

MAYOR & CABINET		
Report Title	Baring Hall Hotel: Confirmation of Article 4 (1) Direction	
Key Decision	Yes	Item No.
Wards	Downham and Grove Park	
Contributors	Executive Director Resources & Regeneration (Head of Planning) and Head of Law	
Class	Part 1	Date: 18 January 2012

1. Summary

- 1.1 The report outlines the background to the decision to make an Article 4 (1) Direction which removed permitted development rights under Part 31 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 relating to the Baring Hall Hotel. It considers the representations submitted and recommends that the Direction should be confirmed. The original report to Mayor & Cabinet dated 14th September 2011 is attached to this report.

2. Purpose

- 2.1 To provide the information necessary to enable Mayor and Cabinet to decide whether to confirm the provisional Article 4 (1) Direction for the Baring Hall Hotel having considered the representations received.

3. Policy context

- 3.1 The contents of this report are consistent with the Council's policy framework. The Local List programme will contribute to the 'Clean, green and liveable' objective in the Sustainable Community Strategy (i.e. improving environmental management and promoting a sustainable environment), and the corresponding clean green and liveable priority, notably improving environmental management and promoting a sustainable environment. Consistency with Council Local Development Framework Documents is explained below.

- 3.2 Government Planning Policy Statement 5: Planning for the Historic Environment (PPS5) identifies locally listed buildings as non-designated heritage assets. With regards to non-designated heritage assets PPS5 states;

"Regional and local planning authorities should ensure that they have evidence about the historic environment and heritage assets in their area and that this is publicly documented." (HE2.1)

With regard to Article 4 Directions, PPS 5 states under Policy HE4;

“Local planning authorities should consider whether the exercise of permitted development rights would undermine the aims for the historic environment. If it would, local planning authorities should consider the use of an article 4 direction to ensure any development is given due consideration.”

- 3.3 The London Plan (Policy 4B.12) states that boroughs should, “...ensure that the protection and enhancement of historic assets in London are based on an understanding of their special character...”
- 3.4 Lewisham’s Core Strategy Policy 16, states that, “The Council will ensure that the value and significance of the borough’s heritage assets...such as locally listed buildings...will continue to be monitored, reviewed, enhanced and conserved according to the requirements of government planning policy guidance, the London Plan policies, local policy and English Heritage best practice.”
- 3.5 Lewisham has a saved UDP policy URB 20, “ The Council will seek to ensure and encourage the preservation and enhancement of locally listed buildings of townscape merit and will use its powers where possible to protect their character and setting.”

4. Recommendation

- 4.1 It is recommended that the Article 4 (1) Direction for the Baring Hall Hotel be confirmed.

5. Background

- 5.1 The Baring Court Hotel is a late Victorian hotel built in a domestic style with Arts and Crafts influences, is located at the heart of the Grove Park shopping centre (within Downham ward but immediately adjacent to Grove park ward) and was most recently used as a pub. It had been considered but rejected by English Heritage for statutory, national listing, and is the subject of an extensive local campaign for its preservation. Planning permission for its demolition and redevelopment was refused by the Planning Committee at its meeting on 11 August 2011.
- 5.2 Article 4 directions and Local Listing are matters for the Mayor and Cabinet, so following the decision of the Planning Committee, the Mayor and Cabinet on 14 September considered that the qualities of the building were such that it justified being locally listed, and that there was sufficient planning justification for bringing its demolition within planning controls by the making an immediate Article 4 Direction removing the right to demolish the building without the need for planning permission. The Mayor came to this decision having regard to the relevant criteria as set out in the report to Mayor & Cabinet of 14 September 2011 which is attached to this report. The Council is required to consider whether to confirm the provisional Direction within 6 months of making it otherwise it will lapse.

- 5.3 Confirmation of the Direction may give rise to the liability to pay compensation, but only if an application for development is refused which would normally have been permitted before the Article 4 Direction was introduced, or permission is granted subject to more limiting planning conditions than the General Permitted Development Order would allow. The potential financial consequences of confirming the Article 4 (1) Direction remain the same as when considered in September and are reproduced in Appendix 1 which is in the Part 2 agenda because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).

