



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: Trumpington

ARTICLE 4 DIRECTIONS – ACCORDIA ESTATE Non-Key Decision

1. Executive summary

- 1.1 Following 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, a report was considered by Environment Scrutiny Committee on June 11th 2013 and it was resolved that officers draft an Article 4 Direction and accompanying consultation process for consideration at a future Environment Scrutiny Committee.
- 1.2 This report presents a draft order (attached as Appendix 1) and consultation requirements.

2. Recommendations

- 2.1 The Executive Councillor is recommended:
 - a) To authorise the making of a non-immediate Article 4 Direction for the Accordia Estate as shown in Appendix 1 attached to this report.
 - b) To note the need at a later date to confirm or not confirm the Article 4 Direction in the form appended to this report, taking into account representations made during the representation period.

3. Background

As noted in the report of June 11, 2013, to committee on this subject, Department of Communities & Local Government (DCLG) guidance given in the *National Planning Policy Framework* states that 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.

- 3.1 In terms of DCLG guidance (Replacement Appendix D to Circular 9/95 (June 2012)), the “test” for using Article 4 Directions is that the continuing exercise of permitted development rights would undermine the visual amenity of the area or damage the historic environment. The harm that the direction is intended to address is adverse impact on the character or appearance of the conservation area via the exercise of certain permitted development rights.
- 3.2 The Local Planning Authority (or “LPA”) must be satisfied that it is expedient that the specified works may not be carried out unless permission is granted on an application. An Article 4 Direction would not mean that no works could be carried out to the Accordia houses but would require planning applications to be made for what would otherwise be permitted development. Applications would be considered on their merits and assessed against the applicable Local Plan policies and other material considerations.
- 3.3 An Article 4 Direction removing permitted development rights under the General Permitted Development Order (GPDO) 1995 may take the form of:
 - a) 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
 - b) 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 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.
- 3.4 There is no right to appeal against the making of an Article 4 Direction. However, it is important that before an Article 4 Direction is made, the LPA is satisfied that exceptional circumstances exist to justify the making of the Article 4 Direction. Also, that it is assured that the works to be controlled should not be carried out without specific permission.

- 3.5 The Accordia estate is now within the boundary of the Brooklands Avenue conservation area (as per the approval of the revised appraisal at the committee meeting of June 11, 2013). The Accordia Community Residents Association (ACRA) has requested 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.
- 3.6 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.
- 3.7 Some alterations that have occurred at Accordia have been pointed out to officers by the Residents Association to illustrate their case for an Article 4 Direction. These have been previously reported to the Environment Scrutiny Committee and so are not repeated here.
- 3.8 An Article 4 Direction may cover several classes of permitted development or a particular operation within any class. The features officers have confirmed as being important to the appearance of the houses on the Accordia estate and which are proposed for protection via an Article 4 Direction are:
- 1 upper floor open terrace areas and ground floor recessed front entrances.
 2. consistent pattern and type of fenestration,
 3. projecting window bays
 4. external cladding is in a particular range of materials
 5. consistent soft landscaped areas
 6. large chimney elements key to the design of some houses
 7. predominantly open layout at street level without fence or walls
 8. external brickwork in a consistent type and not painted or rendered.
- Changes to these features would affect the appearance of the estate. The classes of permitted development or the particular operations within a class that relate to these items (and taking into account works that are not permitted development in conservation areas) covered in the formal Direction attached as Appendix 1.
- 3.13 The Accordia Community Residents Association have produced an information pack that details the original materials and products used in the various types of house at Accordia. This will be available to residents as a reference when repairs are needed or work that will require planning permission is being considered. The association has

been very proactive in promoting the protection of the development given its very high level of design quality and the information pack is part of the efforts by the association in this regard.

- 3.14 Some changes to the external appearance of houses at Accordia 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 - examples have occurred on Wherry Housing properties. However, recent discussion with Wherry Housing Association indicated that control for instance of varying colour of woodstain and replacement of missing rainwater downpipes may be dealt with via inclusion in regular maintenance schedules (with agreed materials) or via restrictions being placed in tenancy agreements.
- 3.15 Officers propose that an Article 4 Direction (non-immediate) for Accordia is made in the light of all the above considerations and the resolution made by the Executive Councillor in June 2013. It is recommended however that only the most essential features of the housing within the development are covered by an Article 4 Direction e.g. those noted earlier in this report.

