

MUNICIPAL YEAR 2017/2018 REPORT NO. 38

MEETING TITLE AND DATE:

Council 19.7.17

REPORT OF:

Director – Regeneration and Environment

Contact officers and details:

Christine White 020-8379-3852

Harriet Bell 0208 379 4700

E mail: Christine.White@enfield.gov.uk

Harriet.Bell@enfield.gov.uk

1.1.1 Agenda –

Item: 10

Subject: Review of Enfield Town Article 4 Directions

Wards: Town, Grange

Key Decision No: 4322

Cabinet Member consulted:

Cabinet Member for Economic Regeneration & Business Development

Cabinet Member for Environment

1. EXECUTIVE SUMMARY

- 1.1 Householders have permitted development rights allowing them to carry out a range of development works to dwellings without the express need for planning permission. Where these works are undertaken insensitively they can have a harmful effect on the character or appearance of a conservation area leading to the erosion of its special interest. Article 4 Directions allow the Council to remove these permitted development rights so that express planning permission is required, thereby giving greater control over the appearance, form and design.
- 1.2 The Council has previously made three Article 4 Directions in Enfield Town, dating from 1978, 2003 and 2006. The Directions from 1978 and 2006 relate to the removal of permitted development rights from dwellinghouses and the 1978 order includes some flats. The Direction from 2003 relates to the painting of external brickwork on a number of properties in The Town.
- 1.3 Due to the passage of time and changes in legislation the 1978 and 2006 Article 4 Directions and the protection they afford are now out of date. The effect has been to leave the conservation area vulnerable to the very harm that Article 4 Directions are used to prevent. Consequently, the aims of the reviewed and approved Enfield Town Conservation Area Management Proposals (2015) can only be met in part.
- 1.4 The Article 4 Directions for the Enfield Town Conservation Area have been reviewed. It is recommended that a non-immediate Article 4 (1) Direction is served for the whole of the Enfield Town Conservation Area. If confirmed this will withdraw permitted development rights given under current legislation for broadly the same range of development as is controlled by the 1978 and 2006 directions. This will continue to maintain the upkeep of the area by providing a consistent approach to the restrictions placed on permitted developments to dwellinghouses and flats in Enfield Town Conservation Area. It will also extend the geographical area of coverage and hence make the provisions consistent across the conservation area. No change is proposed for the 2003 Article 4 Direction which does not apply to dwellinghouses.

- 1.5 As set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) notice must be given as soon as possible after the recommendation is authorised by local advertisement, site notice and where practicable by notification to all owner/occupiers within the affected area giving the proposed date on which the order will come into effect. A period of at least 21 days will need to be specified in the notice to allow any representations concerning the direction. A date will need to be set which will specify when the direction will come into force. This date must be at least 28 days but no longer than 2 years after the 21 day period referred to above on which representations can be made. The consultation will also be informed by the Equalities Impact Assessment.
- 1.6 Account must be taken of representations received during consultation when deciding whether to confirm the Direction. (The Directions from 1978 and, 2006 for Enfield Town would also then be cancelled.) This will be the subject of a further report, which it is recommended that the Planning Committee be authorised to determine.

2. RECOMMENDATIONS

2.1 That the Council:

- 2.1.1 approves the serving of a non-immediate Article 4(1) Direction under The Town and Country Planning (General Permitted Development) Order (2015) upon all properties and shown on the attached map at Appendix 1 for the whole of the Enfield Town Conservation Area, withdrawing permitted development rights as set out in the schedule attached at Appendix 2.
- 2.1.2 authorises the statutory consultation as set out in The Town and Country Planning (General Permitted Development) (England) Order (2015) Schedule 3.
- 2.1.3 authorises the Planning Committee to have regard to the representations received during consultation and confirm or cancel the new Article 4 (1) Direction or as directed by the Secretary of State and to cancel the existing 1978 and 2006 directions.
- 2.1.4 notes that the existing Article 4 Directions cover 343 residential properties in the conservation area of which 29 are addressed as flats and the new order will cover 900 residential properties of which 215 are addressed as flats.