6. Representations

- 6.1 Following the making of the provisional Direction, statutory notification was given by a notice published in the "News Shopper", notices displayed on site and the owners notified directly. Only one representation was received, an objection from the owners' solicitor. The objection letter and the relevant correspondence referred to therein are attached to this report, at Appendix 1.
- 6.2 The objection begins by asserting that the Council's decision to locally list the building is unsustainable because officers had initially considered that it did not merit local listing. However government guidance (PPS5 policy HE8) does provide the scope for local planning authorities to identify heritage assets as part of the development management process. In the case of the Baring Hall Hotel extensive evidence was provided by third parties during consultation on the planning application, and in addition English Heritage had acknowledged its local significance both architecturally and as a landmark. These considerations along with the decision of the Planning Committee underpinned the building appraisal contained in the Mayor & Cabinet report of 14 September which provided evidence to demonstrate that the building did meet the Council's criteria for local listing.
- 6.3 The objection also considers that the building should not have been locally listed because it had not already been as part of the production and adoption of the Core Strategy. However this represents a misunderstanding of the plan making process; local listing is an ongoing process, as is national listing, and the ongoing nature of the process is facilitated by PPS5.
- 6.4 The objection goes on to state that an Article 4 Direction is not justified because it would not meet the compelling and exceptional circumstances set by government to justify the removal of permitted development rights, nor those of English Heritage good practice guidance. The Mayor's decision to make the immediate direction was made in the light of officers recommendations and opinions expressed under paragraph 7 of that report. Officers contend that the demolition of the Baring hall Hotel, which is now locally listed, will result in the loss of a building of significant historic, townscape and architectural qualities which will cause harm to the visual amenity of the area. Further, as considered in the earlier report, officers consider that the Council cannot properly plan for its area without having control over the demolition of the Baring Hall Hotel, especially now considering its locally listed status. This remains the opinion of

officers, even more so now that the building has been locally listed. Accordingly, officers consider that there are exceptional grounds justifying the Direction.

- 6.5 The Mayor's reasons for making the Direction set out in detail how he considered that, having considered all relevant considerations, there were exceptional reasons for removing permitted development rights for demolition in this case and concluded that "... the strong arguments concerning visual amenity and the need for the proper planning of the area lead him to believe that he should issue an Article 4 Direction that withdrew the right to demolish as well as agreeing to a local listing."

7. Financial implications

- 7.1 There will be some administrative costs in advertising, mailings and printing the final documents associated with making an Article 4 Direction. These costs can be contained within the existing 2011/12 Planning budget.
- 7.2 Section 108 of the Town and Country Planning Act 1990 makes provision for compensation to be paid by the local planning authority either:
(1) if an application for development is refused which would normally have been permitted development before an Article 4 Direction was introduced; or
(2) the LPA grants planning permission subject to more limiting conditions than the General Permitted Development Order 1995 would normally allow, as a result of an Article 4 (1) Direction being in place.
- 7.3 Section 107 sets out the method for assessing such compensation, which is strictly limited to the abortive costs associated with the planning application and any other loss, which is directly attributable to the Article 4 (1) Direction being made. The Council is only liable to pay compensation on planning applications made within 12 months of the Article 4 (1) Direction being introduced. The making of a Direction creates this right. No budget exists for such claims and should one arise it would need to be funded from the Council's corporate provisions.
- 7.4 The estimated possible compensation payable on making an Article 4 direction is set out in the associated report in Part 2 of this agenda, reproduced from the meeting of 14 September 2011.

8. Legal implications

- 8.1 An Article 4 Direction, pursuant to the Town and Country Planning (General Permitted Development) Order 1995 ("the Order"), may be made to withdraw permitted development rights granted under Part 31 of Schedule 2 of that Order - which permits the demolition of buildings subject to certain conditions being satisfied. An "immediate" direction will withdraw rights immediately under Part 31 but is subject to confirmation following local consultation within 6 months, or else the direction will lapse.