Consultation

- 3.16 On making an Article 4 Direction the following must be carried out:
1. Local Advertisement is required including in the press, site notices (at least 2 and for a period of at least 6 weeks). Notice must be served on individuals affected (unless impractical).
 2. The Secretary of State must be notified on the same day as the first publication of the Direction.
 3. The County Council must be notified on the same day as the first publication of the Direction.
 4. Notice must specify a period of at least 21 days within which representations are to be made. A non-immediate Direction must specify the date on which it is to come into force.
- 3.17 The representations received during the consultation period must be considered before a decision on confirmation. In addition,
1. A Direction cannot be confirmed before 28 days after its service.
 2. A non-immediate Direction comes into force on the date specified in the original notice (unless the notice is modified due to representations).
 3. To modify an Article 4 Direction, a local planning authority would have to cancel the existing Direction and prepare a replacement Direction incorporating the required modifications and to the same procedures.

- 3.18 The formal Direction appended to this report is for a non-immediate Article 4. An immediate Direction is considered unnecessary as a) the exercise of permitted development rights is currently limited and b) the twelvemonth period will enable scope for all Accordia residents to better understand the implications of the Direction.
- 3.19 Subject to the approval of the Executive Councillor, it is recommended that Notice of the making of a Direction is given in February 2014 with consultation taking place in March. Subsequently, representations received would be considered, followed by confirmation or a replacement Direction. Subject to no overriding legal or planning reasons, it is recommended that the Direction is confirmed after twelve months (in recognition of paragraph 4.3 below) following the making of the Direction (Feb 2015).

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. Given the very proactive work being done by ACRA and the production of an information booklet and the profile this has raised regarding the importance of maintaining the material integrity of Accordia, a Direction affecting Accordia is not expected to result in more than a small number of planning applications annually.
- 4.2 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.
- 4.3 As noted in the June 2013 report on this subject, approximate figures of staff costs estimated by the Planning Advisory Service put the figure per average householder application at £330. This does not include potential time spent in dealing with enquiries or enforcement action costs. If, as a broad estimate, the Article 4 Direction for Accordia was to generate the need for no more than five (5) planning applications per year at Accordia, the costs to the Council in lost application fees would be £1,650.00,

(b) Staffing Implications

Some duty officer time would be taken up to respond to resident questions about whether works they would undertake require planning permission but publicity and design guidance already prepared by ACRA would help with reducing the number of requests. Notwithstanding, the Article 4 Direction is still likely to result in some

applications every being submitted for works that would have otherwise been allowed under permitted development rights. Application fees, as noted in the committee report in June, are not applicable in such circumstances. The costs of staffing for processing applications is therefore not covered in the event of a proposal being subject to an Article 4 Direction.

(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 regulations around "permitted development"). 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 positive as the recommendations support the quality of the Brooklands Avenue conservation area.

(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).

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

UCO: Town & Country Planning Use Classes Order 1987
<http://www.legislation.gov.uk/ukxi/1987/764/schedule/madeCircular9/95>

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

6. Appendices

Appendix 1 Draft Article 4 Direction for the Accordia Estate

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

Draft Article 4 Direction for the Accordia Estate

CAMBRIDGE CITY COUNCIL

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

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS Cambridge City Council being the appropriate local planning authority within the meaning of article 4(4) of the GPDO, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured on the attached plan, unless planning 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 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(s) set out in the Schedule below:

Made under the Common Seal of Cambridge City Council thisday of.....20..... The Common Seal of the Council was affixed to this Direction in the presence of

Chief Executive Officer

Confirmed under the Common Seal of Cambridge City Council thisday of.....20..... The Common Seal of the Council was affixed to this Direction in the presence of

Chief Executive Officer

SCHEDULE 1.

1. The enlargement, improvement or other alteration of a dwellinghouse comprising:

- i. the infill or enclosure of a recessed entrance or an open terrace area,**
- ii. insertion of a new window opening,**
- iii. removal of a projecting part of a dwellinghouse,**
- iv. the recladding of any part of a building in a material of a different type or appearance to the original**

being development comprised within Class A of Part 1 of Schedule 2 to the said Order and not being development comprised within any other Class.

2. **The provision within the curtilage of a dwellinghouse of a hard surface** for a purpose incidental to the enjoyment of the dwellinghouse as such, being development comprised within Class F of Part 1 of Schedule 2 to the said Order and not being development comprised within any other Class.

3. **The alteration or removal of a chimney**, being development comprised within Class G of Part 1 of Schedule 2 to the said Order and not being development comprised within any other Class.

4. **The erection or construction of a gate, fence, wall or other means of enclosure** being development comprised within Class A of Part 2 of Schedule 2 to the said Order and not being development comprised within any other Class.

5. **The painting of the exterior of any building or work** being development comprised within Class C of Part 2 of Schedule 2 to the said Order and not being development comprised within any other Class.

SCHEDULE 2 – Land to which Schedule 1 applies

The land shown edged/coloured on the attached plan.