

# Full Council

## 26 February 2019

### Dorchester Article 4 Direction

#### For Decision

#### Senior Leadership Team Contact:

S Hill, Strategic Director

#### Report Author:

Paul Wyeth, Specialist Services Manager

#### Statutory Authority

Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

#### Purpose of Report

- 1 To seek authorisation for the making and subsequent confirming of an Immediate Article 4 Direction, for properties within the Dorchester Conservation Area, as recommended by WDDC Planning Committee.

#### Recommendations

- 2 a) That under the Town and Country (General Permitted Development) (England) Order 2015 as amended, authorisation is delegated to the Specialist Services Manager to make and subsequently confirm an **Immediate Article 4 Direction**, in respect of those residential and non-residential properties identified in Appendix C. The Direction will seek to remove the following permitted development rights immediately upon the making of the order:

Part 2 Minor operations (Class A) gates, fences, walls etc

A. Permitted development

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

And

Part 11 Heritage and Demolition (Class C) demolition of gates, fences walls etc.

C. Permitted development

Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

Class C contains some limitations to this right such as:

C.1. Development not permitted

Development is not permitted by Class C if the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc. building in a conservation area). Please note that the demolition of a wall less than 1 m adjacent to a highway and less than 2 m elsewhere, in a conservation area, is not relevant demolition but it is development and therefore would be permitted by the above.

b) That following the making of an Immediate Article 4, copies of the Direction are sent by post to all owners/occupiers, further statutory consultation is carried out and the Secretary of State notified, as required under the General Permitted Development Order.

c) That authority is delegated to the Specialist Services Manager to following consultation, consider and address any consultation responses and, once the officer is satisfied the objections have been addressed, to proceed to confirm the Immediate Article 4 Direction within six months of it coming into force.

3) That if confirmed each property is notified by post and all further publicity as required under the Order is carried out.

## **Reason for Decision**

- 3 The WDDC Planning Committee on 17<sup>th</sup> January 2019 agreed to recommend to Full Council that an Immediate Article 4 Direction be made to protect the public amenity of areas within parts of the Dorchester Conservation Area and to preserve the character and appearance of the Conservation Area, by enabling the Council to retain control over the carrying out of development which would normally be permitted development. The permitted development rights being removed by this Article 4 Direction have been limited to the removal of boundary walls. There is an increasing pattern of boundary walls being removed within the conservation area to accommodate off-street parking and the Planning Committee agreed with officer's opinion that this was having a detrimental effect on the character of the conservation area.

## **Background and Reason Decision Needed**

- 4 An Immediate Article 4 Direction carries with it the risk of compensation claims (Appendix A) within a statutory period of 12 months from the date of the Council's decision to refuse a planning permission, or to approve with more onerous conditions than would have been in place under permitted development rights, therefore Full Council is required to approve the making of the Article 4 Direction.

In October 2008, a study on the use of Article 4 Directions – then there was the choice of an Article 4 (1) or an Article 4 (2), but each when made and publicised, came into force immediately - commissioned by the Historic Towns Forum found that of 72 planning authorities contacted in England, 81% of which had an Article 4 Direction for one or more conservation areas, none reported any incidences of compensation claims for withdrawing permitted development rights in conservation areas.

- 5 Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended imposes a duty on local planning authorities to designate as Conservation Areas any “areas of special architectural or historic interest, the character of which is desirable to preserve or enhance”, and 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”.
- 6 Within the District there are currently 79 designated Conservation Areas. Designation introduces a general control over the demolition of unlisted buildings and provides the basis for policies designed to preserve or enhance all the aspects of character or appearance that define an area’s special interest.
- 7 The National Planning Policy Framework (NPPF) 2018 identifies Conservation Areas as Designated Heritage Assets. The process of designation has identified them as having a level of significance that justifies special protection measures. In the chapter *Conserving and enhancing the historic environment*, 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”.

The Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for certain types of development. This development can be carried out, in most cases, 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.

In the chapter *Tailoring planning controls to local circumstances*, paragraph 53, 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 or 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”.

- 8 Provision 4, *Directions restricting permitted development* of the Town and Country Planning (General Permitted Development) Order 2015 as amended means there is a tool available to a local planning authority to help safeguard the local amenity or the proper planning of an area, including the character and appearance of a conservation area. This tool is in the form of an Article 4 Direction, which removes certain classes of permitted development rights and brings such development within the control of the Local Planning Authority by ensuring that they are subject to the need for a specific express approval of planning permission following the submission to the Council of an application.

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.

There are two types of Article 4 Direction (Immediate and Non-Immediate) and these are explained in Appendix A. This proposal is for authority to make an immediate direction.

