

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 17 JUNE 2010
title: PROPOSED CONSERVATION AREA ARTICLE 4 DIRECTION
CONSULTATION
submitted by: DIRECTOR OF DEVELOPMENT SERVICES
principal author: ADRIAN DOWD – PRINCIPAL PLANNING OFFICER (DESIGN AND CONSERVATION)

1 PURPOSE

1.1 To seek Member agreement to a proposed consultation on the withdrawal of permitted development rights from some unlisted dwelling houses in conservation areas by means of Article 4 direction.

1.2 Relevance to the Council's ambitions and priorities

- Council Ambitions – To protect and enhance the existing environmental quality of our area.
- Community Objectives – The Ribble Valley Sustainable Community Strategy 2007-2013 has three relevant strategic objectives – maintain, protect and enhance all natural and built features that contribute to the quality of the environment. Ensure that the design of buildings respects local character and enhances local distinctiveness. Sustainably manage and protect industrial and historical sites.
- Corporate Priorities - Objective 3.3 of the Corporate Plan commits us to maintaining and improving the environmental quality of the Ribble Valley. Objective 3.8 of the corporate plan commits us to conserving and enhancing the local distinctiveness and character of our towns, villages and countryside when considering development proposals.
- Other Considerations – None.

2 BACKGROUND

2.1 The Planning (Listed Buildings and Conservation Areas) Act 1990, Section 69, states that every local planning authority shall from time to time determine which parts of their area are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance, and, shall designate these areas as conservation areas.

2.2 Section 71 of the Act states that it shall be the duty of a local planning authority from time to time to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas.

2.3 Section 72 of the Act states that in the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the planning acts, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

- 2.4 The purpose of Article 4 direction is summarised in “Listed Buildings, Conservation Areas and Monuments” (Mynors C, 2006, page 180 – 189), extracts of which appear below: “Some buildings are particularly susceptible to harm caused by a succession of small changes – things that might in other circumstances be of no consequence eg a row of traditional cottages might be spoiled if the occupier of one of them replaced the traditional windows with modern ones with crude plastic frames. And what one does, others are likely to copy”. For unlisted buildings in conservation areas, the only protection is through a requirement for planning permission. However, many alterations eg window and door replacement, some boundary wall and chimney demolition, small extensions may be “permitted development”. An Article 4 direction restricts the right of the landowners to carry out certain categories of “permitted development”. The affect is not that developments within a particular category can never be carried out, but that it is no longer automatically permitted and the local planning authority can control as appropriate development that may otherwise harm the character or integrity of an area.
- 2.5 English Heritage’s “Guidance on the Management of Conservation Areas” (5.13 – 5.22, 2006) provides a comprehensive discussion of the scope, use and implementation of Article 4 directions:

“Under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, a general planning permission is granted for a range of minor developments, subject to limits and conditions designed to protect amenity and the environment. “Permitted development” rights are, however, more restricted in conservation areas than elsewhere for certain types of development: these include the addition of dormer windows to roof slopes, various types of cladding, the erection of satellite dishes fronting a highway and a reduction in the size of permitted extensions.

Articles 4(1) and 4(2) of the General Permitted Development Order (GPDO) enable local planning authorities to make certain directions withdrawing the permitted development rights given under the Order. Article 4(2) directions apply only to parts of dwelling houses and associated buildings and structures that front onto highways, waterways or open spaces. They can be confirmed by local authorities once the direction has been advertised locally and notice served on residents, without reference to the First Secretary of State. Article 4(1) directions can be used to withdraw permitted development rights on any type of land or building, whether or not fronting onto highways, waterways or open spaces, but they need to be approved by the First Secretary of State. Unfortunately, some conservation areas will already have undergone such significant loss of historic features that this procedure is no longer appropriate.

In detail, Article 4(2) directions may be used to withdraw permitted development rights for a prescribed range of development which materially affects aspects of the external appearance of dwelling houses in conservation areas. This includes the erection, alteration, or removal of a chimney; various kinds of development fronting a highway, waterway, or open space, such as the enlargement, improvement, or other alteration of a dwelling house; the construction of an external porch; and the painting of a dwelling house, or of a building or enclosure within its curtilage. Article 4(2) directions may also be used in a conservation area to withdraw the permitted development rights to demolish a gate, fence, wall or other means of enclosure, if it is within the curtilage of a dwelling house and fronts a highway, waterway or open space.

Article 4(2) directions can be selective both between and within the categories of development specified. The removal or alteration of a particular type of architectural feature which is important to the character or appearance of the conservation area, such as distinctive windows, doors and fanlights, or cornices, parapets and other characteristic architectural details, could be specified in the direction. Local authorities are not required to obtain the approval of the First Secretary of State to serve a direction: but they should notify local people and take account of public views before deciding whether to confirm it. A direction should be confirmed within six months, or it lapses.

