

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: THURSDAY, 29 MAY 2014  
title: CONFIRMATION OF ARTICLE 4 DIRECTION AT 30-31 CHURCH STREET,  
RIBCHESTER  
submitted by: DIRECTOR OF COMMUNITY SERVICES  
principal author: ADRIAN DOWD – PRINCIPAL PLANNING OFFICER  
(DESIGN AND CONSERVATION)

## 1 PURPOSE

1.1 To seek Member confirmation of the 'Immediate' Article 4 direction applying to 30-31 Church Street, Ribchester. The direction withdraws some permitted development rights from two prominently sited unlisted buildings within Ribchester Conservation Area.

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 Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 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.

2.2 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.

2.3 Section 66 of the Act states that in considering whether to grant planning permission for development that affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

2.4 The Governance and Legal Director of English Heritage ('Legal Developments' Conservation Bulletin Issue 71: Winter 2013) states that the courts have said that these

statutory requirements operate as 'a *paramount consideration*' and 'the *first consideration for a decision maker*'.

2.5 The recent *Barnwell Manor* Court of Appeal ruling has provided further clarity on consideration and weighting of these statutory requirements within the 'planning balance'. In the original judgment, Mrs Justice Lang confirmed that 'desirability' means 'sought-after objective' and that 'in order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to 'the desirability of preserving ... the setting' of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status'. In respect to the Court of Appeal decision, Gordon Nardell QC and Justine Thornton ('Turbines, heritage assets and merits', Local Government Lawyer, 24 April 2014) state "the key point is that once a decision-maker finds harm to setting, there must be some express acknowledgement of the 'considerable' weight to be given, in the balance, to the desirability of avoiding that harm. It is not enough to ask in a general sense whether benefits outweigh harm, but whether they do so sufficiently to rebut the strong presumption against permission". Furthermore and in respect to considerations of 'less than substantial harm', the Secretary of State's decision on Lane Head Farm, Cumbria (recovered appeal; decision 16 April 2014; paragraph 11) is noted "having regard to the judgment in the *Barnwell Manor* case, the Secretary of State takes the view that it does not follow that if the harm to heritage assets is found to be less than substantial, then the subsequent balancing exercise undertaken by the decision taker should ignore the overarching statutory duty imposed by section 66(1). He therefore sees a need to give considerable weight to the desirability of preserving the setting of all listed buildings".

2.6 The most recent Government guidance on when and how to make an article 4 direction is provided in Replacement Appendix D to Department of Environment Circular 9/95: General Development Consolidation Order 1995, June 2012, Department for Communities and Local Government. This states:

Article 4 directions are one of the tools available to local planning authorities in responding to the particular needs of their areas. They do this by allowing authorities to withdraw the 'permitted development' rights that would otherwise apply by virtue of the *Town and Country Planning (General Permitted Development) Order 1995* as amended (the 'GPDO'). An article 4 direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development.

In deciding whether an article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.

In deciding whether an article 4 direction might be appropriate, local planning authorities may want to consider whether the exercise of permitted development rights would:

- Undermine the visual amenity of the area or damage the historic environment.

Local authorities should regularly monitor and review the appropriateness of their article 4 directions, considering whether the original rationale for the directions remains valid.

Immediate directions are where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse.

Immediate directions can only be used to withdraw a small number of permitted development rights [Development permitted by Parts 1-4 and 31 of Schedule 2 to the

GPDO (development within the curtilage of a dwellinghouse, minor operations, changes of use, temporary buildings and uses, and demolition of buildings)].

Any planning application required as a consequence of an article 4 direction is exempt from the usual planning application fee.

It is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation.

Compensation - there are circumstances in which local planning authorities may be liable to pay compensation having made an article 4 direction, although the potential liability is limited in many cases by the time limits that apply.

Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:

- refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or
- grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an article 4 direction being in place.

Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights [See Section 108 of the *Town and Country Planning Act 1990* as amended].

All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).

Additionally, for certain permitted development rights withdrawn by an article 4 direction, compensation may only be claimed if an application for planning permission is submitted within 12 months following the effective date of the direction (and, if 12 months prior notice of the withdrawal of permitted development rights is given, there is no ability to claim compensation.) These specified permitted development rights are currently set out in Statutory Instrument 2012/749, but may apply to permitted development rights subsequently introduced.

