

REPORT TO: Planning Committee

DATE: 31st January 2012

DEPARTMENT: Development Services

REPORTING OFFICER: Acting Head of Planning Services
(Mrs Naomi Kempton, Senior Conservation and Design Officer)

SUBJECT: **CONFIRMATION OF PILOT ARTICLE 4 DIRECTION IN GREAT OUSEBURN CONSERVATION AREA**

WARD/S AFFECTED: Ouseburn

FORWARD PLAN REF: Not Applicable

1.0 PURPOSE OF REPORT

- 1.1 On the 2nd August 2011, Planning Committee approved, in principle, a pilot Article 4 Direction for Great Ouseburn Conservation Area where residents have specifically requested that this approach be introduced. Under the Town and Country Planning Act 1990, the Article 4 Direction must be confirmed before the expiry of 6 months.
- 1.2 Under the Planning Scheme of Delegation, the decision to make and confirm an Article 4 Direction rests with the Planning Committee. The purpose of this report, therefore, is to request that the Committee confirms the Article 4 Direction for the Great Ouseburn Conservation Area.

2.0 RECOMMENDATION/S

- 2.1 That the Article 4 Direction for Great Ouseburn Conservation Area is confirmed.

3.0 RECOMMENDED REASON/S FOR DECISION/S

- 3.1 Article 4 Directions are designed to bring under planning control particular types of development that could normally be classed as 'permitted development'.

- 3.2 Planning Policy Statement (PPS) 5 policy HE4.1 states that: “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”. Through the recent review of conservation area appraisals, it is evident that the exercise of permitted development rights has, in some cases, eroded the special character and appearance of the District’s conservation areas, thereby undermining the aims for the historic environment. The making of an Article 4 Direction in Great Ouseburn Conservation Area would be in accordance with advice in PPS5.
- 3.3 There is demonstrable public support for the making of Article 4 Directions in the District’s conservation areas as a method of managing development. Great Ouseburn Parish Council has urged the Council to pursue the proposal to make a Direction in its area.
- 3.4 The pilot Article 4 Direction will enable the effectiveness of the measure in protecting our conservation areas to be assessed and if deemed successful, the Direction will be used as a model for similar approaches in other conservation areas.

4.0 ALTERNATIVE OPTION/S CONSIDERED AND RECOMMENDED FOR REJECTION

- 4.1 Not to confirm the pilot Article 4 Direction to remove permitted development rights in this conservation area. This is rejected, as there is evidence to demonstrate that works carried out under permitted development rights constitute a threat to the character and appearance of the conservation areas. Furthermore, there is public support for the implementation of such measures.
- 4.2 Great Ouseburn Parish Council has urged the Council to pursue the Article 4 Direction and has committed resources to gather evidence to support the proposal. As such the Parish Council would be aggrieved if the Article 4 Direction in Great Ouseburn is not confirmed.
- 4.3 If the Article 4 Direction is not confirmed, the Order will lapse 6 months after it was made, specifically 12th February 2012.

5.0 THE REPORT

- 5.1 The review of all 52 conservation areas in the District has identified the detrimental impact of incremental alterations and extensions carried out by private property owners under ‘permitted development’ rights. This incremental development serves to erode the special character and appearance of the District’s conservation areas to the detriment of the quality of the historic environment. The use of Article 4 Directions is considered to be an appropriate response to address this problem in line with government guidance and this approach has strong public support in Great Ouseburn. The use of Article 4 Directions is referenced in the management guidelines detailed in the

Conservation Area Appraisal documents as one of a number of measures to help preserve and enhance the special character of these areas.

