

Report to Development Control Committee

Agenda
Item:
A.3

Meeting Date: 3rd October 2014
Portfolio: Economy, Enterprise & Housing
Key Decision: Not Applicable
Within Policy and
Budget Framework Yes
Public / Private Public

Title: ARTICLE 4 DIRECTIONS - COMMUNITY ASSET REGISTER
Report of: Director of Economic Development
Report Number: ED.37/14

Purpose / Summary:

This report sets out consideration of issuing an Article 4 Direction to suspend permitted development rights for the change of use of buildings and land, registered as a Community Asset to other Uses within the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Recommendations:

It is recommended that delegated authority is given to the Director of Economic Development to make, publicise, consider representations and, where she considers appropriate, confirm an Immediate Article 4(1) Direction under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove permitted development rights for change of use of public houses within Carlisle District, registered as Community Assets, under Part 3 of the same Order.

Such a Direction would operate alongside existing local development plan policies and help to maximise the protection afforded to community facilities of value - on this occasion public houses.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1 Public houses in rural villages, and similarly in some urban environments, continue to provide an important facility delivering a valuable service and social focus for the local community particularly for those without access to private transport. However, one of the major challenges facing communities, and which is often exacerbated in rural settlements, is their ability to retain local services and facilities which are essential for maintaining thriving and sustainable communities.
- 1.2 The National Planning Policy Framework (NPPF) recognises the importance of community facilities and seeks to protect against their loss. The NPPF sets the achievement of sustainable development as its main focus. This encompasses three goals; economic, social and environmental. Public houses help contribute to supporting all three. Firstly, in terms of their social contribution, rural public houses provide a social meeting place for the community. Secondly, in terms of economic contributions, local pubs are an important source of local employment and support the local economy. Lastly, environmentally, many of our pubs contribute to the history and architectural heritage of the area and are therefore identified as heritage assets in their own right. A thriving local pub sector is therefore important to achieving the principle function of national planning policy; achieving sustainable development.
- 1.3 The NPPF provides a wealth of general support for those community facilities which can promote social inclusion whilst supporting the economy. In particular paragraph 70 defines public houses as community facilities and proceeds to outline that in order to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should, amongst other considerations
 - *“guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs”*
- 1.4 The need to protect such facilities, including public houses, is equally recognised at the local level within Carlisle District and specific provisions have been included within the Development Plan to help achieve this objective. Adopted Local Plan Policy EC13 seeks to sustain rural facilities and services through explicitly seeking to resist the change of use of those which are of value to the community. Whilst similar provisions are also contained within the emerging Local Plan, current permitted development rights are such that there are limitations to how successful a policy on its own will be in protecting such assets in the future.

2.0 LEGISLATION

- 2.1 The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. The aforementioned Order allows permitted development rights for change of use, and in some cases, for associated operational development without the requirement of planning permission. The Use Classes Order (UCO) contains a Schedule for which planning permission is not required for a building or other land to change from one use within that class to another use within the same class.
- 2.2 Class A of the UCO has been subdivided into five separate uses. These being: Class A1 (shops); A2 (Financial and professional); A3 (Food and Drink); A4 (drinking establishments) and A5 (hot food takeaways). The Order allows any of the higher numbered uses to be changed into a lower Order Use i.e. A4 Use into an A2 Use without requiring the need for planning permission as the Government considers these uses to be interchangeable as they all contribute in one way or another to the economy of the area.
- 2.3 Recent changes have also been made to the Town and Country (General Permitted Development) (Amendment) (England) Order 1995 (GPDO). Part 3 of the GPDO has expanded upon the classes which permit the changes of use and associated operational development without requiring planning permission.
- 2.4 Over the past decades many communities have suffered the closure of valuable local amenities such as local public houses, shops and village halls. This has left many areas bereft of the assets that can help to contribute to the development of vibrant and active communities. Recognising how important local amenities are to local communities the Government has introduced the 'Community Right to Bid' legislation under the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.
- 2.5 Part 5 Chapter 3 of the Localism Act, and the Assets of Community Value (England) Regulations, deliver the Community Right to Bid, which is aimed at encouraging more community-focused, locally-led action by providing an important tool to help communities looking to take over and run local assets. The scheme allows local communities to nominate an asset and request that the Council includes it on 'a list of assets of community value'. Should the owner of a property wish to sell a property that is included on the list, then the intention of the legislation is that a moratorium is put in place for a set period of up to six months to allow the local community to raise money to make a bid to purchase the property. The

requirements of the Assets of Community Value Regulations; however, do not apply to buildings where the property stays in the same ownership and the owner wishes to carry out another 'permitted business use' from the premises. The consequence of this undesirable reality is that valued community facilities such as public houses can be lost without any scrutiny or jurisdiction from the Council.

- 2.6 The City Council currently has a register of 54 Registered Assets of which 8 are public houses. Of the total assets listed it is recognised that public houses are under the greatest pressure for change. Although the register has yet to be ratified, the significance and importance of these Assets has been recognised by local communities by their nomination. This report focuses on matters relating to public houses only and further work will be undertaken in due course in relation to other registered community assets.