2.7 National Planning Policy Framework, paragraph 200 foresees the removal of national permitted development rights where this is necessary to protect local amenity or the wellbeing of the area.

2.8 English Heritage ([website](#); 2013) advice:

The (GPDO) rules are the same across England and so inevitably cannot take account of local sensitivities

Article 4 directions are used to control works that could threaten the character of an area of acknowledged importance, such as a conservation area.

Article 4 directions can increase the public protection of designated and non-designated heritage assets and their settings.

2.9 English Heritage 'Understanding Place: Conservation Area Designation, Appraisal and Management' (March 2011) discusses the making of article 4 directions:

Article 4 of the GPDO gives local planning authorities the power to restrict 'permitted development rights' where they have the potential to undermine protection for the historic environment.

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 provides a robust evidence base on which to assess the need for and scope of an Article 4 direction.

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.

Increase in planning applications - is likely to be minimal 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 (paragraphs 3.18-3.19 *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).

Compensation claims - have been extremely rare. The RPS 2008 study found no evidence for any compensation payments actually being made (*Op cit*, paragraphs 3.20-3.21)

2.10 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 indicated the top 10 threats facing conservation areas:

1. Unsympathetic replacement doors and windows (83% of conservation areas).
4. Loss of boundary walls, fences or hedges (43%).
5. Unsightly satellite dishes (38%).
7. Alterations to front elevations, roofs and chimneys (34%).
8. Unsympathetic new extensions (31%).

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

- (i) Unsympathetic replacement windows and doors, particularly plastic/PVCu, is the single biggest threat to property values in conservation areas;
- (ii) 82% feel that original features tend to add financial value to properties and 78% think they help a property to sell more quickly;
- (iii) 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;
- (iv) Residential properties within conservation areas sell for more than equivalent properties not in a conservation area;

2.11 The National Planning Policy Framework states:

Core principle (Paragraph 17) "*Planning should ... conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations*".

Paragraph 126 “Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.”

Annex 2 Glossary “**Conservation (for heritage policy):** The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance”.

- 2.12 The National Planning Policy Guidance (6 March 2014) states: “Heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits.

*Development should seek to promote character in townscape and landscape by responding to and reinforcing locally distinctive patterns of development, local man-made and natural heritage and culture, while not preventing or discouraging appropriate innovation.*

**Distinctiveness is what often makes a place special and valued. It relies on physical aspects such as:**

**building forms;  
details and materials;  
style and vernacular.”**

- 2.13 The Historic Environment Planning Practice Guide states:

**Doors and windows are frequently key to the significance of a building. Change is therefore advisable only where the original is beyond repair, it minimises the loss of historic fabric and matches the original in detail. Secondary glazing is usually more appropriate than double-glazing where the window itself is of significance.** As with the building as a whole, it is more appropriate to deal with timber decay and similar threats by addressing the cause of the decay rather than treating the symptoms, but where remedial works are shown to be necessary, minimum interference to achieve reasonable long term stability is the most sustainable approach (paragraph 152).

- 2.14 ‘Constructive Conservation in Practice’ (English Heritage, 2008) states:

*“Constructive Conservation is the broad term adopted by English Heritage for a positive and collaborative approach to conservation that focuses on actively managing change.*

*The aim is to recognise and reinforce the historic significance of places, while accommodating the changes necessary to ensure their continued use and enjoyment ...*

*... The Principles also underline the importance of a systematic and consistent approach to conservation. In order to provide this consistency, we are guided by a **values-based approach to assessing heritage significance**”.*

- 2.15 ‘Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment’ (English Heritage, 2008) identifies **four groups of heritage values: Evidential, Historical, Aesthetic and Communal.**

Paragraph 91 states:

***“Evidential value, historical values and some aesthetic values, especially artistic ones, are dependent upon a place retaining (to varying degrees) the actual fabric that has been handed down from the past; but authenticity lies in whatever most truthfully reflects and embodies the value attached to the place (Principle 4.3). It can therefore relate to, for example, design or function, as well as fabric. Design values, particularly those associated with landscapes or buildings, may be harmed by losses resulting from disaster or physical decay, or through ill-considered alteration or accretion”.***