6.0 Legislation

- 6.1 Article 4 Directions have the effect of removing some or all of the permitted development rights given by Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended in 2008 and 2010 (GDPO).
- 6.2 Article 4 Directions imposed in conservation areas should only relate to development that is likely to threaten the character or appearance of a conservation area.
- 6.3 Article 4 Directions cannot place an embargo on change and if a planning application required solely due to the Direction is refused, it is open to the normal right of appeal. Additionally if the owner is prevented from undertaking the work through the decision of the Council or at appeal there is a right to reasonable compensation where the owner can demonstrate that they were financially committed to such works. This used to be open ended, but is now limited to the first 12 months of the Direction coming into force (see Risk Assessment below).

7.0 Pilot Article 4 Direction

- 7.1 The existing confirmed Article 4 Direction in the District, which was made in order to prevent the painting of facing stonework in Harrogate town centre, has proved successful and records show that the Direction has only generated a single application and very few enforcement cases. Notwithstanding this, there is the possibility that the making of wider ranging Article 4 Directions would give rise to additional workload in the Planning Department.
- 7.2 For this reason, it was determined that a pilot should be run to enable the full implications and effectiveness of making Article 4 Directions to be understood before applying the model throughout the District.
- 7.3 Following the Committees' approval on the 2nd August 2011, in principal, of a pilot Article 4 Direction in Great Ouseburn, officers formally served notice upon owners/occupiers affected and invited representations within a 6-week period. An advert was placed in the local press and the Direction and a map of the affected area have been available for public inspection. A photographic record was taken of each property affected by the Direction on the day of service.
- 7.4 An officer also attended a Parish Council Meeting, by invitation, in order to answer questions on the purpose and scope of the Direction and the implications. Some residents present at the meeting expressed the need for clarity in the precise wording of the Direction, however it should be noted that the wording reflects that detailed in the General Permitted Development Order (GPDO). Notwithstanding this, the production of guidance on the Article 4 Direction is programmed and will form part of the proposed Heritage

Management Supplementary Planning Document (SPD).

- 7.5 At the time of writing this report, no representations had been received. Any responses received subsequently will be reported verbally at the meeting.
- 7.6 The process for confirming an Article 4 Direction is as follows:
- After at least 21 days, consider representations received and determine whether to confirm the Direction;
 - Prepare report to Planning Committee to have Direction confirmed.
 - Confirm land charge on all properties covered by the Direction;
 - Serve notice on owners/occupiers of confirmation of Direction and place advert in the local press.

If the Direction is not confirmed, the order will lapse 6 months after it is made, specifically 12th February 2012.

- 7.7 If Planning Committee confirms the pilot Article 4 Direction for Great Ouseburn and it is demonstrated that this Direction is effective in protecting the special character and appearance of the Great Ouseburn conservation area, it is intended that this template should be applied to other conservation areas in the District. Any such future Directions would need to be considered by the Planning Committee on a case-by-case basis.

8.0 Great Ouseburn Conservation Area

- 8.1 The Great Ouseburn Conservation Area Appraisal was adopted in September 2009 in accordance with the Planning (Listed Buildings and Conservation Areas) 1990 Act. The residents and Parish Council were fully involved in the survey and analysis of the character of their area, and directly contributed to producing the Appraisal document.
- 8.2 During the course of survey work in relation to the reappraisal of the conservation area, the Parish Council identified the damage that can be caused to the historic environment when normal permitted development rights are exercised. Local residents have expressed concern and are keen for action to be taken to avoid further erosion of the special character of the village. In response, the Parish Council urged the Council to pursue the proposal to make an Article 4 Direction in the village.
- 8.3 The pilot Article 4 Direction restricts permitted development in the interests of preserving the special character and appearance of the conservation area and the significance of individual heritage assets within the boundary. The schedule attached to and forming part of the Direction details the scope of the Direction and lists the classes of permitted development rights to be removed, a copy of the Direction is appended to this report. In summary, the works to be brought under planning control are as follows:
- extension or alteration of the front or side elevation of a dwelling house adjacent to a highway (including porches);
 - alteration to the front roof slope of a dwelling house (including dormers and rooflights);

- additional buildings in, and alterations to, the curtilage of dwelling houses (including the provision of hardstanding);
- installation of chimneys and flues;
- erection of gates or fences fronting a highway;

The Ward Member and the Parish Council are wholly supportive of the Article 4 Direction.

