

Report to:

EXECUTIVE

Relevant Officer:

Carl Carrington, Head of Planning Quality and Control

Relevant Cabinet Member:

Councillor Gillian Campbell, Cabinet Member for Tourism and Culture

Date of Meeting:

7 December 2020

ARTICLE 4 DIRECTION ORDER FOR LOCALLY LISTED BUILDINGS

1.0 Purpose of the report:

- 1.1 To request approval to make a non-immediate Article 4 direction order to remove the permitted development right for demolition of locally listed buildings outside conservation areas and for exterior painting.

2.0 Recommendation(s):

- 2.1 To approve the making of a non-immediate Article 4 direction order to remove the permitted development right for demolition of locally listed buildings outside conservation areas, and for exterior painting.

3.0 Reasons for recommendation(s):

- 3.1 Although the status of locally listed buildings is a material consideration when planning applications are being determined, buildings outside conservation areas are nevertheless vulnerable to demolition because they currently fall outside the scope of planning legislation.

In addition, commercial buildings in particular have been the subject of damaging exterior paintwork changes during rebranding exercises. A targeted Article 4 direction would remove the permitted development rights which allow total demolition and fundamental changes to buildings (like the rendering/painting of exterior walls) within the planning system so that they can be managed appropriately.

- 3.2 Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No
- 3.3 Is the recommendation in accordance with the Council's approved budget? Yes

4.0 Other alternative options to be considered:

When the local list was completed in 2014, following discussions with the legal team and the then Cabinet member, paperwork was prepared to allow the application of an immediate 'reactive' article 4 direction should a prior notification for demolition be received. A prior notification gives 28 days' notice of demolition to allow scrutiny of site clearance proposals only. Since then it has become clear that this may bring a risk of claims for compensation when work towards the re-use of the site may already be in hand. The alternative of 'do nothing' would mean the uncontrollable loss of more locally listed buildings as is being evidenced by current applications to demolish three locally listed buildings outside conservation areas. Locally listed buildings are at the heart of communities and are cherished parts of the streetscene.

5.0 Council Priority:

5.1 The relevant Council Priority is: "Communities: Creating stronger communities and increasing resilience".

6.0 Background Information

6.1 On 2 November 2011 Executive approval was received to create a list of buildings of local architectural and/or historic interest (Local List), which was completed by 2014. Locally listed buildings are undesignated heritage assets recognised in the National Planning Policy Framework as being irreplaceable elements of the historic built environment which contribute to the quality of life of existing and future generations. However, their status is only a material consideration which has to be taken into account when planning applications are being determined; they are not subject to any additional planning controls over alteration or demolition. It has become clear that locally listed buildings outside conservation areas are vulnerable to demolition because they fall outside the scope of planning legislation to protect them. The application for demolition of the Empire bingo (former Empire Cinema) is the most recent example of the vulnerability of locally listed buildings.

6.2 In Blackpool there are 179 locally listed buildings outside Conservation Areas. An Article 4 direction to prevent demolition of locally listed buildings outside conservation areas would mean that developers would have to apply for planning permission for demolition, rather than the current system of prior approval covering only the method of demolition and management of site clearance. In line with the objectives of the Core Strategy, this would ensure that consideration is given to a heritage asset's potential for re-use or incorporation into any new development. Demolition would only be permitted where its replacement is of such high quality design that the loss of character resulting from the demolition would be adequately mitigated or the public benefit of such demolition materially outweighed the harm caused by it.

