

# Area Planning Committee (Northern)

## Dorchester Conservation Area Article 4 Direction

Date of Meeting: 19<sup>th</sup> November 2019

Portfolio Holder: Cllr D Walsh, Planning

Local Member(s): Cllr Canning, Cllr Fry, Cllr Jones, Cllr Rennie

Director: John Sellgren, Executive Director of Place

**Executive Summary:** In February 2019 an Immediate Article 4 Direction was made for the Dorchester Conservation Area. The aim of the Article 4 was to restrict the gradual loss of character of the conservation area brought about by the replacement, alteration or removal of boundary walls and fences primarily due to off-road parking.

In making the article 4, the West Dorset Council was required to undertake a period of public consultation, which raised a number of concerns and queries from residents living in the conservation area. However the Article 4 was not confirmed within the required timescale of six months and expired in August.

In response to the concerns raised it is recommended to make a new Article 4 Direction (possible draft attached as Appendix 1) which should be brought in using provisions enabling it to take immediate effect. This would apply to the same area as the original Article 4 Direction. It would also reflect the provisions of the previous order by continuing to apply to the same permitted development rights, namely :

- Class A Part 2 – “development consisting of the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure; and
- Class C Part 11 – any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure

However, it would materially differ from the previous order in particular by limiting its application to any gate, fence, wall or other means of enclosure adjacent to a highway or open space. (This is in response to the consultation and would enable people to alter fences between back gardens which are not publicly visible without requiring planning permission).

If a decision is made to make this article 4 direction there will follow a consultation period after which a further decision will need to be taken as to whether the order should be confirmed.

The recommendations of members in respect of this report will be taken forward through a delegated decision using the Planning portfolio holder's executive powers.

**Equalities Impact Assessment:**

An Equalities Impact Assessment has been completed and considered by the Place diversity and inclusion group on 24<sup>th</sup> October 2019.

**Budget:** there will be a cost of approximately £1400 to notify property owners of the made Article 4 Direction and its implications, advertise in the local press (if additional space needed) and again when notifying property owners at the end of the six month consultation period if the Article 4 Direction is confirmed.

There is a possible risk of compensation claims, but this did not occur during the duration of the previous Article 4 Direction and it is considered that the risk of this resulting in significant expenditure is limited.

**Risk Assessment:**

If the Article 4 Direction is not made, there is a medium to high risk that works undertaken that have general permitted development rights could impact detrimentally on the character and amenity value of the Dorchester Conservation Area.

There is a possible risk of compensation claims, but this did not occur during the duration of the previous Article 4 Direction and it is considered that the risk of this is limited.

**Climate implications:**

The application of the Article 4 Direction could lead to applications for removal of walls and fences being refused. In some instances, this may make it difficult for property owners to install electric charging points for electric vehicles, which help reducing emissions. There are no other identified impacts.

**Other Implications:**

There will be a cost to persons having to seek planning permission which would not otherwise occur. This may impact on those with limited financial means.

**Recommendation:**

That members support the following:

a) the making by the Council of a new Article 4 Direction under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) some indicative draft wording of which is set out in Appendix 1 for properties within the Dorchester Conservation Area (identified in Appendix 2). The Direction will seek to remove the following permitted development rights immediately upon the making of the order:

i) Class A Part 2 – development consisting of the erection, construction, maintenance, improvement or alteration of a gate; fence, wall or other means of enclosure

ii) Class C Part 11 – any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure; but

in both cases to limit the direction to any gate, fence, wall or other means of enclosure adjacent to a highway or open space (the proposed definitions for which are as set out in Appendix 1);

b) the Council using powers available in respect of the new Direction to enable it to take immediate effect;

c) that power be delegated to the Service Manager for Conservation to undertake all action that she considers necessary and appropriate for the purposes of addressing all procedural requirements relevant to the making, publicity and subsequent consultation of an article 4 direction;

**Reason for Recommendation:** it is considered that there remains a need for an Article 4 direction. In the time since the last one expired, at least one wall has been removed through the returned permitted development rights. Without an Article 4 Direction, this could continue and the negative impact on the character of the conservation area could be substantial. In order to prevent loss of further features which contribute to the character of the Dorchester Conservation Area, it is proposed that the Article 4 Direction takes immediate effect. The proposed delegation is to avoid requiring member approval for making small changes and amendments to the Article 4 Direction.

