

Report for: **PLANNING COMMITTEE**

Date of Meeting:	28 th September 2022
Subject:	Proposed Article 4 Direction –Canons Park Conservation Area – outcomes of consultation
Responsible Officer:	Viv Evans, Interim Chief Planning Officer.
Exempt:	No
Wards affected:	Canons
Enclosures:	Appendix 1 – Table of consultation responses

Section 1 – Summary and Recommendations

- 1.1 This report documents representations received on the non-immediate Article 4 Direction for the Canons Park Conservation Area (all properties within the Conservation Area excluding 1, 5, 9-75 and 8-74 Lake View and Donnefield Avenue)_agreed by Planning Committee at its 11th March 2020 meeting and introduced thereafter in May 2022 for public consultation. The report recommends on balance that this Article 4 Direction is not confirmed.
- 1.2 An Article 4 Direction (“Direction”) is an order made under the Town and Country Planning (General Permitted Development) (England) Order 2015 (“GPDO”) which enables the Council to withdraw specified permitted development rights across a defined area. If the Direction has been confirmed then the effect of this is to require the landowner to apply for planning permission for the specified works where normally such works would not require planning permission. In Harrow, the Council has proactively made Article 4 Directions for the majority of its Conservation Areas in order to protect the special architectural or historic interest and character / amenity of the areas.

- 1.3 There are two types of Article 4 Directions under the 2015 Order: non-immediate directions and directions with immediate effect. An immediate Direction withdraws permitted development (PD) rights with immediate effect. However, a local planning authority may be liable to pay compensation to a landowner when PD rights are removed by an immediate Article 4 Direction if planning permission is subsequently refused for the development to which the Direction applies. For certain types of PD rights, as per those proposed under this report, a local planning authority is not liable to pay compensation provided that the bringing into force of the Article 4 Direction is stayed for 12 months ('non-immediate direction').
- 1.4 The Direction was proposed to require planning permission for all residential properties within the Conservation area where it faces a highway, waterway or open space for:

Canons Park Conservation Area

All properties within the Conservation Area excluding 1, 5, 9-75 and 8-74 Lake View and Donnefield Avenue for:

- 1) Works for the *enlargement, improvement or other alteration of a dwellinghouse*, (including the alteration or replacement of windows or doors) (Schedule 2, Part 1, Class A of the GPDO).
- 2) Other alterations to the roof of the dwelling house (Schedule 2, Part 1, Class C of the GPDO).
- 3) *The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse* (Schedule 2, Part 1, Class G of the GPDO).
- 4) The erection or construction of a porch outside any external door (Schedule 2, Part 1, Class D of the GPDO).
- 5) Painting of the exterior of any building (Schedule 2, Part 2, Class C of the GPDO).

1.5 Recommendations:

- 1.6 Planning Committee is requested to:
- A. Note and consider the representations received during the statutory consultation period in respect of the Article 4 Direction made on 19 May 2022.
 - B. Consider and agree to officers' recommendation to not confirm the Article 4 Direction of the Town and Country Planning (General Permitted Development) (England) Order 2015 to require planning permission for the works listed above under Schedule 2 of the GPDO in light of the public consultation.
 - C. Delegate authority to officers to undertake any necessary statutory processes required not to confirm the proposed Article 4 Direction in order to ensure that the Direction made is cancelled.

1.7 Reason: (For recommendations)

1.8 Since 1967 local authorities have been required to protect areas which are valued for their special architectural or historic interest – the character or appearance of which it is desirable to preserve or enhance - through the designation of Conservation Areas under the provisions of Sections 69 and 70 of the Planning (Listed Buildings and Conservation Areas) Act 1990. They are required to carry out reviews 'from time to time' to ensure areas are adequately covered. Consequently the suggested additional controls were put to public consultation. It is noted that many objections were received (significantly more than typical) and whilst there appears to be a degree of support for the principle, there is concern with respect to some aspects of the Direction and therefore on balance it is proposed that the Direction as it stands is not confirmed.

Section 2 – Report

2.1 The report incorporates the corporate priority concerning:

- Making a difference for communities

2.2 The potential improved protection of areas of special architectural or historic interest would help maintain the unique historical local character of areas or neighbourhoods within Harrow which residents cherish and value.

