

# PLANNING POLICY & LOCAL PLAN COMMITTEE

11 JANUARY 2022

## REFERENCE FROM COUNCIL

### A.2 MOTION TO COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE 12 - APPLICATION OF ARTICLE 4 DIRECTIONS IN THE DISTRICT OF TENDRING (Report prepared by William Fuller and Ian Ford)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To report to the Planning Policy & Local Plan Committee a motion submitted at the meeting of the Council held on 30 November 2021.

##### EXECUTIVE SUMMARY

This report sets out a motion moved by Councillor Coley and seconded by Councillor G V Guglielmi to the meeting of the Council held on 30 November 2021 relating to the option of applying for an Article 4 Direction in respect of appropriate Conservation Areas, Industrial Estates and Commercial and Retail Centres in the District of Tendring and which was referred to this Committee by the Chairman of the Council for further consideration, in accordance with the provisions of Council Procedure Rule 12.4.

The motion expresses concern about the powers available to the Council's planning services in relation to preserving Conservation Areas, Industrial Estates and Commercial and Retail Centres in the District of Tendring. A fuller outline of the extent of these powers is set out in later sections of this report and including:

- What protection already exists under the General Permitted Development Order in these locations,
- What restrictions under Article 4 Directions the Council already hold,
- What powers the Council has in planning terms to restrict development further in these areas,
- The consequences of such restrictions.

##### RECOMMENDATION

**That the Committee decides whether to recommend, or not, that the Council should support the motion in its original format.**

**If the Committee decides to advise the Council that in its opinion the motion should not be supported in its original format it may, in addition, suggest to Council that an amended motion be proposed.**

## PART 2 – SUPPORTING INFORMATION

### Rule 12.6 Referred Motion

In accordance with Council Procedure Rule 12.6 (Referred Motions – Right of Mover to Attend Meeting), Councillor Coley has been notified to attend the meeting to answer any questions and/or points of clarification, if requested.

### LEGAL

Council Procedure Rule 12.5 (Referral of Motions) states that:-

*“Where a motion has been referred in accordance with Rule 12.4 the Cabinet or any relevant Committee shall (subject to the provisions of Rule 12.6) be required to consider such motion and to advise the Council (by no later than the second Ordinary Meeting of the Council held following the date of Council’s referral\*) of their opinion and reason as to whether such motion should be supported in its original format.*

*Prior to making its decision Cabinet or the relevant Committee may following consultation with Officers, require further information to be presented to them for consideration on the implications of the proposed motion. Such a report must be considered in a timely manner.*

*If the Cabinet or relevant Committee decides to advise the Council of its opinion that such motion in its original format should not be supported, the Cabinet or relevant Committee may, in addition, suggest to the Council that an amended motion be proposed.*

*Once Cabinet or any relevant Committee has considered the motion it will be referred back to Council with the recommendation. If an amended motion is proposed by Cabinet, or relevant Committee, when presented back to Council, the amended motion will be debated first, in accordance with Rule 16.5 and Rule 16.10 (b).”*

\* In this instance the relevant Full Council meeting is on 29 March 2022.

The making of Article 4 directions is an executive function and consequently, the Planning Policy and Local Plan Committee and full Council are limited in being able to make recommendations to Cabinet for consideration. All decisions made by Tendring District Council must follow the general principles of decision making, as set out in Article 13 of the Council’s Constitution:

#### **13.02 Principles of Decision Making**

All decisions of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consideration of all the relevant factors and options, taking into account the results of any consultation undertaken and the professional advice of Officers;
- (c) Respect for human rights, and equality and diversity;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes; and
- (f) Transparency (i.e. explaining what options were considered and giving the reasons for that decision).

In addition, decision-makers will follow the relevant procedure rules, as set out in Part 5 or Article 7, as appropriate when considering the matter.