**Appendices:**

1. Draft indicative Article 4 Direction
2. List of properties in the Dorchester Conservation Area which the Article 4 Direction will apply to
3. Copy of consultation responses received
4. Dorchester Article 4 Direction: Areas surveyed in the Dorchester Conservation Area
5. Plan showing proposed properties included in the Article Direction 4

**Background Papers:**

Planning (Listed Buildings and Conservation Areas) Act 1990 as amended  
National Planning Policy Framework (NPPF) 2018

Town and Country Planning (General Permitted Development) Order 2015 as amended

Town & Country Planning Act 1990

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 as amended

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## **1. Background**

- 1.1 In February 2019 Full Council of West Dorset District Council recommended that an Immediate Article 4 Direction be made to protect the public amenity of areas within parts of the Dorchester Conservation Area. The purpose of the Article 4 Direction was to preserve the character and appearance of the Conservation Area by removing permitted development rights, enabling the Council to retain control over development which would normally be permitted development. The need for this arose as a result of the removal of front walls to allow parking, and the detrimental impact this was having on the character of the conservation area.
- 1.2 A six week consultation period followed the making of the Article 4 Direction, and a number of comments were received during this time. A copy of the responses is attached as Appendix 3. Following the consultation, the Direction must be confirmed within six months. However, due to issues relating to local government reorganisation this did not occur, and the Article 4 Direction lapsed on 21<sup>st</sup> August 2019.
- 1.3 Since the Article 4 Direction lapsed at least one wall has been removed so the threat to the character of the conservation area remains. During the consultation a number of responses were received suggesting amendments to the original Article 4 Direction. These have been taken into account and used to inform the proposed new Article 4 Direction, a possible draft of which is attached as Appendix 1.

## **2. Planning background to making an Article 4 Direction**

- 2.1 Under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, local planning authorities have a duty to designate as Conservation Areas any “areas of special architectural or historic interest, the character of which is desirable to preserve or enhance”. Section 72 of the same Act requires that “special attention be paid to the desirability of preserving or enhancing the character or appearance of that area”. Designation of conservation areas introduces a general control over the demolition of unlisted buildings and provides the basis for policies designed to preserve or enhance the character or appearance that define an area’s special interest.
- 2.2 The National Planning Policy Framework (NPPF) 2019 identifies Conservation Areas as Designated Heritage Assets, as the process of designation has identified them as having a level of significance that justifies special protection measures. Paragraph 186 states “when considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of

conservation is not devalued through the designation of areas that lack special interest”.

- 2.2 The Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for certain types of development which can be carried out without the need to consult or refer to the Council. These rights can only be removed through an Article 4 Direction or a planning condition.
- 2.3 Paragraph 53 of the NPPF states “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 of the well-being 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”.
- 2.4 An Article 4 Direction removes certain classes of permitted development rights and brings such development under the control of the Local Planning Authority by ensuring they are subject to the need to apply for planning permission. This can be used to safeguard the local amenity or the proper planning of an area, including the character and appearance of a conservation area. When considering an Article 4 Direction, the local planning authority should first identify the potential threat and the extent of the threat that a Direction needs to address.
- 2.5 There are two types of Article 4 Direction, immediate and non-immediate. An immediate Article 4 Direction withdraws permitted development rights with immediate effect from the date the Direction comes into force. The justification for making this Article 4 Direction immediately is that it is considered that the development to which the direction relates would prejudice the proper planning of a threat to the amenities. This can be applied if the identified threat to the Dorchester Conservation is considered to be immediate. As a result of the potential for boundaries adjacent to a highway or open space to be removed using permitted development rights (and the impact of this on the character and amenity), it is proposed that Dorset Council makes an immediate Article 4 Direction.

### **3. The need for an Article 4 Direction for Dorchester**

- 3.1 A local Councillor made the request to progress an Article 4 Direction as a result of concern from residents regarding the negative impact of the potential loss of boundary walls on the character and appearance of the Dorchester Conservation Area. The proposal is to remove the permitted development rights to demolish, erect, construct, maintain, improve or alter a boundary wall, fence, gate or other means of enclosure belonging to a property that fronts onto a highway or open space, and require that planning permission be first obtained for such work.

