

<b>MAYOR &amp; CABINET</b>		
<b>Report Title</b>	Proposed Jevington Way Article 4 (1) Direction	
<b>Key Decision</b>	Yes	Item No. 11
<b>Ward</b>	Grove Park	
<b>Contributors</b>	Head of Planning and Head of Law	
<b>Class</b>	Part 1	Date: 19 January 2011

## 1. Summary

- 1.1 This report is in respect of a proposed Article 4 (1) Direction covering Jevington Way, with particular regard to the green amenity created by the front gardens and extensive grass verges along the length of the road. The report informs about the threat to the amenity by the creation of hard standings for car parking and of cross-overs under permitted development rights. It recommends that an Article 4 (1) Direction should be made in order to ensure the future protection and enhancement of the area and streetscene.

## 2. Purpose

- 2.1 To provide the necessary information to support the making of an Article 4 (1) Direction covering the area as shown in the attached map.

## 3. Policy Context

- 3.1 The contents of this report are consistent with the Councils policy framework. The making of the Article 4 Direction 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 Relevant policies in the adopted Unitary Development Plan (July 2004) include URB 3 Urban Design, URB 12 Landscape and Development and URB 13 Trees. The additional Open Space policies are relevant:-

**STR.OS 3** To protect and wherever possible enhance nature conservation and biodiversity in the Borough.

- 3.3 UDP policy STR.URB 4 states that the Council will "protect the best in our environment and enhance and improve the environment in areas of the Borough where social and environmental conditions are poorest."

### 3.4 Policy URB 3 Urban Design states:-

'The Council will expect a high standard of design in new development (...) whilst ensuring that schemes are compatible with, or complement the scale and character of existing development, and its setting (including any open space). Where appropriate, the following factors will be taken into consideration:-

(k) the preservation and creation of urban form which contributes to local distinctiveness such as plot widths, building features and uses, roofscape and open space;

### 3.5 The London Plan advises Boroughs to consider the need for protecting all types of open spaces, including the protection of local open spaces that are of value to the local community or spaces that have special quality or character in heritage conservation terms.

- Policy 3D.11 (*Open space provision*) asks Boroughs 'to identify, promote and protect Green Corridors and Green Chains and include appropriate designations and policies for the protection of local open spaces that are of value, or have the potential to be of value, to local communities'.
- Policy 3D. 12 (*Open space strategies*) advises that 'Boroughs should (...) produce open space strategies to protect, create and enhance all types of open space in their area.
- Policy 4B.12 (*Heritage conservation*) says that 'Boroughs should identify areas, spaces, historic parks and gardens, and buildings of special quality or character and adopt policies for their protection and the identification of opportunities for their enhancement'.

## 4. Recommendation

### 4.1 The Mayor is recommended to approve the following:

- Approve the making of an Article 4 (1) Direction to the area as shown in the attached map Appendix 1.

## 5. Background

5.1 Jevington Way is located in the south-east part of the Borough of Lewisham, close to the boundary with London Borough of Bromley. It does not lie within a Conservation Area, but has a special character. This is created by the front gardens to the properties and by the wide Highways grass verges, measuring about 4.7 metres in width, on both sides of the road. It provides an uninterrupted green corridor along the full length of a road which is unique in the borough.

5.2 Jevington Way was built in the 1930's on a suggested line for a South Circular road diversion. This accounts for the unusual wide grass verges to either side of the road to allow for its future widening. In anticipation of the diversion all the

properties were also provided with private rear access roads. As a result, more front gardens and boundaries have been preserved in Jevington Way than in the surrounding streets or other streets in comparable residential areas. There is a certain level of on-street parking that takes place, but most occupiers have created off-street parking in the form of garages in the rear gardens.

- 5.3 The houses in Jevington Way are a mixture of semi-detached and terraced houses, dating from the inter-war period. As is typical for this period, houses are well set back from the road via deep front gardens. Brick boundaries were kept low creating a smooth transition of front gardens and green highways verges which contributes to the green and open character of the street.
- 5.4 The character and amenity of the street has been affected by the loss of front gardens and their paving over to create 'maintenance free' front areas or car parking. The latter has usually involved the removal of boundaries and loss of the traditional distinction between public footpath and private garden. In a number of individual cases, the front boundaries have been raised – in one case to create a 'gated' drive – which have had an urbanising effect on the character of the area.
- 5.5 As a consequence of changing front gardens to car parking areas, some residents have applied for vehicle crossovers over the verge which would create a significant loss of green amenity in each case and diminish the value of the verges as corridors for wildlife. The number of applications has recently increased posing a real threat to this landscape corridor.
- 5.6 The above mentioned changes can currently be carried out under permitted development rights and the Council's Highways Department cannot legally refuse the creation of crossovers on amenity grounds. Cumulatively, these changes can erode and permanently damage the character of Jevington Way. It is therefore considered appropriate to introduce an Article 4 (1) Direction that withdraws the relevant permitted development rights for the protection of the area.