- 6.3 It is also proposed to include measures to control external painting of locally listed buildings. Painting previously unpainted exterior stone and brick causes irreversible harm to the character of historic buildings, and is impossible to remove without causing physical damage to the brickwork. Public houses are particularly vulnerable to commercial pressure and rebranding exercises. The Article 4 Direction Order would also ensure that the colour of paint applied to previously painted surfaces is able to be managed, and the order would also be applied to public houses within Conservation Areas.
- 6.4 The proposed Article 4 direction is not intended to prevent change but to ensure that it is managed through the planning system, so that the buildings which have been identified as having local architectural and/or historic interest can continue to make a positive contribution to the townscape and sense of place.
- 6.5 The direction order would be subject to public notification and to a subsequent decision to confirm. Following public consultation and confirmation (if given) of the article 4 direction order, guidance would be published on the Council website explaining which works will require planning permission.
- 6.6 Does the information submitted include any exempt information? No

7.0 **List of Appendices:**

Appendix 6a: Draft Article 4 direction order

Appendix 6b: List of locally listed buildings which would be subject to the Article 4 direction order

8.0 **Financial considerations:**

- 8.1 There is no risk of compensation claims arising from the making of a non-immediate Article 4 Direction Order.

9.0 **Legal considerations:**

- 9.1 The National Planning Policy Framework states that use of Article 4 directions should be limited to where it is necessary to protect local amenity or the wellbeing of the area.
- 9.2 Article 4 directions are registrable as local land charges. Article 4 directions may be made when the Local Planning Authority is satisfied that it is expedient that development that would normally benefit from Permitted Development rights should not be carried out unless planning permission is granted.

- 9.3 Regard should be had to DCLG Replacement Appendix D to the Department of the Environment Circular 9/95: General Development Consolidation Order 1995 issued in November 2010. It contains a general statement that an Article 4 direction should be considered 'only in those exceptional circumstances where the evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.' The Guidance requires that the potential harm that the direction is intended to address must be clearly identified and where such withdrawal is proposed to cover a wide area there must be particularly strong justification for the withdrawal at the time of making the Direction.
- 9.4 The order states further that local planning authorities may wish to consider whether the exercise of permitted development rights would undermine local objectives to create or maintain mixed communities. The immediacy of the threat and the compensation liability may be factors in determining which type of direction to use.
- 9.5 The number of locally listed buildings outside conservation areas which have been demolished since the Local List was established has demonstrated that current powers are inadequate to prevent harm to local amenity and planning for the historic built environment. The local listing process of selection, expert scrutiny and public consultation is evidence of the rigorous approach taken to ensure that the heritage significance of the buildings in question has been fully assessed. The above tests have therefore been met.
- 9.6 Regard must also be had to the Human Rights Act 1998 in particular Article 8 (right to respect for private and family life) and Article 1 (protection of property). Any interference with the rights protected by the Act must be necessary and proportionate in the interests of a democratic society.

10.0 Risk management considerations

- 10.1 There is no risk of compensation claims arising from the making of a non-immediate article 4 direction order.

11.0 Equalities Considerations:

- 11.1 Regard must be had to the provisions of the Equality Act 2010 and to the duty under section 17 of the Crime and Disorder Act 1998.

12.0 Sustainability, climate change and environmental considerations:

- 12.1 None directly from this decision.

13.0 Internal/ External Consultation undertaken:

13.1 The relevant Cabinet member, Development Management, Planning Policy and Legal Teams have been consulted who are fully supportive of the measure.

13.2 Historic England is highly supportive of the move to apply Article 4 directions to locally listed buildings. The Civic Trust has also offered its full support.

14.0 Background papers:

14.1 None.

15.0 Key decision information:

15.1 Is this a key decision? No

15.2 If so, Forward Plan reference number:

15.3 If a key decision, is the decision required in less than five days? No

15.4 If **yes**, please describe the reason for urgency:

16.0 Call-in information:

16.1 Are there any grounds for urgency, which would cause this decision to be exempt from the call-in process? No

16.2 If **yes**, please give reason:

TO BE COMPLETED BY THE HEAD OF DEMOCRATIC GOVERNANCE

17.0 Scrutiny Committee Chairman (where appropriate):

Date informed: N/A Date approved: N/A

18.0 Declarations of interest (if applicable):

18.1

19.0 Executive decision:

19.1

20.0 Date of Decision:

20.1

21.0 Reason(s) for decision:

21.0

22.0 Date Decision published:

22.1

23.0 Executive Members in attendance:

23.1

24.0 Call-in:

24.1

25.0 Notes:

25.1