction has been made.
4. Advertise Direction – end month 1 (local paper) + month 2 for not less than 6 weeks (site advertisement).
5. Period of consultation – month 2 period of consultation (a notice must specify a period of at least 21 days within which representations are to be made).

6. Month 2 - 3. Determine whether to confirm the Direction – by the Executive Councillor following a post consultation briefing on the responses received during the consultation period (a Direction cannot be confirmed until after at least 28 days following the latest date on which any notice relating to the Direction was served).
(note: the timeline to confirmation of a non-immediate Direction would be longer).

7. Serve notice locally (advertisement as above) and notify the Secretary of State after the Direction has been confirmed.

4.0 Implications

(a) Financial Implications

Financial implications may arise via staff time, direct costs of searches to confirm ownerships of buildings and costs of advertisements to publicise a Direction in the local paper. These would be covered from existing Environment Department budgets.

There are circumstances in which the LPA 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.

(b) Staffing Implications

These would depend on the number of Article 4 Directions made. As a limited number of buildings are proposed and as the withdrawal of permitted development would be focused on one class (demolition), the number of resultant applications is expected to be small.

(c) Equal Opportunities Implications

Retention of public houses is likely to benefit various communities. As the ownership/occupancy Buildings of Local Interest is wide ranging, a negative impact on equality is unlikely.

(d) Environmental Implications

The environmental implications are considered to be highly positive as protecting public houses via an Article 4 Direction supports the quality and maintenance of local communities and 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, which must be undertaken over a period of at least 21 days (the order must be confirmed by the issuing authority subsequently) 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:

Decision Letter. Appeal Ref: APP/Q0505/A/12/2176501

Land at former St Colette's Preparatory School, Tenison Road, Cambridge CB1 2DP

<http://www.pcs.planningportal.gov.uk/pcsportal/fscdav/READONLY?OBJ=COO.2036.300.12.5503758&NAME=/DECISION.pdf>

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

<http://www.planningportal.gov.uk/permission/responsibilities/planningpermission/permitted>

UCO: Town & Country Planning Use Classes Order 1987.

<http://www.legislation.gov.uk/ukxi/1987/764/schedule/made>

Circular 9/95 .

<http://www.planningportal.gov.uk/england/government/policy/policydocuments/planningcirculars/71122p0995>

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

<https://www.cambridge.gov.uk/sites/www.cambridge.gov.uk/files/docs/protection-of-public-houses-ippg.pdf>

Cambridge Public House Study 2012.

<https://www.cambridge.gov.uk/sites/www.cambridge.gov.uk/files/docs/cambridge-public-house-study.pdf>

6. Appendices

1. Article 4 Direction
2. Affected PHs List
3. PHs map

7. Inspection of papers

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

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Appendix 1

CAMBRIDGE CITY COUNCIL

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
ORDER 1995 AS AMENDED

DIRECTION MADE UNDER ARTICLE 4 (1) to which Article 6 Applies.

WHEREAS the Council of the City of Cambridge being the appropriate local planning authority within the meaning of article 4(4) of the Town and Country Planning (General Permitted Development) Order 1995 as amended, are satisfied that it is expedient that development of the description set out in the Schedule below should not be carried out on land shown edged/coloured red on the attached plan, unless permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4 (1) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description set out in the Schedule below.

THIS DIRECTION is made under article 4 (1) of the said Order and, in accordance with the article 6 (7), shall remain in force until XXth XXXX 2014 (being six months from the date of this Direction) and shall then expire unless it has been confirmed by the Council in accordance with paragraphs (9) and (10) of article 5 before the end of the six month period.

SCHEDULE

Any building operation consisting of demolition of a building being development comprised within Class A of Part 31 of Schedule 2 to the said Order and not being development comprised within any other class.

Made under the Common Seal of Cambridge City Council this XXth day of XXXXXXXX 2014

The Common Seal of the Council was affixed to this Direction in the presence of:

.....
Title:

Confirmed under the Common Seal of Cambridge City Council this day of
____20

The Common Seal of the Council was affixed to this Direction in the presence of:

.....
Title: