
**Public Decision Session of the Executive Member
for Planning and Transport**

18th June 2015

Report of the Assistant Director (Development, Planning and Regeneration)

**Request for Confirmation of Immediate Article 4 Direction in respect of
the Punch Bowl Public House, York**

Summary

- 1 This report seeks authority to confirm the Article 4 Direction made by the Council on the 24th December 2014, to remove permitted development rights for the change of use of the public house to a class A1 retail use.

Background

- 2 Following concern that the Punchbowl Pubic House was to be sold to a retailer to be changed into a convenience store, a request to the Council to make an Article 4 Direction to prevent such a change of use without planning permission was submitted by CAMRA in October 2014. Under the planning regulations, an Article 4 Direction is the mechanism for requiring applications to be made for changes of use that would otherwise be permitted development.
- 3 The request was accompanied by a petition with over 1200 signatories, strongly opposed to the replacement of the Public House by a convenience store. The representations originally submitted were later supplemented by a number of Witness Statements and relevant testimonials from users of the Public House. The documents include submissions from University of York Football Club, The Gravers - a specialist residential mental health care home, 2 longstanding patrons of the Punch Bowl and a resident who has made representations to the Cabinet Members.

4 A report was prepared for consideration at the meeting of the Cabinet held on 7th October 2014. It was resolved:

- (i) “That, as a matter of urgency, the Director of City and Environmental Services and the Director of Customer and Business Support Services be requested to further investigate options in relation to the request for action to preserve the Punch Bowl public house, Lowther Street, York as a public house;
- (ii) That the Cabinet Members for Environmental Services, Planning and Sustainability and Finance and Performance, each be asked to consider the options identified by the Directors under (i) above and, if satisfied that action is justified, to take such action under his delegated powers.
- (iii) To confirm the delegation of powers to the Cabinet Member for Environmental Services, Planning and Sustainability to make an Article 4 direction to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) if satisfied that sufficient evidence exists to justify the making of such a Direction.
- (iv) That Officers be requested to bring a report back to a future Cabinet meeting outlining a long term strategy to assist with similar future requests.

Reason: In order to allow further work to evidence if exceptional circumstances exist to show that a change of use would harm the amenity or the proper planning of the area, and whether there is a need to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) by the making of an Article 4 Direction.”

5 A copy of the report and annexes to that meeting is attached (Annex A). At a Public Decision Session of the Cabinet Member for Environmental Services, Planning and Sustainability in consultation with the Cabinet Member for Finance and Performance on 11th December 2014, to

address point (ii) of the above resolution, further clarification was sought as to:-

- Whether an Article 4 direction could be conditioned to state that the premises must be used as a community facility.
- The risks to the Council if it did determine that exceptional circumstances existed and made the Article 4 direction, but subsequently revoked the order before an application had been submitted.

6 A copy of the officer report to that Public Decision Session is appended at Annex B. It was resolved that a decision on whether or not to make an Article 4 Direction be deferred to enable further written legal advice to be provided.

7 At the reconvened Public Decision Session on 22nd December 2015, further legal advice was provided. It was resolved that the Cabinet Member for Transport, Planning & Economic Development, in consultation with the Cabinet Leader, Finance & Performance agree that exceptional circumstances exist and that a change of use of the premises would constitute a threat to the amenity of the area. The Members agreed to:

- (i) Use the Council's discretionary power to make an immediate Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1)
- (ii) Request Officers to prepare a report to assist with similar future requests outlining a longer term strategy for the Council.

Reasons:

- (i) That exceptional circumstances exist to show that a change of use would harm the amenity and the proper planning of the area.
- (ii) To provide a strategy to cover similar future requests for Article 4 Directions.

8 An immediate Article 4 Direction was subsequently made on 24th December 2014 (Annex C). From that date any proposed change of use to A1 retail would first require planning permission.

Consultation

- 9 Representations on the Article 4 Direction were invited between 6th January 2015 and 16th February 2015. The formal notice of the making of the Direction was carried out in accordance with the statutory process via a York Press newspaper notice, the display of notice at Punchbowl, information being published on the Council's website, and the documents being deposited at the Council offices at West Offices. The Secretary of State was also notified as required.
- 10 No representations were received in response to the notification.