For the direction to become effective once confirmed, the local authority must give notice by advertisement in a local newspaper and normally serve a notice on the occupier or owner (if there is no occupier) of all the properties affected by the direction.

Article 4(1) directions need to be approved by the First Secretary of State, either by submission of a prior application for approval (via the government Regional Office), or by confirmation of the direction within six months of its service, if the matter is urgent. English Heritage is of the view that, if the exercise of the permitted development rights concerned within a conservation area could materially detract from the special interest of the area, then the local authority should consider seeking an Article 4(1) direction. This is often desirable to protect investment already made in the area by private owners and/or developers, by the local authority, and through central government grant-aid. The existence (or proposed establishment) of a publicly-funded grant scheme can also be cited in support of a proposal for an Article 4(1) direction.

When considering seeking an Article 4(1) direction, local authorities should contact the relevant government Regional Office and discuss informally the scope and presentation of the proposed direction, before making an application.

The fact that an area is a conservation area does not, of itself, automatically justify making an Article 4(1) direction – as PPG 15 makes clear. Directions in conservation areas are more likely to be approved, however, where they are justified by a clear assessment of the area's special architectural and historic interest; where the importance to the special interest of the features in question is established; where the local authority can demonstrate local support for the direction; and where the direction proposes the minimum withdrawal of permitted development rights necessary to achieve its objective. Careful definition and a reasoned argument in support of the proposed direction and its extent are, therefore, essential in making the case to the government Regional Office.

Although the First Secretary of State is not required to explain disallowing a direction, government offices usually make the reasons known to the local authority – which of course remains free to make a revised application. Full guidance on Article 4 directions is given in DoE Circular 9/95.

When a direction is proposed, the local authority should consider carefully whether to consult the public at the outset, since, in some cases, a lengthy consultation period may provoke the carrying out of the very works which the direction would control. If this seems likely, the direction should be served and consultation undertaken subsequently: if not confirmed following consultation, the direction will lapse. It may be possible for

compensation to be claimed from the local authority if permission is refused following an application that was only required as a result of the Article 4 direction, but this is rare. The calculation of the sum involved is a complex matter, requiring specialist legal and valuation advice.

Generally and subject to the guidance in Appendix D of DoE Circular 9/95, General Development Order Consolidation, permitted development rights should only be withdrawn where there is firm evidence to suggest that permitted development which could damage the character or appearance of a conservation area is taking place or is likely to take place, and which therefore should be brought within full planning control in the public interest. Once an Article 4 direction has been confirmed, the local authority will need to monitor the area to which it applies and pursue any breaches. A photographic survey made at the time the direction is made will provide a useful baseline for future monitoring and dealing with subsequent enquiries, especially when properties change hands.”

- 2.6 More recent encouragement for local planning authorities to consider the use of Article 4 direction has been provided in English Heritage’s “Guidance on Making Article 4 Directions” (December 2009). This concludes that “although requiring an initial investment of some resources, making a direction is usually worthwhile for its long term benefits”.

The guidance notes that with care to ensure that all the relevant formalities are completed (see attached flow chart), the process of making a direction is relatively straightforward. It also discusses the concerns which local planning authorities sometimes have because of resource implications, uncertainties about their likely effectiveness and possible claims for compensation:

Resource Implications – the making of an Article 4 direction will involve additional resources, but experience shows that a direction is worthwhile for its long term benefits. The evidence to justify it (a real and specific threat to the character of the conservation area) may be available already from the conservation area character appraisal and the extent and scope of the direction ideally should already be identified as part of the management plan. The process of preparing the management plan provides an opportunity for consultation on the proposed direction (if thought appropriate).

Identification of properties and controls – the properties to which a direction applies, and the classes of development which are to be brought under control, should be considered carefully. Permitted development (PD) rights should only be withdrawn in exceptional circumstances, where there is a real and specific threat: best practice is to assess the need for a selective Article 4 direction as part of the preparation of management proposals for the conservation area. If there are properties within the area to which the direction need not apply (eg flats or commercial properties) these should be identified when the direction is drawn up and excluded from it. An Article 4(2) can be applied non selectively, or ‘blanket fashion’ to the whole of a conservation area, whether or not it applies to all the properties within it, but this does not constitute best practice.

Effectiveness – Article 4(2) directions can be extremely effective particularly when:

- Developed as part of a management plan for the conservation area;
- Are selective in response to the evident threat of harm (ie withdraw the relevant classes of PD rights) and of the appropriate extent;
- Are backed up by a dated photographic record;
- Are supported by guidance on appropriate repair and alteration;
- Have a level of public support, and more importantly
- Are monitored by the local authority and prompt enforcement action taken if any breaches occur.