- 2.16 The Ribchester Conservation Area Appraisal (The Conservation Studio consultants; adopted by the Borough Council following public consultation 3 April 2007) identifies:
- (i) the **architectural and historic interest** of the area’s buildings within Summary of Special Interest;
  - (ii) **30-31 Church Street to be Buildings of Townscape Merit (making a positive contribution to the character and appearance of the conservation area) on the Townscape Appraisal map;**
  - (iii) Ribchester’s historic character and **the appearance of its core area to be a strength of the conservation area;**
  - (iv) ***the loss of architectural detail (original windows, doors etc) and the insensitive alteration of historic buildings (spoiling the conservation area’s historic character and appearance) to be Weaknesses of the conservation area;***
  - (v) ***the continuing loss of original architectural details and use of inappropriate modern materials or details to be a Threat to the conservation area;***
- 2.17 The Ribchester Conservation Area Management Guidance (The Conservation Studio consultants; subject of public consultation) identifies:
- (i) ***Windows: Sliding sash and side-hung casements are the two principal window types. As a rule, windows in historic buildings should be repaired, or if beyond repair should be replaced 'like for like'. It is important that the design, scale and proportion of new windows should be sympathetic to the character of the building.***  
***Glazing bars in old buildings are invariably moulded and slender. Over time, the thickness and moulding of glazing bars, the size and arrangement of panes and other historic window details varied. Care is therefore needed in the repair and replacement of historic windows to ensure works are ‘honest’ and not historically misleading. Details should be appropriate to the date of the building or to the date when the window aperture was made;***
  - (ii) ***Doors and doorways: Original doors should be retained. Their replacement or defacement is often entirely unnecessary.***
  - (iii) ***Appearance, materials and detailing: If windows are to be double glazed, then these must be carefully designed. Avoidance of glazing bars can assist in achieving a satisfactory solution.***
- 2.18 ‘Ribchester: A Short History and Guide’ (Hodge A.C. and Ridge J.F, 1986, page 9) pictures 28-29 Church Street (Grade II listed) and notes “a pair of unusual Georgian

houses ... there are very few brick town houses such as these in this part of the country. They are dated to 1745”.

At a recent appeal relating to 28 Church Street ([APP/T2350/A/12/2185263](#)), the Planning Inspector described the listed building as “a handsome narrow two storey house ... The pair dates from 1745, as embossed on the original lead rainwater hoppers, and is built of brick with fine dressed stone details including rusticated quoins, moulded architrave surrounds at window and door openings as well as a stone plinth, string band and eaves cornice. It opens directly onto the footway on Church Street, part of the original Roman route in the town, **and is prominently located close to the heart of the Ribchester Conservation Area** ... together with No 29 the adjoining part of the pair, the appeal listed building has a substantial degree of significance **and plays an important role in the historic character and appearance of the conservation area, which is also a designated historic asset of high significance**”.

The front windows to 29 Church Street are recent replacements – authenticity was ensured by listed building consent 3/2006/0909.

- 2.19 ‘Energy Efficiency and Historic Buildings: Application of Part L of the Building Regulations to Historic and Traditionally Constructed Buildings’ (English Heritage, 2011) states:

**“The Importance of Windows in Older Buildings: Window openings and frames give a building’s elevation its character. They should not be altered in their proportions or details, as they are conspicuous elements of the design ... Replacing traditional single-glazed sash windows with double-glazed PVCu windows can be very damaging to the special character and appearance of the building. The fundamental objections, amongst many, are that double-glazed sealed units thicken the dimensions of glazing bars inappropriately, or result in extremely poor facsimiles stuck to the face of the glass. The frames and glazing of many historic windows have fallen victim to inappropriate replacements, but over the past decade greater appreciation of their value has begun to develop. However, many windows are still threatened and Part L must not become the agent for their thoughtless destruction. While listed buildings enjoy some protection, unlisted buildings are at high risk – even where they are in conservation areas.**

*Window Types and Materials:* England has a rich tradition of window designs and materials from different periods of history. Most historic windows are timber-framed. Oak joinery (either fixed or in casements) predominated until the late 17th century, when, with the advent of the sash window, softwood was imported from Scandinavia and the Baltic. This slow-grown, high-quality, naturally durable timber continued to be widely used until the early 20th century. Thereafter use began to be made of inferior species, the timber from which needed chemical preservatives to provide some degree of longevity. **It is very difficult to source timber of traditional quality and durability today. Where possible windows should be repaired and continue to be used .... All these windows are important historically and should be conserved** (page 46).