The full implications of the proposals referred to in the motion are unknown at this stage and would require further research before an informed decision could be made. Alternatively, any recommendation to proceed would be subject to the implications being fully considered by Cabinet prior to approvals, to ensure any action was taken in accordance with the Council's Budget and Policy Framework.

## **RESOURCES AND RISK**

**Resources:** TDC Officers are advising on the consequences of Article 4 and will invite (where appropriate) input of Essex County Council Place Services (in regards to Conservation Areas) under an existing service level agreement. If a decision is taken to explore further the option of imposing further Article 4 Directions with a view to making such Directions, there will be considerable resource implications in assessing the applicability, justification and necessary detail of Article 4 Directions in different areas of the District. There will also be the processes for formal consultation for the individual Directions and obtaining Secretary of State approval which will have administrative and legal costs.

**Risks:** Whilst it is possible that the implementation of further controls under Article 4 Directions within Conservation Areas could support the protection of Tendring's heritage, it should be noted that using such powers to control conversions to housing and other commercial uses could impact upon the Council's aspiration to deliver high quality housing and also has the potential to impact the economy of Tendring.

## **OTHER IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

### **Crime and Disorder**

There are none.

### **Equality and Diversity**

There are none.

### **Health Inequalities**

There are none.

### **Consultation and Public Engagement**

See separate section.

### **Carbon Neutrality**

No adverse impact overall.

### **Area or Ward Affected**

All Wards are potentially affected.

## **BACKGROUND**

At the meeting of the Council held on 30 November 2021 (Minute 90 refers), the following motion was moved by Councillor Coley and seconded by Councillor G V Guglielmi and, in accordance with Council Procedure Rule 12.4, stood referred to the Planning Policy & Local Plan Committee for further consideration:

*“In order to preserve Tendring’s uniqueness, heritage, amenity areas and the established areas of industrial and commercial activity:-*

*This Council requests its Cabinet to explore the option of applying for an Article 4 Direction in respect of appropriate Conservation Areas, Industrial Estates and Commercial and Retail Centres in the District of Tendring.”*

On further discussions with Councillor Coley, it has been determined that the key areas of concern revolve around the following issues:

- Inappropriate permitted changes of use of property to residential dwellings which can result in an incompatible mix of uses – particularly in predominantly commercial areas and above shops;
- Permitted changes of use to residential dwellings that provide substandard levels of private amenity space;
- The inability to secure financial contributions from permitted developments for infrastructure such as children’s play areas;
- Permitted changes in Conservation Areas that can impact on the character and setting of listed buildings; and
- Conversion and redevelopment of agricultural buildings to residential dwellings which have a negative impact on the countryside.

## **The General Permitted Development Order**

Permitted development rights are a provision of the national planning system that automatically grants consent for certain building works and changes of use to be carried out without the need to apply for planning permission. Permitted development rights are subject to certain conditions, size thresholds and limitations to control impacts and to protect local amenity – but generally allow many types of development to take place without any control from the local authority.

The General Permitted Development Order (GPDO) covers a vast variety of land uses and sets out the permitted development rights that exist for each. For the purposes of this report, Officers have focussed on the permitted development rights most pertinent to the particular concerns identified by Councillor Coley.

### **Commercial Permitted Development**

Part 7 of the General Permitted Development Order provides for non-residential (commercial) extensions and alterations. In very brief it allows, without the need for planning permission:

Commercial and business properties (Use Class E)

- Buildings can be extended by 50% or 100 square metres in floor area

- Buildings can be extended up to, but no higher than 4 metres
- New development may not include the insertion or alteration of a shopfront

Industrial building or warehouse (Use class B1 and B8)

- No more than 200 square metres for a new building within a commercial site
- Extensions of no more than 50% or 1000 square metres in floor area
- Extensions of no more than 15 metres high

### **Restricted Permitted Development within Conservation Areas**

Within Conservation Areas (and Areas of Outstanding Natural Beauty) the following additional restrictions apply:

