

**Decision Session - Executive Member
for Economy and Strategic Planning**

24 January 2023

Report of the Director of Environment, Transport & Planning

**Confirmation of an article 4 direction for the Heslington
conservation area**

Summary

1. On 9 June 2022 City of York Council (CYC) made a non-immediate article 4 direction covering sensitive buildings within the Heslington Conservation Area, in accordance with the decision of the Executive on 27 August 2020 (“the Direction”). A six-week consultation with residents and interested parties elicited five responses which either supported the Direction or raised no objections to it. Officers consider that an article 4 direction to protect the Heslington conservation area is justified and that the Direction should be confirmed, coming into effect on 10 June 2023.

Recommendations

2. The Executive Member is asked to:
 - i. Authorise the confirmation of the Direction.

Reason: Officers consider that it is expedient to confirm the Direction due to the convincing justification for strengthening planning control in the Heslington Conservation Area; local support for doing so; and the availability of external funding and adequate resources.

Background

3. Article 4 directions may be served by local planning authorities to

restrict particular types of development to private dwelling houses within conservation areas by requiring owners to apply for planning permission for works that would otherwise be permitted development. Within conservation areas, article 4 directions are typically served to protect historic and traditional features such as windows, doors, building materials and boundary treatments and discourage their replacement with inappropriate alternatives; and to control the installation of external equipment such as aerials and solar panels that may affect the character of the area. Article 4 directions may cover a whole conservation area or particular properties within them.

4. CYC has a number of adopted conservation area appraisals that include recommendations for article 4 directions, including the Heslington Conservation Area Appraisal, adopted in 2009, which recommended that consideration should be given to serving an article 4 direction.
5. Since 2015 Heslington Parish Council (“the PC”) has asked CYC to serve an article 4 direction to restrict certain permitted development rights in order to conserve traditional features which contribute to the architectural and historic character and appearance of the Conservation Area. In 2018, the PC offered a sum of £3000 (consisting of £2000 of ward funding and £500 each from the PC and Heslington Village Trust) to CYC to fund the preparation and implementation of a direction.
6. Policy HES: 6 of Heslington Parish Neighbourhood Plan Submission Version September 2019 highlights particular characteristics that contribute to the village’s distinctive character, stating that the impact on these characteristics will need careful consideration to ensure that development is sustainable and appropriate to the local context. The characteristics include vernacular forms, the variety of historic styles and construction methods including use of materials that respect and are sympathetic to the context and building traditions and supports reinstating original features where inappropriate modern materials or other external features have been introduced to listed buildings

or elsewhere.

7. The Explanation to Policy D4 (Conservation Areas) of the CYC Local Plan Publication Draft Feb 2018 supports the use of Article 4 Directions in the following terms: *“Whilst it is the quality and interest of an area as a whole which is recognised through designation, it is often the cumulative impacts of small changes over time which erode the special qualities and significance of a place. Where necessary, and with public support, Article 4 Directions will be introduced to help to control potentially damaging alterations.”*
8. A report recommending the making of the Direction was prepared for consideration by Executive which is appended to this report as Annex B. At the Development Plan Working Group meeting on 21 August 2020 Members resolved that further information should be provided to the Executive on the costs of implementation and enforcement of the proposed Direction and clarification of the number of properties affected by the withdrawal of permitted development rights for the installation of solar panels and how the impact of this aspect could be mitigated. This information was provided in an Addendum for the Executive dated 27 August 2020 which is appended to this report as Annex C.
9. The procedure for serving and confirming a direction is set out in Schedule 3 of the General Permitted Development Order 2015 and entails: making the direction; giving notice, via local advertisement, site display and by post to affected owners and the Secretary of State, followed by a 6-week consultation period; considering any responses; producing a report to Executive/Executive Member to confirm the direction within 2 years; if confirmed, notifying those referred to above. If not confirmed, the direction will lapse.
10. On 27/08/20 the Executive resolved the following: *“That officers be authorised to prepare and serve a non-immediate Article 4 Direction covering parts of the Heslington Conservation area, and to finalise the boundary of the area covered by the Direction in consultation with parish council representatives.”*

11. The Direction was made on 9 June 2022, covering permitted development consisting of the alteration or installation of roofing materials, rooflights, solar panels, chimney stacks, porches or small extensions, boundary treatments, windows, doors and satellite dishes, on the basis that these features can affect the special qualities of the conservation area identified in the Heslington Conservation Area Appraisal and the Heslington Neighbourhood Plan. The Direction applies to development on relevant elevations only – those facing or clearly visible from the public sphere. The boundary of the Direction excludes listed and the majority of non-conforming modern buildings to avoid imposing unnecessary regulation.

