

# The Use of Article 4 Directions

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## Introduction

RPS Planning was commissioned by the English Historic Towns Forum to undertake research into the use of article 4 directions by English local planning authorities. These are used to bring under planning control a range of works authorised under article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) Order 2008, which came into force from 1<sup>st</sup> October, 2008.

Many of these small scale “permitted development” works such as the replacement of traditional timber or metal windows with plastic windows in modern styles, natural roofing materials such as slates and clay tiles with concrete and plastic tiles, and front gardens with hardstandings for vehicles, can significantly harm the character and appearance of historic buildings and areas. The English Historic Towns Forum 1992 report entitled *Townscape in Trouble* highlighted the damage that can be caused to our historic townscapes when normal permitted development rights are exercised.

Where the buildings are listed, this problem is avoided by the requirement for listed building consent to be obtained for any works of demolition, alteration or extension that would affect the building’s special interest. In the case of unlisted buildings article 3 of the General Permitted Development Orders allow a vast range of works to be carried out without the need to apply for planning permission.

Within conservation areas and other environmentally sensitive areas such as world heritage sites, national parks and areas of outstanding natural beauty, the permitted development rights are more limited than elsewhere but even so those works can still degrade the character of individual buildings and whole areas over time, as a result of a succession of inappropriate changes. This has led to an increasing number of local planning authorities taking the opportunity when reviewing the boundaries of their conservation areas, to de-designate parts of existing conservation areas.

A local planning authority can restrict the permitted development rights of property owners to carry out certain categories of development that would otherwise be automatically allowed through the making of an article 4 direction. These directions can be made to cover one or more properties and they can restrict one or more classes of permitted development.

The Secretary of State's general approach to the making of article 4 directions (as set out in paragraph 4.23 of Planning Policy Guidance Note 15) is that permitted development rights should not be withdrawn without clear justification such as where there is a real and specific threat of development being carried out that would damage an interest of acknowledged importance.

The effect of an article 4 direction is not that development within the particular category of permitted development can not be carried out, but simply that it is no longer automatically permitted by article 3 of the General Development Order, but must instead be subject to a specific planning application. This does not necessarily mean that the local planning authority will refuse permission for the works but it does enable the authority to retain some control over the design and detailing of the proposed development and to grant permission subject to appropriate conditions.

### **Types of article 4 directions**

There are three types of article 4 directions:

1. directions under article 4(1) affecting only listed buildings
2. directions under article 4(1) affecting other buildings
3. directions under article 4(2) affecting dwellinghouses in conservation areas.

#### 1. Directions under article 4(1) affecting only listed buildings

It is unnecessary to make an article 4 direction concerning alterations and extensions to listed buildings as these works usually require listed building consent or planning permission, or both.

However, it may be appropriate for a local planning authority to make a direction restricting permitted development within the curtilage of a listed building. An example of this type of article 4 direction is that made by Westminster City Council for the 52 properties in Abbey Gardens, NW8, which are within the St. John's Wood Conservation Area. This direction introduced controls over the construction of buildings, enclosures and swimming pools within the curtilages of the properties (permitted under Part 1 – Class E of the GPDO) and the construction or alteration of gates, fences or walls (permitted under Part 2 – Class A).

This type of article 4 direction does not require the approval of the Secretary of State for Communities and Local Government if it relates only to a listed building or to development within the curtilage of a listed building.

In these cases the direction is made by a local planning authority and notified to the owners and occupiers and it comes into force on the date of notification.

## 2. Directions under article 4(1) affecting other buildings and land

These directions are normally made to restrict permitted development at the following:

1. dwellinghouses in conservation areas not fronting onto highways, waterways and open spaces;
2. other types of property in conservation areas such as commercial buildings where there is a desire to restrict the painting of facades. An example of this type of direction is that made by Chesterfield Borough Council and approved by the Secretary of State on 7<sup>th</sup> December, 2007, which introduced controls over the painting of the exterior of buildings in the Town Centre Conservation Area (works permitted under Part 2 – Class C of the GPDO). To assist owners the Council has produced a Colour Scheme Guide to inform designers, contractors and building owners of a range of British Standard paint colours that are likely to be acceptable to the Council.
3. to properties not in a conservation area. Normally this type of article 4 direction is used by local authorities to restrict the provision of temporary buildings and the use of land for less than 28 days (permitted under Parts 4 and 5 respectively of the GPDO), the use of land as a caravan site (permitted under Part 5), and the construction of agricultural and forestry buildings (permitted under Parts 6 & 7 respectively). However, one of the most unusual examples of this type of direction is made by the London Borough of Merton which involves the withdrawal of permitted development rights to erect marquees on public and private land in the north Wimbledon area at the time of the annual Wimbledon tennis championships.