3. BACKGROUND

- 3.1 The Council has recently reviewed appraisals and management proposals for its twenty-two conservation areas, reviewing problems and pressures as well as opportunities for their improved management. The review of the Enfield Town Conservation Area highlighted gaps in the cover provided by the existing Article 4 Directions as well as difficulties with their implementation due to changes in legislation since they were drawn up.
- 3.2 The Council is working to produce a new masterplan for Enfield Town. This review of the Article 4 Directions will provide a robust framework for the ongoing management of the Conservation Area, supporting and consolidating the benefits brought by the masterplan.
- 3.3 The proposals for revisions to the Enfield Town Article 4 Directions have been developed in discussion with the Enfield Town Study Group and with reference to the Conservation Advisory Group (CAG).
- 3.4 The extension to the Article 4 Direction proposed has been discussed with the Head of Development Management. Costs will be accommodated from existing resources.
- 3.5 Article 4 Directions remove permitted development rights for certain works with the consequence that express planning permission is required for these works, thereby enabling the Council to manage change to preserve and enhance the conservation area.
- 3.6 There are currently three Article 4 Directions in place for Enfield Town Conservation Area:
1978 - parts of Gentleman's Row, Chase Side, Chase Side Place, Holly Walk and River View
2003 - part of The Town
2006 - parts of Chase Side Avenue, Essex Road, Sydney Road and Raleigh Road
The 2003 Direction is concerned with the painting of external brickwork on commercial premises, but the Directions from 1978 and 2006 relate to household development.
- 3.7 Although served under differing legislation, the scope of what is covered in the 1978 and 2006 directions is broadly consistent - the enlargement, improvement and alteration of dwelling houses including roof coverings, alterations to windows, demolition of chimney stacks, or the addition of external render (1978 order), addition of porch enclosures, creation of hard surfacing, addition of gates, walls or fences or other means of enclosure, creation of access to the highway (1978 order), external painting and in the case of the 2006 order, demolition of a wall, gate or means of enclosure and installation of satellite antennae. Controls were restricted to certain streets or parts thereof, excluding buildings now recognised as of historic / architectural interest or important to the setting of such buildings. This makes it hard for owners and their agents to anticipate whether a property will be covered and perceptions that the

designations are arbitrary. Some properties in other uses at the time the Article 4 was made have reverted to being dwellings and now have permitted development rights that their neighbours do not.

- 3.8 To resolve the problems of the existing Article 4 Directions and make the level of control more consistent it is proposed that the existing orders from 1978 and 2006 should be cancelled and a new order served for the whole of the Enfield Town Conservation Area. A whole-area Direction would enable greater clarity for property owners and occupiers and ensure that properties are not excluded from control through subsequent change of use or in error. Withdrawing permitted development rights for alterations to the side and rear roof slopes of dwelling houses and for painting of exteriors, enclosures and demolition of front boundary walls/enclosures at flats would enable greater consistency with controls on dwelling houses and flats already included in the orders from 1978 and 2006. These controls, however, go beyond what is permissible in a Direction made with immediate effect which the Secretary of State does not have the power to cancel or modify and consequently a non-immediate Direction is proposed.
- 3.9 As set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) notice must be given as soon as possible after the recommendation is authorised by local advertisement, site notice and where practicable by notification to all owner/occupiers within the affected area giving the proposed date on which the order will come into effect. A period of at least 21 days will need to be specified in the notice to allow any representations concerning the direction. A date will need to be set which will specify when the direction will come into force. This date must be at least 28 days but no longer than 2 years after the 21 day period referred to above on which representations can be made.
- 3.10 This report seeks authority to delegate powers to the Planning Committee, to confirm or withdraw the new notice or as directed by the Secretary of State and to cancel the existing 1978 and 2006 Direction for Enfield Town. It should be noted that with an Article 4(1) Direction the Secretary of State may intervene at any stage before or after confirmation.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 An alternative would be to make an Article 4(1) Direction for the whole of the Enfield Town Conservation Area with immediate effect and cancel the existing orders from 1978 and 2006. Due to the provisions of the legislation, however, a Direction with immediate effect would dilute the level of control already in place (in the case of works to roofs) and so reduce the Council's ability to manage the conservation area as set out in the approved management proposals.
- 4.2 A second alternative would be to leave the existing Article 4 Directions in place and serve another Article 4 (1) Direction filling in the gaps. This would mean, increasing the existing confusion over what is controlled, and where, and increasing the perception of arbitrary implementation.