- 8.4 Part 25 Classes A and B and Part 40 Classes A to F inclusive of Article 3 Schedule 2 of the Town and Country Planning (General Permitted Development) Order, which relate to microwave antenna, solar photovoltaics, solar thermal and microgeneration, are omitted from this Direction as these classes are required to be made under a different procedure, which is to be set out in a separate report that will be brought before the Committee in due course. For the avoidance of any doubt, a separate Article 4 Direction is proposed to remove Part 25 Classes A and B and Part 40 Classes A to F inclusive of Article 3 Schedule 2 of the Town and Country Planning (General Permitted Development) Order.

9.0 FINANCIAL IMPLICATIONS

- 9.1 The potential financial implications of making an Article 4 Direction are essentially twofold:
- increased number of planning applications submitted for determination relating to development that would otherwise be classified as 'permitted development'- these additional applications would not generate a fee and therefore would constitute additional demand on resources in terms of officer time;
 - compensation claims for development under section 108 of the 1990 Act for abortive expenditure, or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 9.2 Notwithstanding the above, it should be noted that the experience of other local planning authorities in North Yorkshire suggests that after an initial period immediately following the making of an Article 4 Direction, there may be a very slight increase in the number of applications, but any increase quickly falls once residents understand the scope of, and justification for, the Direction. None of the North Yorkshire planning authorities have reported on paying compensation and the risk of an owner having placed an order for works to be done just prior to the making of an Article 4 Direction is minimal. In the unlikely event that an owner was financially committed, the Council could decide to grant consent for that work if any harm were mitigated. As with any changes to planning policy, there is a risk of compensation claims, but this is very low. This risk has been reduced by notifying property owners at the earliest opportunity following the decision to make the Direction and will be further reduced by notifying owners once the Direction is confirmed.

- 9.3 Similarly, any enforcement action associated with the Direction can be significantly minimised by notifying property owners at the earliest opportunity following the decision to make and confirm the Direction.
- 9.4 During the 6 week consultation period and indeed since the consultation period ended on the 23rd September 2011 to date, there has been no record of applications generated solely by the Article 4 Direction having been submitted. Furthermore, there have not been any compensation claims or any enforcement cases resulting from the Direction to report.
- 9.5 The government has recently produced a consultation paper on the proposal to de-centralise planning fees for different types of applications. If adopted, this proposal would allow local authorities to determine applications for which fees would be payable as well as setting the level of fees. Applications generated by Article 4 Directions are included in the consultation paper and consequently, there may be scope to apply fees to such applications in the foreseeable future. The consultation period has now closed and the outcome is expected in due course.

10.0 HUMAN RESOURCES IMPLICATIONS

- 10.1 Consultation with the Human Resources section was not deemed necessary during the preparation of this report.

11.0 LEGAL IMPLICATIONS

- 11.1 The Council has powers to make and review conservation areas and management plans by virtue of Part II, Section 69 (1(a)) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 11.2 The Council's powers to make Article 4 Directions are contained in Articles 4, 5 and 6 of the Town and Country Planning (General Permitted Development) Order 1995, as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (SI 2010/654)
- 11.3 Section 108 of the Town and Country Planning Act 1990 provides for the payment by the Council, in limited circumstances, of statutory compensation to persons who have incurred abortive expenditure or otherwise suffered loss or damage as a direct result of the withdrawal of permitted development rights by an Article 4 Direction.

12.0 ICT IMPLICATIONS

- 12.1 Consultation with the Technical Advisory Board (TAB) was not deemed necessary during preparation of this report.

13.0 RISK ASSESSMENT

- 13.1 A risk assessment has been undertaken and the risks are considered to be low as outlined below.