3. Options considered

3.1 The option of confirming in due course the new non-immediate Article 4 Direction as it stands was considered but this would be contrary to the Council's corporate priority of demonstrating that the Council seeks and listens to the views of its residents.

3.2 Should the Committee resolve not to accept Recommendation 1.6(B) above,, under the GDPO and the Article 4 Direction, the Committee will not be in the position to confirm the Direction until next year as the Direction is due to come into force on the 20th June 2023 subject to hearing from the Secretary of State and its decision (see section 5.2 below).

4. Background

4.1 Article 4 Directions require planning permission to be obtained for certain works that would not usually require planning permission (even in a conservation area). This is to ensure change is sensitively managed to preserve the special character and appearance of conservation areas. Accordingly non-immediate Article 4 Directions for

Canons Park Conservation Area were proposed in a report to Planning Committee in March 2020 that were tailored to relate to elements of permitted development rights under the GPDO that could effect the special character and appearance of the conservation area, based on the adopted Conservation Area Appraisal and Management Strategy (CAAMS), as outlined in the report to that Committee and included as Background Papers.

4.2 Planning Committee agreed at their meeting in March 2020 to introduce these non-immediate Directions such that they would only come into effect if they were confirmed by Planning Committee following public consultation and its results being reported back to them. Accordingly, this report provides the consultation responses for the non-immediate Article 4 direction for Canons Park Conservation Area. Consultation responses and recommendations for the remaining four of the five Conservation Areas ie Old Church Lane, Stanmore Hill, Little Common and Kerry Avenue, as well as and End House, Donnefield Avenue in Canons Park Conservation Area will be reported back to Planning Committee later this year (subject to correspondence from the Secretary of State (see section 5.2 to 5.4 below).

4.3 The non-immediate Article 4 Directions were proposed for all of the residential houses listed within the Canons Park Conservation Area as follows, as set out in the report to Planning Committee of March 2020:

Canons Park Conservation Area

All properties within the Conservation Area excluding 1, 5, 9-75 and 8-74 Lake View and Donnefield Avenue for:

- 1) Works for the *enlargement, improvement or other alteration of a dwellinghouse, (including the alteration or replacement of windows or doors)* (Schedule 2, Part 1, Class A of the GPDO).
- 2) Other alterations to the roof of the dwelling house (Schedule 2, Part 1, Class C of the GPDO).
- 3) *The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse* (Schedule 2, Part 1, Class G of the GPDO).
- 4) The erection or construction of a porch outside any external door (Schedule 2, Part 1, Class D of the GPDO).
- 5) Painting of the exterior of any building (Schedule 2, Part 2, Class C of the GPDO).

4.4 A separate Direction was made for End House, Donnefield Avenue but is not covered by this report, with the outcomes of consultation on that Direction to be reported to Committee separately.

4.5 Consultation Process

4.6 In accordance with the GPDO, the following consultation actions were undertaken:

- a) local advertisement in at least one newspaper in the local area (as defined in article 1(2) of the GPDO) - in the Harrow Times on 26th May, 2022
- b) by site display at no fewer than two locations within the relevant Conservation Area on site for a period not less than six weeks – expiring on 26th May, but the period was extended to 31st August 2022.

4.7 Based on feedback received as a result of the above actions, a letter was sent to all properties effected by the proposed Direction on 22nd August 2022. The letter set out in greater detail the proposals and outlined the end date for consultation responses.

5. Representations received

5.1 A total of 60 responses were received during the consultation period; representing approximately a quarter of properties within the Conservation Area. Appendix 1 provides details of the responses. Outlined below is a summary of the responses:

- a. 47 of 60 responses (i.e. 78%) responded to support the principle of the preservation of the conservation area, but requested that one element (out of five) of the proposed Article 4 direction (i.e. that requiring planning permission before painting the exterior of a house) be clarified so that it is clear that planning permission is not needed where the appearance of the property would not change.
- b. Only 8 of 60 respondents provided outright objections i.e.10%. Various reasons were provided including:
 - i. unnecessary bureaucracy;
 - ii. poor consultation;
 - iii. human rights and stealth taxation;
 - iv. the need for security/environmental improvements;
 - v. planning applications fees;
 - vi. the Conservation Area Appraisal on which it is based is old (2013) and the 2019 survey did not question residents;
 - vii. the Council approve harmful planning works e.g. roof tiles on Canons Drive and plastic windows;
 - viii. compensation would be sought from the Council;
 - ix. it would be unfair given the Council patch repair pavements;
 - x. and Canons Drive should be protected not the side roads;
 - xi. and Handel Close should be excluded as it is backed onto by roads that are excluded from the proposed controls.
- c. One respondent replied to explicitly support the proposals.

