



Mayor and Cabinet

Confirmation of a non-immediate Article 4 Direction at Deptford High Street and St Paul's Church Conservation Area

Date: 3 November 2021

Key decision: No.

Ward(s) affected: Evelyn, New Cross, Brockley

Contributors: Head of Planning and Interim Director of Law, Corporate Governance & Elections

Outline and recommendations

To inform the Mayor and Cabinet of the outcome of statutory consultation for the making of a (non-immediate) Article 4 Direction in the Deptford High Street and St Paul's Church Conservation Area and to seek authorisation to confirm the Direction .

The Mayor and Cabinet is asked to:

- a) Authorise the confirmation of the Deptford High Street and St Paul's Church Conservation Area non-immediate Article 4 Direction (Appendix 1) and;
- b) Delegate to the Director of Planning the power to carry out the statutory procedures to confirm the Deptford High Street & St Paul's Church Conservation Area Article 4 Direction under the Town & Country Planning (General Permitted Development) (England) Order 2015

Timeline of engagement and decision-making

Statutory period for representations on the making of an Article 4 Direction 13 January 2021 - 9 March 2021, in line with the requirements of Schedule 3, paragraph 1 of Town and Country Planning (General Permitted Development) (England) Order 2015. Advertised in the local press, by site notices, by letters to affected addresses and a copy of the Article 4 Direction was displayed in Deptford Library and on the Council's website.

Report to M&C 7.10.2020 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:

- advising M&C of an omission in previous report and seeking re-confirmation of 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 which includes alterations to windows (Class A; The enlargement, improvement or other alteration of a dwelling house).

Report to M&C 11.12.2019 Merging Deptford High Street and St Paul's Church Conservation Areas, adopting as an SPD the Deptford High Street and St Paul's Church Conservation Area Appraisal, and the making of an Article 4 direction:

- advising M&C of consultation responses, seeking approval to adopt the revised CA boundaries, adopt the Appraisal and make the Article 4 Direction

Public consultation undertaken in June - August 2019 on CA Appraisal, boundary changes and Article 4 Direction in line with the requirements of the Council's SCI. This process of consultation did not constitute statutory consultation for the purposes of the Article 4 and, once made, the Article 4 direction also has to follow the statutory consultation procedures set out within Schedule 3, paragraph 1 of Town and Country Planning (General Permitted Development) (England) Order 2015.

Report to M&C 08.05.2019 Proposed Deptford High Street and St Paul's Church Conservation Area Appraisal, boundary changes and Article 4 Direction:

- seeking approval to carry out public consultation on CA Appraisal, boundary changes and Article 4 Direction

1. Summary

- 1.1. To inform the Mayor and Cabinet of the outcome of statutory consultation following the making of a non-immediate Article 4 Direction in the Deptford High Street and St Paul's Church Conservation Area (no representations were made by residents or building owners and no objection or comment was made by the Secretary of State for MHCLG) (now the Department for Levelling Up Housing & Communities) and to seek

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authorisation to confirm the Direction.

- 1.2. This is referred to Mayor & Cabinet given the report of 11/12/19 advised that a recommendation to confirm the Direction would be submitted to Mayor & Cabinet.

2. Recommendations

- 2.1. The Mayor and Cabinet is asked to:
 - a) Authorise the confirmation of the Deptford High Street and St Paul's Church Conservation Area Article 4 Direction) (Appendix 1);
 - b) Delegate to the Director of Planning the power to carry out the statutory procedures to confirm the Deptford High Street and St Paul's Church Conservation Area Article 4 direction under the Town & Country Planning (General Permitted Development) (England) Order 2015

3. Policy Context

- 3.1. Development Plan: Local Plan Policy DM36 - New development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens – seeks to manage new development affecting designated heritage assets in a manner that sustains and enhances their heritage significance. Article 4 Directions are a tool which brings specific classes of works to buildings into planning control, enabling the Council to more effectively achieve this policy objective.
- 3.2. Heritage at Risk. Deptford High Street Conservation Area is on Historic England's Heritage at Risk Register. The introduction of an Article 4 Direction (in association with the conservation area appraisal, adopted December 2019) will enable the Council to have more control over development proposals which could harm its special character and appearance.

4. Background

- 4.1. The proposal to make an Article 4 Direction was part of a programme of proactive conservation work in Deptford High Street conservation area that was prioritised due to the conservation area being on Historic England's Heritage at Risk Register. The conservation area had no appraisal that identified its significance or guided development, and Historic England provided granted aid to produce an appraisal of the area.
- 4.2. Following community engagement and survey work, proposals were 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.
- 4.3. The Article 4 Direction 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 had eroded the special character.
- 4.4. 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

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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. 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.