Increase in planning applications – recent research on the impact of Article 4 direction identified that a local authority can expect to receive 1 or 2 additional planning applications per week (depending of course on the number and nature of its conservation areas). Clear, concise controls backed up by appropriate guidance, tend to encourage like for like repair or replacement in matching materials which do not require planning permission.

Compensation – compensation may be payable if permission is refused following an application made as a result of an Article 4 direction. The calculation of the level of compensation would be based on the loss of value of the property, as a result of the restriction of PD rights. Compensation claims are extremely rare. In a recent study, no evidence was found for any such payments having been made.

- 2.7 Planning Policy Statement 5: Planning for the Historic Environment (PPS5) replaced PPG15 and PPG16 in March 2010. Policy HE14: Permitted Development and Article 4 Direction states:

“Local planning authorities should consider whether the exercise of permitted development rights would undermine the aims for the historic environment. If it would, local planning authorities should consider the use of an Article 4 direction to ensure any development is given due consideration”.

- 2.8 The Heritage Environment Planning Practice Guide (March 2010) contains guidance to be considered alongside the policy in PPS5. At paragraph 46 it is noted that revisions to the process by which Article 4 directions are made are scheduled for April 2010. Paragraph 48 states that conservation area appraisals can be particularly helpful for informing local planning authorities about adverse impacts on conservation areas that could be addressed through the issuing of an Article 4 direction.

- 2.9 A letter received in April 2010 (in response to an enquiry concerning Kirk Mill Conservation Area from the Borough Council) from the Government Office for the West Midlands (responsible for such matters) suggests how the changes in 2.8 might be framed “revised GPDO came into effect on 6 April.... According to the new legislation, although Article 4(1) directions still need to be submitted to the Secretary of State, the revised procedures remove the requirement for the Secretary of State to approve them, and his role now appears to have become one of oversight and intervention to amend or revoke directions where necessary, although we have not had any specific instructions yet at GOWM... also, new regulations have been issued regarding

compensation in respect of Article 4 directions... need to consult our policy team at CLG at each stage until we have established the protocol”.

- 2.10 In April 2007 Planning and Development Committee designated four new conservation areas and a number of conservation area extensions, and adopted conservation area appraisals produced by The Conservation Studio consultants. The appraisals included the recommendation of Article 4 directions for specific properties within the Borough’s conservation areas (those contributing significantly to character and which retained their traditional features) as illustrated on the associated appraisal maps. The appraisals were subject to public consultation and five comments were received in respect of the consultant’s suggestion of Article 4 directions. No objections were received but two responses asked for the owners/occupiers of the properties to be individually consulted on any proposed Article 4 directions.

3 ISSUES

- 3.1 The gradual erosion of the character and appearance of conservation areas has resulted in English Heritage incorporating conservation areas within its yearly “Heritage at Risk” report and indicators. The initiating 2008 report in this regard formed part of a campaign to redress the 1 in 7 conservation areas found to be at risk (ie deteriorated over last 3 years or expected to do so over the next 3 years). The report states that “the problems fall into two categories: what owners and residents do or fail to do to their properties and how the council maintains the streets and public spaces..”.

The report indicated that the top 10 threats facing conservation areas are:

1. Unsympathetic replacement doors and windows (83% of conservation areas)

The English House Condition Survey (2006) found that 40% of houses built between 1850 and 1899 now have PVCu double glazed windows and all the evidence suggests that the proportion of historic houses with PVCu windows will continue to rise significantly

2. Poorly maintained roads and pavements (60%).
3. The amount of street clutter (45%).
4. Loss of boundary walls, fences or hedges (43%).
5. Unsightly satellite dishes (38%).
6. The effects of traffic calming or traffic management (36%).
7. Alterations to front elevations, roofs and chimneys (34%).
8. Unsympathetic new extensions (31%).
9. The impact of advertisements (23%).
10. Neglected green spaces (18%).

Dr Simon Thurley, Chief Executive, English Heritage commented:

“If we were to ask for just two things from this campaign, they would be these. First, that councils use the powers they already have to apply Article 4 directions in conservation areas, giving them control over small changes to things like doors, windows, roofs and fences, which, unchecked, lead to slow but irreversible decline. Does a row of Victorian villas with plastic windows lift your spirits? I doubt it. Second, that councils pay more attention to the public elements. Cluttered streets, patchwork pavements, intrusive traffic calming, abandoned buildings, an unkempt park, these soon add up to a pervasive air of neglect...

Everyone must work together – the council and the community as a whole. Article 4 directions need local community backing and dealing with streets and open spaces should involve all parts of the council, not just planning teams, but the highways, environmental services, health and education departments whose buildings and maintenance programmes are crucial to the appearance of conservation areas.

Conservation areas help to underpin community cohesion. They are the local heritage that local people pass on. Join our campaign to improve England’s conservation areas and you will be helping not only yourselves, but your neighbours, your children and your children’s children.”

