

MAYOR AND CABINET		
Report Title	Correction of an omission in previous reports to Mayor and Cabinet and consultation material on the making of an Article 4 direction in Deptford High Street and St Paul's Church Conservation Area.	
Key Decision	YES	Item No.
Wards	Evelyn, New Cross, Brockley	
Contributors	Head of Planning and Head of law	
Class	Part 1	Date: 7 October 2020

1. Purpose

- 1.1 To bring to Councillors' attention an omission in a previous report and appendices and to seek confirmation of the Mayor and Cabinet's previous resolution to approve the making of a non-immediate Article 4 Direction on 13 single family dwelling houses in Deptford High Street and St Paul's Church Conservation Area.

2 Summary

- 2.1 A report was brought to M&C at their meeting on 8 May 2019 seeking authorisation for public consultation on proposals for a non-immediate Article 4 Direction on thirteen single family dwelling houses on Watson's Street and Tanners Hill, along with proposals to amend the boundary of the Deptford High Street and St Paul's Conservation Areas and to adopt a new draft Conservation Area Appraisal Supplementary Planning Document (SPD).
- 2.2 Public consultation was undertaken in June - August 2019. The results of the consultation were brought back to Mayor and Cabinet on 11 December 2019, who agreed the recommendation to make a non-immediate Article 4 Direction, amend the boundary and adopt the Conservation Area Appraisal SPD.
- 2.3 On proceeding to make the Direction officers saw that the draft Direction appended to both the M&C reports and the online consultation did not include, as intended, the class of development which includes alterations to windows (Class A The enlargement, improvement or other alteration of a dwelling house) and the second report that went before M&C on the 11 December 2019 did not include reference in the text to that Class of permitted development rights as being removed.
- 2.4 This report is to bring this omission to members' attention and to seek confirmation of their previous authorisation to make the Direction.

3. Recommendations

3.1 The Mayor and Cabinet are asked to:

1. Note the omission in the previous appendices, consultation material and appendices, and
2. Re-confirm their previous authorisation to make a non-immediate Article 4 Direction in Deptford High Street and St Paul's Church Conservation Area, that includes the class of permitted development that includes alterations to windows (Class A The enlargement, improvement or other alteration of a dwelling house).

4. Background

- 4.1 A report was brought to M&C at their meeting on 8 May 2019 seeking authorisation for public consultation on proposals for a non-immediate Article 4 Direction on thirteen single family dwelling houses on Watson's Street and Tanners Hill, along with proposals to amend the boundary of the Deptford High Street and St Paul's Conservation Areas and a new draft Conservation Area Appraisal SPD.
- 4.2 This was justified by the survey of condition of the conservation area which concluded that only a small number of properties in the area benefit from full permitted development rights and that, of these, nos. 1-9 (odd), nos. 12-16 (even) and no. 20 Watson's Street; and nos. 11-17 Tanners Hill form part of uniform or coherent small groups that made a positive contribution to the Conservation Area (CA) and to the setting of adjacent listed buildings on Tanners Hill. These buildings were found to be in generally good condition but painting of brickwork and loss of timber window joinery and replacement with non-traditional windows has eroded the special character (paras 6.10 – 6.11 Appendix 1).
- 4.2 Public consultation was undertaken between 17 June and 9 August 2019 and the results of the consultation were brought back to M&C on 11 December 2019. On the non-immediate Article 4 proposal, comments were generally in favour of the introduction of the Direction, with no comments that referred to specific permitted development rights proposed for removal (para 10.5, Appendix 2). Mayor and Cabinet agreed the recommendation to make a non-immediate Article 4 Direction, along with adoption of the boundary changes and the Conservation Area Appraisal SPD.
- 4.3 Unfortunately on proceeding to make the Direction Officers saw that the draft Direction appended to the M&C reports and the online consultation did not include the class of development which includes windows, namely *Class A - the enlargement, improvement or other alteration of a dwelling house*. In addition, unlike the first report to M&C on 8 May, the second report on 12

November did not include reference to windows as one of the permitted development rights to be removed.

- 4.4 As there is a possibility that Members may have been unaware that permitted development rights for windows were being proposed for removal, this report is submitted now so as to make this fact clear.
- 4.5 There is also a possibility that it was not clear to residents whether this class of permitted development rights were intended to be removed. During the consultation period a letter setting out the proposals was sent to all residents. It contained the following information on the Article 4 proposal (particularly relevant sections highlighted in bold):

‘These buildings [*on Watson’s Street and Tanners Hill*] are in generally good condition and there has been relatively little harmful alteration to their external faces or roofscapes. **Development that has eroded the special character chiefly comprises painting of brickwork and loss of timber window joinery and replacement with non-traditional windows.** It is considered better practice to introduce smaller directions more often than attempting to cover everything in one large direction. **At this stage it is considered expedient on the basis of existing and likely change to remove pd rights only for those items which appear to be frequently or likely to be undertaken,** and monitor the situation as regards other items of pd. A copy of the proposed Article 4 direction is attached as Appendix 2 to this report’.

- 4.6 As mentioned in paragraph 4.3 above, the proposed Article 4 Direction included in the consultation materials on the Council’s website did not include the class of development which includes windows, namely Class A -The enlargement, improvement or other alteration of a dwelling house. Consultees may therefore have been unclear as to whether this specific class of development was, or was not, proposed for removal.
- 4.7 That process of consultation on the wider conservation area proposals did not constitute statutory consultation for the purposes of the Article 4. Any Article 4 direction made would have to follow the statutory consultation procedures for Article 4(1) Directions (non-immediate) as set out within Schedule 3, paragraph 1 of the Order. Officers consider that any ambiguity can be rectified during the forthcoming statutory consultation process by clearly setting out the permitted development rights to be removed and the implications of this in the required site notices, press notice and letters to affected owners and occupiers. As per the required process, any representations received would be brought back to Mayor and Cabinet for consideration of whether to confirm the Article 4 Direction, and the Direction would not come into force until the Direction has been confirmed and between 12-24 months have elapsed from the date of making of the Direction.

