

EAST HERTS COUNCIL

EXECUTIVE - 6 SEPTEMBER 2016

REPORT BY EXECUTIVE MEMBER FOR DEVELOPMENT  
MANAGEMENT AND COUNCIL SUPPORT

PROPOSED USE OF DIRECTIONS TO RESTRICT PERMITTED  
DEVELOPMENT RIGHTS IN CONSERVATION AREAS

WARD(S) AFFECTED: Potentially all wards with conservation  
areas

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**Purpose/Summary of Report**

- To enable the Executive to consider the principle of introducing Directions restricting permitted development (commonly referred to as Article 4 Directions) relating to permitted development rights in conservation areas.

<b><u>RECOMMENDATIONS FOR EXECUTIVE:</u> That</b>	
<b>(A)</b>	<b>the Head of Planning and Building Control, in consultation with the Executive Member for Development Management and Council Support and local Ward Members as appropriate, be authorised to introduce an immediate trial Article 4 Direction; and</b>
<b>(B)</b>	<b>a report on the trial, as authorised, be brought back to the Executive to enable decisions to be made with regard to any future Article 4 Directions.</b>

1.0 Background

- 1.1 Members will be aware that the Council is carrying out a review of its 42 conservation areas. In undertaking this review it appears to Officers that there are many examples of harm to the special interest, character and appearance of the Conservation Areas occurring through the unfettered exercise by individual owners of 'Permitted Development rights'.

- 1.2 Permitted Development (PD) rights stem from The Town and Country Planning (General Permitted Development) (England) Order 2015 and allow householders to carry out many types of development, including an extensive range of minor works and alterations to dwellings, without obtaining planning permission. With a few exceptions, these works are also allowed within Conservation Areas (Identified in the Order as 'Article 2 (3) land').
- 1.3 In recognition of the potential harm PD rights can have to local character, the government allows Councils to withdraw PD rights through the making of a Direction under Article 4 of the same Order (an Article 4 Direction). Once introduced, an Article 4 Direction would require owners wishing to undertake such minor works to first obtain planning permission. As such, Article 4 Directions are important tools in controlling these works and enabling Councils to carry out their statutory duty in the exercise of their planning powers, namely to give special attention *'to the desirability of preserving or enhancing the character or appearance of that (Conservation) area'*.
- 1.4 Most of the Conservation Area Character Appraisals and Management Proposal documents completed to date advise that Article 4 Directions should be made. The Character Appraisals and Management Proposals (including the proposed Article 4 Directions) have each been the subject of public consultation within the relevant area. This aspect of the proposals has generated little, if any, resistance. It is now recommended that action is taken to commence implementation of Article 4 Directions subject to the agreement of the Executive, on a trial basis.
- 1.5 A more detailed assessment of the harm caused by individual Permitted Development rights and the schedules and classes of work that might be withdrawn is included in **Essential Reference Paper B**.

## 2.0 Proposals

- 2.1 It is proposed that, in accordance with the Conservation Area Management plans adopted by the Council to date, any Article 4 Direction is selective – in that it will apply to a selected range of properties and withdraw a selected range of PD rights. This is opposed to a blanket approach, where a Direction is cast widely and all residential PD rights removed.

- 2.2 A Direction can be made to take effect immediately (where they relate to the withdrawal of, amongst other matters, householder PD rights), with a consequent period of consultation, or be introduced after the consultative process. It is recommended that the immediate introduction route is followed (once the Council has decided that it wishes to proceed) as this avoids the problem of certain owners 'jumping the gun' and implementing harmful change before a Direction is implemented. This does not mean that owners would not be consulted. A consultation exercise would still be undertaken, the results of which would be reviewed. However, the Order would be put in place prior to the consultation commencement. If, following the consultation, it is determined that the Direction is not appropriate, it can be withdrawn.
- 2.3 If it is determined that the Direction should remain, then it has to be confirmed within 6 months. Owners and residents will then be notified that the Article 4 Direction has been made permanent.
- 2.4 It is still necessary to review Article 4 directions periodically, to ensure that they remain relevant and are effective. It is proposed that this would be undertaken as part of further review and assessment of the character of the Conservation Areas in the future.
- 2.5 It is proposed then that a trial approach be taken to the introduction of Directions. The trial would involve the introduction of a single immediate Direction followed by the appropriate consultation. The action will accord with any appropriate statutory requirements or guidance. Feedback to this would be assessed, along with the number of additional planning applications and enforcement workload it generated for the six month period following introduction. A decision would then be made with regard to making the Direction permanent and proceeding with other Directions.
- 2.6 It is proposed that the Head of Planning and Building Control, in consultation with the Executive Member for Development Management and Council Support and the appropriate local Ward Members, select the location of the trial Direction, its extent and PD rights it would withdraw.
- 2.7 The outcome of this trial process would be reported back to the

executive along with recommendations with regard to how to proceed in the future. This may include, in due course, a recommendation that any future decisions in relation to Article 4 matters be delegated to the Development Management committee.

### 3.0 Implications and resources

- 3.1 Article 4 Directions would become a local Land Charge.
- 3.2 Article 4 Directions have some resource implications in relation to staff time and income. If a property owner wants to undertake works for which PD rights have been removed, they are required to apply for planning permission. There is no fee payable for such an application, therefore no income to the Council, however, it is necessary to undertake the normal processing, consideration and determination of that application.
- 3.3 In relation to adjoining Uttlesford, where six such Directions have been served, the advice from that authority is that such impact has been '*minimal, not really noticed*'. Similarly, in the LB of Enfield, which introduced comprehensive Article 4 directions across all its conservation areas in 2006- 2008, the impact on officer time was found to be minimal. This may be because owners, realising that harmful change would not be allowed, do not proceed with applications, but instead either repair and better maintain the existing property features or put forward proposals more likely to be acceptable.
- 3.4 Some unauthorised works must be anticipated. This may result in the creation of workload for the enforcement function.
- 3.5 Lastly, there is a risk of potential compensation claims from the immediate introduction of Directions. The potential for this arises when planning permission is refused, following the Direction, for a development that would otherwise be PD. Any claim has to be based on the difference between the capital value of the property with permission compared with the value resulting from the refusal. Aggrieved owners must be able to demonstrate actual loss, which given the enhanced property values generated by well-preserved conservation areas, is considered to be highly unlikely.
- 3.6 Neither Uttlesford nor Enfield have had any claims for compensation from any of their Directions. Indeed, nationally,

while there are very many Article 4 directions in place, only one instance of compensation has ever succeeded, related to the value of a parking space in St John's Wood, London. Any claims would be time limited to a 12 month period from the effective date of the Direction.

#### 4.0 Implications/Consultations

4.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper A**.

#### Background Papers

None

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