- 4.3 A third alternative would be to leave the existing Directions in place and not extend the cover. This would perpetuate the problems identified and also mean that the Council could only partially implement the approved management proposals for the conservation area.
- 4.4 There has been concern expressed by the Enfield Town Conservation Area study group regarding the effect of permitted development rights introduced in 2008 for micro-generation. There is, however, little evidence of it yet being a sufficiently significant problem in the Enfield Town Conservation Area to counter a fairly recent government initiative. By including micro-generation within the new Direction there would be increased risk of intervention by the Secretary of State as it extends the scope of what is brought under control. Without sufficient evidence, removing permitted development rights for micro-generation is unlikely to be approved and the inclusion of controls on micro-generation could jeopardise the other measures in the new Direction. However, the situation should be kept under review, as for all conservation areas

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Council has a duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to put in place proposals for the preservation and enhancement of its conservation areas. The use of Article 4 Directions is part of discharging that duty.
- 5.2 Due to changes in legislation and practice over time, the existing Article 4 Directions for Enfield Town Conservation Area from 1978 and 2006 leave a lack of clarity as to what is covered. There is an increasing concern that the level of cover is made inconsistent when properties change from other uses back to houses, the consequences of which can also have harmful effects on the conservation area. Consequently, the approved management proposals can only be implemented in part. The serving of a new whole-area Article 4 Direction will remove these inconsistencies and associated perceptions of arbitrariness and allow the management proposals to be more fully implemented.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 There is a limited cost for the legal processing, serving and advertising of the Direction; this is estimated at £2.5k - £3k. This will be met from the Local Plan budget.
- 6.1.2 In order to make Article 4 coverage in Enfield Town Conservation Area consistent with that in the Borough's other conservation areas there will be an extension to the geographical area presently covered by Article 4 controls. The

number of property addresses in the conservation area is 1290. The number of residential properties covered by the existing Article 4 Directions is 343. The number of additional residential properties to be included within the new order is 557.

- 6.1.3 Planning applications which are necessary because of an Article 4 Direction do not require a fee, which has resource implications for the Development Management service. The financial implication of the proposed change is minimal, which will be met from within existing Development Management service resources.

Applications data for the past three years shows that of the 343 residential property addresses currently within the Article 4 areas there have been only 8 planning applications that generated no fees as a consequence of the Article 4 Directions.

In Enfield Town Conservation Area as a whole (not just the Article 4 area) there have been 155 investigations of reported planning breaches and as a consequence of a comprehensive review last year 72 notices have now been served. The expectation is that this action and the publicity around the new Article 4 Direction will result in a reduction in the number of breaches of planning controls.

- 6.1.4 There is the risk of claims being made against the Council for losses incurred as a result of the new order as set out in para 7.3 Compensation may be claimed for abortive expenditure and loss or damage directly attributable to the loss of permitted development rights. The proposed use of a non-immediate rather than immediate Article 4 Direction limits this potential and it is not considered to be significant. All the Borough's residential Conservation Areas have Article 4 Directions in place dating from 1978 onwards. No known successful compensation claims have been made.

6.2 Legal Implications

- 6.2.1 The Council has power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do subject to the constraints stated in the section.
- 6.2.2 There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way. In addition, section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 6.2.3 The Council has an ongoing duty under Section 69(1)(a) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) to review its conservation areas and under Section 71(1) to formulate proposals for their preservation and enhancement.

- 6.2.4 Statutory guidance is provided on the level and depth of consultation that is recommended when proposing an Article 4 Direction.
- 6.2.5 The withdrawal of permitted development rights may give rise to claims for compensation if an application is refused or granted subject to conditions other than mentioned in the GPDO. However, as set out in para 6.1.4 this risk is considered to be low.
- 6.2.6 The London Borough of Enfield, being the appropriate Local Planning Authority within the meaning of Article 4 (5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 is satisfied that it is expedient for certain types of permitted development which will cause harm to the Conservation Area of Enfield Town unless prohibited are restricted by way of a non-immediate Article 4 Direction.

6.3 Property Implications

- 6.3.1 There are a number of Council-owned properties within the Enfield Town Conservation Area.
- 6.3.2 In a wider context, the Council has both operational and non-operational properties located within Conservation Areas. Changing patterns of retailing, and other trends and pressures, which influence economic viability, have the potential to impact on the use of buildings within the Borough's Conservation Areas, their associated character and built fabric. However, this updated Direction affects permitted development rights for broadly the same range of development as controlled by earlier Directions, and future changes and alterations generally can be devised and brought forward in compliance with the Article 4.

