



East
Northamptonshire
Council

Planning Policy Committee 21 July 2014

Review of Existing Article 4 Directions

Purpose of report

The purpose of this report is to update the committee regarding the council's existing article 4 directions and to make recommendations as to revisions to those directions.

Attachment(s)

1.0 Introduction

1.1 This committee considered a report regarding the state of the council's article 4 directions at its meeting on 25 July 2011. The committee resolved to approve the revisions proposed (minute 119 refers). Since then work has been carried out to prepare draft directions and legal advice has been sought. However, as a considerable period of time has passed since the committee considered the issues, and given that we have now received further legal advice regarding procedural matters, this report is now seeking to update the committee and renew the authority to undertake this work.

2.0 Background

2.1 An article 4 direction is essentially a mechanism which allows local planning authorities to withdraw permitted development rights in certain circumstances so as to bring building works which would otherwise be 'permitted development' within control. The aim of making such a direction is to ensure that the traditional details which form part of the character of an area are not removed or altered, and that development which would damage the character of an area does not go ahead.

2.2 The council currently has four conservation areas that are subject to article 4 directions. These are the conservation areas of Easton on the Hill, Collyweston, Duddington and King's Cliffe. With the exception of the article 4 direction covering the King's Cliffe Conservation Area, which was approved in 1999, all have been in force since the early 1990s.

3.0 Issue and Need

3.1 The Town and Country Planning (General Permitted Development) Order 1995 (the 'GPDO') is the legislation that governs permitted development rights; it is frequently being amended to reflect government policy.

3.2 In 2008 a series of amendments were made to the GPDO, some of which have a direct impact upon the existing article 4 directions. For example, works which involve the installation, alteration or replacement of a chimney, flue or soil vent pipe on a dwellinghouse would previously have been covered by Part 1 Class C (other alterations to the roof of a dwellinghouse), but is now covered specifically by the newly revised Class G. As Class G, which formerly related to the installation of oil tanks, is not currently covered in any of the article 4 directions, we currently cannot control this sort of work.

3.3 In addition to the changes to the existing classes of Part 1 of Schedule 2 of the GPDO which covers general householder works, a separate part was introduced to cover the

installation of domestic microgeneration equipment (Part 40). Of particular interest in Part 40 is the installation of solar panels which were previously assessed under Class C of Part 1.

- 3.4 Initially, when this class was introduced in April 2008 a planning application was required for solar panels if sited on a roof slope or a wall of a dwelling located within a conservation area. However, this legislation was amended again in October of the same year, removing the requirement for planning permission for solar panels on roof slopes of dwellings within conservation areas. Currently, therefore, an application for planning permission is only required for solar panels which are to be installed on walls of dwellings within conservation areas.
- 3.5 We have begun to see a plethora of solar panels appearing in conservation areas, often on the front roof-slopes of buildings. The majority of the developments carried out to date are considered unsightly and damaging to the special character and appearance of the area. A number of parish councils have contacted us recently to express their concern over this type of development.
- 3.6 Notwithstanding the amendments to the GPDO which came into force in 2008, the article 4 directions are in need of review owing to the fact that all but the direction concerning the King's Cliffe Conservation Area do not remove Part 1 Class B of the GPDO which relates to the enlargement of a dwelling house consisting of an addition or alteration to its roof. This situation may have occurred because the directions were prepared before 1995, when the GPDO came into force.

4.0 Article 4 Directions

- 4.1 Advice on the use of Article 4 Directions is contained in the Department for Communities and Local Government, Replacement Appendix D to Department of the Environment *Circular 9/95: General Development Consolidation Order 1995*. This states that generally permitted development rights should only be withdrawn in "exceptional circumstances" and only where there is a real and specific threat. This guidance also states that there should be particularly strong justification for the withdrawal of permitted development rights relating to, among other things, the installation of microgeneration equipment.
- 4.2 It is considered that there is strong justification to withdraw the permitted development rights relating to the installation of microgeneration equipment in this instance given that the special character of some of the district's conservation areas have been harmed by this type of development. Also, it should be noted that we are not seeking to remove all permitted development rights regarding the installation of microgeneration equipment, just those that relate to the installation on dwellings (freestanding equipment will still be permitted).
- 4.3 The effect of an article 4 direction is not that development within the particular category of permitted development cannot be carried out, but simply that it is no longer automatically permitted by Article 3 of the General Permitted Development Order and must instead be subject to a specific planning application. This does not necessarily mean that we will refuse permission for the works but it does enable us to retain some control over the design and detailing of the proposed development and to grant permission subject to appropriate conditions.
- 4.4 Such applications would need to be considered against national and local policy and any other relevant material consideration, including a conservation area appraisal. This type of application would not attract a planning fee so the additional costs would be borne by the council in determining the application.
- 4.5 It should be noted that an article 4 direction cannot be applied retrospectively to works that have already been carried out.