## **6. Article 4 (1) Direction**

- 6.1 An Article 4 (1) Direction is a provision that can be introduced to better protect and manage an area's character by withdrawing permitted development rights for certain types of development and requiring that an application for planning permission is made. Local Authorities can withdraw certain permitted development rights if they consider that the development to which the direction relates would constitute a threat to the amenity of an area. The area in question does not necessarily need to be within a Conservation Area, although this is often the case.
- 6.2 In view of the character of Jevington Way, it is recommended that permitted development rights are removed only from the following four classes within Schedule 2 the Town & Country Planning (General Permitted Development Order 1995 (as amended):

- **The construction or replacement of a hard surface** (Class F of Part 1),
- **the erection or alteration of boundary treatments** (Class A of Part 2),
- **the formation, laying out and construction of a means of access to a highway** (Class B of Part 2), and
- **the demolition of the whole or any part of any boundary treatments** (Class B Part 31).

It is also considered that the restrictions should only apply to areas facing Jevington Way, usually the front gardens..

- 6.3 The effect of making such a Direction is that those works are no longer automatically permitted and that planning permission has to be sought for them. There would be a presumption against the removal of existing front boundaries where these contribute to the character of the area and against the paving over of front gardens and the creation an crossovers. With regards to alterations to or replacement of existing hardstanding or boundaries treatments, the Direction would enable the planning service to retain some control over the design and detailing of the proposals.
- 6.4 An Article 4 (1) Direction withdrawing Part 1 permitted development rights only applies to dwelling houses as only these enjoy extensive permitted development rights Houses subdivided into flats or apartment blocks do not have Part 1 permitted development rights. In contrast Part 2 permitted development rights are not limited to dwelling houses. An Article 4 (1) Direction cannot be applied retrospectively requiring owners undertake remedial works where works were carried out prior to the making of the direction.
- 6.5 Part of the process of making an Article 4 (1) Direction involves statutory notification of the direction inviting representations. The Direction comes into force when statutory notification of it is given. Planning permission is then required for carrying out the classes of former permitted development specified on the Direction. The Council is required to confirm the Direction within six months, or it lapses.

## **7. Public Consultation**

- 7.1 Some residents of Jevington Way have repeatedly asked the Highways Department to protect the grass verges and refuse applications for the creation of crossovers. Following the increased number of such applications, in March 2009 Highways sent out a brief questionnaire to all residents asking them their views on the construction of vehicle crossovers and footpaths across the verges. It did establish that the great majority of residents, i.e. 76 percent, see the verges as a valuable amenity and want to see them maintained.
- 7.2 When an Article 4 (1) Direction is made a public consultation exercise is carried out. Following statutory consultation, residents are invited to make representations concerning the direction during a period of at least 21 days. The notice will be accompanied by a guidance sheet explaining what an Article 4 (1) Direction is, and why one has been made in this particular case. The Council

then has to consider the representations received before deciding whether to confirm the Direction.

## **8. Financial Implications**

- 8.1 There will be some costs in advertising, mailings and printing the final documents associated with the making of the Article 4 (1) Direction. All these costs are contained within the existing 20010/11 planning budget.
- 8.2 Section 108 of the Town and Country Planning Act 1990 makes provision for compensation to be paid by the local planning authority either if an application for development is refused which would normally have been permitted development before an Article 4 (1) Direction was introduced or grant 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. 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. Such payments are made from the planning budget.

## **9. Legal Implications**

- 9.1 Under the latest amendments to the Town and Country Planning (General Permitted Development) Order 1995, which came into force on 6 April 2010, Local Authorities can withdraw certain permitted development rights if they 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 areas. It cannot be applied retrospectively to development which has already been carried out prior to the making of the direction.
- 9.2 The procedure for making an Article 4 (1) Direction is prescribed in Article 5 and 6 of the Order. There is no requirement to give notice to owners and occupiers affected by the Direction prior to the making of it. On the making the direction statutory consultation occurs. The Direction expires six months after the date the Direction is made unless it is confirmed by the local planning authority after it has taken into account any representations received following consultation.

## **10. Human Rights Implications**

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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 householder 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.

## **11. Crime and Disorder Implications**

- 11.1 There are no direct crime and disorder implications.

## **12. Equalities Implications**

- 12.1 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.

## **13. Environmental Implications**

- 13.1 The protection of front gardens, Highways grass verges and trees are relevant for maintaining both a high quality environment and landscape corridors for wildlife.
- 13.2 Maintaining trees, front gardens and grass verges helps maintaining natural permeability. This reduces surface water run-off and the risk of flooding. Jevington Way falls within an area that is at risk of flooding from the River Quaggy.

## 14. Conclusion

- 14.1 The character of Jevington Way is considered special and the wide grass verges and green corridor they form are a landscape asset to the borough. The amenity is considered worthy of protection.
- 14.2 Due to recent threats to the amenity, it is recommended to approve the making of an Article 4 (1) Direction for the future management and preservation of Jevington Way, including all the properties as indicated on the map Appendix 1.