- 3.2 There was local opposition to the demolition of an unlisted low brick wall facing a highway, which was carried out under permitted development rights. The planning authority concluded that its replacement by railings was out of keeping with the walls of adjoining neighbours and the terraced street as a whole, which was situated within the Conservation Area.
- 3.4 Surveys were undertaken to identify the potential harm to public amenity and the Conservation Area from changes to boundaries that front a relevant location. The results of the survey work (included as Appendix 4) show that there is a threat of harm resulting from permitted development available to the properties surveyed (listed in Appendix 2). The properties are unlisted and mainly residential but include a number of non-residential buildings. The properties exemplify a distinctive local building tradition, often with a particular use of stone and brick, described in the adopted Dorchester Conservation Area Appraisal as: “Polychromatic brickwork on 19<sup>th</sup> century buildings and boundary walls, in the form of contracting courses of brick colours, panels, moulded brick string courses and wall capping (mainly in the late Victorian suburbs around the core, such as Prince of Wales Road, Weymouth Avenue, Victoria Park and the Cornwall Road area)”. The document also refers to Dorchester having “a wealth of 18<sup>th</sup> century and early 19<sup>th</sup> century ironwork, in the form of boundary railings”. Page 43 section 7.6 of the appraisal refers to “the control of alterations to unlisted buildings” (which would include alterations to curtilage boundary walls) as a planning issue. The appraisal is available on <https://www.dorsetcouncil.gov.uk/planning-buildings-land/planning/planning-constraints/conservation-areas/west-dorset/pdfs/dorchester-conservation-area-appraisal-part-three.pdf>
- 3.4 In the areas surveyed for the Article 4 Direction (Appendix 4) there are twenty-five properties that have already removed their front boundary walls, fences, gates or other means of enclosure for off-road parking or for ease of maintenance. Others have wholly or partly replaced boundaries or could erect a boundary of some sort for the first time. Where such properties affect public amenity and the character and appearance of the Conservation Area, or have the potential to do so, they have been included in the Article 4 Direction. This will allow the Council to control the replacement and treatment of future boundaries.
- 3.5 It is considered that there is a real and potentially immediate risk of permitted development rights being carried out in relation to identified properties, thereby having a detrimental effect on the character and public amenity of the conservation area. It is therefore proposed that an immediate Article 4 Direction be made, withdrawing specific development rights to safeguard the future public amenity, character and appearance of the Dorchester Conservation Area.

#### **4. Responses to the consultation on the previous Article 4 Direction and changes proposed to the new Article 4 Direction as a result**

- 4.1 Twenty-five responses were received during the consultation period on the previous Article 4 Direction. These are included together with officer responses in Appendix 2. Many respondents were in favour of the proposals to maintain the character of boundaries, including gates, as a “key component of the townscape”.
- 4.2 Comments were made regarding the inclusion of rear boundary features in the Article 4 Direction, despite the fact that these are not visible and are often modern. It is proposed to restrict the new Article 4 Direction to boundary features “adjacent to a highway or open space” to enable permitted development rights to be retained by residents on boundaries between back gardens.
- 4.3 Several comments were received regarding the inclusion of gates and maintenance. Considerable discussion has taken place regarding these and the desirability or otherwise of including them. A survey of the gates has shown that many of them are traditional wrought iron gates which contribute to the character of the conservation area, and therefore it is proposed to include them in the new Article 4 Direction. Similarly, maintenance can include a wide range of actions. For example, inappropriate repointing of walls or repair and painting of gates can have a negative impact on the character of a conservation area, and for this reason it is proposed to retain it in the new Direction. However, in response to the comments received, a “frequently asked questions” factsheet will be produced to seek to give clarity on what is and is not covered by the order. Generally speaking, works of maintenance, improvement or other alteration which do not materially affect the external appearance of a building do not require planning permission and the proposed article 4 direction will not change this. The factsheet will seek to address this point to help explain what can normally be done without submitting a planning application. In order to assist residents with this, initial officer advice can also be sought to ascertain whether planning permission.
- 4.4 Comments were also made regarding the difficulty understanding the need for, and the implications of, the Article 4 Direction. In response to that, the letter that will go out to property owners and occupiers has been revised and will be sent out with the frequently asked questions factsheet, to set out clearly the effect of the Article 4 Direction and some examples of what will and will not require planning permission.