These directions require the approval of the Secretary of State.

## 3. Directions under article 4(2) affecting dwellinghouses in conservation areas

A simplified procedure has been available since 1995 to enable article 4(2) directions to be made for dwellinghouses in conservation areas, without the need for the Secretary of State's approval.

These directions may be made to restrict the carrying out of the following categories of development in relation to dwellinghouses that front onto highways, waterways or open spaces in conservation areas:

1. – the enlargement, improvement or other alteration of a dwellinghouse (Part 1 – Class A)
  - any addition or alteration to its roof ( Part 1 – Class C)
  - the construction of a porch (Part 1 – Class D)
  - the provision within its curtilage of a building, enclosure or swimming pool (Part 1 – Class E)
  - the provision of a hard surface (Part 1 – Class F)
  - the installation of a chimney, flue or soil & vent pipe (Part 1 – Class G)
  - the installation of a microwave antennae (Part 1 – Class H).

2. the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure within the curtilage of a dwellinghouse (Part 2 – Class A)
3. the painting of the exterior of any part of a dwellinghouse or of a building or enclosure within the curtilage of a dwellinghouse (Part 2 - Class C)
4. the demolition of all or part of a gate, fence, wall or other means of enclosure within the curtilage of a dwellinghouse (Part 31 – Class B).

In addition the permitted development right to construct, alter or remove a chimney on a dwellinghouse in a conservation area, or on a building within the curtilage of a dwellinghouse can be removed.

An example of this type of article 4 direction is that confirmed by the London Borough of Ealing on 13<sup>th</sup> November, 2002 for all of the properties within the Hanger Hill Garden Estate. A Design Guide has been produced by the Council to explain the new controls and to provide guidance to the owners and occupiers as to precise details of the works that are likely to be acceptable to the Council.

#### **Procedures for making article 4 directions**

The procedures for making article 4 (1) and 4(2) directions differ:

1. Where a local planning authority makes a direction under article 4(2) it must publicise it by inserting a notice in a local newspaper and serve a notice on the owner and occupier of every dwellinghouse affected by the direction, unless this is impracticable.

The direction comes into force on the date on which the notice is served on the owner or occupier, or the date of the press advertisement. While there is no right of appeal against the making of an article 4 direction, the local planning authority must consider any representations made in response to the notices. It may then confirm the direction, not less than 28 days after the last notice was published and not more than six months after it was made.

If the local planning authority confirms the direction, it has to give notice of the confirmation in the same way that it notified the making of the order. If the local planning authority does not confirm the order within six months of making it, it will lapse.

2. Where a local planning authority makes a direction under article 4(1) it has to send a draft to the Secretary of State for Communities and Local Government for approval. When approved the local planning authority must notify every owner and occupier of the land affected by the direction immediately since the direction takes effect only on the date on which it is notified to the owner and occupier. If

the local planning authority considers that individual notification is impracticable, it may rely on a notice in the press.

### **Survey Methodology**

The research brief required RPS Planning to gather information on the use of article 4 directions by English local planning authorities. The data was obtained via a telephone survey and an officer responsible for the historic environment at each of the local planning authorities contacted, was consulted. All of the officers were happy to contribute to the research and made interesting points in relation to the use of article 4 directions.

A total of 72 local planning authorities were consulted - these being spread across the whole of England – with the officers providing varying levels of factual information relating to the operation of article 4 directions within the designated conservation areas in their administrative areas as follows:

- How many conservation areas are there in the local authority area?
- How many of these are subject to article 4 directions?
- What types of property are subject to the article 4 directions?
- Where they are used, do the directions cover all properties or just selective buildings within the area?
- On what dates were the directions made?
- Which permitted development rights have been removed by the directions?

The officers were asked for their opinion on a number of more detailed matters, including the following:

- Have significant numbers of additional planning applications been received as a result of the article 4 directions?
- Has a successful claim for compensation ever been made against the refusal of a planning application following the withdrawal of permitted development rights by a direction?

### **Research Findings**

#### *1. Numbers of conservation areas and number of them subject to article 4 directions*

The 72 local planning authorities consulted as part of the survey have amongst them designated 2,044 conservation areas. The number of conservation areas designated by the individual authorities varies considerably with Canterbury City Council having 95, Leeds City Council 65, Chester City Council and Huntingdonshire District Council 61 each, while those with the fewest are Basildon District Council with only 4, Sandwell Metropolitan Borough Council with 6, and Middlesbrough Council with 7.