3.0 PROPOSED SOLUTION

- 3.1 In order to preserve the Community Assets as envisaged by Central Government it is proposed that the Council makes an Immediate Article 4 Direction with regard to public houses. Part 4 of the GPDO, more commonly known as Article 4, is one of the tools available to Local Planning Authorities in responding to the particular needs of their areas. It allows Local Authorities to withdraw 'permitted development' rights that would otherwise apply by virtue of 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.
- 3.2 The 1995 Act states that Article 4 Directions should only be used where it is necessary and expedient to do so and can be used by a Local Planning Authority where it considers that development could be prejudicial to the proper planning of their area or constitute a threat to the amenity of the area. Article 4 Directions can be imposed where development would:
- Undermine the visual amenity of the area or damage the historic environment;
 - Undermine local objectives to create or maintain mixed communities;
 - Lead to the subdivision of agricultural land other than for purposes reasonably necessary for agriculture, or to the loss of agricultural land;
 - Lead to an intensification of development in close proximity to a military or aviation safeguarding zone;

- Have a direct and significant adverse effect on a flood risk area, flood defences and their access, the permeability of ground, and management of surface water or flood risk;
- Lead to an intensification of development or use in areas affected by coastal erosion

3.3 Provided there is justification for both its purpose and extent, it is possible to make an Article 4 Direction covering:

- Any geographic area from a specific site to the entirety of a local authority administrative area
- Permitted development rights related to operational development or change in the use of land and buildings;
- Permitted development rights with temporary or permanent effect

3.4 Paragraph 200 of the National Planning Policy Framework (NPPF) provides a recent Government steer on the appropriateness of using Article 4 Directions to control the use of buildings or land. It states that the use of Article 4 directions to remove national permitted development rights should be limited to *“situations where this is necessary to protect local amenity or the wellbeing of an area”*.

3.5 The recently published Planning Practice Guidance (PPG) makes it clear that if a Local Planning Authority makes an Article 4 Direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

- Refuses planning permission for development which would otherwise have been permitted development; or
- Grants planning permission subject to more limiting conditions than the general permitted development order.

3.6 The PPG outlines that the grounds on which compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development rights. The withdrawal of development rights does not necessarily mean that planning consent would not be granted. It merely means that an application has to be submitted, so that the Planning Authority can examine the plans in detail.

3.7 Article 4 Directions can be issued as an ‘emergency measure’ with the result that ‘immediate direction’ will withdraw permitted development rights straight away.

However; there must be a formal consultation period of 21 days following the service of the Order. Representations submitted in response to this consultation must be taken into account by the Council when deciding whether to confirm the Direction. Any amendments to the Direction will require another period of consultation. Once the Direction is issued by the Council it must be confirmed within six months or it will lapse. The Secretary for State no longer has to confirm the Direction. However, he/she remains as a consultee on any new Directions and has powers to modify or cancel proposed orders at any time if he/she feels that this is necessary.

3.8 Article 4 Directions are more commonly used by Local Planning Authorities to control development within a larger geographical area where the aim is to limit the ability of the property owners to physically alter their properties. At present, the only Article 4 Directions in the Carlisle District are within Stanwix Conservation Area. The Council having conferred Conservation Area status, had a duty to bring forward proposals which preserve and enhance the character of appearance of Stanwix.

3.9 Article 4 Directions, however; as explained above are not exclusive to Conservation Areas, they can also be used to control the use of individual properties and they can be issued in an emergency situation. Article 4 directions are increasingly being used by Local Planning Authorities to counter act relaxations to permitted development rights where owing to locally specific circumstances there are clear and defensible reasons to do so.

4.0 CONCLUSION AND REASONS FOR RECOMMENDATION

4.1 It is recommended that delegated authority is given to the Director of Economic Development to make, publicise, consider representations and, where she considers appropriate, confirm an Immediate Article 4(1) Direction under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) to remove permitted development rights for change of use of public houses within Carlisle District, registered as Community Assets, under Part 3 of the same Order.

4.2 Such a Direction would operate alongside existing local development plan policies and help to maximise the protection afforded to community facilities of value - on this occasion public houses.

5.0. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

5.1 Not applicable

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**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's – N/A

Deputy Chief Executive – N/A

Economic Development – As set out in the report

Governance – The emergency Article 4 direction procedure is available to an LPA if it wants to restrict certain permitted development rights quickly and if:

- such permitted development rights would be "prejudicial to the proper planning of their area or constitute a threat to the amenities of their area", or
- the property is sited in a conservation area.

Once the emergency Article 4 direction has been made the LPA must carry out the same publicity requirements as required for non-emergency Article 4 directions, with a slightly different notice, and any representation received by the LPA during this period **must** be taken into account by the LPA in deciding whether to confirm the Article 4 direction.

There is no right of appeal against an Article 4 direction. The decision of the LPA to make an Article 4 direction can be subject to judicial review proceedings.

A claim for compensation can be made to the LPA if planning permission is refused or granted subject to conditions other than those conditions imposed by the GPDO. The claim for compensation can include abortive expenditure and other loss or damage directly attributable to the withdrawal of the permitted development right. This can include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the cost of preparing the plans for the works. Section 108(2A) of the TCPA 1990 provides that compensation is **only** payable if an application for planning permission for certain development formerly permitted by the [GPDO 1995](#) is made within 12 months of the Article 4 direction taking effect. However, no compensation

for the withdrawal of certain permitted development rights is payable if an LPA gives notice of the withdrawal between 12 months and 24 months in advance.

Local Environment – N/A

Resources – N/A