- d. Five respondents stated proposals do not go far enough and should include Lake View in the controls and the consultation: one of these also requesting Cavendish Road, Lodge Close and Dorset Drive (outside the conservation area) be included in the controls. There were 5 further objections to the consultation process e.g. no Council letter received or late receipt.

5.2 Department for Levelling Up Housing and Communities

- 5.3 In making an Article 4 Direction, a Local Planning Authority is required to notify the Secretary of State. The Department for Levelling Up Housing and Communities responded on 19 July 2022 and informed the Council that their policy team will consider whether the Direction fulfils national policy set out in Paragraph 53 of the National Planning Policy Framework on the use of Article 4 directions, and whether there is cause for the Secretary of State to use his powers of intervention under Schedule 3, Paragraph 1(13) of the 2015 Order to prevent the Article 4 directions being introduced. They requested the Council to provide a map showing the extent of the Article 4 direction under consideration in a digital format and a link to our evidence setting out the justification for the Article 4 direction.

- 5.4 The Local Planning Authority addressed this request in a response dated 1 August 2022 by referring the department to the evidence in the 11th March 2020 planning committee report and addressing the updated NPPF paragraph 53 introduced after the March 2020 Planning Committee report by noting that:

'this provides a slight change in the policy specifying also that Article 4 directions should be limited to the 'smallest geographical area possible'. It stated the report adheres fully with the 2021 NPPF wording of paragraph 53 by proposing directions limited to the 'smallest geographical area possible' as demonstrated by the thorough survey assessment provided, down to an individual house assessment, to provide the smallest geographical area possible....The assessment demonstrates that the proposed Article 4 directions only relate to those items that contribute to the special character and appearance of the conservation area and are vulnerable to change as identified by the Council's relevant adopted CAAMS (2013), and the more recent through survey (2019) of all relevant houses and features that the Article 4 directions would pertain to.

In addition, it should be noted that the proposed Article directions are limited to 5 of Harrow's 6 Stanmore and Edgware Conservation Areas, only carefully selected houses, and only then for certain selected works in each instance where evidence suggests sensitivity to harmful works. There are no Article 4 directions otherwise elsewhere within Harrow either existing or proposed, with the exception of those in conservation areas where character is of the utmost importance/ sensitivity in the conservation area to particular works.

Indeed, a Conservation Area is defined under Section 69 of the Planning (Listed Buildings and Conservation Areas Act) 1990 as 'areas of special architectural or historic interest the character or

appearance of which it is desirable to preserve or enhance'. Under Section 72 (1) of the same Act, the Local Planning Authority have a duty to ensure 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'. This imposes a statutory duty on Local Planning Authorities when exercising any of its functions in a conservation area. **These Article 4 directions would allow the Local Planning Authority to achieve this. Indeed,** guidance from Historic England website ([Restricting Permitted Development: Article 4 Directions and Heritage – Planning Law Overview | Historic England](#)) states that Article 4 directions may help in the protection of heritage assets'.

- 5.5 Recommended Way Forward / Officer response to representations
- 5.6 A significant number of responses were received as a result of the consultation process and the majority of these indicated that the proposed Article 4 direction in the current form are not acceptable due to concerns regarding the proposed removal of permitted development rights relating to the painting the exterior of a house. A number of representations requested the requirement be amended / clarified so it would not apply where the external appearance would not change. It is noted that this would be de minimis works in planning terms were the exterior appearance not to change and this would therefore not be controlled under this Article 4 direction. However, in light of the objections it is recommended that at this stage on balance that the Article 4 Direction in its current form is not confirmed.
- 5.7 Otherwise, the majority of responses expressed a desire to preserve or enhance the character of the conservation area. This is in line with the Planning (Listed Buildings and Conservation Areas) Act 1990 and the goals of the Article 4 directions; this may warrant re-consideration of the position at a future date.
- 5.8 Any future process could seek to clarify and / respond to concerns raised.
- 5.9 Any future process could also go beyond the standard statutory consultation requirements to increase awareness of the proposals and the understanding of them by writing to all residents with any amended proposals (including Lake View), providing a minimum three weeks for responses and a public meeting during this timeframe. This consultation letter and meeting can address the other concerns raised e.g. by explaining that:
- a. the apparent inconsistency in planning decisions / recent changes in the Conservation Area actually relates to these Article 4 directions not yet being in place, meaning many works cannot be refused as no permission is required (and partly the rationale behind any proposed Directions).
 - b. Environmental and security matters would be considered where planning permission was sought for any works since this would be a material consideration in terms of 'public benefits' or 'clear and convincing justification' for any works under national policy.