81% of the local planning authorities had article 4 directions for one or more of their conservation areas with those with the highest number of directions in relation to the number of conservation areas are Hart District Council with an article 4 direction in place for each of its 32 conservation areas, Stockton-on-Tees Borough Council with a direction for each of its 11 conservation areas, Brighton and Hove City Council with directions in 84% of its conservation areas (that is, 28 directions in its 33 conservation areas), the London Borough of Enfield with 81% coverage (13 out of 16), the London Borough of Harrow with 50% of its conservation areas having article 4 directions (14 out of 28) and Canterbury City Council with 47% coverage (45 out of 95).

While 19% of the local planning authorities consulted had no article 4 directions for any of their conservation areas, particularly notable being Leeds City Council with 65 conservation areas, Huntingdonshire District Council with 61 conservation areas and Kirklees Metropolitan District Council with 59 conservation areas, many others with a large number of conservation areas had very few article 4 directions. In this category are Amber Valley Borough Council with 1 direction for its 29 conservation areas, the Metropolitan Borough of Wirral and Scarborough Borough Council with 1 direction for their 24 and 25 conservation areas respectively (4%), Carlisle City Council with 1 direction in its 19 conservation areas (5%), Bristol City Council with 2 directions for its 33 conservation areas, Stroud District Council with just 3 directions for its 42 conservation areas (7%).

The total number of conservation areas with one or more article 4 directions was 347 which amounts to just 15% of all of the conservation areas designated by the 72 local planning authorities.

## *2. Types of property affected by the article 4 directions.*

Of the local planning authorities consulted, the majority reported that the main type of property affected by the extra controls were dwellinghouses in conservation areas fronting onto highways, waterways or open spaces. However, a number of local authorities have brought under control, through the use of article 4(1) directions, works to non-residential properties; for example the Derbyshire Dales District Council by an article 4(1) direction approved by the Secretary of State in January, 2008, is able to control the painting of the exterior of buildings and the construction of gates, fences and walls in the Matlock Bath Conservation Area. The majority of the properties affected by this direction are in commercial use or are residential flats.

Other local planning authorities have used article 4(1) directions to bring under control permitted development works to agricultural and industrial premises within their conservation areas; notably Hart District Council by a direction made on 19<sup>th</sup> January, 1970 for the Odiham Town Centre Conservation Area, and Redcar and Cleveland Borough Council by directions made in 1978 and 1980 to control the construction of agricultural buildings in its Guisborough and Upleatham Conservation Areas, respectively.

3. *Are the article 4 directions applied selectively to specific properties or are they applied to all buildings within the conservation areas*

74% of all of the article 4 directions that have been made by the local planning authorities that responded to the survey have been applied selectively to specific properties within the conservation areas. For example, Carlisle City Council's article 4(2) direction made on 20<sup>th</sup> February, 1998 covers 69 individual unlisted dwellinghouses within the Stanwix Conservation, and Stroud District Council's article 4(2) direction made on 11<sup>th</sup> February, 1998 for 52 unlisted dwellinghouses in the Bisley Conservation Area.

However, a number of local authorities (26%) have applied the extra controls non-selectively or "blanket fashion" to all properties within their conservation areas. For example, Hart District Council on 23<sup>rd</sup> January, 1998 when it made 29 separate article 4(2) directions for 29 of its conservation areas, it applied the controls to all properties within each of the conservation areas, with the boundaries of both the conservation areas and article 4 directions being the same.

Similarly, Redcar and Cleveland Borough Council used the blanket approach for its article 4(1) directions made in 1974 for four of its conservation areas at Kirkleatham, Ormesby Hall, Wilton and Yearby, and again in 1978 when it made directions for a further three of its conservation areas at Guisborough, Liverton and Loftus. Also taking this approach was Stockton-on-Tees Borough Council which used the conservation area boundary of the Norton Conservation Area when it made the article 4(2) direction in 1973 to restrict development within the area.

This too has been the approach adopted by the London Borough of Ealing towards the article 4 directions made for the Hanger Hill (Haymills) Estate Conservation Area in 1997, the Hanger Hill Garden Estate Conservation Area in 1976 and 2002, and for the Brentham Garden Estate Conservation Area made in 1976 and 2007.

4. *Dates on which the directions were made*

The purpose of this question was to establish whether the majority of the directions were made after the introduction of the streamlined system introduced by the 1995 GPDO, whereby article 4(2) directions do not require the Secretary of State's approval. However, it has to be borne in mind that these directions only apply to dwellinghouses that front onto highways, waterways or open spaces within conservation areas.

Where this is not the case, for instance where an authority wishes to bring under control the construction of agricultural or industrial buildings, or where controls are sought over works to the rear of dwellinghouses, it is still necessary to seek the Minister's approval for an article 4(1) direction.

71% of the article 4 directions made by the local planning authorities that responded to the survey date from after 1995, with this high figure reflecting the large number of article 4(2) directions that have been made after the changes in the legislation. Many have come about after the preparation of character appraisals and management plans for conservation areas which have identified the need for controls over permitted development works.

