

MUNICIPAL YEAR 2009/2010 REPORT NO. 83

MEETING TITLE AND DATE:

COUNCIL

23 September 2009

REPORT OF:

Director of Place Shaping &
Enterprise

Agenda - Part: 1**Item: 7****Subject:**

Conservation Area Review Phase III

Approval of proposed Article 4 Directions to support revised boundaries for existing conservation areas and one new conservation area.

Wards:

Enfield Lock, Chase, Town, Southgate, Southgate Green.

Cabinet Members consulted:

Cabinet Members for Environment and Street Scene and Place Shaping and Enterprise

Contact officer and telephone number:

Mike Brown (ext. 3865) E mail: MIKE.BROWN@enfield.gov.uk

1. EXECUTIVE SUMMARY

- 1.1 Cabinet has approved boundary amendments for Church Street Edmonton, Fore Street Edmonton, Clay Hill, Enfield Lock, Forty Hill, Ponders End Flour Mills, Southgate Green, Turkey Street and Winchmore Hill Green Conservation Areas together with approval of a proposed Abbotshall Avenue Conservation Area. This decision has taken immediate effect. Of the extended existing conservation areas, Clay Hill, Enfield Lock, Forty Hill, and Southgate Green involve the inclusion of further small numbers of houses. All properties in the new Abbotshall Avenue Conservation Area are houses.
- 1.2 Householders have permitted development rights allowing them to carry out a range of development works to houses without planning permission. Such development works can have a harmful effect on the character or appearance of the area leading to the erosion of their special interest. The Council has already removed these rights from householders in the original part of the existing conservation areas.
- 1.3 This report recommends that these permitted development rights be withdrawn from these householders within the extended and the new conservation areas. This is achieved by serving Article 4 Directions on identified properties and specifying what works need to be the subject of a planning application (Appendix A). The majority of these permitted development rights can be withdrawn by the Council under its powers to make an Article 4 (2) Direction. The removal of one particular permitted development right, the installation of solar or

photo-voltaic panels on front roof slopes, will need to be approved by the Secretary of State under an Article 4 (1) Direction.

- 1.4 Once the Directions are served they come into immediate force, but require re-affirmation within 6 months. The report therefore further recommends Planning Committee be given the power to consider any representations received and then, as appropriate, to authorise the subsequent confirmation that the Directions be made permanent.

2. RECOMMENDATIONS

- 2.1 That Council approves that the dwelling houses listed within Appendix A of this report be subject to an Article 4(2) Direction under The Town & Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008, in respect of those Parts/Classes of the Order scheduled against each Conservation Area in Appendix A, removing permitted development rights.
- 2.2 That the Director of Place Shaping and Enterprise undertakes the necessary steps to serve Article 4 Directions on the properties within the conservation areas referred to in Appendix A.
- 2.3 That any representations arising from the serving/publication of the Article 4 Directions be reported to the Planning Committee for consideration and a final formal decision be made as to whether the Directions should be made permanent with regard to any of the affected properties.
- 2.4 That Council delegates the authority to Planning Committee to carry out 2.3 above, in relation to these proposed Directions.
- 2.5 That the Conservation Advisory Group is advised when the Directions are made.
- 2.6 That the Director of Place Shaping and Enterprise be further instructed to apply to the Secretary of State for approval of an Article 4 (1) Direction removing the permitted development right to install solar PV or solar thermal equipment on the principal or side roof slopes of householders allowed under Part 40 of Class A of Schedule 2 of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 as amended by The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 for all properties shown on the Schedule in Appendix A to this report.
- 2.7 Should the Secretary of State approve the Article 4 (1) Direction, the

Director of Place Shaping and Enterprise be instructed to carry out Recommendations 2.2 – 2.5 above in this regard.

3. BACKGROUND

3.1 Context

- 3.1.1 As part of the Council's Conservation Areas Review Phase I, Character Appraisals and Management Proposals were approved for each of the existing 16 conservation areas in the Borough. One of the Management Proposals for those conservation areas with a predominantly residential character was the making of an Article 4 (2) Direction removing permitted development rights from householders in order to bring minor development works within the planning system. This was approved by full Council in 2006 and has proven a popular measure with the public and an effective tool in helping the Council to 'preserve and enhance' the character or appearance of those conservation areas.
- 3.1.2 Phase II of the Conservation Area Review identified four new conservation areas together with Character Appraisals and Management Proposals for each. As before with Phase I, one of the Management Proposals for those new conservation areas with a predominantly residential character (being Grange Park, Meadway and The Crescent) was the making of Article 4 Directions to remove permitted development rights from householders in order to bring minor development works within the planning system. This was approved by full Council in 2008.
- 3.1.3 Phase III, approved by Cabinet on the 16th September 2009, involves the progressing of two of the Management Proposals for many of the original conservation areas:-
- 1/ the revision of their boundaries to make them more defensible and
 - 2/ the making of Article 4 directions to protect houses within them.
- 3.1.4 As a consequence of the boundary revisions approved under Phase III, four of the conservation areas (being Clay Hill, Enfield Lock, Forty Hill, and Southgate Green Conservation Areas) have enlarged to include a small number of houses. These conservation areas presently have in place successful and popular Article 4 Directions which remove permitted development rights from houses within them (see below). It is proposed to remove the permitted development rights from these further houses now included within the conservation areas.
- 3.1.5 Phase III also included the designation of a new conservation area – the Abbotshall Avenue Conservation Area. In common with all other conservation areas, the Council has approved a Character Appraisal and Management Proposals document for it. One of the approved Management Proposals is that an Article 4 Direction is made that