New ‘facsimile’ double-glazed windows have been developed with sealed units and low emissivity glass. In most cases these fail to provide an adequate visual match to the original patterns owing to the thickness of the glazing-bar required to accommodate the glazing cavity. **It is impossible to replicate most original glazing bars in double glazing even with the thinnest systems. The aim should be to improve thermal performance whilst retaining the existing windows** by investigating the following options: Draught Proofing ... Secondary Glazing ... Shutters (page 49).

... reducing carbon emissions from buildings is not just about heating and insulating the building fabric. Much can be achieved by changing behaviour avoiding waste, using energy efficient controls and equipment and managing the building to its optimum performance, all of which is as relevant to older buildings as new ones.

For historic buildings and those of traditional construction an appropriate balance needs to be achieved between building conservation and measures to improve energy efficiency if lasting damage is to be avoided both to the building's character and significance and its fabric. **For example, it would be neither sustainable nor cost effective to replace a 200-year-old window that is capable of repair and upgrading with a new double-glazed alternative** and even less so if the new window were to have an anticipated life of only 20–30 years, as some do.

... the **Approved Documents make it clear that a reasonable compromise on the energy efficiency targets may be acceptable in order to preserve character and appearance and to avoid technical risks.** They do this by specifically including some *exemptions* and circumstances where *special considerations* apply for historic buildings and those of traditional construction (page 4).

2.20 In 'The Thermal Performance of Historic Windows', The Building Conservation Directory 2008, Chris Wood (Head of Building Conservation and Research Team at EH) suggests "*There is little dispute as to how important windows are to historic buildings. After all, the front windows of a building are often the first feature to draw the eye*".

2.21 'Traditional Sash Windows', Nottinghamshire County Council, states "*Architectural fashion and technological progress working hand in hand may have led to the massive popularity of the vertical sliding sash from the end of the seventeenth century onwards*

*... By the Georgian period (1715-1830), the typical eighteenth century sash window had appeared with each sash having six panes of glass held by glazing bars of ovolo moulded profiles ... each individual pane was carefully proportioned as were the window openings as a whole ... the changing shape of the glazing bar is a subtle but important feature of the sash window*

*the history of the development of the sash window has been dominated by the desire to increase the size of individual panes of glass and reduce the number and thickness of glazing bars, a desire really only limited by the technology available at the time ... after the mid eighteenth century, glazing bars became much thinner and their profiles more complex and varied. **By the turn of the century, bars might be 12mm (half an inch) or less in width.** By this time panes of glass of up to 25" by 15", produced by the crown glass method, had become available*".

2.22 The Georgian Group Guide No1 'Windows' states:

**No element does more than the fenestration to enhance the character of Georgian buildings; this is even more relevant to modest terraced houses and country cottages than it is to grander, multi-windowed piles.** Yet in recent years the defacing of Georgian buildings by inappropriate modern windows has become more and more commonplace

*... although it must be remembered that sash windows were never constructed to a standard size, an arrangement of six panes over six was widespread from c. 1700 onwards ... As the eighteenth century progressed the manufacture of larger panes of glass became easier, and Georgian glazing bars became thinner. These bars were*



*moulded in a variety of ways, the robust ovolo form gradually giving way to lamb's tongue, ogee and other, more slender mouldings. **In terms of proportion, the individual panes of glass were generally taller than they were wide (in accordance with the artistic theory of the 'golden section');** whilst early panes were virtually square, most later examples tended to emphasise the verticality of the window*

*... a vital component of the Georgian window was, naturally enough, its glass. **Yet this feature is often the first casualty of window repair or replacement***

*... **the resultant visual effect is often dark and reflectant** (double-glazing of historic windows). **Individual double glazing is certainly not applicable in any circumstances for Georgian windows with slender glazing bars***

*... **replacement of windows should only be a last resort**, when repair of individual parts, or the installation or insulation methods, has proved quite impracticable or insufficient.*

