

Notice of :	EXECUTIVE
Decision Number:	EX28/2022
Relevant Officer:	Carl Carrington, Head of Planning and Conservation
Relevant Cabinet Member	Councillor Lynn Williams, Leader of the Council and Cabinet Member for Tourism, Arts and Culture
Date of Meeting	11 July 2022

ARTICLE 4 DIRECTION ORDER FOR LOCALLY LISTED BUILDINGS

1.0 Purpose of the report:

1.1 To consider objections and whether to confirm 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 consider the objections received attached at Appendices 4a and 4b, to the Executive report.

2.2 To consider, in light of the objections, whether to approve the confirmation of the Article 4 direction to remove the permitted development right for demolition and exterior painting of locally listed buildings outside conservation areas.

3.0 Reasons for recommendation(s):

3.1 As objections have been received they should be considered by the Executive along with the recommendation of the Head of Planning and Conservation outlined below at paragraphs 6.11 and 6.12.

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:

4.1 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.

5.0 Council priority:

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

6.0 Background information

6.1 Executive approval was given on 7 December 2020 to produce a non-immediate Article 4 Direction order to remove the permitted development right for demolition of and exterior painting of locally listed buildings outside conservation areas (Decision EX53/2020 refers). Due to the Coronavirus pandemic restrictions, it was decided to delay the public consultation exercise to a time when it would be easier for the public to access information not just online but also in libraries and the Council offices. Consultation was therefore carried out 23 February 2022 – 20 April 2022.

6.2 During the course of the consultation 23 telephone calls were received from owners of locally listed buildings requesting more information. Subsequent to the receipt of additional information no written objections were received from those who had telephoned with queries in respect of the Article 4 direction.

6.3 Two written objections were received, on behalf of the owners of Central and South Piers, and the Blackpool Pleasure Beach respectively. These objections are attached for consideration at Appendix 4a and 4b, to the Executive report.

6.4 The objection regarding from the Piers attached at Appendix 4a, to the Executive report, was that they believed the deadline should be extended as they had not been furnished with the information required to make a thorough representation, hampered further by the fact that there was a delay in receiving the letter because it was addressed to the owner/occupier, and an email of the 1 April 2022 had allegedly been ignored.

6.5 The letter was addressed to the Owner/ Occupier at the property address. The legislation requires that the Council makes reasonable efforts to inform owners

and occupiers of the proposed Article 4 direction unless it is impracticable to do so. However, given that over 250 such notices were sent out, it was impracticable to address them all individually, hence they were addressed to the Owner/Occupier. The letter was only read by the complainant on 23 March 2022 because of a delay caused by their internal mail system, but nonetheless this still meant that the legal minimum of 21 days of public consultation allowing them to respond was exceeded by 7 days.

- 6.6 The objection mentions an email of 1 April 2022 however this was never received by the Heritage Team.
- 6.7 The statutory notice is specific about which permitted development rights will be withdrawn. The view of the Heritage Team is that given the simplicity of these provisions, it should not take a qualified heritage consultant very long to assess and inform the owner of the effects of the notice. For clarification the effect of the implementation of the Article 4 direction does not prevent works from being permitted it simply requires planning permission be granted prior to demolition or the exterior painting of the building.
- 6.8 The objection on behalf of the Blackpool Pleasure Beach attached at Appendix 4b, to the Executive report, is that the building does not meet the criteria for local listing, and that to date there has been an implicit policy that the local list would never remove permitted development rights from property owners. The owner therefore contends that the new intention to introduce an Article 4 Direction for locally listed buildings would represent an unfair imposition for property owners.
- 6.9 The building was locally listed in 2013 because it is a good and little-altered example of its age and type. There were no objections to its local listing at the time. The character and appearance of the building has not changed since then, and there is no reason to reconsider its locally listed status.
- 6.10 Guidance to date has always been that local listing does not have the power of statutory designation but it is a material consideration if a planning application is under consideration so that its special interest is taken into account. However, demolition of an unlisted building outside a conservation area is not classed as development and does not therefore require planning permission. Due to the loss of several locally listed buildings which the Council had no power to prevent, approval was sought from the Executive to introduce a non-immediate Article 4 direction to prevent demolition, and external painting, to bring these permitted development rights within the planning system. As such, the Article 4 direction would not prevent demolition or repainting, but will enable the Council to scrutinise and weigh the proposals within the context of the National Planning Policy Framework.
- 6.11 The view of the Head of Planning and Conservation as the Council's heritage specialist is that the Article 4 direction should be confirmed as 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.

6.12 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 the painting of exterior walls, bringing these within the planning system so that they can be managed appropriately by requiring planning applications. The Head of Planning and Conservation does not consider that the objections raise any significant issues and this must be balanced against the relatively small impact of the Article 4 direction and the need to prevent harm to local amenity and planning for the historic built environment.

6.13 Does the information submitted include any exempt information? No

7.0 List of Appendices:

7.1 Appendix 4a: Piers Objection
Appendix 4b: Pleasure Beach Objection

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 There are no sustainability, climate change and environmental considerations.

13.0 Internal/external consultation undertaken:

- 13.1 Internal consultation has taken place as well as consultation with the Local Planning Authority prior to obtaining the Executive approval on 7 December 2020.

An external consultation period of 8 weeks undertaken with the public and interested parties

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 None.

19.0 Summary of Discussion:

19.1 Councillor Lynn Williams presented the report to the Executive, she highlighted that the non-immediate Article Four direction had been approved for consultation in December 2020 but the coronavirus pandemic had delayed that consultation. The Article Four direction was intended to deal with the situation where locally listed buildings outside Conservation Areas could be demolished or painted under permitted development rights without requiring planning permission. It was emphasised that the direction did not mean

that such activity could not take place but that planning permission would be required so allowing for representation from affected parties and the Council's Heritage team and a decision in line with the Council's planning policy and national planning guidance.

20.0 Executive decision:

20.1 The Executive resolved as follows:

1. To note the objections received attached at Appendices 4a and 4b, to the Executive report.
2. To approve the confirmation of the Article 4 direction to remove the permitted development right for demolition and exterior painting of locally listed buildings outside conservation areas given the need to prevent harm to local amenity and planning for the historic built environment.

21.0 Date of Decision:

21.1 11 July 2022

22.0 Reason(s) for decision:

22.1 Having considered the objections received, the Executive concluded that the Article Four direction which would bring the total demolition and the painting of exterior walls within the planning system was necessary and proportionate to manage the potential risk of harm to the historic built environment. The Executive agreed with the Head of Planning and Conservation that the objections did not raise any significant issues and overall the impact of the Article Four direction needed to be balanced against the relatively small impact of the direction and the need to prevent harm to local amenity and planning for the historic built environment.

23.0 Date Decision published:

23.1 12 July 2022

24.0 Alternative Options Considered and Rejected:

24.1 The Executive noted that it could choose not to confirm the Article Four Direction but considered that this would not protect the historic built environment.

25.0 Executive Members in attendance:

25.1 Councillor L Williams, in the Chair

Councillors Brookes, Campbell, Farrell, Hugo, Smith and Taylor

26.0 Call-in:

26.1

27.0 Notes:

27.1 Apologies were received from Councillor Hobson who was engaged elsewhere on official Council business.