removes the permitted development rights from houses within the Conservation Area.

- 3.1.6 Therefore this Report to Council considers a “daughter” document to the above Management Proposals documents. It actions the recommendation in the parent documents to serve the Article 4 Directions to withdraw certain specific permitted development rights.
- 3.1.7 The revised and new Character Appraisals, Management Proposals and, if approved, this Article 4 Report will form a family of documents that will allow the effective management of the Borough’s conservation areas, to ensure their special character and appearance is preserved and enhanced.

3.2 Article 4(2) Direction

- 3.2.1 Householders in single-family dwellings have certain ‘permitted development’ (‘PD’) rights under planning legislation (The Town & Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008) enabling them to undertake certain works to their properties without the need to formally seek planning permission. Many PD rights are also exercisable within conservation areas. Flats, maisonettes or other properties (commercial) do not enjoy these PD rights.
- 3.2.2 The implementation of development works, (for example installation of PVCu windows and doors, roofing works and the removal of front gardens and boundary walls to make off-road parking spaces) carried out as PD, can be very detrimental to the appearance and character of conservation areas. The consultant carrying out the Character Appraisals of each of the Borough’s conservation areas has identified such problems within many of our conservation areas. These have been identified within the Management Proposals documents for those areas together with a proposal that Article 4 Directions be made to remove these PD rights from households within them.
- 3.2.3 The schedules in Appendix A detail the affected addresses within each of the above areas and the specific categories of PD rights that are proposed for removal.
- 3.2.4 The Council, as Local Planning Authority, is able to exercise the power to make an Article 4(2) Direction to remove most PD rights within conservation areas.
- 3.2.5 Once a Direction is formally served it takes immediate effect – thus requiring that the specific scheduled works can only be carried out with express planning permission. Any owner is able to make representations to the Council on the serving of the Direction on their property. Any received representations must then be considered, and if the Council is minded to confirm the Direction then this must be

exercised not less than 28 days or more than 6 months of the Direction first being served. A final confirmed Direction is then served.

3.3 Article 4 (1) Direction

- 3.3.1 One category of harmful works – the permitted development right to install solar photo-voltaic or solar thermal panels – is a recent introduction to the General Permitted Development Order. Part 40 of Class A of Schedule 2 of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 introduced in April 2008 allowed householders to install such equipment. An exception was their installation on principal or side elevation walls and roof slopes on dwelling houses within conservation areas, where they were not permitted.
- 3.3.2 However, The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 introduced in October 2008 removed the restriction on the installation of such equipment on roof slopes in conservation areas. Given the importance of the roof slopes to the character and appearance of our conservation areas it is considered that the uncontrolled installation of solar PV and solar thermal panels within these areas will cause considerable harm to their special interest. It is recommended, therefore, that this permitted development right is removed.
- 3.3.3 However, upon advice from the Department of Communities and Local Government (CLG), who are responsible for the Order, a drafting oversight in the Amendment Orders has not enabled this permitted development right to be withdrawn under an Article 4 (2) Direction. The advice from CLG is that it can only be withdrawn under an Article 4 (1) Direction, which must be approved by the Secretary of State. The above Recommendations 2.6 and 2.7 instruct officers to pursue that course. Should the Article 4 (1) Direction be approved the mechanism for serving and confirming the direction is the same as for Article 4 (2) Directions.
- 3.3.4 The Council is mindful of its responsibility to play the fullest part in reducing energy waste and combating climate change and officers will help applicants for planning permission for such equipment to seek acceptable solutions that achieve those aims while not harming the special architectural or historic interest of the relevant conservation area. Often this can be achieved by the simple relocation of the proposed equipment on rear slopes, not visible from the highway.

3.4 General

- 3.4.1 An Article 4 Direction is registered against a property as a Local Land Charge and is declared on any subsequent searches.
- 3.4.2 Requiring planning applications for hitherto permitted works across these designated (conservation) areas will generate some additional applications to the Development Control Service. The additional applications are exempt from any planning application fees, and will involve some more casework for the Development Control Service. As these are relatively minor proposals, such applications are usually

determined under delegated powers. An assessment has been carried out and it is forecast that the designations and Article 4 Directions together would produce approximately 2 new planning applications p.a. (compared with an average number for the service of 2,864 p.a.). The assessment suggests a similar small increase in workload for planning enforcement. This is statistically insignificant and can be contained within existing resources.