- 4.5. 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.
- 4.6. A report was therefore drafted to bring this omission to the attention of M&C and seek re-confirmation of the Article 4 Direction including this class of development. The report was scheduled for March 2020 but due to the Covid 19 lockdown this was delayed, and it was finally brought to M&C on 7 October 2020 where authorisation to make the Article 4 was re-confirmed.

5. Assessment

- 5.1. The Direction was made on 8 January 2021 (Appendix 1) and a statutory period of publicity ensued in accordance with the requirements set out in the General Permitted Development Order 2015 (GPDO). Notification was provided in the form of letters which were sent to all legal owners and to the properties. Site notices were displayed in both streets, a press notice was advertised in the New Shopper and a copy of the Direction was displayed in Deptford Library.
- 5.2. An Article 4 direction cannot come into force on the date specified in the notice unless it has been confirmed by the Council (paragraph 1(7), Schedule 3, GPDO 2015).
- 5.3. The publicity stated the date upon which the Direction would come into force if confirmed (which must be between 28 days and 2 years from the date of notification) would be 14 January 2022.
- 5.4. In considering whether to confirm the Article 4 Direction, the Council must take into account any representations it receives during the consultation period (paragraph 1(9), Schedule 3, GPDO 2015).
- 5.5. No representations were received from residents or building owners. The Ministry of Housing, Communities and Local Government (MHGLC) raised no objections nor issues with the making of the Article 4 Direction.
- 5.6. The test for the use of Article 4 directions at paragraph 53 of the NPPF states that the use of Article 4 directions should be limited to situations where it 'is necessary to protect local amenity or the wellbeing of the area'. The revised NPPF (20 July 2021) added the requirement that Article 4 directions should be 'based on robust evidence and apply to the smallest geographical area possible'.
- 5.7. Officers note that no objections or representations have been received following the making of the Article 4 direction that lead them to consider that the need for an Article 4 Direction has changed since first proposed, and that as the proposal continues to comply with the revised NPPF because it will protect local amenity, it is appropriate to recommend confirmation of the non-immediate Article 4.
- 5.8. If the recommendation is followed, the date upon which the Article 4 would come into force would be as notified, which is 14 January 2022.

6. Financial implications

- 6.1. No compensation for the withdrawal of most permitted development rights included in

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the Direction is payable if an LPA gives notice of the withdrawal between 12 months and 24 months in advance. The Council allowed for a minimum period of 12 months between notification and the date that the Direction would come into force, if confirmed.

- 6.2. However the removal of one of the permitted development rights to paint the exterior of a building in the Direction can be subject to a claim for compensation.
- 6.3. Compensation would remain payable for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. It is not possible to estimate the amount of compensation that the Council may need to pay but given the nature of the rights in question, namely the painting of the exterior of a house, it is likely not to be significant. Any compensation due will be met through existing service budgets.
- 6.4. The Council has not received any compensation claims in relation to the recent Article 4 Directions confirmed in January 2020 in Lewisham Park and Perry Vale/Christmas Estate Conservation Areas, nor is it aware of any others historically in the borough.

7. Legal implications

- 7.1. Article 4 directions are made where the local planning authority is satisfied that it is expedient that development specified with particular classes of the Town & Country (General Permitted Development) (England) Order 2005 should not be carried out unless planning permission is granted on an application.
- 7.2. 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.
- 7.3. The circumstances in which compensation will be payable for the the withdrawal of the permitted development right relating to exterior painting are if an application is made for planning permission to carry out this work and it is either refused planning permission or granted permission subject to conditions other than those formerly imposed under the Order. Compensation would be payable for abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development right. A claim for compensation would need to be made within twelve months from the date of the decision on the planning application.
- 7.4. If an Article 4 direction is confirmed notification of this is required under Schedule 3 of the Town & Country (General Permitted Development) (England) Order 2015. The notice must include the description of the development and area affected, a statement of the effect of the direction the date that it will come into force and give details of where the Direction and map can be viewed. Notice is given by local advertisement, by site notice and if practicable by service on individual owners and occupiers of the properties subject to the Article 4 direction. The Secretary of State is also required to be notified of the confirmation of the Direction.
- 7.5. The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It 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.
- 7.6. In summary, the Council must, in the exercise of its function, have due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

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- 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 persons who do not share it.
- 7.7. The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, 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.
- 7.8. The Equality and Human Rights Commission has 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 code and the technical guidance can be found at:
<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>.
- 7.9. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- The essential guide to the public sector equality duty
 - Meeting the equality duty in policy and decision-making
 - Engagement and the equality duty
 - Equality objectives and the equality duty
 - Equality information and the equality duty
- 7.10. 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: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>.
- 7.11. Implications in relation to the Human Rights Act 1998 Schedule 1, Part I – The Convention have been identified. If the Direction is confirmed this will affect the owners and occupiers’ Article 1 property rights and their Article 8 rights to respect for Private & Family and Home rights
- 7.12. Under Article 1 Protection of Property every natural or legal person is entitled to the peaceful enjoyment of his possessions Under Article 8 Right to Respect for Private and Family Life Everyone has the right to respect for his private and family life, his home and his correspondence.. Interference in these rights by a public authority is only justified if it is in the public interest and subject to the conditions provided for by law.
- 7.13. The Council cannot act in a way which is incompatible with these rights. However these are qualified rights and therefore can be interfered with if it is in the public interest and proportionate to do so.