- 8.2 Prior to making a decision on whether to make a direction paragraph 1 (a) of Article 6 of the Order contains a legal requirement that where an immediate direction is made the Council must consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. It was considered that the grounds for making the Article 4 Direction had been fulfilled and the Mayor & Cabinet authorised the making of the Direction on 14th September 2011.
- 8.3 The procedure for making an Article 4 (1) Direction is prescribed by Articles 5 and 6 of the Order. There is no requirement to give notice to the owners and occupiers affected by the Direction prior to the making of it. On the making of the Direction statutory consultation takes place. The Council is required to take into account any representations received in response to the Direction before deciding whether to confirm it. The representations received and associated documents appear at Appendix 1, and officers' responses to the points contained therein are set out in this report. The Mayor must consider those representations before making any decision. He must also be satisfied having considered them that the grounds upon which an Article 4 direction may be made (and confirmed) are still made out. Notice of confirmation of the Direction is required to be given by public newspaper notice and the display of site notices in the area included in the Direction. Unless the Direction is confirmed by the Council within a period of six months it lapses.
- 8.4 By virtue of the Local Government Act 2000 (as amended) and the associated Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) the decision on whether to confirm an Article 4 Direction is the responsibility of the Mayor.
- 8.5 Under the Human Rights Act 1998, the Council must not act in a way which is incompatible with the rights referred to in the Act. There is an exception to this, in that the Council will not be acting unlawfully if Acts of Parliament mean that it can not act in any other way.

The relevant human rights in this instance are the:

- right to respect for the home, under Article 8; and
- right to peaceful enjoyment of possessions, under Article 1 of Protocol 1.

- 8.6 However, these rights are not absolute, and may lawfully be infringed in certain defined circumstances. Where infringement is permissible, it must occur in accordance with, or subject to the conditions provided for by, the law. It must also be proportionate; i.e., it must achieve a fair balance between competing interests and not go beyond what is strictly necessary to achieve the purpose involved.
- 8.7 In the case of Article 8, permitted infringements include those necessary for the protection of the rights and freedoms of others. With regard to Article 1 of Protocol 1, controls over the use of property are permissible where they are in the public interest. The withdrawal of permitted development rights by the Council is covered by the exceptions to these two Articles.

- 8.8 As the Council's powers for controlling the exercise of permitted development rights are contained, and subject to the procedures set out, in the Town & Country Planning (General Permitted Development) Order 1995 (as amended), their use occurs within the provisions laid down by the law, and is proportionate. The effect of removal of permitted development rights is that a householder will need to obtain formal planning permission before undertaking works prohibited by the Direction This creates a further safeguard, in that if planning permission is refused by the Council, then the usual right of appeal to the Secretary of State is available.
- 8.9 Notice of confirmation of Article 4 (1) Directions must be given.

9. Crime and disorder implications

- 9.1 There are no direct crime and disorder implications.

10 Equalities implications

- 10.1 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. The new duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

As was the case for the original separate duties, the new duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally

required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty, However, that Code is not due to be published until later in 2011. The guides can be found at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>

10.2 Equal opportunities will be promoted by making the Notification available equally to all and providing it in alternative formats when requested. The Article 4 Direction can be viewed at the Council's Planning Reception or a photocopy or PDF version obtained on request. Article 4 (1) Directions are applied equally without discrimination on any grounds

11 Environmental implications

11.1 The principle implicit in conservation management is to repair and maintain existing building elements rather than requiring the replacement and disposal of serviceable items to landfill. This reduces environmental impacts by retaining items and their embodied energy and not causing carbon dioxide emissions necessary for the manufacture and transportation of new items.

12 Conclusion

12.1 Having made the article 4 Direction in September, the purpose of this report is to consider whether it should be confirmed having taken into consideration the representations received. These representations have been reviewed in section 6 above and for the reasons set out there it is recommended that the Article 4 (1) Direction is confirmed.

