

EAST HERTS COUNCIL

EXECUTIVE - 6 FEBRUARY 2018

REPORT BY EXECUTIVE MEMBER FOR DEVELOPMENT MANAGEMENT  
AND COUNCIL SUPPORT

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OUTCOMES OF THE PILOT ARTICLE 4 DIRECTION IN BISHOP'S  
STORTFORD CONSERVATION AREA AND PROPOSED FURTHER  
ARTICLE 4 DIRECTIONS

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

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**Purpose/Summary of Report**

- To enable the Executive to consider the outcomes of the pilot Article 4 Direction in Bishop's Stortford Conservation Area
- To enable the Executive to consider proposals for further Article 4 Directions covering other conservation areas.

**RECOMMENDATIONS FOR EXECUTIVE: That:**

<b>(A)</b>	<b>the outcome of the monitoring period for the pilot Article 4 Direction for Bishop's Stortford Conservation Area be noted, and</b>
<b>(B)</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 make further Article 4 Directions, as have been successfully piloted in Bishop's Stortford, for all of the District's conservation areas in line with the 4-phase programme detailed within this report.</b>

## 1.0 Background

1.1 A report to Executive on the 6 September 2016 recommended that:

*(A) 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) 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.*

Both recommendations were approved.

1.2 Following consultation with Members, the Bishop's Stortford Conservation Area was chosen as the pilot.

1.3 A detailed analysis of the General Permitted Development Order 2015 revealed that two Article 4 Directions were required; one for households that could take immediate effect and a second for commercial premises, flats and some categories of household works that could only initially be proposed. Both were required to be subject to public consultation and could be confirmed thereafter. The householder Article 4 direction was required under the GPDO to be confirmed within 6 months of its making.

1.4 Both Article 4 Directions were made on the 14 June 2017 and publicised in accordance with Schedule 3 of the above Order. The required 21 days consultation was extended to 28 days and closed on the 14 July 2017.

1.5 All households affected received individual mailings with copies of the Directions and further explanatory information.

- 1.6 Both Directions and details of the consultation were published in the local press and site notices were erected in 5 prominent locations within Bishop's Stortford for the required period. A press release was also made available.
- 1.7 The Directions and consultation details were also made available on the Council's website and hard copies made available at Council offices.
- 1.8 Of the 1400 households affected only 7 objected; the majority of responses received were neutral or in favour of the Article 4 Direction. There were no objections to the non-householder Article 4 Direction. Nevertheless, many householders contacted the Council needing advice and assistance with proposed minor works. Of these the majority were resolved without recourse to a planning application. Only 6 applications were required at that time.
- 1.9 Having carefully considered the consultation responses officers concluded that the vast majority of affected households, flats and businesses were content with the Directions. However, it was felt prudent to pause until completion of the monitoring period before confirming the Directions.
- 1.10 The 20 week monitoring period was carried out between 14 June – 1 November 2017, at the end of which officers reviewed the impact of the Directions in terms of the types and number of planning applications they generated and the nature of the final decisions. The Directions generated 9 applications during the monitoring period of which 5 had been determined, all of them approved (some following amendments to the proposals).
- 1.11 The Direction generated no Enforcement enquiries or investigations during the monitoring period.

1.12 The evidence suggested that the Direction and the way it was being interpreted by officers was working well in that owners/occupiers were now exercising discretion and restraint and not carrying out works that might harm the character or appearance of the Conservation Area.

1.13 Consequently, utilising the above authority granted by the Executive, the Head of Planning and Building Control, in consultation with the Executive Member for Development Management and Council Support confirmed both Article 4 Directions for Bishop's Stortford Conservation Area on the 15 November 2017. The required statutory notifications were duly sent out and all households were notified, press notices published and site notices erected all in accordance with Schedule 3 of the GDPO. One householder, who had previously objected, continued his objection via the local press; however, this was a tiny minority view and there were no further repercussions.

## 2.0 **Part 1 - Report on Monitoring the effect of the Bishop's Stortford Conservation Area Article 4 Direction**

2.1 There are two major effects to be considered:-

- the effectiveness of the Directions in preserving or enhancing the character or appearance of the special architectural or historic interest of the Bishop's Stortford Conservation Area, and
- the resource impact on the Local Planning Authority of the generated applications.