- 9 A request to progress an Article 4 Direction from Cllr S Jones is the result of concern for the negative impact on the character and appearance of the Dorchester Conservation Area caused by the potential loss of boundary walls to allow off-street parking. The intention being to remove the permitted development right to demolish, remove or otherwise alter an unlisted boundary wall, - listed boundary walls would require Listed Building Consent regardless of location - belonging to a property that fronts a relevant location (fronts onto a highway, waterway or open space), and instead require that planning permission be first obtained for such work.

There has also been recent local opposition to the demolition, under permitted development rights, of an unlisted low brick wall facing a highway. Assessment by the planning authority concluded that its replacement was out of keeping with the walls of adjoining neighbours and the terraced street as a whole, situated within the Conservation Area.

- 10 Survey work was carried out 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 (Appendix B) show that there is the threat of harm resulting from permitted development available to the properties surveyed (Appendix C). The properties are unlisted and predominantly residential but a number are non-residential. The properties, often with a particular use of stone and brick, exemplify a distinctive local building tradition. For example, on page 40, the Adopted Dorchester Conservation Area Appraisal states: "Polychromatic brickwork on 19th century buildings and boundary walls, in the form of contrasting 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 Appraisal also pinpoints "the control of alterations to unlisted buildings (p43)" as a planning issue and that would include alterations to curtilage boundary walls. The Appraisal is available on [www.dorsetforyou.com](http://www.dorsetforyou.com)

- 11 In the areas surveyed for the Article 4 Direction (Appendix B), there are twenty five properties that have already removed their frontage boundary walls for off-road parking or for ease of maintenance. Others have wholly or partially replaced boundaries or have the capacity to 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 Local Planning Authority to control the replacement and treatment of future boundaries.

- 12 It is your officer's view that there is a real and potentially immediate risk of the permitted development rights, stated at paragraph 2 above, being carried out in relation to those properties identified. Therefore the making of an immediate Article 4 Direction withdrawing the specific permitted

development rights referred to in this report is necessary to safeguard public amenity and the character and appearance of the Dorchester Conservation Area.

## Implications

### Financial

13 This report seeks authorisation for an Immediate Article 4 Direction, which has the possible risk of compensation claims such as abortive costs in relation to the preparation of a planning application and other losses or damage directly related to the removal of permitted development rights. It is impossible to quantify the risk of compensation, as it depends on how many planning applications are made, and subsequently refused, as claims can only be brought within 12 months, following a refusal of planning permission (or an approval with more onerous conditions than those within the GPDO). However, the last study, referred to in paragraph 4 above, suggests that applications for compensation in Conservation Areas is rare and it would only be allowed if the refusal by the Council to grant permission to remove or alter a wall *would negatively effect the value of the property*.

14 There would also be the costs of determining any applications submitted as a consequence of the Article 4 Direction but there is now a fee of £260 chargeable for such submissions, which would assist in covering such costs and that of any subsequent planning appeals.

15 In addition, there is a requirement to notify all owners/occupiers of the properties which are to be affected by the Direction. In this case there would be over 1000 properties to notify. The recommendation is to notify all property owners by writing using DocMail, the cost would be approximately 40p per letter, making a cost of £400 per notification, which is inclusive of stationary and little officer time required. However, property owners would need to be notified twice, once for the making and once for the confirmation of the Article 4, so the total postage cost would be approximately £800.

Rather than notifying property owners directly, the Council could rely on the other required notification procedures, as detailed in paragraph 16 below.

16 There will be a notice in the local newspaper for the making of an Article 4 Direction. If it can be fitted into the planning authority's weekly notice, there will be no cost, but if it cannot, there may be an estimated cost of £380 (and again if an Article 4 Direction is confirmed) .

17 Article 4 Directions are registrable as local land charges.

### Risk Management (including Health & Safety)

16 If an Article 4 Direction is not made, there is a potential threat to the character and appearance of the Dorchester Conservation Area.

## **Human Resources**

17 Officer time from Development Services, Legal and Finance.

## **Consultation and Engagement**

Consultation requirements for a made Article 4 Direction are specified by the General Permitted Development Order:

- Publish a notice (content defined by the Order) in a local newspaper;
- Display at least two site 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.
- It is good practise to publish the Article 4 Direction on [www.dorsetforyou.com](http://www.dorsetforyou.com)

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 is confirmed, the publicity is repeated.

## **Appendices**

Appendix A Article 4 Direction for the Dorchester Conservation Area

Appendix B Dorchester Article 4 Direction: Areas Surveyed in the Dorchester Conservation Area

Appendix C Property addresses for the Dorchester Article 4 Direction

## **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)(England) 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

## **Footnote**

Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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**Date:** 13/02/2019