Background documents and originator

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Baring Hall Hotel Report to M&C (Part 1)	14 Sept 2011	Laurence House	Urban Design and Conservation	Phil Ashford	No
Baring Hall Hotel report to M&C (Part 2)	14 Sept 2011	Laurence House	Urban Design and Conservation	Phil Ashford	Yes
London Borough of Lewisham Local Development Framework Core Strategy	2011	Laurence House	Urban Design and Conservation	Brian Regan	No
London Borough of Lewisham Unitary	2004	Laurence House	Urban Design and Conservation	Phil Ashford	No

Development Plan					
The London Plan	2004 (with later alterations)	Laurence House	Urban Design and Conservation	Phil Ashford	No

If you have any queries on this report, please contact Phil Ashford, 5th floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8533.

Mayor and Cabinet		
Report Title	Baring Hall Hotel	
Key Decision	Yes	Item No.
Ward	Grove Park	
Contributors	Head of Planning and Head of Law	
Class	Part 1	Date: 14 September 2011

1 Reason for Urgency

- 1.1 This matter has not been included in the Council's Forward Plan. However, the decision must be taken by such a date that it is impracticable to defer it until after it has been included in the next Forward Plan on September 9 and until the start of the period to which the next Forward Plan relates on October 1. The reason the report needs to go to Mayor and Cabinet on 14 September is because it concerns the need to give consideration to the protection of a building, which may otherwise be demolished before it can be included in the next forward plan.
- 1.2 **In accordance with the provisions of Regulation 16 Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000, the Mayor has received the written agreement of the Chair of the Overview & Scrutiny Business Panel that the taking of the decision cannot reasonably be deferred.**

2. Summary

- 2.1 The Baring Court Hotel is a late Victorian hotel built in a domestic style with Arts and Crafts influences, was most recently used as a pub and has now been refused planning permission for its demolition and redevelopment. It has been considered but rejected by English Heritage for statutory listing, and is the subject of an extensive campaign for its preservation. The report considers whether the building should be locally listed, and whether its demolition can be brought within the Council's planning control by the making of an immediate Article 4 Direction. The report concludes that the building does merit local listing, and that there is sufficient planning justification for bringing its demolition within planning controls by the making of an immediate Article 4 Direction, but that the financial implications of doing so are likely to expose the Council to substantial costs. Consequently officers do not recommend making an Article 4 Direction.

- 2.2 The potential financial consequences of making an Article 4 Direction for the Council are set out in the associated part 2 report.

3. Purpose

- 3.1 To provide the information needed to enable Mayor and Cabinet to decide whether to locally list the Baring Hall Hotel and whether to put in place an Article 4 Direction removing permitted development rights for its demolition.

4. Recommendations

- 4.1 The Mayor is recommended to approve the addition of the Baring Hall Hotel to the Local List.
- 4.2 The Mayor is not recommended to make an Article 4 Direction removing the permitted development rights for demolition, provided by Part 31 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

5. Policy Context

- 5.1 The contents of this report are consistent with the Council's policy framework. The Local List programme will contribute to the 'Clean, green and liveable' objective in the Sustainable Community Strategy (i.e. improving environmental management and promoting a sustainable environment), and the corresponding clean green and liveable priority, notably improving environmental management and promoting a sustainable environment. Consistency with Council Local Development Framework Documents is explained below.

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With regard to Article 4 Directions, PPS 5 states under Policy HE4;

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- 4.4 Lewisham's Core Strategy Policy 16, states that, "The Council will ensure that the value and significance of the borough's heritage assets...such as locally

listed buildings...will continue to be monitored, reviewed, enhanced and conserved according to the requirements of government planning policy guidance, the London Plan policies, local policy and English Heritage best practice.”

- 4.5 Lewisham has a saved UDP policy URB 20, “ The Council will seek to ensure and encourage the preservation and enhancement of locally listed buildings of townscape merit and will use its powers where possible to protect their character and setting.”

5. Background

- 5.1 Until 2009 the Baring Hall Hotel was in use as a pub; since then it has been vacant and has been damaged by fire. At its meeting on 11 August the Planning Committee A considered a planning application to demolish the Baring Hall Hotel and redevelop its site with a mixed use development consisting of ground commercial uses and fourteen new residential units, some of them affordable.

