

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 4 NOVEMBER 2010  
title: PROPOSED ARTICLE 4 DIRECTIONS FOR GROVE HOUSE AND 1-5 THE GROVE (KIRK MILL) CHIPPING  
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 the imposition of Article 4 Directions, restricting some residential permitted development rights, at Grove House and 1-5 The Grove, Chipping.

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 In February 2010 Members designated Kirk Mill Conservation Area in response to the immediate threat of redevelopment to the late 18<sup>th</sup> Century industrial hamlet. A limited consultation exercise was undertaken prior to decision. Members also resolved to authorise the Director of Development Services to serve Article 4 Directions restricting potentially damaging 'permitted development' rights on Grove House, and other residential properties where necessary, Kirk Mill, Chipping.

2.2 In June 2010 Members resolved to 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.

2.3 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.

- 2.4 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.
- 2.5 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.
- 2.6 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”.

- 2.7 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.
- 2.8 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. (NB: However, there have been recent changes to the regulations which are discussed below):

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.

Article 4 of the General Permitted Development Order (GPDO) enables local planning authorities to make certain directions withdrawing the permitted development rights

given under the Order... Unfortunately, some conservation areas will already have undergone such significant loss of historic features that this procedure is no longer appropriate.

Article 4 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 and other building types in conservation areas. This includes the erection, alteration, or removal of a chimney; the enlargement, improvement, or other alteration of a dwelling house; the construction of an external porch; the painting of a dwelling house, or of a building or enclosure within its curtilage and the demolition of a gate, fence, wall or other means of enclosure.

Article 4 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.

Directions in conservation areas are more likely to be successful 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.

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.

- 2.9 More recent encouragement for local planning authorities to consider the use of Article 4 Direction, issued following the changes to the regulations on 6 April 2010, is provided in English Heritage's "Guidance on Making Article 4 Directions".

#### Assessing the need

PPS5 Policy HE2 requires local authorities to have evidence about the historic environment and heritage assets in their area and use that evidence to assess the condition of heritage assets. Policy HE.3.1 requires a proactive strategy for the conservation of the historic environment and Policy HE3.4 requires local authorities to consider how best to conserve individual, groups or types of heritage assets that are most at risk. Historic characterisation approaches such as Historic Area Assessment which can provide this evidence also encourage public participation in the management of the historic environment. They can therefore not only identify heritage assets which may be under threat from unrestricted exercise of permitted development rights but also provide a mechanism for securing community support for any further restrictions under the provisions of Article 4.

The specific requirement on local authorities under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to carry out a conservation area appraisal

will also provide a robust evidence base on which to assess the need for and scope of any Article 4 Direction.

### Scope

It is only appropriate to remove permitted development rights where there is a real and specific threat and exclude properties where there is no need for the direction to apply. Article 4 Directions are most commonly used to control changes to elevations of buildings in conservation areas fronting a highway, waterway or open space but they can also be used to control other forms of development which might harm the significance of heritage assets such as:

- extensions to commercial or domestic properties in an archaeologically sensitive area where the footings might harm the archaeological deposits;
- development that could threaten the outstanding universal value (OUV) of a World Heritage Site;
- the demolition of a heritage asset outside a conservation area which has not been designated but is of local value.

### Monitoring and Enforcement

Article 4 Directions are more likely to be effective if:

- there is a dated photographic record of the properties affected for the purposes of tracking any subsequent changes;
- guidance is provided for homeowners on how the direction affects them with advice on appropriate repair and alteration;
- the local authority undertakes regular monitoring for compliance and appropriate enforcement;
- the need for the Article 4 Direction is reviewed if circumstances change.

### Impact on Resources

Increase in planning applications is likely to be minimal (RPS Planning *Research into the use of Article 4 directions on behalf of the English Historic Towns Forum* [October 2008], paragraphs 3.18-3.19) as 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 claims have been extremely rare. A 2008 study found no evidence for any compensation payments actually being made (Op cit, paragraphs 3.20-3-21).