- 4.8 Officers will also write to the affected properties advising them of this report so that they have the opportunity to make representations to Mayor and Cabinet if they wish.

5. Legal Context

- 5.1 Under Section 71 of the Planning (Listed Building and Conservation Areas) Act 1990 the local planning authority has a duty from time to time to formulate and publish proposals for the preservation and enhancement of conservation areas.

6. Policy Context

- 6.1 With regard to **Article 4 Directions**, paragraph 53 of the NPPF 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 well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)’.

- 6.16 The procedure to be followed in making an Article 4 direction is set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

7 Financial Implications

- 7.1 There are no direct financial implications arising from the delay in making the non-immediate Article 4 Direction or reporting this omission back to Mayor and Cabinet. The costs of consulting on the non-immediate Article 4 Direction will be met from the existing Planning budget.

8 Legal Implications

- 8.1 Section 71 of the Planning (Listed Buildings & Conservation Areas) Act 1990 places a duty on local planning authorities to from time to time formulate and publish proposals for the preservation and enhancement of their conservation areas; to hold a public meeting to canvas views; and to take into consideration the views expressed at that time.

- 8.2 The procedure for making an Article 4 Direction is set out in Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

- 8.3 There is no statutory obligation to carry out consultation prior to making an Article 4 Direction. However the fact that the Council has chosen to consult those likely to be affected by the decision to make the Article 4 Direction means that those people may have a legitimate expectation that such consultation is carried out properly. The Council has now identified an error with the

consultation process, therefore those affected by that error should be notified and given adequate time to comment before the matter is further considered by Mayor and Cabinet. This will enable Mayor and Cabinet to take their comments into account when arriving at their decision.

- 8.4 Section 9D of the Local Government Act 2000 states that any function of the local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements. The Local Authorities (Functions and Responsibilities (England) Regulations 2000 does not specify that the certain functions proposed here are by law the responsibility of the Council, and therefore they are an executive function.

9. Crime and Disorder Implications

- 9.1 There are no direct implications relating to crime and disorder issues.

10. Equalities Implications

- 10.1 The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010. It describes the Council's commitment to equality and fairness for citizens, service users and employees through its powers to influence access to good quality housing, education, safety & security, health and leisure services.
- 10.2 When considered against the five objectives of this strategy the proposed making of an Article 4 Direction does not have any direct implications on tackling victimisation, discrimination and harassment or on closing the gap in outcomes for all residents. However, through provision of the associated Supplementary Planning Guidance it will provide equality of access to guidance that, if used, will increase the likelihood of successful planning applications. The process of research for the first draft Appraisal and consulting on the draft provided opportunities for engagement with residents and visitors, particularly at the public drop in stall on the High Street in January 2019, and may have contributed to furthering mutual understanding within this community, as well as involving an element of citizen participation and engagement.
- 10.3 The consultation process was in line with the Council's Statement of Community Involvement.

11. Environmental Implications

- 11.1 There are no environmental implications associated with the introduction of the Article Direction.

12. Conclusion

- 12.1 The omission of text from the 11 December 2019 report to Mayor and Cabinet and from the draft Article 4 Direction used in consultation and appended to the previous reports to Mayor and Cabinet may have led to Members and consultees being misled as to the intention to remove the permitted development rights in Class A including alteration of windows.
- 12.2 This report is to make members aware of the omission and to ask for their confirmation of their previous authorisation to make the non-immediate Article 4 Direction.
- 12.3 Any ambiguity amongst members of the public would be addressed by the opportunity to comment on the matter before Mayor and Cabinet and by the formal statutory consultation period on the making of a non-immediate Article 4 Direction which would take place once the Direction was made, subject to Mayor and Cabinet agreeing the recommendations of this report.
- 12.4 Any representations received would be brought back to Mayor and Cabinet for consideration as to whether to confirm the Direction.

Background documents and originator

Short Title Document	Date	File Location	File Reference	Contact Officer	Exe mpt
Planning & Compulsory Purchase Act 2004	May 2004	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
Localism Act 2011	November 2011	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
National Planning Policy Framework (NPPF)	June 2018	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
Town and Country Planning (Local Planning) Regulations 2012 (as amended)	March 2012	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
The London Plan 2016 (and draft London Plan 2018)	March 2016	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
The Core Strategy	June 2011	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No

Lewisham Development Management Plan	November 2014	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
Statement of Community Involvement	July 2006	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
Comprehensive Equalities Scheme 2016 - 2020	2016	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
Conservation Area Designation, Appraisal and Management Historic England Advice Note 1	March 2016	2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No
Corporate Strategy 2018-22		2 nd floor Civic Suite	Strategic Planning Team	Joanna Ecclestone	No

If you have any queries on this report, please contact David Syme, Strategic Planning Manager, 2nd floor Civic Suite, Catford Road, Catford, SE6 4RU, telephone 020 8314 7400.

Appendix 1: Report to M&C 26 May 2019 seeking authorisation to consult

Appendix 2: Report to M&C 11 December 2019 seeking authorisation to make Article 4 Direction

Appendix 3: Consultation material sent to residents