The report also refers to a recent survey of estate agents which reveals that:

1. Unsympathetic replacement windows and doors, particularly plastic/PVCu, is the single biggest threat to property values in conservation areas;
 2. Poorly maintained highways or paving and unsympathetic extensions and alterations are also considered to be particular problems;
 3. 82% feel that original features tend to add financial value to properties and 78% think they help a property to sell more quickly;
 4. Three quarters believe that a well maintained conservation area adds to the value of the properties within it. Confidence in the area keeping its character and the attractive environment are the two key reasons;
 5. Residential properties within conservation areas sell for more than equivalent properties not in a conservation area;
 6. 82% of estate agents feel that only a minority of their clients have a reasonable understanding of the additional controls in conservation areas.
- 3.2 The concerns of English Heritage were unfortunately recently illustrated by a development within the newly (February 2010) designated Kirk Mill Conservation Area at Chipping (see photographs appended). The works did not require either planning permission or conservation area consent.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – Planning applications generated by the making of an Article 4 direction are not fee earning. Where an application for planning permission is made following an Article 4 direction compensation may be payable if permission is refused. English Heritage advise that the most significant factor in the effectiveness of Article 4 directions is their monitoring and the undertaking of prompt enforcement action if breaches occur.
- Technical, Environmental and Legal – The Council has a statutory duty to keep conservation area designations under review and to prepare and monitor management proposals.
- Political – N/A.
- Reputation – N/A.

5 CONCLUSIONS

5.1 Conservation area designation provides limited additional planning control on development. A lot of work potentially having a dramatic and negative impact upon the character and appearance of conservation areas, is “permitted development”. This worrying situation is compounded by the limited applicability of conservation area consent controls following the judgement in Shimizu (UK) Ltd v Westminster CC (1996). Mynors (2006, page 353) concludes on this decision that:

“Conservation area consent will only be needed for the carrying out of works in a conservation area provided that they are, as a matter of fact, carried out on such a scale as to amount to the ‘demolition’ of a whole building. This would include, for example, the removal of an entire building; or the removal of all of it except the façade; or the removal of an entire front garden wall. But it would not include the removal of a single window, or a whole shop front; nor the removal of one wall of a building, prior to adding on an extension (even before consent had been granted for the new work); nor the removal of a porch, or the knocking of a hole into a wall; nor the removal of architectural details such as finials, gate-piers and so on. These would all be ‘alterations’.”

The results are to be found nationally (English Heritage’s ‘Conservation Areas at Risk’ report and campaign) and locally (eg Kirk Mill Conservation Area).

5.2 However, I am mindful of Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and of the duty of local planning authorities “to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas”, and of the recent invitation to local authorities at PPS5 Policy HE4: Permitted Development and Article 4 Directions to consider whether the exercise of permitted development rights would undermine the aims for the historic environment.

- 5.3 The overall outcome of the Borough Council's 2006-2007 public consultation on proposed new conservation areas, proposed extension of existing conservation areas and appraisal (which included explicit reference to proposed Article 4 directions) and management guidance was supportive. No adverse comment was received in respect to the principle of Article 4 directions.

Whilst I recognise the potential dangers, as discussed at 5.21 of English Heritage's 'Guidance on the Management of Conservation Areas', of further alerting the public to the consideration of Article 4 directions I am convinced that this is necessary by English Heritage's more recent advice in 'Guidance on the Making of Article 4 Directions' (directions can be extremely effective, particularly when they have a level of public support) and the emphasis given to the need for Article 4 direction local community backing by its Chief Executive. I would therefore recommend that the owners/occupiers of those properties identified by The Conservation Studio as requiring Article 4 direction to retain their character be sent a copy of this report and invited to comment on the proposal before Members consider this matter further. I would also recommend that the Parish Councils be similarly informed and involved.

- 5.4 The Article 4 directions suggested by The Conservation Studio relate to a minority of properties within the borough's conservation areas (some conservation areas have no suggested Article 4 directions) and are only those which retain their historic and architectural significance and contribute directly to conservation area character and appearance. The suggested Article 4 directions arise from the consultant's careful and detailed appraisal of the conservation areas and production of management guidance (which includes information for householders on the conservation of traditional features). In my opinion this provides strong justification and support for this measure.

6 RECOMMENDED THAT COMMITTEE

- 6.1 Authorise the Director of Development Services to consult the owners and occupiers of affected properties, and the relevant Parish Councils, in regard to progression with the Article 4 directions recommended by The Conservation Studio consultants in their appraisal of the Borough's conservation areas.

DIRECTOR OF DEVELOPMENT SERVICES

BACKGROUND PAPERS

Are referenced in the report.

For further information please ask for Adrian Dowd, extension 4513.