

# THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

13 JUNE 2013

## DELEGATED DECISION REPORT

### CONFIRMATION OF A NON-IMMEDIATE ARTICLE 4 DIRECTION DATED 6 JULY 2012 NORLAND NEIGHBOURHOOD AREA AND 133-159 HOLLAND PARK AVENUE

#### 1. EXECUTIVE SUMMARY

- 1.1. This report is to request that the Executive Director for Planning and Borough Development authorises the confirmation of a Non-Immediate Article 4 Direction dated 6 July 2012 to remove permitted development rights for certain types of development within the Norland Conservation Area and 133-159 Holland Park Avenue.

#### 2. RECOMMENDATIONS

- 2.1. I recommend that the Executive Director for Planning and Borough Development authorises the confirmation of the Non-Immediate Article 4 Direction dated 6 July 2012, as amended, to come into force immediately and without the need for further consultation (Option 8.2).

#### 3. REASONS FOR DECISION

- 3.1. Recent alterations to properties in the area under permitted development, such as the inappropriate painting of facades and replacement doors and windows, demonstrate that the properties that contribute to the character of the conservation are under real threat. The proposed Article 4 Directions sit alongside the emerging Norland Neighbourhood Plan, which sets out the evidence base in detail.
- 3.2. A new direction encompassing and consolidating all existing Article 4 Directions would be easier to understand than the numerous previous directions made under different Permitted Development orders.

#### 4. BACKGROUND

- 1.1 On 6<sup>th</sup> July 2012, the Executive Director for Planning and Borough Development signed off a Delegated Decision Report (Appendix 3) authorising the making of a Non-Immediate Article 4 Direction. The Non-Immediate Article 4 Direction was made on the same day and sought to remove permitted development rights for development considered to impact negatively on the character of the conservation area. It also sought to consolidate previous Article 4 Directions.
- 4.1. Requirements to increase the coverage of Article 4 Directions in the area were initiated by the Norland Conservation Area Society and are contained within their Neighbourhood Plan. Council Members and officers support the introduction of

an Article 4 Direction to address the impact on the historic environment by certain types of development in Norland Conservation Area and the terrace of houses within the Holland Park Conservation Area.

## 5. PROPOSAL AND ISSUES

5.1. Specifically, the Direction identifies five types of permitted development to be removed:

- **The enlargement, improvement or other alteration of a dwellinghouse** - to prevent alterations that would conflict with original designs, in order to protect the architectural integrity of all front elevations.
- **The provision of garden buildings** - to prevent the loss of private garden space that contributes to the character of the conservation area and plays an important role in sustainable urban drainage and biodiversity.
- **The creation of hard standings in front gardens and forecourts** - to prevent car parking in front gardens, which can affect sustainable urban drainage through the removal of natural soakaways and harm the character of the street.
- **The erection or alteration of a gate, fence or wall** - to prevent railings or other enclosures of unoriginal designs in order to maintain the character of the conservation area.
- **The painting of external facades** - to prevent the painting of brickwork and specifying uniform colours on designated pieces in order to protect the original design intent and cumulative architectural effect of significant buildings and terraces.

5.2. The Core Strategy (Dec 2010) supports the conservation of the Borough's historic built fabric. This Article 4 Direction would require that certain types of development would be assessed against Policy CO5 and therefore help support the objective of renewing the legacy "...by taking great care to maintain, conserve and enhance the glorious built heritage we have inherited and to ensure that where new development takes place it enhances the Borough."

5.3. The notice, made on 6 July 2012, anticipated that the Non-Immediate Article 4 Direction would come into force on 31 August 2012, but a Direction cannot come into force unless it has been confirmed by the Local Planning Authority<sup>1</sup>. Consultation with householders has been taken into account and details of consultation responses are reported below.

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<sup>1</sup> 'Replacement Appendix D to Department of the Environment Circular 9/95 : General Development Consolidation Order 1995' produced by Communities and Local Government in June 2012 advises that 'Taking into account representations received during consultation may require that the direction comes into force later than specified in the initial notice of the direction.'

- 5.4. There are several existing Article 4 Directions relating to the area made under different General Permitted Development Orders. The Article 4 Direction made on 6 July 2012 seeks to cancel the existing Article 4 Directions in the event that the proposed Direction is confirmed<sup>2</sup>.

## 6. CONSULTATION

- 6.1. Representations were sought between 6 July 2012 and 17 August 2012<sup>3</sup>. There was a notice in the local press and site notices were displayed in the affected area for a period of six weeks. The Council's website advised people of the changes and gave them the opportunity to make representations.
- 6.2. The report dated 6 July 2012 concluded that because of the extent of the area it was impracticable to serve individual notices on all owners and all occupiers<sup>4</sup>. A copy of the notice was placed at sixty locations within the area. Copies of the Direction were also served on the Secretary of State, who had no comments.
- 6.3. The Council received eight written representations during the consultation period, of which one was in support and seven objected/raised concerns (Appendix 5).
- 6.4. There were six objections from residents in north Portland Road. These residents feel that the two terraces of north Portland Road have a different genesis and character from other parts of the Norland Conservation Area, thus the same controls ought not apply. The residents submitted compelling evidence to support their case.
- 6.5. The other objection was from a resident on Addison Place who wants to extend and modify their property to accommodate the needs of their young child. Their concern is that the removal of permitted development rights could restrict their ability to build a basement extension. The Direction proposed to affect this property will introduce controls over the painting of external walls, and the enlargement or alteration of a dwelling house.
- 6.6. The property is not listed but is referred to specifically in the Norland Conservation Area Proposals Statement as being 'startlingly different' and 'worthy of its surroundings'. This formerly dilapidated mews house was completely rebuilt in 1978 with a large arched elevation of tinted glass. Despite its unique elevation, planning permission was granted in 2010 to make significant changes to the property including the demolition of the front facade. It was considered that whilst the existing dwellinghouse made an interesting contribution to the area, its visual merit has dated over time. Due to this permission for demolition works and redevelopment of the property, it does not