2.23 'Period house fixtures and fittings 1300-1900', Linda Hall, 2007, page 80-81 states:

*a major change occurred at the beginning of Queen Victoria's reign in 1837 when much larger sheets of cylinder glass and then plate glass became cheaper and more readily available. At first it was still too expensive for general use and sashes with small panes continued to be used for many houses. After the abolition of window tax in 1851 and the duty on glass in 1857 plate glass came into more general use. Each sash could now have only two panes of glass, usually divided vertically but sometimes horizontally and later just a single pane of plate glass. These sheets of glass were heavier than the small panes and the absence of glazing bars put a strain on the sash frame. To counteract this **the sash horn was invented, a small projection below the joint on each side of the sash. Sash windows have frequently been repaired or renewed and unfortunately the replacements often have both horns and small panes of glass, two things which should never occur together.***

2.24 There are a number of relevant appeal decisions:

APP/T2350/A/06/2028551 - 45 Church Street, Ribchester (unlisted):

*"Ribchester is an attractive small town with Roman and pre-Roman antecedents. Church Street, at the heart of the town, leads down to the bank of the River Ribble and is characterised by terraces of modest houses. Typically they are built of stone under slate roofs and although **some have been marred by the incorporation of unsuitable modern features**".*

APP/T2350/A/12/2185263 – 28 Church Street, Ribchester

*"**the proposed reinstatement of traditional doors, windows and rainwater goods authentic to the origins of the listed building is a positive aspect of the proposal**".*

APP/T2350/F/09/2094978 – 20 Church Street, Ribchester (Grade II listed)

*"**the appeal is allowed ... whereas the front elevation of the row of houses, and those of other houses to both sides, is well preserved, the rear elevation has been seriously eroded. There are probably no original window frames in openings in the rear elevation**".*

APP/T2350/E/11/2161957 – Mellor Lodge Gate House, Mellor (Grade II listed, 1790s,'sashed windows with glazing bars' – retrospective application; appeal dismissed):

*“the alterations to the listed building include the insertion of replacement windows in two of its original openings. These windows are **crudely detailed with unduly thick glazing bars to support the double glazed units**”.*

APP/B1225/E/11/2165202 (Grade II listed house in Dorset, 11 June 2012):

*“As far as traditionally configured modern double glazed units go, these ‘Slimlite’ fixtures offer amongst the closest approximations to traditionally fabricated historic window types available. Their principal distinguishing advantage being the employment of the functional glazing bars, a considerable improvement on those with sandwiched dividers within the unit and with profiled strips applied to their inner and outer faces. However, despite this achievement, **it is the apparency of the double-glazed units, with their visible parting bead and the double register of the two panes of glass in each one that identify them as modern fixtures, critically undermining the integrity, character, and so special architectural interest and significance of the listed building.***

APP/X1118/E/11/2157186 (listed cottages in Devon, 20 December 2011):

*“Historic Environment Planning Practice Guide states that changing windows is advisable only where the original is beyond repair. Secondary glazing is usually more appropriate than double-glazing where the window itself is of significance. The windows in this case show signs of decay particularly on the cills but I have seen **no evidence to suggest that they are beyond repair. Secondary glazing would allow retention of the historic windows and could be installed with minimal impact on the fabric or appearance of the listed building.***

*The proposed replacement windows ... would have **thicker and wider frames than the existing windows and have 24mm double glazing units fixed with timber beads. The size of the frames would reduce the area of glass in the windows giving them an uncharacteristically heavy appearance and an altered ratio of glass to timber.***

*... in view of the possibility of installing temporary, reversible secondary glazing.*

- 2.25 At the meeting of 16 January 2014, the Director of Community Services was authorised to expedite the making of an Immediate Article 4 direction in respect to those permitted development restrictions detailed in 3.1 below, relating to 30 and 31 Church Street, Ribchester.

### 3 CONSULTATION

- 3.1 The Article 4 direction came into force on 28 January 2014 and relates to the following:

The enlargement, improvement or other alteration or a dwellinghouse being development comprised within Class A of Part 1 of Scheduled 2 to the said Order and not being development comprised within any other Class.

Any other alteration to the roof of a dwellinghouse being development comprised within Class C of Part 1 of Schedule 2 to the said Order and not being development comprised within any other Class.