2.2 The Conservation and Urban Design Team prepared and circulated within the LPA guidance on the interpretation of the Directions to assist colleagues, particularly Development Management staff, in advising the public. The guiding principles are that discretion and the 'test of reasonableness' would prevail such that like-for-like traditional works that accord with the desirable character or appearance of the

Conservation Area would not require an application. Typical examples would be that:-

- external redecorations of windows, doors, joinery and render etc. in the existing or traditional colours would not need an application but painting previously unpainted masonry and the choice of non-traditional colours would,
- replacement windows in modern materials and/or to a new pattern would need an application while painted timber windows to the existing or historic pattern would not.

## **1/Effect on the Conservation Area**

- 2.3 An assessment of the effectiveness of the Directions on the Conservation Area can only be made after a reasonable lapse of time – this to allow for a reasonable accumulation of applications, determinations and build-out periods such that the effect can be seen ‘on the ground’. This is generally considered to be a minimum of a year from implementation.
- 2.4 The Bishop’s Stortford Conservation Area Character Appraisal and Management Proposals were adopted in December 2014. Using the previous government guidance that such documents should be reviewed and adopted every 5 years then, subject to resources, it is likely that the documents will be reviewed in the second half of 2019 – 18 months hence. It would be appropriate and efficient, therefore, if this review included a detailed assessment of the impact and effectiveness of the Directions.

## **2/ Effect on Planning Service workload**

- 2.5 Monitoring of planning applications generated under the Article 4 Directions has continued following the initial 20 week period in order to give the Executive up-to-date information. Information is included up to the end of 2017.

2.6 In that time a number of telephone, email and duty officer enquiries were made relating to potential requirements to obtain planning permission under the Article 4 Direction. A significant majority of these were able to be resolved utilising the above guidelines and no application was required. This was broadly in line with the outcomes of the consultation responses details above whereby of 24 responses, 18 were simply resolved and only 6 were advised to follow up with an application

2.7 An analysis of the period from 14 June 2017 (when the Article 4 Directions were introduced) to the end of December 2017 (29 weeks) shows that the following applications generated by the Directions were received. The table also shows the current position with regards determinations.

	<b>Case</b>	<b>Validated</b>	<b>Description</b>	<b>Decision</b>	<b>Date of decision</b>
1/	3/17/1400/HH	15 June 2017	Fencing and gates at 47 Castle Street	Granted with conditions	21 Aug 2017
2/	3/17/1402/HH	16 June 2017	Windows and doors at 20 Trinity Close	Granted with conditions	22 Aug 2017
3/	3/17/1578/HH	5 July 2017	Replace patio and driveway at 73 Newtown Rd	Granted with conditions	25 Aug 2017
4/	3/17/1812/HH	1 Aug 2017	Replace bay window at 12 Regency Close	Granted with conditions	5 October 2017
5/	3/17/1815/HH	31 July 2017	Replace PVCu windows with trad. timber at 29 Apton Road	Granted with conditions	5 October 2017
6/	3/17/2224/HH	25 Sept 2017	Fencing and gate at 6 Trinity	Withdrawn and	20 November

			Way	reapplied (not counted) See below	2017
7/	3/17/2270/HH	28 Sept 2017	New door and garden work at 5 Warwick Road	Granted	23 November 2017
8/	3/17/2387/HH	10 Oct 2017	New windows at 50 Portland Road	Granted with conditions	23 November 2017
9/	3/17/2427/HH	16 Oct 2017	New windows at 11 Grange Road	Granted with conditions	30 November 2017
10/	3/17/2554/HH	31 Oct 2017	New wall and fencing at 11 Crown Terrace	Granted with conditions	9 January 2018
11/	3/17/2746/HH	27 Nov 2017	Fencing and gate at 6 Trinity Way	Granted with conditions	2 January 2018
12/	3/17/2783/HH	01/12/2017	New PVCu windows at 5 Warwick Road	Awaiting decision	-
13/	3/17/2879/HH	14/12/2017	New door and PVCu windows at 13 Church Street	Awaiting decision	-

2.8 The LPA received 1496 applications during the above period. The additional 12 applications deriving from the Directions representing just 0.8% of this total. This has proved absorbable within the new structure and available capacity.

2.9 The above percentage uplift in applications generated following introduction of an Article 4 Direction is broadly in line with the national experience and that of neighbouring Uttlesford DC and the London Borough of Enfield (both of whom have introduced a number of Article 4 Directions). It is, therefore, a reasonably reliable statistic.

2.10 The LPA receives approximately 2700 applications p.a. The 12 applications received during the period would extrapolate to approximately 22 applications p.a. ( $12 \times 52/29 = 21.5$ ). Again, at less than 1% of the total (0.8%), this is considered absorbable within existing capacity.