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<sup>2</sup> Article 5(13) GPDO states that a Local Planning Authority can, when making a subsequent direction, cancel any previous Directions. Article 8 also says that 'any power conferred by this order to give a Direction includes a power to cancel or vary the direction by a subsequent Direction'.

<sup>3</sup> Consultation was carried out in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 1995, as amended

<sup>4</sup> As permitted by Article 5(2) of the Town and Country Planning (General Permitted Development) Order 1995, as amended

possess the original architectural features that the Article 4 Direction intends to protect. Therefore, it is not considered that the property should be subject to an Article 4 Direction.

- 6.7. As a result of the consultation responses, minor alterations to the Direction have been made, as highlighted in Appendix 1. These serve to remove some of the proposed directions in Addison Place and in north Portland Road and are considered to be non-material. As a result of this it is not felt that another round of consultation is needed.

## **7. FINANCIAL, LEGAL AND RESOURCE IMPLICATIONS**

- 7.1. The Article 4 direction will require that an application for planning permission be submitted for all development specified in the Article 4 Direction. Planning applications that are required for any development as specified within the Article 4 direction area will not require a planning fee. The implications of this on the resourcing of the Planning Department need to be taken into account. The Council has received only a handful of applications relating to Article 4 Directions over the last 20 years. It is not, therefore, expected that there will be many applications, and thus, any applications can be dealt with within existing resources.

### **Compensation**

- 7.2. The Council may be liable to pay compensation if, as a result of the Article 4 Direction, they (i) refuse planning permission for development which would have been permitted development, or (ii) grant planning permission subject to conditions more limiting than the General Permitted Development Order would normally allow. There are two compensation scenarios according to the Town and Country Planning Act 1990.

- 7.3. Firstly<sup>5</sup>, in the case of:

- The erection or alteration of a gate, fence or wall;
- The painting of external facades.

Compensation will always be payable within 12 months of the refusal of permission or grant subject to more onerous conditions. In this case there is no benefit to giving 12 months notice before confirming the Direction.

- 7.4. Secondly<sup>6</sup>, in the case of:

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<sup>5</sup> Section 108 of the Town and Country Planning Act 1990 provides for the payment of compensation in certain circumstances following the withdrawal of permitted development rights. All claims for compensation must be made *within 12 months* of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the General Permitted Development Order).

<sup>6</sup> Section 108 was subsequently amended by the insertion of Section 108(2A) which gave the Secretary of State power to make regulations<sup>6</sup> restricting the application of Section 108 in certain circumstances. This new section provides that where prescribed development granted by a Development Order is withdrawn by the Local Planning Authority, compensation is only payable if an application for development formerly permitted by that order is made *within 12 months* following the date the Article 4 Direction takes effect.

- The enlargement, improvement or other alteration of a dwellinghouse;
- The provision of garden buildings;
- The creation of hard standings in front gardens and forecourts.

If the Article 4 direction is confirmed immediately, the Council will be liable for compensation for a 12 month period as a result of any refusal of permission or granting of permission subject to more onerous conditions. If the direction is confirmed, but does not come into force until 12 months later, the Council would not be liable for compensation for these types of development.

- 7.5. The Council has not assessed compensation as a high risk, and therefore considers that the benefit of making the Direction within 12 months, in protecting and enhancing the character of the area, is considered to outweigh the risk of potential compensation.

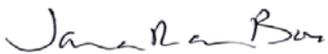
## **8. OPTIONS**

- 8.1. Re-consult on the revised Non-Immediate Article 4 Direction, as shown in Appendix 1 and Appendix 2;
- 8.2. **Recommended:** Confirm the Non-Immediate Article 4 Direction, to come into force immediately and without the need for further consultation; or
- 8.3. Confirm the Non-Immediate Article 4 Direction, but request amendments; or
- 8.4. Confirm the Non-Immediate Article 4 Direction, but request that it does not come in force until 12 months later; or
- 8.5. Confirm the Non-Immediate Article 4 Direction, but request that the parts of Direction relating to 'prescribed development' do not come in force until 12 months later; or
- 8.6. Decide not to confirm the Non-Immediate Article 4 Direction.

*Penelope Tollitt*

*Head of Policy, Design and Consultation*

*I agree with the recommendation.*

Signed: 

*Jonathan Bore, Executive Director for Planning and Borough Development*

*Date: 13 June 2013*

**Local Government Act 1972 (as amended) – Background papers used in the preparation of this report**

*Appendix 1: Classes of Permitted Development Rights to be removed and list of properties affected by each class.*

*Appendix 2: Maps showing the extent of the Non-Immediate Article 4 Direction*

*Appendix 3: Delegated Decision Report, 6<sup>th</sup> July 2012*

*Appendix 4: Map showing locations of site notices during consultation period.*

*Appendix 5: Table of all consultation responses*

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