The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse being development comprised within Class G of Part 1 of Schedule 2 to the said Order and not being development comprised within any other Class.

The installation, alteration or replacement of a microwave antenna on a dwellinghouse or within the curtilage of a dwellinghouse being development comprised within Class H of

Part 1 of Schedule 2 to the said Order and not being development comprised within any other Class.

The painting of the exterior of any building or work being development comprised within Class C of Part 2 of Schedule 2 to the said Order and not being development comprised within any other Class.

3.2 The statutory public consultation and notice has been undertaken and a letter received from the owner of 30-31 Church Street, Ribchester objecting to the Article 4 direction. This makes the following points:

- (i) the owner is seeking to meet the Council's ambitions, community objectives and corporate priorities by refurbishing a vacant building and restoring many original features (including new windows which have already been purchased);
- (ii) the building is not identified as of interest in the Ribchester Conservation Area Appraisal;
- (iv) the officer's report does not include any evidence of the potential threat the direction is intended to address, the threat to the local amenity, or to explain how the current refurbishment is prejudicial to proper planning. The Planning Officer has not identified any work currently being undertaken which contravenes the Council's own Policy;
- (v) doors and windows had already been purchased and were available for the Planning Officer to see on site prior to the issuing of the direction;
- (vi) the owner is unaware of any local advertisement and has not been issued with any notice;
- (vii) no changes have been made to the front of the building;
- (viii) existing windows are unsafe and beyond economic repair. Like for like windows have been made;
- (ix) the building has been repointed using lime rendering;
- (x) the drainpipe had to be replaced (health and safety) and has been replaced with a period cast iron pipe;
- (xi) the owner quotes three local authorities where planning permission is not required for exact copies/replicas of existing windows:
- (xii) the owner would have welcomed dialogue rather than an Article 4 direction. It would be helpful if the Council could develop clear policies for home owners of unlisted buildings in conservation areas. Lancaster City Council's guidance is supported by a grant for owners in a conservation area replacing windows and doors;
- (xiii) the owner seeks advice as to how to claim compensation for the loss occurred in window manufacture. Replacement windows and doors had been made prior to the decision to apply the direction.

The owner has also submitted 10 letters from Ribchester residents which make the following points:

- (i) Support work on 30-31 Church Street to bring back into use.
- (ii) there is a balance between retaining original historic appearance and creating a home to live in which secures the building's future.
- (iii) Unclear why Article 4 direction applied in isolation to others in the area.

A letter has been received from the occupants of 30-31 Church Street which hopes that the Article 4 direction will not be confirmed and makes the following points:

- (i) understand that Article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning in the area – do not believe this evidence exists and not in any committee report;
- (ii) understand that Article 4 directions appropriate where undermine visual amenity of the area or damage the historic environment. Note the location of the SPAR and a building to the right of 30-31 Church Street (which the Parish Council has raised with the Borough Council as an area of concern within a conservation area) and a listed building with modern, double-glazed, plastic PVC windows next door but one to 30-31 Church Street;
- (iii) Article 4 directions cannot be applied retrospectively;
- (iv) Additional work on a Ribchester builder doing best to develop an unliveable building into a family home;

A letter has been received from the resident of 45 Blackburn Road, Ribchester which makes the following points:

- (i) concerned about the use of an article 4 direction, which exposes the Council to a claim for compensation for abortive expenditure, other losses or damages directly attributable to the withdrawal of permitted development rights. A complete waste of money in financially challenging times;
- (ii) hope that Council will not confirm the Article 4 because no evidence of how the work which has taken place is prejudicial to the proper planning of Ribchester or constitutes a threat to the amenity of Ribchester. The report does not identify the potential harm that the direction is intended to address or the exceptional circumstances which justify use when benchmarked against other areas. Unjustified and inappropriate.