#### **5. Extent of the new Article 4 Direction**

- 5.1 As a result of the consultation, it is proposed that the new Article 4 Direction:

- a) covers the same areas as the previous one (properties listed in Appendix 2);
- b) applies to the erection, construction, maintenance, improvement demolition or alteration of a gate, fence, wall or other means of enclosure; and
- c) only applies where the gate, fence, wall or other means of enclosure is adjacent to a highway or open space.

5.2 A possible draft of the Article 4 Direction is attached at Appendix 1.

## **6. Procedure for making article 4 directions with immediate effect**

6.1 The procedure for an Article 4 Direction to take effect immediately can be done in two ways. The first is to serve notice on all of the affected owners and occupiers of properties within the area covered by the Direction. This was the means used for the previous Article 4 Direction. However, it is extremely difficult to ensure that all owners and occupiers receive a letter on the same day. Legally, there would be practical issues proving that all the occupiers and owners were contacted at the same time. It is therefore not proposed to use this method.

6.2 The second option is that the direction comes into force on the date on which the notice is first published and displayed. This is a more practical solution. It is therefore proposed to make the Article 4 Direction with immediate effect through advertising it in the Dorset Echo, and putting up notices in the areas affected. This will be followed up with a letter to all owners and occupiers, informing that the Article 4 Direction has been made, informing them of the consultation timescale within which they can make comments, and including the list of frequently asked questions.

## **7. Implications**

### **Financial**

7.1 This report seeks authorisation for an Immediate Article 4 Direction, which has the possible risk of compensation claims within a statutory period of 12 months from the date of the Council's decision to refuse, or approve with more onerous conditions. This may include lost income in relation to the preparation of a planning application or damage directly related to the removal of permitted development rights. In 2008 the Historic Towns Forum contacted 72 planning authorities in England, 81% of which had at least one Article 4 Direction. None reported any incidences of compensation claims for withdrawing permitted development rights in conservation areas. In the six months that the previous Article 4 Direction for Dorchester was in place, there were no claims for compensation. On balance, it is therefore considered that the risk of claims for compensation is low.

7.2 The cost of determining any applications submitted as a consequence of the Article 4 Direction would be offset by the fee of £206 for householder permission for submitting a planning application.

7.3 There is also a cost associated with the requirement to notify all owners / occupiers of properties affected by the Direction (see 6.2 above). There are approximately 904 properties to notify. The recommendation is to notify the majority of property owners through DocMail. This would cost around £510 per notification (inclusive of stationary). Property owners would need to be informed that the Article 4 Direction has been made and that they can comment during the consultation process, and again when the Article 4 Direction is confirmed, making the total postage cost around £1,020.

7.4 In the redrafted letter to occupiers / owners, it states that the outcome (confirmed or not) of the article 4 could be ascertained by phoning Planning Support or by checking the Dorset Council website. If this is considered acceptable, and assuming there is no further revised article 4, there would be no follow up DocMail or extra postal cost. It is therefore proposed to use this method to inform local people of the outcome of the consultation process and whether or not the Article 4 Direction is confirmed. There will be additional postal costs to send 25 personalised letters to those who commented previously at a cost of £15.25 (Royal Mail, second class).

7.5 A notice will also be included in the local newspaper informing people of the making of the Article 4 Direction. There is no cost if this can be included in the planning authority's weekly notice but if not the cost would be around £400, both to notify and confirm the making of the Article 4 Direction.

## **Risk Management**

7.6 If an Article 4 Direction is not made, there is a risk to the character and appearance of the Dorchester Conservation Area if works allowable under permitted development rights continue to take place.

## **Consultation and Engagement**

7.7 The General Permitted Development Order specifies the following consultation requirements for the making of an Article 4 Direction:

- Publish a notice (content defined by the Order) in a local newspaper;
- Display at least two notices within the area to which the Direction relates for a period of time no less than six weeks;
- Notify the owners / occupiers of the affected properties / land, unless impracticable to do so;
- Notify a statutory undertaker or the Crown where under their ownership

In addition it is proposed to publish the Article 4 Direction on the Dorset Council website. On the date a notice is first published or displayed, a copy of the Article

4 Direction and the notice must be sent to the Secretary of State. When an Article 4 Direction is confirmed, the publicity must be repeated.

7.8 If a decision is made to make this article 4 direction, there will follow a consultation period of six weeks. During this time affected property owners will have an opportunity to make their comments and put forward their views. These comments will be collated and responded to, and taken back to the Portfolio holder to use his delegated powers to confirm the order if appropriate.

### **Appendices**

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