## 15. Background documents and originator

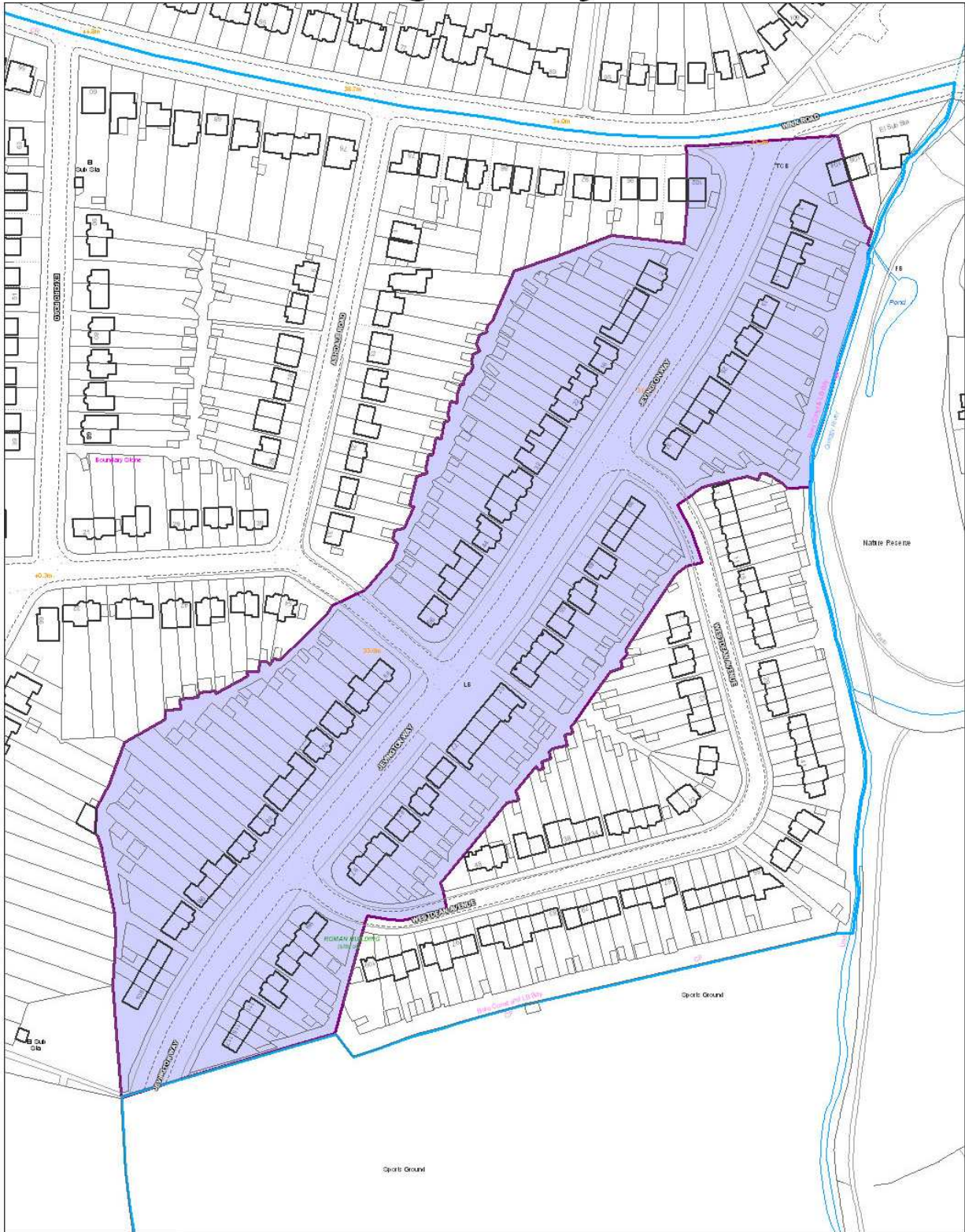
Short Document	Title	Date	File Location	File Reference	Contact Officer	Exempt
Town and Country Planning (General Permitted Development) Order		1995	Laurence House	Urban Design and Conservation	Phil Ashford	No
London Borough of Lewisham Unitary Development Plan		2004	Laurence House	Urban Design and Conservation	Phil Ashford	No
The London Plan		2004	Laurence House	Urban Design and Conservation	Phil Ashford	No

If you have any queries on this report, please contact Regina Jaszinski, Senior Conservation Officer, 5<sup>th</sup> floor Laurence House, 1 Catford Road, Catford SE6 4RU - telephone 020 8314 9112

**Appendix 1: Map of Jevington Way showing area to be covered by Article 4 Direction**



# Jevington Way



**Proposed Area to be covered by Article 4 Direction**

## Appendix 2: Photographs of Jevington Way