- 5.2 The application was refused by the Planning Committee for the following reasons:

“The proposed development, by reason of its mediocre design, would fail to provide a suitable replacement for the existing Baring Hall Hotel building which is of significant historic, architectural and townscape quality in this prominent corner location and fails to justify the amount of development proposed for the site. As such, the development would fail to make a positive contribution to the visual character of the area, would fail to meet Core Strategy Objective 10: Protect and Enhance Lewisham’s character and would fail to comply with Spatial Policy 5 Areas of Stability or Managed Change of the Council’s Core Strategy and Core Strategy Policies 15 High quality design for Lewisham and 16 Conservation areas, heritage assets and the historic environment, saved Policy URB 3 Urban Design of the Unitary Development Plan and Policies 7.1 and 7.4 of the London Plan 2011.

- 5.2 Separate to the determination of the Planning application, the developer applied for prior approval of the method of demolition as this would allow the demolition of the building. This was subsequently granted by Officers. However, this determination has been quashed by a Consent Order and the matter remitted to the Council for re-determination within 28 days of the making of the Order.

6 Local Listing

- 6.1 The Baring Hall Hotel is a late Victorian purpose built hotel prominently located at the junction of Baring Road and Downham Way. It is located across the road from Grove Park station and is surrounded by several small parades of shops, mainly anonymous blocks, which make up the Grove Park Local Centre. The

Downham Estate, a 1920s development, which spreads over much of the locality, adjoins Grove Park to the west of the hotel.

- 6.2 Grove Park as such came into existence after the arrival of the railway and construction of Grove Park station in 1870. Following this, a small selected estate of large villas for the middle class was developed to the west of Baring Road north of the railway tracks which remained surrounded by fields and farms until the beginning of the 20th century. The rural surrounding also appeared to make Grove Park an attractive location for day or weekend trips hence the construction of the Baring Hall Hotel.
- 6.3 The Hotel and station marked the southern entrance to the estate and no doubt constituted the public face of it. The Hotel is still in both scale and architectural quality the most significant building in the area and this landmark quality is enhanced by its prominent corner position. The estate was re-developed during the 20th century with only one villa remaining in a much altered form in Somertrees Avenue. A few remainders of Grove Park earliest development phase also remain at the eastern side of Baring Road south of the junction with Downham Way though none of them comparable in quality and state of preservation to the Hotel.
- 6.4 The Baring Hall Hotel is two storeys with a hipped roof and made of red brick. There are gabled dormer windows and a projecting gabled bay to the first floor and roof. There is a balcony to the front elevation with an iron balustrade and a pedimented entrance to the side. An extension was built in the 1950s that extends to the rear along Downham Way. The hotel sits on a generous plot with a large car park to the rear accessed via Downham Way.
- 6.5 The hotel is believed to have been built around 1880 when the Earl of Northbrook, Lord Baring, developed the southern part of his estate around the new Grove Park station. Norman Shaw's architectural practice was engaged to design the new hotel and it was his senior assistant, Ernest Newton who was responsible for the design of the hotel. Newton went on to have a distinguished career becoming President of the Royal Institute of British Architects (RIBA), a founding member of the Art Workers Guild and a Royal Academician. He was also awarded a CBE and became known as a distinguished Arts and Crafts architect. He was a local man, educated in Blackheath and responsible for several notable local buildings including St Swithun's Church in Hither Green Lane, the vicarage of which is already on Lewisham's Local List. The Baring Hall Hotel is an unusual example of a commercial building by Newton as he principally built substantial residential properties in Kent, Surrey and Sussex.
- 6.6 English Heritage were asked to statutorily list the building but considered it to be an early example of Newton's work lacking the qualities of his later work and as such did not meet the criteria for statutory listing. However, in the notification report English Heritage state that,

“The Baring Hall Hotel ...[is]...locally significant as a landmark and ...a handsome piece of street architecture...”