3.4.3 Compensation could be sought from the LPA in those circumstances where a householder could demonstrate loss of value to their property if this is wholly attributable to the making of an Article 4 Direction. This would have to be in a case where planning permission was refused, or granted with conditions, solely because of the Direction. The likelihood of such a claim being received is quite remote, and needs to be considered in the context of the actual PD rights being withdrawn. For example the loss of rights to replace roof material of your choice (as opposed to, say, slate) or refusal to insert plastic windows, are unlikely to substantiate a material loss of value to the property that could support a compensation claim.

4. REASONS FOR RECOMMENDATION

There is no alternative way to secure control of otherwise 'Permitted Development' and safeguard the character of the Borough's Conservation Areas.

5. ALTERNATIVE OPTIONS CONSIDERED

It is evident from the Conservation Area Character Appraisals that the character of these areas is under threat from unsympathetic minor developments. The only way to address this is to remove PD rights and secure a higher standard of work, or even to refuse wholly inappropriate proposals, by requiring planning permission for the works.

6. DIRECTOR OF FINANCE & CORPORATE RESOURCES COMMENTS

6.1 Finance Implications

There is a cost, albeit limited, for the actual legal processing/serving/ advertising of the Directions. The additional costs arising from the process are not significant and these will need to be met from within existing Planning budgets.

6.2 Legal Implications

The making of the proposed directions is a non-executive function, so must be referred to full Council. The directions must be advertised and served on affected properties as soon as it is made. It becomes effective upon service but must be ratified within 6 months, at which time any representations received must be formally considered prior to confirmation. It is proposed that the Directions are ratified by Planning Committee, in which case a delegation of authority is necessary as this is currently outside the general terms of reference

of Planning Committee. The withdrawal of permitted development (PD) rights may give rise to a claim for compensation if an application is refused or granted subject to conditions other than mentioned in the Order. Compensation may be claimed for abortive expenditure and loss or damage directly attributable to the loss of PD rights.

6.3 Property Implications

The Council does not own any household properties within the effected areas and will not be affected by the Article 4 Directions.

6.4 Risk Management Implications

Failure to approve the Article 4 Directions will allow uncontrolled development works to be carried out to household properties within the conservation areas. Such works have been demonstrated to be a major cause of the incremental erosion of the special architectural and historic interest of the areas. The purpose of designation of conservation areas is to preserve or enhance their character and appearance and thereby protect that special interest. The Article 4 Directions will strengthen the Council's ability to discharge this statutory duty.

6.5 Health & Safety Implications

None

7. PERFORMANCE MANAGEMENT IMPLICATIONS

7.1 The introduction of Article 4 Directions within Enfield's conservation areas is part of a wider package of management proposals being brought forward for these areas and it thus achieves compliance with current Government advice and local performance indicators for such areas.

7.2 The enlarged existing and new conservation areas and associated Article 4 Directions will add to the work load of the Conservation Team, Development Control and Enviro-crime through the generation of further planning applications of greater complexity and detail requiring more public consultation procedures and the need for more rigorous planning enforcement within these areas. Planning applications under an Article 4 direction do not attract a fee. Nevertheless, it is forecast that the increase in workload is statistically insignificant and can be contained within existing resources.

8. COMMUNITY IMPLICATIONS

Enfield's heritage is of growing importance to local people and its effective protection and beneficial utilisation is a key foundation upon which healthy, engaged and sustainable communities must be built. Once approved, the Article 4 Directions will improve the Council's effectiveness in this important field and thereby support the Place shaping agenda, sustainable communities and social adhesion within Enfield's diverse citizens and groups.

9. PUTTING ENFIELD FIRST

Aim 2 of Putting Enfield First – the Council Business & Improvement Plan 2009/2012 is 'A cleaner, greener sustainable Enfield'. Objective 2e is to:-

'Protect and enhance the character and quality of Enfield's buildings through good urban design, protection of conservation areas and local heritage and improve parks and green spaces'.

The Article 4 Directions will be a major driver for fulfilling this aim. They will form a key element for the delivery of sustainable development within the Borough and an important contributor to successful place shaping.

Background Papers:

The Cabinet Report of the 16 September 2009 that approved the amended existing and new designations and the Management Proposals for the affected conservation areas from which this report and recommended Article 4 Directions flow.

The Character Appraisals and Management Proposals for the amended existing and new conservation areas held by Mike Brown, Team Leader for Conservation X3865.

APPENDIX A
THE ARTICLE 4 DIRECTION SCHEDULES