Options

- 11 The options available to the Executive Member are:
- a) Not to confirm the Direction, in which case it will lapse 6 months after taking effect i.e. on 24th June 2015.
 - b) Confirm the Article 4 Direction at Annex C. The premises would continue to be subject to restricted permitted development rights preventing the change of use to A1 without permission being applied for and approved.

Analysis of Options

- 12 Option a) If the Direction is not confirmed, then Permitted Development rights to change the Public House to another use (such as a retail unit) under the General Permitted Development Order would be restored and would be available to current or prospective owners.
- 13 Option b) Confirmation of the immediate Direction would ensure the continued removal of permitted development rights. It would also leave the Council at risk of compensation claims due to loss of business should planning permission be applied for and refused or subject to conditions.

Wider Protection for Public Houses

- 14 In response to the motion passed by Council on 11th December 2014, it is intended that a paper will be brought to Executive in August. The purpose of the report will be to provide Members with information on the measures available to the Council to afford greater protection to public houses. These measures include a city wide Article 4 Direction and

utilising the assets of community value register, whereby eligible groups have the opportunity to identify and nominate assets that are of value to the local community. Options will be presented to members to address the remaining actions from the Council motion.

Council Plan

- 15 The most relevant section is that relating to Community Infrastructure, which seeks to establish appropriate community facilities, including housing, leisure opportunities, schools, and work and enterprise units. It states that in planning for our communities, the Council will work in a more joined up way in order to better meet the infrastructure needs of each neighbourhood.

Implications

Financial

- 16 The use of an *immediate* Article 4 Direction exposes the Council to a claim for compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions. This would be likely to include business losses, and could be substantial.

Human Resources

- 17 There should be no Human Resources implications.

Equalities

- 18 The confirmation of the Direction itself would not result in any adverse impact; it simply involves the withdrawal the permitted development rights for the property to change to a shop. The only effect would be on the owners and any prospective tenant needing to apply for permission (with no fee currently payable) for such a change.

Legal

- 19 Whether to make and subsequently confirm an immediate Article 4 Direction is a discretionary power to be exercised in accordance with the principles of Wednesbury reasonableness. An Article 4 Direction should only be confirmed if, after considering any representations made, Members remain satisfied that exceptional circumstances exist

whereby evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. If the immediate Article 4 Direction is confirmed, and a subsequent planning application made before 24th December 2015 is refused, the Local Planning Authority can be liable for compensation.

Crime and Disorder

- 20 There are no direct crime and disorder Implications arising from this report

Information Technology

- 21 There are no known implications

Property

- 22 There are no known implications

Other

- 23 None.

Risk Management

- 24 The confirmation of the “immediate” Article 4 Direction maintains the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. The potential encouragement of other similar requests has been diminished somewhat by the recent amendment to permitted development rights whereby permission is now required to change a class A4 (drinking establishment) listed as an asset of community value (ACV) to another use. A number of applications for ACVs for public houses have already been submitted to the Council. It is also of note that no challenge to the Direction has been instigated, and no planning application has been proposed or submitted in the (almost) 6 months since the making of the Direction.

Conclusion

- 25 No representations have been received and so no additional evidence has come forward since Members resolved to make the Direction. Other than the removal of permitted development rights for drinking

establishments listed as assets of community value, there has been no other relevant change in circumstances. It is therefore recommended that the Direction be confirmed.

Recommendations

- 26 (i) That the Direction be confirmed.
- (ii) That Notice of the confirmation be publicised locally by means of Press Notice and site notice, and Secretary of State be informed of the confirmation as required by the regulations.

Reason: To continue to prevent the loss of the Punch Bowl Public House to a retail use without prior consideration of the impact through a planning application.

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Wards Affected: Guildhall

For further information please contact the author of the report.

Annexes

A Report to Cabinet 7th October 2014

B Report to meeting of the Cabinet Member for Environmental Services, Planning and Sustainability & Cabinet Member for Finance and Performance 11th December 2014

C The Direction and Plan of site