Consultation

12. Following making of the Direction the Notice was published in *The Press*, posted within the Conservation Area and letters of notification and consultation were sent to the Secretary of State, all residents affected and other stakeholders (including Heslington Parish Council, Heslington Village Trust, York Civic Trust, Historic England, the University of York, Halifax Estates) on 10 June 2022. The notification and consultation documents were also made publicly available on the CYC website and in York Explore.
13. The consultation elicited five responses which are précised in the Table of Responses at Annex D. The comments submitted either supported the Direction (3 no.), proposed extensions to its scope (1 no.), or sought clarification about its application to an individual property (1 no.). No responses objected to the Direction or considered it to be unmerited. Officers' response to the comments are included in the Table.
14. In deciding whether to confirm a direction, CYC must take into account any representations received during the consultation period.

Options

15. Executive Member may wish to consider:
 1. Varying the scope of the Direction.

2. Allowing the Direction to lapse.
3. Authorising the confirmation of the Direction. (**Recommended**)

Alternative Options

Varying the Direction

16. No objections were received to the Direction. York Civic Trust made a number of recommendations, including to extend the Direction to cover the 1970s-era housing development at Turner's Croft, Peel Close and West Moor Lane; and to extend the scope of the Direction to restrict alterations to chimney pots and the installation of heat pumps. With regard to the modern housing, it is considered that it would be inappropriate to apply an article 4 direction to an area that has not been assessed as being of special architectural or historic interest. However, the qualities of this area can be considered as part of any review of the conservation area appraisal in the future.
17. With regards to the suggested inclusion of additional forms of development in the types restricted, officers are satisfied that alterations to chimney pots would be covered by the existing provisions within the direction, and the installation of heat pumps in sensitive locations would already require planning permission through the provisions of the General Permitted Development Order 2015.
18. Although not a subject of the responses received during the consultation, the inclusion of solar panels in the Direction is a particularly sensitive restriction because mitigating and adapting to the effects of climate change is a priority for the Council as well as the Government. The effects of the proposed Direction in these regards were considered by the Executive in the Addendum, Annex C, which concluded that as a consequence of the small number of dwellings with roofs suitable for the optimal installation of solar panels, and the availability in many cases of alternative solutions for improving energy efficiency and incorporating appropriate technology, the impact of the proposed Direction on climate change mitigation would be very low.

19. Officers are currently developing an SPD on climate change. This will provide practical guidance on how to adapt buildings, including advice on historic properties. DCSD team (the council team responsible for this report) are part of the working group developing the SPD, and have provided draft guidance to inform its development. In the meantime, sources of national guidance on appropriate energy efficiency measures for historic buildings will be included in correspondence with residents in connection with the statutory notifications and consultation of this Direction.
20. An article 4 direction does not constitute a ban on any particular development, rather it brings the cited works under planning control so that they may be considered in accordance with local and national planning policy and guidance; and permitted development rights remain on elevations not affected by the direction (usually on rear and many side elevations).
21. Officers consider that the confirmation of the proposed Direction would be unlikely to prevent energy efficiency measures being pursued but rather that bringing these matters into the planning sphere would allow the principles of sustainable development embedded within planning guidance to be applied in order to ensure that the significance of heritage assets is conserved while allowing sympathetic changes to support their continued use and address climate change.
22. Consequently, officers do not recommend varying the scope or extent of the Direction.

Allowing the Direction to lapse

23. The Direction represents a long-standing aspiration by local bodies including Heslington Parish Council and Heslington Village Trust to strengthen planning controls to protect the conservation area in accordance with Policy D4 (Conservation Areas) of the CYC Local Plan Publication Draft Feb 2018, and the Conservation Area Appraisal of 2009. These bodies have supported this

initiative with funding, and permitting the Direction to lapse would fail to address their long standing concern to strengthen planning controls in the Conservation Area.

24. Officers consider that the provisions of the Direction are justified and that permitting the Direction to lapse would allow the low-level but incremental erosion of architectural and historic character that is evident in the Conservation Area to continue.

Authorising the confirmation of the Direction

25. Background sections 4-7 above set out the rationale for the Direction with regards to planning policy and local support.
26. No objections to the Direction have been received during the course of the consultation period.
27. Officers consider that there is convincing justification for strengthening planning control in Heslington Conservation Area; local support for doing so; and external funding and adequate resources are available, and therefore recommend the confirmation of the non-immediate Direction covering parts of the Heslington Conservation Area.

Timetable

28. The Direction has to be confirmed by the Executive in order for it to come into force. If confirmed, the Direction would come into effect on 10/06/2023. This is 12 months from when the Direction was made.

Council Plan

29. The targeted making of article 4 directions where they have local support would support the CYC Plan 2019-2023. In particular, one of the eight core outcomes sought by the Council Plan is “a greener and cleaner city”. This component seeks the protection and enhancement of York’s environment: *York’s rich built and*

natural environment underpins people's quality of life and attracts millions of visitors to the city each year. Protecting and enhancing these environments for existing and future generations is a key priority for the council and our residents (p.14). In helping to protect the special character of the Heslington Conservation Area the Direction would contribute to this core outcome. Another core outcome is "an open and effective council". This component seeks to ensure that the Council does *things that matter for residents and communities, which means that we believe in giving local communities control over what's important to them, wherever possible, and involving them in delivering the solutions. We recognise in addressing challenges, the best approach is often to build on the strengths and the assets that we have in our communities.* In supporting the long-standing aspiration of local stakeholders for more effective planning controls in the Heslington Conservation Area the Direction would contribute to this core outcome.