- 13.2 Potential risks are identified as follows:
- increased number of planning applications submitted for determination relating to development that would otherwise be classified as 'permitted development'. It is considered, and the experience of other planning authorities in North Yorkshire and further a field suggests, that this is low risk. Any slight increase in the number of applications is likely to be for a short period immediately following the making of a Direction, falling thereafter once the Direction is established and understood;
 - increased workload for the Enforcement Team as required in enforcing the scope of the Direction. This risk can be minimised with early notification following the decision to make a Direction;
 - compensation claims for development under section 108 of the 1990 Act for abortive expenditure, or other loss or damage directly attributable to the withdrawal of permitted development rights. Evidence suggests that the occurrence of compensation claims is minimal and the risk can be further minimised through early notification.

13.3 Notwithstanding the potential risks outlined above, the risks of not making a Direction are that the special character and appearance of the conservation areas in the District will be eroded by inappropriate, incremental extensions and alterations resulting from the implementation of 'permitted development' rights. Furthermore determining not to make Article 4 Directions may result in the loss of community support to the detriment of the good relations forged during the programme of review and reappraisal of the Districts conservation areas.

13.4 It should be noted that local businesses might potentially benefit from the additional planning controls. For example joiners may secure work supplying and/or repairing traditional timber windows that might otherwise be lost to UPVC replacements sourced from outside the District.

13.5 During the 6 week consultation period and indeed since the consultation period ended on the 23rd September 2011 to date, there has been no record of applications generated solely by the Article 4 Direction having been submitted. Furthermore, there have not been any compensation claims or any enforcement cases resulting from the Direction to report.

14.0 EQUALITY AND DIVERSITY

14.1 An Equality and Diversity Impact Assessment has been undertaken and the impact of this proposal on race, disability and gender equality in the local community or in the Council is neutral.

15.0 CONCLUSIONS

15.1 The implementation of an Article 4 Direction needs to be proportionate. It

should be designed to address a perceived and immediate threat to the overall character and appearance of a conservation area, rather than as a response to protect development at a single site. From the survey and review of all 52 conservation areas in the District, it is evident that incremental alterations, such as the removal of traditional timber windows and doors and the installation of UPVC replacements and the installation of solar panels on roof slopes fronting the village street, do present a threat to the special character of District's conservation areas and the quality of the historic environment.

- 15.2 Following a survey of development carried out under 'permitted rights' in the Great Ouseburn conservation area and considering the threat of further such development, it is concluded that the imposition of an Article 4 Direction would be proportionate. Such a Direction would not place an embargo on change, but rather it brings certain types of permitted development within the scope of planning control (See Appendix for the list of permitted development rights proposed to be removed).
- 15.3 The use of an Article 4 Direction, which restricts permitted development in the interests of preserving the special character and appearance of the conservation area and the significance of individual heritage assets within the boundary, is in line with government guidance and this approach has strong public support. The use of Article 4 Directions is referenced in the management guidelines detailed in the Conservation Area Appraisal documents as one of a number of measures to help preserve and enhance the special character of these areas.

Background Papers -
Great Ouseburn Conservation Area Appraisal

OFFICER CONTACT: Please contact Mrs Naiomi Kempton Harrogate Borough Council if you require any further information on the contents of this report. The Officer can be contacted at the Department of Development Services, Knapping Mount, West Grove Road, Harrogate, HG1 2AE by telephone on 01423 556693 or by e-mail at naiomi.kempton@harrogate.gov.uk

**SUSTAINABILITY ASSESSMENT / POLICY & COMMUNICATIONS
CONSIDERATIONS**

		Implications are		
		Positive	Neutral	Negative
A	Economy		✓	
B	Environment	✓		
C	Social Equity		✓	
i)	General		✓	
ii)	Customer Care / People with Disabilities		✓	
iii)	Health Implications		✓	
D	Crime and Disorder		✓	

	Implications			
E	Business Transformation		✓	
F	Communications		✓	

If all comments lie within the shaded areas, the proposal is sustainable.