All but one of Canterbury City Council's and Hart District Council's article 4 directions for controlling permitted development works in conservation areas date from after the introduction of the 1995 legislation. Similarly, all of the 14 directions made by South Northamptonshire District Council were made after 1995 and with 14 directions post 1995. A number of local authorities including the London Boroughs of Ealing and Merton have supplemented pre 1995 article 4(1) directions with new 4(2) directions, though the changed legislation appears to have made no difference to other local authorities including Westminster City Council, Derby District Council, Allerdale Borough Council and Bradford Metropolitan District Council which have made no new directions since the introduction of the 1995 GPDO.

#### 5. *Types of permitted development removed*

The majority of the article 4 directions made by the local authorities that responded to the survey involved the removal of permitted development rights in Parts 1 and 2 of the General Permitted development Order. The works most often brought under planning control were as follows:

- Part 1 – Class A – extensions and alterations to a dwellinghouse
- Part 1 – Class B – additions to the roof of a dwellinghouse
- Part 1 – Class C - alterations to the roof of a dwellinghouse
- Part 1 – Class D - the construction of a porch
- Part 1 – Class E – the construction of curtilage buildings
- Part 1 – Class F – the construction of a hardstanding
- Part 1 – Class H - the installation of a microwave antenna
- Part 2 – Class A - the construction of a gate, fence or wall
- Part 2 – Class C - the painting of the exterior of a building
- Part 31 – Class B – the demolition of any gate, fence or wall.

In the case of the 34 article 4(2) directions made by Hart District Council in 1998 and 2000, Classes A, B, C, D and E were removed from all of the unlisted dwellinghouses within its conservation areas. While the direction made by Stroud District Council on 11<sup>th</sup> February, 1998 for the unlisted houses in the Bisley Conservation Area, additionally applied Classes F, H and D.

In the case of the Derbyshire Dales District Council direction for the Classes B and E were not applied to the Matlock Bridge Conservation Area article 4(1) direction that was approved by the Secretary of State in January, 2008.

## 6. *Additional numbers of planning applications submitted due to article 4 directions*

As a result of the introduction of an article 4 direction, a planning application must be submitted to the local planning authority for express permission for development proposals. However, no fee is payable in respect of a planning application made for what would have been permitted development had there been no article 4 direction. (See the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 – regulation 5).

A number of the respondents to the survey provided a rough figure of 1 to 2 additional planning applications per week being received by their authority as a result of the making of article 4 directions. However, most were unable to come up with a figure though 15% were of the view that significant amounts of applications had been generated by the article 4 directions.

## 7. *Compensation*

The withdrawal of permitted development rights by an article 4 direction may give rise to a claim for compensation if a planning application is refused or granted subject to conditions. Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. (See Section 108 of the Town and Country Planning Act, 1990)

None of the local planning authorities contacted in the survey reported any incidences of claims for compensation being made against their authority. The only known cases where this has occurred, have been in relation to the withdrawal of permitted development rights for car boot sales and Sunday markets. Nevertheless a number of respondents quoted this as being a deterrent to making article 4 directions.

## **Conclusions**

Over the past decade many more article 4 directions have been made by local planning authorities than previously, as a result of the financial impetus provided by the Government to local authorities to prepare character appraisals of their conservation areas. The subsequent preparation of management plans for these areas have drawn attention to the damage caused to the character of these areas by many of the small scale works that can be carried out under article 3 of the General Permitted Development Order 1995 and the 2008 Amendment Order, and to the need for these works to be brought under planning control.

Not all of these new article 4 directions have been of the simplified 4(2) variety which do not require the Secretary of State's approval; many local authorities have carried out a very detailed assessment of the problems within their conservation areas and have as a consequence been able to establish a "real and specific threat" that justifies the imposition of the additional planning controls. Approval of these article

4(1) directions by the Minister now appear to be more easily forthcoming as they are seen as part of the local authorities plan for the preservation and enhancement of their conservation areas.

While most local authorities seem to be willing to make article 4 directions as part of their proposals for the preservation and enhancement of the character and appearance of their conservation areas, there are a small number that have avoided taking such action and this is often blamed on a lack of member support.

However, there are more and more cases where government appointed planning inspectors are upholding the decisions of local planning authorities to refuse planning permission for works that had previously been permitted but which have been brought under planning control through article 4 directions. Recent cases are 1 Abbey Gardens, London, NWW8 9AS (Appeal reference APP/X5990/A/07/2062092) and 3 Ray Walk, Leigh-on-Sea, Essex, SS9 2NP (appeal reference : APP/D1590/A/08/2072146).