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8. Equalities implications

- 8.1. The Council has a legal duty to consider the implications of anything it does on the basis of people's protected characteristics as set out in the Equality Act 2010. The nine protected characteristics are: Age, Disability, Gender reassignment, Marriage and civil partnership, Being pregnant or on maternity leave, Race, Religion or belief, Sex (gender), and Sexual Orientation. It should also consider wider inequalities and marginalised groups such as refugees, asylum seekers or migrants. The Council's Corporate Equality Policy v2 January 2020 guides how the Council monitors, analyses and promotes equality in the borough.
- 8.2. There are no direct implications relating to equalities issues.

9. Climate change and environmental implications

- 9.1. The Council has made a commitment to making the borough carbon neutral by 2030. This requires it to consider how to embed low-carbon and environmental policies and practices in its service delivery.
- 9.2. The retention of embedded carbon in historic fabric is itself a sustainable aspect of the built environment and avoids generation of additional CO2 emissions through the production of new building elements. Improvements in energy efficiency to reduce CO2 emissions generated by occupants can be achieved in a variety of ways, and Historic England recommends a whole house approach that considers the specifics each house and its use individually.
- 9.3. An Article 4 Direction introduces a requirement for planning applications to be made for specific alterations. This gives the Council an opportunity to consider the impact of proposals on the character and appearance of the building and the conservation area, as well as the public benefits generated by proposals seeking to improve energy efficiency. The Council will consider whether the approach to energy efficiency is in line with Historic England's most recent guidance, and whether proposals meet the policy aims of preserving and enhancing the character and appearance of the conservation area.

10. Crime and disorder implications

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

11. Health and wellbeing implications

- 11.1 There are no direct implications relating to health and wellbeing issues.

12. Background papers

- 12.1. Report to M&C 07.10.2020 [Clarification to 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](#)
- 12.2. Report to M&C 11.12.2019 [Adopting as SPD Deptford High Street and St Paul's Church Conservation Area Appraisal, and Article 4 direction](#)
- 12.3. Report to M&C 08.05.2019 [Authorisation to consult on adoption of the Conservation Area Appraisal, boundary changes and Article 4 Direction for Deptford High Street Conservation Area](#)

13. Glossary

- 13.1. [Link to Oxford English Dictionary here.](#)

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Term	Definition
Article 4 Direction	A legal measure under the Town and Country Planning (General Permitted Development Order) 2015 which restricts the scope of permitted development rights either in relation to a particular area or site, or a particular type of development anywhere in the authority's area.
Permitted Development (PD)	Certain works that would normally require planning permission but are permitted by the Town and Country Planning (General Permitted Development Order) 2015. This is primarily because the works are of a scale or type that is generally not likely to have an unacceptable impact.
General Permitted Development Order (GPDO)	The Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO 2015") is a statutory instrument, applying in England, that grants planning permission for certain types of development. Such development is then referred to as permitted development.
Conservation Area (CA)	Local planning authorities are obliged by the Planning (Listed Buildings and Conservation Areas) Act 1990 to designate as conservation areas any parts of their own area that are of special architectural or historic interest, the character and appearance of which it is desirable to preserve or enhance.
Heritage at Risk (HAR)	Heritage at Risk (HAR) is a national programme led by Historic England that promotes understanding of the overall condition of England's historic sites. The programme identifies those sites that are most at risk of being lost as a result of neglect, decay or inappropriate development. The HAR Register tells communities about the condition of their local neighbourhood. It encourages people to become actively involved in looking after what is precious to them. It also reassures them that any public funding goes to the most needy and urgent cases.
Local Plan	A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.
Development Plan	The London Plan, Local Plans, other Development Plan Documents and Neighbourhood Plans.

14. Report author(s) and contact

- 14.1. Joanna Ecclestone, 020 8314 9912, joanna.ecclestone@lewisham.gov.uk
- 14.2. Comments for and on behalf of the Executive Director for Corporate Resources
- 14.3. Shola Ojo. Strategic Finance Business Partner, 020 8314 7778, shola.ojo@lewisham.gov.uk
- 14.4. Comments for and on behalf of the Director of Law, Governance and HR

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14.5. Fiona Shanahan. Property Lawyer, 020 8314 7674, fiona.shanahan@lewisham.gov.uk

15. Appendices

15.1. The following appendices are attached to this report

Appendix 1 – Deptford High Street and St Paul's Church Article 4 Direction

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