- 6.7 The building is prominently positioned on a busy road junction and as such makes a positive contribution to the local streetscape as a distinctive local landmark building. All four elevations are visible because of the corner plot it occupies and the architect has designed each to be viewed, not succumbing to using cheaper materials on its secondary elevations.
- 6.8 The hotel is the last remnant of the artist estate that Lord Northbrook envisaged with the redevelopment of his estate in this part of Grove Park. It is significant as evidence of the evolution of this suburb which is now dominated by early twentieth century residential properties.
- 6.9 To conclude the Baring Hall Hotel, by way of its historic, townscape and architectural qualities set out above is considered to meet the criteria adopted by Mayor and Cabinet and reproduced at Appendix 1 for locally listed buildings and officers therefore advise that it can be locally listed.
- 6.10 For the purposes of development control, that a building has been "locally listed" is a material consideration in the determination of subsequent planning applications involving the building.

7 Bringing the building's demolition within planning control

- 7.1 Unlike statutorily listed buildings or buildings located in a conservation area, there are no controls over the demolition of a local listed building outside a conservation area. Demolition in certain circumstances is permitted development by reason of Part 31 of the General Permitted Development Order 1995. However, for development to be "permitted" under Part 31, an applicant must apply to the Local Planning Authority for a determination as to whether Prior Approval of the authority will be required to the method of demolition and any proposed restoration of the site. This prior approval relates only to demolition methods and re-instatement of the ground. It does not stretch to the principle demolition which is permitted by the Order if the Council is satisfied as to methods.
- 7.2 Given that the demolition of buildings such as this is development permitted by the General Permitted Development Order, the Council can only control the demolition through the removal of these permitted development rights by an Article 4 Direction. An Article 4 Direction, pursuant to the Town and Country Planning (General Permitted Development) Order 1995 ("the Order"), may be made to withdraw permitted development rights granted under Part 31 of Schedule 2 of that Order - which permits the demolition of buildings subject to certain conditions being satisfied. An "immediate" direction will withdraw rights immediately under Part 31 but is subject to confirmation following local consultation within 6 months, or else the direction will lapse. Paragraph 1 (a) of Article 6 of the Order contains a legal requirement that where an immediate direction is made the Council must consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. The relevant guidance on making Article 4 directions makes clear that such directions should not be

made without clear justification and that it is a power that should be used only in exceptional circumstances. Replacement Appendix D to Circular 9/95 states that there should be particularly strong justification for the withdrawal of permitted development rights relating to cases where prior approval powers are available to control the permitted development. In relation to Part 31, prior approval powers are available to control the permitted development including restoration following demolition.

- 7.3 The threshold for meeting the appropriate criteria for an Article 4 Direction are high; in that it needs to be demonstrated that the development proposed (demolishing the building) would be prejudicial to the proper planning of the area or constitute a threat to the amenities of the area.
- 7.4 The Council's saved policy URB20 seeks to ensure and encourage the preservation and enhancement of Locally Listed Buildings. Under Part 31 however the demolition of such undesignated heritage assets is permitted and as such there is no procedure in place in which the heritage value of these building in proposals for their loss or replacement can be given due consideration. This effectively undermines the Council's aims and proper planning for the protection of locally listed buildings.
- 7.5 The demolition of the Baring Hall Hotel is considered by officers to cause harm to the visual amenities of the area as it will result in the loss of a building of significant historic, townscape and architectural qualities. The building is a landmark and forms a significant part of the visual amenity of the area. This is even more the case were the building to be locally listed.
- 7.6 Overall, it is officers' opinion that the Council cannot plan properly for its area without having control over the demolition of Locally Listed Buildings. Furthermore the demolition of this local landmark will have a significant impact on the amenity of the area. Therefore, it is considered that an article 4 direction could be served to prevent the demolition. However, the impact on amenity and the proper planning of the area must be weighed against the financial implications arising from making the Direction in relation to the extent of the compensation payable, which are described below.

8 Compensation

- 8.1 There is a further matter that the Council will need to consider before making an Article 4 direction in relation to this building. The withdrawal of permitted development rights by way of an Article 4 direction may give rise to the liability to compensate the developer. Any person interested in the land may seek compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. The Town and Country Planning Act 1990 requires that a planning application should first have been made and permission refused or only granted subject to conditions other than those previously imposed by the development order. Compensation may be claimed not only by owners and tenants, but also by persons with a contractual right to use the land. Compensation liability arises even if the Council subsequently refuses to confirm the direction. If a direction is made

and an express planning application for demolition is refused or granted on conditions beyond those set out in the Order, the Council may be liable to compensate those with an interest in the property

- 8.3 An estimate of the level of compensation due is set out in Part 2 of the agenda.