#### **Residential/householder development in Conservation Areas:**

- No side extensions are permitted
- No cladding and pebbledash
- No dormers on front and rear (in all other cases front facing dormers are not permitted)
- No outbuilding to side
- Photovoltaic as far as practical out of sight
- Chimneys and vent pipes not permitted if they are on wall or roof fronts a highway and principle or side wall
- Satellite dishes and antenna not permitted mounted on chimney wall or roof slope fronting highway

#### **Commercial and business development in Conservation Areas:**

- Extensions limited to 25% of original building or 50 sq m (half the standard allowance); materials must be similar; and extensions not permitted if within 2m of any boundary.
- Click and collect not permitted.
- Modification of loading bays not permitted.
- Industrial and Warehouse new buildings 100 sq m (half standard allowance).
- Extensions 10% of original floorspace or 500 sq m (standard is 50% or 1000 sq m)
- Industrial and Warehouse buildings, extensions and alterations must use similar materials.
- Waste management facilities – no extensions, alterations or replacement plant or machinery permitted

From the above, it is clear to see that there are already a number of restrictions in place controlling development of a commercial or business use and further restrictions within Conservation Areas. However, concern has been raised about some of the development that has been allowed in Conservation Areas including the inappropriate changes of use of property to residential dwellings which can result in an incompatible mix of uses, particularly in predominantly commercial areas and above shops. Concerns have also

been raised over changes of use to residential dwellings that provide substandard levels of private amenity space and those changes of agricultural buildings in the countryside which can negatively impact on the character of the area. The inability to secure financial contributions from permitted developments for infrastructure such as children's play areas was also of concern. As was changes in Conservation Areas that can impact on the character and setting of listed buildings.

### **Permitted Development Change of Use to Dwellings**

The General Permitted Development Order also allows (in Part 3) the change of use from specific buildings and uses to residential dwellings without the need for planning permission, but subject to a simpler 'Prior Notification' process. from the following are permitted to change to residential dwellings:

- Small HMOs
- Retail and betting shops
- Amusement arcade and casino
- Offices
- Storage and distribution B1(c)
- Agricultural (see below)

Also within the GPDO (Part 20) there is an allowance for new dwellinghouses to be constructed above flats without planning permission. It is worth noting that all of these permitted changes have certain conditions, size thresholds and restrictions attached.

Subject to a number of conditions and restrictions, agricultural buildings and land within their curtilage may convert to a use falling within Class C3 of the Schedule to the Use Classes Order 1987 (dwelling houses). These conditions and restrictions are set out in Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

The right allows for a maximum number for the following types of houses:

- up to 3 larger homes, to be greater than 100 square metres in floor area, and within an overall floorspace of 465 square metres in total; or
- up to 5 smaller homes each no greater than 100 square metres; or
- Up to 5 homes comprising a mixture of larger and smaller homes, with neither exceeding the thresholds for each type of home.

The right requires that for larger homes each of the 3 homes has to be larger than 100 square metres in residential use and allows for up to 1 home of 465 square metres in residential use. For smaller homes the right requires that a home can have no more than 100 square metres of floor space in residential use. Development of dwelling houses other than those defined as "larger" or "smaller" is not allowed under Class Q. In calculating the number of new homes allowed under the right any existing homes within the established agricultural unit not granted permission under Class Q should be discounted.

### **Article 4 Directions**

An 'Article 4 Direction' is a direction under article 4 of the General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw

specified permitted development rights across a defined area. An article 4 direction cannot be used to restrict changes between uses in the same use class of the Use Classes Order, but it can restrict and require planning permission to be sought for certain types of development that would otherwise be permitted.

The National Planning Policy Framework advises that all article 4 directions should be applied in a measured and targeted way. They should be based on robust evidence, and apply to the smallest geographical area possible.

Provided that there is clear justification for both its purpose and extent, an article 4 direction can:

- remove specified permitted development rights related to operational development or change of use
- remove permitted development rights with temporary or permanent effect

Where an article 4 direction relates to a change from non-residential use to residential use, it should be limited to situations where an article 4 direction is necessary to avoid wholly unacceptable adverse impacts. In other cases, article 4 directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area.