Implications

30.

- **Financial** The administrative costs of preparing and serving a direction are estimated to be covered by the contribution from Heslington Parish Council. Any additional costs are anticipated to be minimal and can be accommodated within the DCSD section budget. The service of Direction precludes any risk of CYC being liable for payment of compensation to any owners affected by giving 12 months' notice of the planning restrictions. In 2018 the Government introduced standard planning fees for applications made under article 4 directions, which were formerly free for applicants. Consequently, planning applications resulting from a direction would not impose any additional costs on the LPA beyond any other planning application, and they are likely to be relatively straightforward to process due to the small scale of the works subject to control.
- **Human Resources (HR)** The preparation and service of an article 4 direction can be prioritised above less urgent work within existing DCSD staffing. It is likely that the number of

additional planning applications generated as a result of the Direction would be low due to the tendency of residents to undertake works on a 'like for like' basis to avoid the formalities of applying for planning permission. Some internal legal advice will be required in preparing the documentation. It is not anticipated that any additional staffing provision would be required for the implementation of the recommendations of this report.

- **Equalities** When considering the recommendations in this report, regard must be given to the public sector equalities duty to eliminate unlawful conduct under the Equality Act 2010. The duty is set out at Section 149 of the 2010 Act. It requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimization and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic.

The report to the Executive of 27 August 2020 advised that the Better Decision Making tool had been completed and no impacts on Equalities or Human Rights arising from the proposal were identified. Since that time the Council has introduced guidance for the preparation of Equality Impact Assessments (*Guidance on Equality Impact Assessment 2021*), replacing the Better Decision Making Tool, which has been considered in the preparation of this report. Officers conclude that the confirmation of the Direction would not be detrimental to people with protected characteristics or affect human rights.

The *Guidance* includes consideration of the effects of decisions on particular socio-economic groups such as carers, low income groups and military veterans. It is considered that low income households could be negatively affected by the effect of the Direction as a consequence of the additional costs that applying for planning permission or carrying out alterations to

an acceptable quality in the conservation area could entail. In mitigation, it should be noted that the Fulford & Heslington ward is among the least deprived in the city (based on information from Strategic Intelligence Hub, CYC); those affected by the Direction are limited to c.70 properties; the types of works covered by the Direction are elective, i.e. the Direction does not require owners to carry out any work; and that there will be a range of options for any works of maintenance and alteration varying between relatively low-cost works, e.g. repairs and upgrades such as insulation, draught proofing and secondary glazing; and more more expensive wholesale replacement of building fabric. Works of maintenance and like for like replacement could still be carried out without planning permission. Consequently, officers consider that any negative effects of the confirmation of the Direction on low income groups would be low.

- **Legal**

The Council has powers to make and review conservation areas and management plans by virtue of Part II. Section 69(1(a)) of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).

The Council's powers to make Article 4 Directions are contained in Articles 4, 5 and 6 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).

Section 108 of the Town and Country Planning Act 1990 provides for the payment by the Council, in limited circumstances, of a statutory compensation to persons who have incurred abortive expenditure or otherwise suffered loss or damage as a direct result of the withdrawal of permitted development rights by an Article 4 Direction. However, so long as 12 months' notice is given before the Article 4 direction takes effect as is the case in the present matter, no compensation will be payable.

The making of a direction under Article 4 renders the Council liable to pay compensation to people who have applied and been refused permission or been granted permission with

conditions. Under the planning system there is a general principle that once permission has been granted, either by a specific grant of planning permission or by means of a Development Order, the right to develop is guaranteed and can only be withdrawn upon payment of compensation. However, the provisions of The Town and Country Planning (Compensation) (No.3) (England) Regulations 2010 will protect a Council from compensation claims provided the Direction takes effect not earlier than 12 months from the date of making.

- **Crime and Disorder** There are no known Crime and Disorder implications.
- **Information Technology (IT)** There are no known IT implications.
- **Property** There are no known Property implications.
- **Other** There are no known Other implications.

Risk Management

31. There are no known risks.

Contact Details

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Wards Affected: *Fulford & Heslington Ward*

All

For further information please contact the author of the report

Background Papers:

[Heslington Conservation Area Appraisal](#) 2009

[Heslington Neighbourhood Plan Submission Version](#) 2019

Annexes

Annex A: Article 4(1) direction for Heslington

Annex B: Report to Executive 27 August 2020, Proposal for an article 4 direction for the Heslington conservation area

Annex C: Addendum for Executive 27 August 2020

Annex D: Heslington Article 4 Direction Consultation: Table of Responses