- c. The Highways department replace paving like for like except where tree routes make this impossible
- d. Conservation Area Appraisals and Management Strategies for the borough will be reviewed when resources allow but that the present proposal is based on a recent survey and review of the area (2019).

6.0 Procedure

- 6.1 The Article 4 Directions were made on 19th May 2022. Notice of Making is dated 26th May 2022 and it was published on 26 May 2022. Directions if confirmed would have come into force on the 20 June 2023 (following para 1(9) and (10) of Schedule 3 of GDPO 2015). If not confirmed by this Committee, then the Direction will lapse on 19 June 2023 (and do not have any effect in the meantime). The Secretary of State will be required to be notified of the Committee's decision.

7.0 Legal Implications

- 7.1 The Council has a statutory duty and is required under section 69(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Act') to carry out reviews 'from time to time' to determine whether any parts or further parts of their area should be designated as conservation areas; and if it so determines, that part(s) shall be so designated.
- 7.2 The Council also has a duty to ensure special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas (Section 71(1) of the Act). Section 72 of the Act imposes a statutory duty on Local Planning Authorities when exercising any of its functions in a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. In addition, guidance from Historic England states that Article 4 directions may help in the protection of heritage assets, particularly in relation to their setting. Article 4 Directions (such as that proposed for Canons Park Conservation Area) is one such means of preserving conservation areas and was made based on the outcomes of the Conservation Area Appraisal and Management Strategy (CAAAMS) adopted in 2013.
- 7.3 The statutory procedure for making Article 4(1) Directions is set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Paragraph 1(9) of that Schedule requires that when deciding whether to confirm a direction made under article 4(1), the local planning authority must take into account any representations received during the statutory consultation period. Under paragraph 1(13) the Secretary of State may (subject to restrictions) make a direction cancelling or modifying any direction under article 4(1) made by a local planning authority at any time before or after its confirmation.

- 7.4 Under the Council's Constitution, Part 3A Terms of Reference, the powers and duties of the Planning Committee include: To consider and, if appropriate, serve Article 4 Directions removing permitted development rights in accordance with the Town and Country Planning General (Permitted Development) Order 1990.

8.0 Financial Implications

- 8.1 The costs of making the proposed Article 4 Direction has been met from within the existing revenue budgets of the Council's Planning Policy team.

9.0 Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

There are no significant risks arising from the recommendations.

10.0 Equalities implications / Public Sector Equality Duty

Was an Equality Impact Assessment carried out? No

EqlA is not considered necessary in respect of the proposal since there will be no change in the present planning controls if the Direction is not confirmed as recommended.

11.0 Council Priorities

The decision sought will help the Council meet the priority of demonstrating that the Council seeks and listens to the views of its residents.

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Man

Signed by the Chief Financial Officer

Date: 13/09/2022 by email

Statutory Officer: Baljit Bhandal

Signed by the Monitoring Officer

Date: 13/09/2022 by email

Chief Planning Officer:



Date: 15 September 2022

Mandatory Checks

Ward Councillors notified: YES

Section 4 - Contact Details and Background Papers

Contact: Lucy Haile, Principal Conservation Officer, 0208 736 6101 or lucy.haile@harrow.gov.uk

Background Papers:

11 March 2020 Committee report -

<https://moderngov.harrow.gov.uk/ieListDocuments.aspx?CId=1001&MId=64668&Ver=4>

Conservation Area Appraisals and Management Strategies for each conservation area in the borough:

<https://www.harrow.gov.uk/conservation>