5.0 Proposed Revisions

5.1 It is proposed that the four existing article 4 directions are revised to remove the following permitted development rights (those marked with * are not currently withdrawn):

- Class A of Part 1 of Schedule 2 – *the enlargement, improvement or other alteration of a dwelling house*
- *Class B of Part 1 of Schedule 2 – *the enlargement of a dwelling house consisting of an addition or alteration to its roof*
- Class C of Part 1 of Schedule 2 – *any other alteration to the roof of a dwelling house*
- Class D of Part 1 of Schedule 2 – *the erection or construction of a porch outside any external door of a dwelling house*
- *Class E of Part 1 of Schedule 2 – *the provision within the curtilage of the dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure; or, a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.*
- *Class F of Part 1 of Schedule 2 – *the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse*
- *Class G of Part 1 of Schedule 2 – *the installation, alteration or replacement chimney, flue or soil vent pipe on a dwellinghouse*
- Class H of Part 1 of Schedule 2 – *the installation, alteration or replacement of a microwave antenna on a dwellinghouse or within the curtilage of a dwellinghouse*
- Class C of Part 2 of Schedule 2 – *the painting of the exterior of any building or work*
- *Class A of Part 40 of Schedule 2 – *the installation, alteration or replacement of solar PV or solar thermal equipment on (a) a dwellinghouse; or (b) a building situation within the curtilage of a dwellinghouse*

6.0 Process for making/revising an article 4 direction

6.1 There is provision within the legislation to make/revise an article 4 direction concerning a conservation area without the need for the Secretary of State's confirmation. A prescribed list is provided within the legislation relating to certain categories of permitted development rights which does not require the approval of the Secretary of State. However, a number of existing categories which have been removed from the conservation areas in question are not included in the list. This list also relates specifically to the elevations of properties fronting a highway, waterway or open space, i.e. usually the front elevation (this is different from the council's existing directions which cover all elevations of properties). Thus, in order to catch all those categories listed in paragraph 5.1 above we shall need to serve a copy of the notice on the Secretary of State, who subsequently has the option to cancel or modify the direction(s).

6.2 In addition to the above, the legislation states that where a local planning authority makes a blanket direction under article 4(1)(a), it must publicise it by inserting a notice in a local newspaper, erecting no less than two site notices and serving a notice on every dwelling affected by the direction (unless this is impracticable).

6.3 The direction comes into force on the date on which the notice is served on the owner or occupier, or the date of the press advertisement. While there is no right of appeal against the making of an article 4 direction, any representations made in response to the notices must be considered. The direction may then be confirmed, not less than 28 days after the last notice was published.

6.4 Once the direction is confirmed, further notice of the confirmation must be undertaken, in the same way the initial notification was undertaken.

7.0 Equality and Diversity Implications

7.1 There are no equality and diversity implications arising from the proposals.

8.0 Legal Implications

8.1 There are no legal implications arising from the proposals.

9.0 Risk Management

9.1 There is a risk that the Secretary of State will cancel or modify the direction(s), therefore leaving us with less control/protection over the conservation areas than we have at present. In order to mitigate against this we can withdraw the existing directions at a later date (following the Secretary of State's confirmation).

9.2 In addition to the above it must be noted that 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.

9.3 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 GDPO would normally allow, as a result of an article 4 direction being in place.

9.4 Compensation would be based on any abortive expenditure or any other loss or damage incurred.

10.0 Resource and Financial Implications

10.1 The proposals give rise to expenditure owing to the administration required (see section 6), and also to the administration of planning applications which arise through the directions, as they do not attract a fee. These resources will be funded through existing budgets.

11.0 Constitutional Implications

11.1 There are no constitutional implications arising from this report.

12.0 Corporate Outcomes

12.1 The relevant Corporate Outcomes are:

- Good Quality of Life
- Effective Management

13.0 Recommendation

13.1 The committee is recommended to approve the revision of the four existing article 4 directions in accordance with the proposals at paragraph 5.1 of this report, and note that a further report will be submitted to the committee for confirmation of the directions in due course.

(Reason: to accord with the legislation)

Legal	Power: The Town and Country Planning (General Permitted Development) Order 1995				
	Other considerations:				
Background Papers: Review of Existing Article 4 Directions, Planning Policy Committee, 25 July 2011					
Person Originating Report: Lloyd Mills, Senior Conservation Officer ☎ 01832 742133 ✉ lmills@east-northamptonshire.gov.uk					
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CFO		MO		CX	