

Strategic Planning and Infrastructure Committee

8 February 2022

Article 4 Directions

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service	William Cornall
Lead Officer and Report Author	Rob Jarman
Classification	Public
Wards affected	All

Executive Summary

The prioritisation and resourcing of potential article 4 directions

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. That the following prioritisation takes place with regard to future article 4 directions :
 - a) Work is completed on the appropriateness of article 4 direction(s) in relation to HMOs in the Fant area.
 - b) Exploratory work is undertaken in relation to article 4 directions being served in relation to :
 - Essential everyday services in villages identified for growth in the Development Plan
 - Conservation Areas
 - Employment Protection Areas
2. That sufficient resource is identified for the above.

Timetable

Meeting	Date
Strategic Planning and Infrastructure Committee	8 February 2022

Article 4 Directions

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they will support the Council's overall achievement of its aims as set out in the discussion section of the report</p>	Rob Jarman
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendations support the achievements of the first cross cutting objectives by, potentially, affording more protection to conservation areas.</p>	Rob Jarman
Risk Management	Covered in the risk section.	Rob Jarman
Financial	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	Paul Holland, Senior Finance Manager (Client)
Staffing	There will be Staffing implications and these are set out in section 3	Rob Jarman

Legal	There are no specific legal implications in the report which is drafted to request additional resources to facilitate delivery of the aspirations of this Committee. Any article 4 directions subsequently pursued will need to be made and (where appropriate confirmed) in accordance with procedures outlined in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.	Cheryl Parks Mid Kent Legal Services (Planning)
Privacy and Data Protection	<ul style="list-style-type: none"> Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules. We recognise the recommendations will impact what personal information the Council processes and so have completed a separate data privacy impact assessment [at reference]. 	Policy and Information Team
Equalities	An Equalities Impact Assessment should be completed as part of the recommended work set out in the recommendations to ensure they meet the needs of those communities.	Equalities and Communities Officer
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	N/A	Rob Jarman
Procurement	N/A	Rob Jarman
Biodiversity and Climate Change	There are no direct implications on biodiversity and climate change.	Biodiversity and Climate Change Manager

2. INTRODUCTION AND BACKGROUND

- 2.1 In a recent meeting of this committee, there has been a resolution to examine whether it would be appropriate to serve article 4 direction(s) on streets in the Fant area in order to restrict permitted development rights for Houses in Multiple Occupation (HMO) and, more broadly, using article 4 directions to protect everyday facilities. The presence of shops and other essential services as well as consideration of these in the Sustainability

Appraisal, formed the foundations of the settlement hierarchy in the Local Plan Review. For these two reasons, this matter was put on the Committee work programme. I also understand that there may well be recommendations for further article 4 directions in the future.

- 2.2 Given this context, it would seem prudent to prioritise work on potential article 4 directions, including the consideration of resource implications and likely timescales.
- 2.3 To recap, an article 4 direction is a direction under article 4 of the General Permitted Development Order which enables this Council, as local planning authority, to withdraw specified permitted development rights across a specified geographical area. The National Planning Policy Framework (NPPF) advises that all article 4 directions should be applied in a measured and targeted way. They should be based on robust evidence and apply to the smallest geographical area possible.
- 2.4 I have previously advised that, for compensation reasons, non-immediate article 4 directions are more appropriate than immediate ones but these require a minimum of 12 months to take legal effect from the time of serving (providing there is no intervention by the Secretary of State) to avoid any compensation risk.
- 2.5 As stated above, there is a need for **prioritisation** if further article 4 directions are to be pursued. Until recently, with the significant increase in permitted development rights, article 4 directions were predominantly used to remove permitted development rights for specified works in conservation areas. It would seem sensible to prioritise these as much resource is taken up with the designation and subsequent appraisals and management plans.
- 2.6 Secondly, the increase in permitted development rights has more of an impact on certain geographical areas and uses than others which, in turn, potentially, could have a significant impact on long established policies such as employment protection areas. It is appreciated that the revised prior approval process for commercial uses provides some safeguards notably in relation to the size threshold but there may be ways around this threshold, case law will dictate. So, there is potential for the undermining of employment protection areas. This overlaps with a previous resolution of this Committee to protect every day / essential services such as shops and other services in villages which are identified for growth in both the adopted Local Plan and the Local Plan Review.
- 2.7 **Resources:** thus far, some bespoke external legal advice has been taken in respect of the new Class MA rights for conversion from commercial to residential uses. Internally, the main bulk of the work has been undertaken by the Head of Planning and Development, legal services officers, conservation officers and administrative/technical support from the Strategic Planning Team. The main resource requirements are around:
 - Evidence gathering
 - Initial legal advice
 - Consultation
 - Report writing

- Execution of resolution (which entails a not insignificant amount of work by officers from both the planning and legal teams)

2.8 One of the main elements in terms of time and other resource is the evidence gathering. This is also where the main risks are, namely, if the geographical area and the alleged harm being caused are not clearly identified and specific then the proposed article 4 direction is likely to fail.

2.9 I would recommend the following prioritisation:

- Complete work on potential HMO article 4 direction(s) in the Fant area. To date, only Charles Street has any potential. Completion of the work should take around 3 months.
- Exploratory work commences on article 4 directions in connection with 'protecting' everyday services in the villages identified for growth in the Development Plan.
- Exploratory work commences on article 4 directions on conservation areas.
- Exploratory work commences on article 4 directions in relation to employment protection areas.

2.10 All the 'exploratory' work will require scoping and then a resource plan and timelines can be attached. I suggest that this will require project management resource together with external legal and planning advice and support. The initial cost of the scoping is likely to be under £10,000.

3. AVAILABLE OPTIONS

3.1 One option would be to complete the Fant HMO work only as this is the sole specific resolution of this Committee. However, there has been a general resolution to examine article 4 directions for protecting everyday services in villages to add significant strength to existing and draft local plan policies and so it would be logical to apply this principle to other long standing planning designations such as conservation areas and employment protection areas.

3.2 Therefore, it is recommended that the actions set out in paragraph 2.9 are adopted with the appropriate resourcing (set out in paragraph 2.10).

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 This is set out in paragraph 3.2.

5. RISK

- 5.1 This has already been set out but it primarily revolves around accurate evidence gathering and clarity over harm allied to sufficient and appropriate resourcing.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 N/A
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the recommendations are agreed then each of these will be reported back to future meetings of this Committee.
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8. REPORT APPENDICES

N/A

9. BACKGROUND PAPERS

None