

| Mayor & Cabinet | | |
|----------------------------|--|---------------------|
| Report Title | Catford Bridge Tavern: Confirmation of Article 4 Direction | |
| Key Decision | Yes | Item No. |
| Wards | Rushey Green | |
| Contributors | Director of Resources & Regeneration | |
| Class | Part 1 | Date: 10 April 2013 |

1. Summary

- 1.1 The report outlines the background to the decision to make an Article 4 (1) Direction which removed specific permitted development rights granted under Part 3 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 relating to the Catford Bridge Tavern. No objections have been made and therefore the report recommends that the Direction should be confirmed. The original report to Mayor & Cabinet dated 14 November 2012 is attached as Appendix 1 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 Catford Bridge Tavern having considered any representations made.

3. Recommendation

- 3.1 It is recommended that the Article 4 (1) Direction for the Catford Bridge Tavern be confirmed.

4. Policy context

- 4.1 The contents of this report are consistent with the Council's policy framework. With regard to Article 4 Directions, the National Planning Policy Framework (NPPF) in paragraph 200 states;

“The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities).”

- 4.2 Paragraph 70 of the NPPF states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services and includes public houses in its list of places considered as community facilities.
- 4.3 Paragraph 152 of the NPPF discusses that local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development and net gains across all three.
- 4.4 London Plan policy 3.1 Ensuring equal life chances for all.
- 4.5 London Plan policy 3.16 Protection and enhancement of social infrastructure.
- 4.6 London Plan policy 4.6 Support for and enhancement of arts, culture, sport and entertainment provision.
- 4.7 London Plan policy 7.1 Building London's neighbourhoods and communities.
- 4.8 London Plan policy 4.1 Developing London's economy.
- 4.9 London Plan policy 4.8 Supporting a successful and diverse retail sector.
- 4.10 London Plan policy 7.4 Local character.
- 4.11 Lewisham's Core Strategy Strategic objective 11 relates to community well-being and is relevant in that the Council will promote and support measures that promote social inclusion and strengthen the quality of life and well-being for new and existing residents of the borough by providing physical, social and green infrastructure, including high quality health and education facilities, that is accessible and suitable to all of Lewisham's residents, to foster independent community living.
- 4.12 Lewisham's Core Strategy Policy 19 seeks the provision and maintenance of community and recreational facilities.
- 4.13 Lewisham's Core Strategy Strategic objective 4 retaining business which supports the functioning of the local economy including premises for the creative industries, green industries, business services and other employment growth sectors.
- 4.14 Lewisham's Unitary Development Plan (UDP) (July 2004) saved policy LCE2 Existing Leisure and Community Facilities states that the Council will not grant planning permission for the change of use or the loss of valuable existing facilities for the leisure and community uses listed in Policy STR. LCE 2, except in the circumstances that there is a proven lack of local need for such facilities; locational requirements for the facilities are not met; the buildings need updating and this cannot be achieved at reasonable cost; the buildings are not ancillary to and essential for the operation of a facility covered by the terms of this policy; alternative provision of equivalent benefit to the community is made.

- 4.15 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.”
- 4.16 Pubs in Lewisham: An evidence base study, while not an adopted document, is a consideration as it draws together information about public houses in Lewisham and the UK and provides the evidence base for and underpins policy development on public houses within the borough.
- 4.17 An emerging policy to protect pubs is being developed as part of the Development Management Local Plan.

5. Background

- 5.1 At its meeting on 14 November 2012, the Mayor and Cabinet agreed to locally list the Catford Bridge Tavern and to make an Article 4 Direction removing permitted development rights to change the use of the pub from Class A4 (drinking establishments) to Class A1 (shop), Class A2 (financial and professional service) or Class A3 (restaurant and cafes).
- 5.2 Since then planning permission has been refused for an application to change the use of the ground floor and basement to a shop and the upper floors to self-contained residential units, and the building has continued in use as a pub.
- 5.3 Article 4 Directions and Local Listing are matters for the Mayor and Cabinet, and following a proposal to change the use of the building from a pub to a shop the Mayor and Cabinet 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 change of use within planning controls by the making an immediate Article 4 Direction removing the right to change the use of 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 November 2012 which is attached to this report at Appendix 1. At present the Direction is provisional and Council is required to consider whether to confirm the provisional Direction within 6 months of making it otherwise it will lapse, having had regard to any representations received.
- 5.4 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 last November 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 Verbal support was expressed for the Direction in a phone call by Antic, the company operating the pub. No other representations have been made, and in particular there are no objections to take into consideration..