### 3.0 **Part 2 - Report On Making Further Article 4 Directions For Other Conservation Areas**

3.1 To date all the other Character Appraisals for the District's conservation areas have reported the same issue as that for Bishop's Stortford:- of harm being done to the relevant area's special interest by the uncontrolled exercise of permitted development rights. The associated Management Proposals state that consideration should be given to the making of Article 4 directions to control this.

3.2 The making of Article 4 Directions is the most immediate and effective way of preventing this harm to the District's conservation areas in that it requires the public to engage with the Council in order to take forward any affected development proposals. This allows the Council, either through its Development Management or, where required, its conservation specialists, to input their expertise. The Bishop's Stortford pilot has clearly demonstrated that a combination of good design guidance, leafleting and negotiation can resolve the majority of instances, while for those that do require the making of a planning application, negotiation during the process produces acceptable outcomes in (to date) every case. This evidence and the derived benefit for the preservation and enhancement of the Bishop's Stortford Conservation Area makes a strong *in principle* case for the rolling out of Article 4 Directions for all of the District's other conservation areas.

3.3 However, a consideration in weighing this proposal has been the potential impact on the capacity of the Planning Service were such Article 4 directions made. The above experience in Bishop's Stortford has now provided a statistical basis for weighing that impact. Thus:-



3.4 Bishop’s Stortford Conservation Area contains circa 2,565 properties – approximately 20% of the total of properties contained within the District’s 42 conservation areas (circa 13,000 properties). Based on the above statistics, were the Bishop’s Stortford pilot extended across all 42 conservation areas it would generate approximately 107 further applications for planning permission per annum.

3.5 The LPA receives approximately 2,700 applications p.a. The additional applications generated by each of the 42 conservation areas being subject to Article 4 directions (circa 107) would, therefore, represent a *circa* 4% uplift in applications. This is considered absorbable within existing capacity. A recent legislative change in the fee position (see 4.3 below) will further ease this matter.

3.6 While the processing of applications generated by Article 4 Directions has been proven to be manageable within existing resources, the process for making Article 4 Directions is complex and quite time-consuming. Officers have considered how this might be resourced and managed. The simplest option would be to let a contract to a consultant to deliver the project. This would take approximately 9 months and is estimated to cost approximately £50-£80K. Alternatively, the work could be done in-house but, given existing work pressures, is likely to take at least 2 years. If done in-house, it is proposed to deliver the project in four phases, thus:

1/ Ware plus south west	(2192 properties)
2/ Hertford (very large)	(3827 properties)
3/ Buntingford plus north	(2164 properties)
4/ Sawbridgeworth plus south east	(2299 properties)

3.7 Once in place the Article 4 Directions would be periodically monitored to ensure their effectiveness in preserving and enhancing the District’s conservation areas.

## 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'**.
- 4.2 Article 4 Directions would become a local Land Charge.
- 4.3 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. Previously, government regulations required that Councils could not charge a planning fee for such an application. Consequently, there was no income for the LPA to off-set the cost of administering the application. However, as of the 17 January 2018, the government lifted this exemption and fees are now payable. This will remove a burden from the LPA and allow costs to be recovered from the fee income. (The projected 107 uplift in applications would equate to an increased income of £22K p.a.).
- 4.4 Some unauthorised works should be anticipated. This may result in the creation of workload for the enforcement function. However, the monitoring period did not discover any such work.
- 4.5 Members are advised that 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. It is worth noting that all

Article 4 Direction generated applications to date in Bishop's Stortford have been successfully negotiated and approved; hence the compensation question could not arise.

- 4.6 Neither Uttlesford nor Enfield has 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.
- 4.7 If authorised, and as undertaken for Bishop's Stortford, the new Article 4 Directions will be put to public consultation in accordance with the requirements of Schedule 3 of the GPDO 2015 and any representations received carefully considered before a decision is taken as to whether to confirm it. The making and confirmation of the Article 4 Directions will, as before with the pilot Bishop's Stortford Article 4 Directions, be carried out by the Head of Planning and Building Control under the Scheme of Delegation.

#### Background Papers

Character Appraisals and Management Proposals for each Conservation Area – See website at:

<https://www.eastherts.gov.uk/conservationareas>

The Article 4 Directions for Bishop's Stortford Conservation Area – See website at: <https://www.eastherts.gov.uk/conservationareas>

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