9 Consultation

9.1 It is the Council's normal practice to notify the building owners of the officers intention to report to the Mayor on local listing as well as the Article 4 Direction. The land owner has been notified and given an opportunity to respond. Any response will be reported verbally at the meeting.

9.2 If an Article 4 Direction was made this will trigger a formal consultation process. Representations following consultation are then taken into consideration when confirmation of the Order is considered.

10 Financial Implications

10.1 There will be some administrative costs in advertising, mailings and printing the final documents associated with locally listing the building and making an Article 4 Direction. These costs can be contained within the existing 20010/11 Planning budget.

10.2 Section 108 of the Town and Country Planning Act 1990 makes provision for compensation to be paid by the local planning authority either:
(1) if an application for development is refused which would normally have been permitted development before an Article 4 Direction was introduced; or
(2) the LPA grants planning permission subject to more limiting conditions than the General Permitted Development Order 1995 would normally allow, as a result of an Article 4 (1) Direction being in place.

10.3 Section 107 sets out the method for assessing such compensation, which is strictly limited to the abortive costs associated with the planning application and any other loss, which is directly attributable to the Article 4 (1) Direction being made. The Council is only liable to pay compensation on planning applications made within 12 months of the Article 4 (1) Direction being introduced. The making of a Direction creates this right.

10.3 The estimated compensation payable on making an Article 4 direction is set out in Part 2 of this agenda.

11 Legal Implications

Some of the legal implications are set out in the body of the report, in addition:

Locally Listing:

- 11.1 The local list is a non-statutory list of buildings compiled by the Council. The local list is intended to recognise buildings which are not statutorily protected so that they can be properly considered when development proposals are submitted to the Council for determination. The Local List reinforces the Council's efforts to preserve the character and appearance of the buildings that are included on it. In adding a building to the list the Council is able to rely upon the well being powers contained within S2 of the Local Government Act 2000 (as amended).
- 11.2 Section 2 of the Local Government Act 2000 provides that every local authority has the power to do anything which they consider is likely to achieve any one or more of the following objects:
- (a) the promotion or improvement of the economic well-being of their area,
 - (b) the promotion or improvement of the social well-being of their area, and
 - (c) the promotion or improvement of the environmental well-being of their area
- 11.3 In determining whether or how to exercise the power set out above the Council is required by Section 2(3) to have regard to the Council's Sustainable Community Strategy. Such considerations are included in the body of this report.
- 11.4 There are no significant human rights implications associated with local listing given the limited effect of local listing and that it does not confer legal protection for buildings so listed.

Article 4 Direction

- 11.5. As previously stated in the report, an Article 4 Direction, pursuant to the Town and Country Planning (General Permitted Development) Order 1995 ("the Order"), may be made to withdraw permitted development rights granted under Part 31 of Schedule 2 of that Order - which permits the demolition of buildings subject to certain conditions being satisfied. An "immediate" direction will withdraw rights immediately under Part 31 but is subject to confirmation following local consultation within 6 months, or else the direction will lapse.
- 11.6 Paragraph 1 (a) of Article 6 of the Order contains a legal requirement that where an immediate direction is made the Council must consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. It is the view of the Borough Planning Officer, as set out in this report, that there are sufficient grounds for an Article 4 Direction.
- 11.7 The relevant guidance on making Article 4 directions makes clear that such directions should not be made without clear justification and that it is a power that should be used only in exceptional circumstances. Replacement Appendix D to Circular 9/95 states that there should be particularly strong justification for the withdrawal of permitted development rights relating to cases where prior approval powers are available to control the permitted development (Paragraph

2.4 of the Replacement Appendix D). In relation to Part 31, prior approval powers are available to control the permitted development including restoration following demolition.