7 KEY RISKS

- 7.1 There is a risk that an Article 4 Direction without immediate effect may be cancelled or modified by the Secretary of State. As set out in para 3.5, the General Planning Development Order (GPDO) of 2015 allows the Council to withdraw certain, specified categories of permitted development within conservation areas without the risk of intervention by the Secretary of State. The removal of permitted development rights proposed by the new order would include controls additional to these for alterations affecting side and rear roof slopes of dwelling houses, and the construction of enclosure for flats. However, as set out in paragraphs 3.4-5 the new order will not extend the scope of the Directions from those of 1978 and 2006, reducing the likelihood of intervention. The existing orders will remain valid until such time as the new Direction is confirmed, so ensuring that if the new order is rejected that there will be no consequent loss of controls.
- 7.2 There is also the risk of some property owners undertaking works in advance of the notice as the requirements of a non-immediate Direction mean that

consultation has to take place in advance of confirmation. The number of affected additional properties to be included within the new order, however, is limited. The risk is therefore considered to be low.

- 7.3 Within twelve months of the order taking effect compensation can be sought where a householder is able to demonstrate loss of value to their property or that there has been abortive expenditure or other loss or damage if this is wholly attributable to the making of an Article 4 Direction. Compensation may also be sought where planning permission is refused, or granted with conditions required solely because of the Direction. The likelihood of such a claim being received is quite remote, and the number of additional properties to be included with the order limited, and needs to be considered in the context of the permitted development rights being withdrawn. For example, the loss of rights to replace a particular roof material or refusal of permission to insert plastic windows are unlikely to substantiate a material loss of value to the property that could support a compensation claim.
- 7.4 There are no fees generated by planning applications resulting from Article 4 Directions and there is a consequent risk of further pressure on the Development Management service. There is a similar risk associated with increased numbers of enforcement cases. However, the number of applications and enforcement cases resulting from the existing Article 4 Directions is small, as set out in 6.1-3. The impact on the Development Management service is therefore considered to be a low risk.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The changes proposed to the Article 4 Directions will increase fairness across the Enfield Town Conservation Area by ensuring that its requirements apply equally across its whole area which is not the case presently. An EqlA has been prepared to consider the effect on groups with protected characteristics concludes a) that there would be no overall negative impact and b) that and equalities issues are considered as part of the consultation. The use of Article 4 Directions in the Borough's conservation areas underpins policy and development management to guide change and ensure that the Borough remains and becomes an attractive place to live, work, learn and play.

8.2 Growth and Sustainability

The use of Article 4 Directions in the Borough's conservation areas allows the Council to more fully consider the impacts of minor development within the Enfield Town conservation area and therefore to guide change and ensure that the Borough remains and becomes an attractive place to live, work, learn and play.

8.3 Strong Communities

The preservation and enhancement of the cherished local scene and heritage helps increase the communities' sense of belonging, civic pride and self-confidence while demonstrating the Council's commitment and support to them and their area. Together these help deliver stable, safe and sustainable places and communities.

9. EQUALITIES IMPACT IMPLICATIONS

The management of the Council's conservation areas has a positive impact on equalities in general. To help evaluate and support this an EqIA has been prepared by the Strategic Planning and Design service to support the review of the Enfield Town Article 4 Directions. This indicates that the impact of the proposed revision to the Article 4 Directions will largely be positive. There is a potential indirect impact identified for disabled groups which will be addressed through the planning process as set out in the Equalities Impact Assessment.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

Conservation Area Character Appraisals support Enfield Council's commitment in its Local Plan and its duty under Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to prepare proposals for the preservation and enhancement of conservation areas and to consult the public about those proposals.

11. HEALTH AND SAFETY IMPLICATIONS

No Health and Safety implications have been identified.

12. PUBLIC HEALTH IMPLICATIONS

The Article 4 Directions support the Conservation Area Appraisals and Management Proposals and seek to enhance the local environment and thereby promote physical and mental wellbeing by contributing to the attractiveness of the environment. The preservation and enhancement of the cherished local scene and heritage helps increase the communities' sense of belonging, civic pride and self-confidence, thereby contributing to mental well-being and enjoyment.

13. BACKGROUND PAPERS

None

Appendices

1. Draft Enfield Town Article 4 Direction map
2. Draft Enfield Town Article 4 Direction schedule
3. Statement of justification