Cost of Preparation - integrating proposals for Article 4 Directions with local plan preparation and conservation area appraisals minimises costs.

- 2.10 A summary of the recent changes to Article 4 Direction procedure is contained in a letter from the Communities and Local Government Chief Planner "Implementing Some Key Killian Pretty Recommendations" (16 March 2010).

“The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 which comes into force on 6 April 2010, amends existing statutory provisions in relation to:

- a) .....
- b) the procedure for making local directions restricting permitted development.

..... In summary, these: change the Secretary of State’s role in the process from determination (where the Secretary of State’s approval is required) to oversight (where the Secretary of State *may* intervene); require that all directions restricting permitted development rights be made subject to public consultation (whilst retaining the ability for certain directions to be made immediately); and require site notices for all directions, in addition to other notification requirements. We will issue guidance shortly, both in relation to the changes to permitted development and the new article 4 arrangements. The latter will reaffirm the existing policy on the circumstances under which article 4 directions are justified.

In restricting permitted development rights, local authorities may face claims for compensation if they refuse a planning application for development that would formerly have been permitted. Section 189 of the Planning Act 2008, to be commenced in April 2010, limits the time period for which there may be liability for compensation following the restriction of permitted development rights to 12 months, and prevents claims for compensation if 12 months notice of the revocation is given prior to its coming into force....

The Town and Country Planning (Compensation) (England) Regulations 2010 apply section 189 to directions made in relation to certain householder permitted development rights (consulted upon in 2007) and those extensions to non domestic permitted development rights proposed in the improving permitted development consultation paper.

The new guidance we will issue shortly will cover changes to arrangements for payment of compensation where permitted development rights are withdrawn ...”

- 2.11 The guidance referred to in 2.10 has not yet been published. It is my understanding that the new regulations do not have the previously held distinction between Article 4(1) and Article 4(2) Directions (the former required Secretary of State approval and primarily related to elevations which did not face a highway or other ‘relevant location’ in a conservation area).

A single Article 4(1) procedure has now been established (although some distinction results, as stated in 2.10, for some directions of more limited extent and/or purpose (Article 6) to be made with immediate effect).

Except in the case of Directions with immediate effect the new Article 4(1) procedure requires that:

“5.1 ...notice of any direction made under article 4(1) shall, as soon as practicable after the direction has been made, be given by the local planning authority—

- (a) by local advertisement;
  - (b) by site display at no fewer than two locations within the area to which the direction relates ... for a period of not less than six weeks; and
  - (c) subject to paragraph (2), by serving the notice on the owner and occupier of every part of the land within the area or site to which the direction relates.
- (2) In a case where this paragraph applies, the local planning authority need not serve notice on an owner or occupier in accordance with paragraph (1)(c), if they consider that—
- (a) individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person; ...
- (4) The notice referred to in paragraph (1) shall—
- (a) include a description of the development and the area to which the direction relates, or the site to which it relates, as the case may be, and a statement of the effect of the direction;
  - (b) specify that the direction is made under article 4(1) of this Order;
  - (c) name a place where a copy of the direction, and a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, may be seen at all reasonable hours;
  - (d) specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority; and
  - (e) specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than two years after the date referred to in sub-paragraph (d)....
- (6) The local planning authority shall send a copy of the direction and the notice under paragraph (1), including a copy of a map defining the area to which it relates, or the site to which it relates, as the case may be, to the Secretary of State on the same day that notice of the direction is first published or displayed in accordance with paragraph (1).
- (7) The direction shall come into force in respect of any part of the land within the area to which it relates on the date specified in accordance with paragraph (4)(e) but shall not come into force unless confirmed by the local planning authority in accordance with paragraphs (9) and (10)....
- “(9) In deciding whether to confirm a direction made under article 4(1), the local planning authority shall take into account any representations received during the period specified in accordance with paragraph (4)(d).