- 11.8 If an Article 4 direction is to be made it is necessary for the Council to demonstrate the prejudice to the proper planning of the area or threat to amenities should permitted development rights be exercised and the hotel demolished. It is necessary for the Council to provide full reasons for considering it necessary, exceptionally, to withdraw these permitted development rights. These reasons would also need to be the subject of local consultation after the making of the Direction in order that the Council can determine whether to confirm the direction.
- 11.9 By virtue of the Local Government Act 2000 (as amended) and the associated Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) the making of an Article 4 Direction is the responsibility of the Mayor.
- 11.10 Under the Human Rights Act 1998, the Council must not act in a way which is incompatible with the rights referred to in the Act. There is an exception to this, in that the Council will not be acting unlawfully if Acts of Parliament mean that it can not act in any other way.

The relevant human rights in this instance are the:

- right to respect for the home, under Article 8; and
- right to peaceful enjoyment of possessions, under Article 1 of Protocol 1.

However, these rights are not absolute, and may lawfully be infringed in certain defined circumstances. Where infringement is permissible, it must occur in accordance with, or subject to the conditions provided for by the law. It must also be proportionate; ie, it must achieve a fair balance between competing interests and not go beyond what is strictly necessary to achieve the purpose involved.

In the case of Article 8, permitted infringements include those necessary for the protection of the rights and freedoms of others. With regard to Article 1 of Protocol 1, controls over the use of property are permissible where they are in the public interest. The right of a person to undertake changes to their properties, in reliance on permitted development rights, is covered by the exceptions to these two Articles.

As the Council's powers for controlling the exercise of permitted development rights are contained, and subject to the procedures set out, in the Town and Country Planning (General Permitted Development) Order 1995 (as amended) their use occurs within the provisions laid down by the law, and is proportionate. The effect of removal of permitted development rights is that a owner will need to obtain formal planning permission before undertaking the categories of work referred to in this report. This creates a further safeguard, in

that if planning permission is refused by the Council, then the usual right of appeal to the Secretary of State is available.

9. Crime and Disorder Implications

9.1 There are no direct crime and disorder implications.

10. Equalities Implications

10.1 Equal opportunities will be achieved by making the documents available equally to all and providing other formats when necessary. Documents will be available on the Council's website, in local libraries and displayed in planning reception.

11. Environmental Implications

11.1 The principle implicit in conservation management is to repair and maintain existing building elements rather than requiring the replacement and disposal of serviceable items to landfill. This reduces environmental impacts by retaining items and their embodied energy and not causing carbon dioxide emissions necessary for the manufacture and transportation of new items.

12 Conclusion

12.1 It has been argued in s6 above that the building merits Local List designation, and in s7 that there is a case to be made in principle for an Article 4 Direction taking away permitted development rights to demolish the building. However, as there is no budget provision for compensation on this site, and there are other locally listed buildings outside conservation areas whose redevelopment may give rise to similar claims, the saving of one unlisted building at such substantial cost is not considered to be justified, particularly in current financial circumstances. For these reasons the Article 4 Direction is not recommended.

12. Background documents and originator

Short Document	Title	Date	File Location	File Reference	Contact Officer	Exempt
PPS5 and Guidance		2010	Laurence House	Urban Design and Conservation	Phil Ashford	No
The London Plan		2004	Laurence House	Urban Design and Conservation	Phil Ashford	No
The Core Strategy		2011	Laurence House	Planning Policy	Brian Regan	No
UDP		2004	Laurence House	Planning Policy	Brian Regan	No
Planning Committee report		11 Aug 2011	Laurence House	Development Management	Geoff Whittington	No

Appendix 1 - Criteria for local listing, as adopted January 2009

Historic Interest: buildings that are of special social, economic or cultural interest to Lewisham, and/or have proven affiliation with locally important people and events, or other community associations (particularly important local architects);

Architectural Interest: buildings that are of special architectural interest to Lewisham for reasons of their vernacular, aesthetic, type (*i.e. form and function*), style, plan, technology, townscape, unity, or association with important local architects;

Age or Rarity: buildings that are:

- a) Legibly pre-1700 in interest
- b) Of appreciable interest from between 1700 to 1840
- c) Of a high level of interest following 1840
- d) Of an outstanding interest and less than 30 years old

Appendix1 Objection letter and relevant correspondence