7. Financial implications

- 7.1 There will be some administrative costs in advertising, mailings and printing the final documents associated with confirming an Article 4 Direction. These costs can be contained within the existing 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 November 2012.

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 specific permitted development rights granted under Part 3 of Schedule 2 of that Order - which permits the removal of permitted development rights for a change of use from Use Class A4 drinking establishments to Use Class A1 shops, Use Class A2 Financial and Professional Services or Use Class A3 restaurants and cafes. An "immediate" direction will withdraw rights immediately under Part 3 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 November 2012.

- 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 Mayor must consider any representations received 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.
- 8.10 The Equality Act 2010 (the Act) introduced a new public sector equality duty. (the equality duty or the duty). It follows the following nine protected characteristics: age, disability,, Gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex and sexual orientation .
- 8.11 In summary, the Council must, in the exercise of its functions have due regard to the need to:
- eliminate unlawful discrimination, harassment, 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
- 8.12 The duty continues to be a “have regard duty” and the weight to be attached to it is a matter for the committee, 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.
- 8.13 The Equality & human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory guide and the technical guidance can be found at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance>.
- 8.14 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty;
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanright.com/advice-and-guidancepublic-sector-equality-duty/guidance-on-the-equality-duty>

9. Crime and disorder implications

9.1 There are no direct crime and disorder implications.

10 Equalities implications

10.1 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities and help ensure compliance with the Equality Act 2010.

10.2 No direct equalities implications have been identified, in terms of adverse impact, with respect to the Council's obligations under the Equality Act 2010.

10.3 The documents will be available on the Council's website, in local libraries and displayed in planning reception. These documents will be available in alternative formats if required.

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 November 2012, the purpose of this report is to consider whether it should be confirmed having had regard to the representations made. In the light of the limited representations detailed above. It is therefore recommended that the Article 4 (1) Direction is confirmed.

Background documents and originator

| Short Title Document | Date | File Location | File Reference | Contact Officer | Exempt |
|-----------------------------|-------------|----------------|------------------|-----------------|--------|
| Local Listing and Article 4 | 14 November | Laurence House | Urban Design and | Phil Ashford | No |

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| Direction Report to M&C (Part 1) | 2012 | | Conservation | (for link see below) | |
| Local Listing and Article 4 Direction report to M&C (Part 2) | 14 November 2012 | 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 (for link see below) | No |
| London Borough of Lewisham Unitary Development Plan | 2004 | Laurence House | Urban Design and Conservation | Phil Ashford (for link see below) | No |
| The London Plan | 2004 (with later alterations) | Laurence House | Urban Design and Conservation | Phil Ashford (for link see below) | No |

If you have any queries on this report, please contact Phil Ashford, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8533.

Links to background documents:

Local Listing and Article 4 Direction Report to M&C (Part 1)

<http://councilmeetings.lewisham.gov.uk/documents/s18687/Cover%20Sheet%20Local%20Listing%20Part%201.pdf>

London Borough of Lewisham Local Development Framework Core Strategy:

<http://www.lewisham.gov.uk/myservices/planning/policy/Documents/CoreStrategyAdoptedVersion.pdf>

London Borough of Lewisham Unitary Development Plan

<http://www2.lewisham.gov.uk/lbl/planning/udp/index.html>

The London Plan

<http://www.london.gov.uk/priorities/planning/london-plan>

Appendix 1

Local List and Article 4 Direction report from 14 Nov 2012