- (10) The local planning authority shall not confirm a direction until after the expiration of—
    - (a) a period of at least 28 days following the latest date on which any notice relating to the direction was served or published; or
    - (b) such longer period as may be specified by the Secretary of State following the notification by the local planning authority to the Secretary of State of the direction.
  - (11) The local planning authority shall, as soon as practicable after a direction has been confirmed –
    - (a) give notice of such confirmation and the date on which the direction will come into force; and
    - (b) send a copy of the direction as confirmed to the Secretary of State.
  - (12) Notice under paragraph (11)(a) shall be given in the manner described in paragraphs (1) and (4)(a) to (c); and paragraphs (2) and (3) shall apply for this purpose as they apply for the purpose of paragraph (1)(c).”
- 2.12 The Government’s response to the ‘Improving Permitted Development’ consultation referred to in the CLG Chief Planner’s letter above stresses that there is “a requirement for local consultation on all Article 4 Directions”. It also states that the forthcoming guidance to accompany the legislation “will clarify that changes in relation to Article 4 Directions are not a relaxation of permitted development rights – that is, that they should only be withdrawn in ‘exception circumstances’ and where there are compelling reasons to do so”.

### 3. NON STATUTORY PUBLIC CONSULTATION

- 3.1 Mindful of Committee’s wish at the 17 June 2010 meeting that the principle of Article 4 Directions be subject to public consultation and of the Government and its advisor’s emphasis on public participation to ensure the success of Article 4 Directions, a public consultation was undertaken in respect to proposed Article 4 directions for Grove House and 1-5 The Grove, Chipping.
- 3.2 Letters (appended) justifying the proposals and stating the proposed permitted development rights likely to be removed in non regulatory language were sent to all properties affected. Both letters and accompanying site notices invited comment on the proposals.
- 3.3 At the time of report writing no comments had been received. The land agent for the current sale of HJ Berry’s assets acknowledged receipt of the information and advised that it had been forwarded to their client’s solicitor for inclusion in the legal pack and available to prospective purchasers.

## 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 (see 2.9 of this report 'Impact on Resources'). Where an application for planning permission is made following an Article 4 direction compensation may be payable if permission is refused (see 2.9). 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. Public consultation and in particular 'local advertisement' will require expenditure.
- Technical, Environmental and Legal – The Council has a statutory duty to keep conservation area designations under review and to prepare and monitor management proposals. At the time of report writing your legal section was considering the Insolvency Act 1986 and any possible implication for the proposed Article 4 Directions affecting 1-4 The Grove (former assets of H J Berrys, now in administration).
- Political – N/A
- Reputation – N/A.

## 5. CONCLUSIONS

- 5.1 In my opinion, the restriction of specific permitted development rights in respect to Grove House (the former mill manager's house) and 1-5 The Grove (former workhouse, converted into worker's cottages in the early 19<sup>th</sup> Century) is justified by the key contribution of these buildings to the special architectural and historic interest of Kirk Mill Conservation Area.
- 5.2 The initial, non statutory consultation suggests no immediate concern with the proposals from owners/occupiers of properties or the general public.
- 5.3 Further consideration of the impact of possible permitted development rights suggests it would also be prudent to seek control of any change to roof materials at both Grove House and 1-5 The Grove and the demolition of the distinctive roadside walling to the front of 1-5 The Grove.
- 5.4 In my opinion, the apparent support for Article 4 Direction, the nature of the permitted development in question and the wish for further public consideration suggests that the '6 – Direction with immediate effect' procedure is unnecessary in this case.
- 5.5 In order for the directions to come into force it will be necessary for Committee to confirm the Directions following consideration of responses received during the statutory consultation period.



6. RECOMMENDED THAT COMMITTEE

- 6.1 Authorise the Director of Development Services to expedite the making of Article 4 Directions in respect of those permitted development restrictions detailed in the appended letters and referred to at 5.3 above, relating to Grove House and 5 The Grove, Chipping.
- 6.2 Authorise the Director of Development Services to expedite the making of Article 4 Directions, once lawfully entitled to do so, in respect of those permitted development restrictions detailed in the appended letter and referred to at 5.3 above, relating to 1-4 The Grove, Chipping.

DIRECTOR OF DEVELOPMENT SERVICES

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