The potential harm that the article 4 direction is intended to address will need to be clearly identified and demonstrated, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to:

- a wide area (eg those covering a large proportion of or the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)
- an area extending beyond the essential core of a primary shopping area
- Agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty
- cases where prior approval powers are available to control permitted development
- the installation of microgeneration equipment

At present the Council has a number of Article 4 Directions in place throughout the District. These include:

- A number of roads in Mistley where rights have been withdrawn for windows, doors, rendering, painting and the erection of porches
- In Jaywick extensions and alterations to houses and alterations to the roof have been withdrawn
- And District-wide rights for the conversion to HMOs have been withdrawn.

### **Consequences for imposing further Article 4 Directions in the District**

As can be seen above, the use of Article 4 Directions can only be used in very specific circumstances with strong justification. Taking each of the use cases in turn, Officers have the following considerations:

## **Removing Permitted Development Rights for Conversion to Dwellings**

The Government is clear that it intends to significantly boost the supply of new homes in the coming years. A key part of this is to allow changes of use without full planning permission for agricultural buildings and for certain uses (see above).

Officers consider that, to restrict conversion of agricultural outbuildings would require an Article 4 Direction to apply across a wide area (covering all land within the District) – which is unlikely to be supported by the Secretary of State. No serious threat to landscape character has been identified and the prior approval regime can control these impacts. Given that a large part of the District and the large part of the country is a rural area to which these permitted development rights apply and that the material harm caused by this form of development is generally low, Officers believe it would be unlikely that the Secretary of State would agree to a direction. For the reasons given above, your Officers do not consider that using Article 4 Directions to control this kind of development would be appropriate.

Similarly, for the other uses which can change to dwellings, no serious justification has been given as to the harm caused and where the specific locations are in the District. In both kinds of conversions, Officers would need more detail to recommend the use of an Article 4 Direction to Members.

This all being said, it is understood that these changes of use under permitted development are not very common in the District. But if Members would like, Officers are happy to look into how common this is and assess what kind of developments are being allowed through the Prior Notification route.

## **Restricting Permitted Development Rights in Conservation Areas**

Within the adopted Heritage Strategy, one of the recommendations to preserve the heritage of the District is for Officers to investigate its powers using Article 4 Directions. Moreover, within the Conservation Area Management Plans taken to Planning Policy and Local Plan Committee in October, there were also recommendations for Officers to consider the use of Article 4 Directions, specifically to control the inversion of windows and doors and shopfront design.

Should Members wish, Officers could investigate stricter controls within Conservation Areas using Article 4 Directions. It is recommended that once each of the Conservation Area Appraisals returns from public consultation, Officers explore this in more detail. This approach is recommended as it is likely that the boundary of Conservation Areas will change and the boundary for any new Article 4 Direction should reflect the most up-to-date Conservation Area boundary.

## **Restricting Permitted Development Rights in Town Centres**

Members will recall that a Committee report was brought before you recently which highlighted the Government's recent rethink of town centre uses. This involved the implementation of a new 'Class E' planning use class which brings together a number of traditionally town centre uses and also allows the permitted change of some of these uses to residential. The Government are attempting here to provide more flexibility to town centre uses. Officers consider that there is no strong justification to tighten these rights and in any event, this approach would not be supported by Government.

## **Further Considerations**



The above all points to a wider piece of work to examine how well the Article 4 Directions the Council already has in place are achieving their goals. Indeed, Government guidance requires that Local Planning Authorities monitor Article 4 Directions to make sure the original purpose of the Direction is being achieved. Should Members wish, Officers could look into this as well.

#### **BACKGROUND PAPERS FOR THE DECISION**

Published Minutes of the meeting of the Full Council held on 30 November 2021.

#### **APPENDICES**

None