## 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 or permission is granted subject to more limiting conditions than the GPDO would normally allow. Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 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 CONCLUSION

- 5.1 Planning applications are under consideration in respect to “replacement windows on front elevation” (3/2014/0217/P) and “retrospective application for the replacement of windows and insertion of velux windows to the rear of the property” (3/2014/0214).
- 5.2 The local resident is correct in asserting that Article 4 directions cannot be applied retrospectively. A photographic survey was undertaken at the time of the coming into force of the Article 4 direction for the avoidance of any doubt in this matter.
- 5.3 The reoccupation of the houses is to be welcomed. The Article 4 direction is intended to ensure that any refurbishment work is undertaken sympathetically and with regard to the special architectural and historic interest of Ribchester Conservation Area and the setting of nearby listed buildings. Like for like repair and the sustaining of significance encouraged by The Ribchester Conservation Area Management Guidance, the NPPF, the NPPG, English Heritage (2011) and The Georgian Group above does not require planning permission.
- 5.4 In respect to the building’s architectural and historic interest and significance (including contribution to Ribchester Conservation Area and the setting of listed buildings – principally 28, 29 and 48 Church Street) and the availability of guidance for owners of unlisted buildings in conservation areas, I would refer the building owner to the information and references contained within the Committee report of 16 January 2014 and the letter of explanation accompanying the Notice of the making of the Article 4 direction (28 January 2014). The latter offers the assistance of your officers in advising on any proposed alterations to the property.
- 5.5 I am mindful of the comments of the building occupants and the local resident. However, in my opinion the report of 16 January 2014 does make it clear why an Article 4 is required (including specific reference to the importance of conserving the historic multi-pane sash windows which is core to the measure) and I note English Heritage (2011) above that ‘a conservation area appraisal provides a robust evidence base on which to assess the need for and scope of an Article 4 direction’.
- For the avoidance of doubt, additional comment on the characteristics and significance of historic sash windows and doors and their conservation (including the advice in the Ribchester Conservation Area Management Guidance; subject to public consultation) has been included in this report .
- 5.6 I am also mindful of the local resident’s comments concerning “the building to the right of 30-31 Church Street (which the Parish Council has raised with the Borough Council as an area of concern within a conservation area) and a listed building with modern, double-glazed, plastic PVC windows next door but one to 30-31 Church Street”. The former is within the ownership of 30-31 Church Street, is identified within the Ribchester Conservation Area Appraisal as “*in a poor state of repair: outbuilding at rear of no. 31*

*Church Street (roof)*” and has been the subject of correspondence from the Council’s Principal Planning Officer (Design and Conservation) as a Building at Risk. The latter (28 Church Street) issue and proposed traditional timber sash replacements was discussed by the Planning Inspector at the recent appeal where the importance of correct sash window detailing and maintaining architectural and historic significance was emphasised *“In view of the six over six pattern of the sliding sash windows at No 29, the adjacent part of the listed building, I do not share the appellant’s view that an eight over eight pattern would be appropriate in No 28 (despite this being present at No 30)”*.

- 5.7 The local resident is correct in asserting that there are circumstances in which local planning authorities may be liable to pay compensation having made on Article 4 direction. This is discussed above and in the committee report of 16 January 2014.
- 5.8 The Article 4 direction is specific to this property and relates only to a small number of permitted development rights to accord with Government guidance on when and how to make an Article 4 direction in replacement Appendix D to the Department of Environment Circular 9/95: General Development Consolidation Order 1995, June 2012, Department for Communities and Local Government.
- 5.9 In my opinion, the efficacy of the Article 4 direction has already been demonstrated. Planning applications now provide the Borough Council with the opportunity to consider the appropriateness of proposed works in this sensitive location before they are undertaken.
- 5.10 I have considered the comments of the building owner and local residents and in giving considerable importance and weight to the keeping free from harm of the character, appearance and significance of Ribchester Conservation Area and the setting of listed buildings (principally 28, 29 and 48 Church Street) as well as the requirements of NPPF paragraph 17, 126 and 200 believe that the Article 4 direction is both effective and necessary.

## **6 RECOMMENDED THAT COMMITTEE**

- 6.1 Authorise the Director of Community Services to expedite the confirmation of the Immediate Article 4 Direction in respect of those permitted development restrictions detailed in 3.1 above, relating to 30 and 31 Church Street, Ribchester.

ADRIAN DOWD  
PRINCIPAL PLANNING OFFICER  
(DESIGN AND CONSERVATION)

JOHN HEAP  
DIRECTOR OF COMMUNITY SERVICES

### **BACKGROUND PAPERS**

Are referenced in the report.

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

(AD/P&D/29 MAY 14)