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**Cabinet****7 October 2014**

Report of the Cabinet Member for Environmental Services, Planning & Sustainability

**The Punch Bowl Public House, Lowther Street, York – Article 4 Direction****Summary**

- 1.1 This report relates to a request from the York Branch of CAMRA that the Council make a make an immediate Article 4 Direction of 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).
- 1.2 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction restricting the change of use from Class A4 to Class A1 for the following reasons:
  - The evidence does not show that *exceptional circumstances* exist whereby such a change of use would harm local amenity or the proper planning of the area
  - The National Planning Policy Framework (NPPF) states that community facilities include both shops and pubs. The change of use would not, therefore, result in the net loss of a community facility
  - The change of use would not harm the visual amenity of the area
  - The change of use would not damage the historic environment
  - The public house is within the urban area where there are similar facilities within a reasonable distance.
  - The circumstances outlined by CAMRA in which Article 4 Directions have been made by other authorities differ from this case, in that they predominantly relate to the demolition and redevelopment of public houses rather than a change of use.
  - The Article 4 Direction in itself would not prevent the public house from changing to a shop, it merely requires a planning application to be made.

- The use of an Article 4 Direction gives rise to compensation (payable by the Council) 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.

## Background

- 2.1 The reasons given by CAMRA for requesting the Article 4 Direction are that they understand that the Punch Bowl public house is the subject of active discussions for a change of use to a supermarket selling alcohol, between the owners (Enterprise Inns) and a national retailer. Such a change of use could normally take place without the need for planning permission. CAMRA state that discussions are at an advanced stage, and that the pub is at imminent risk of being lost as a public house, which is a “community facility” in terms of the NPPF. CAMRA consider that an immediate Article 4 Direction is the most appropriate way of protecting the public house as it would require the submission of a formal application for planning permission for a change of use to a shop.
- 2.2 The Punch Bowl is clearly a much valued local amenity and its potential change of use to a supermarket has resulted in a significant amount of local opposition. The request is accompanied by a petition containing 70 signatures, although CAMRA states that around 1000 signatures have been collected from Punch Bowl patrons that could be supplied if necessary.

## Legislative Background

- 2.3 The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) sets out the categories of development that can be undertaken without the need for planning permission, known as “permitted development”. Class A of Part 3 of Schedule 2 to the GPDO states that development consisting of a change of use of a building to a use falling within Class A1 (shops) from a use falling within Class A3 (restaurants and cafes), A4 (drinking establishments) or A5 (hot food takeaways) falls within permitted development. Thus a change of use from a public house to a shop is classed as permitted development, and under national legislation can take place without the need for planning permission.

## The Effects of an Article 4 Direction

- 2.4 The effect of an Article 4 Direction would be to remove permitted rights for any category of development specified within it. In this particular case, if an

Article 4 Direction was to be imposed, planning permission would be required for the change of use of the public house (Class A4) to a shop (Class A1). It is important to note that an Article 4 Direction would not, in itself, prevent the change of use from going ahead, it would merely bring it within planning control by requiring a formal application for planning permission to be submitted. Any such application would then need to be considered against national and local planning policies and any other relevant material planning considerations. If the application is refused or granted subject to conditions more restrictive than the GPDO, the Local Planning Authority can be liable for compensation under S108 of the Act.

- 2.5 The request has been made for an “immediate” direction, whereby permitted development rights are removed with immediate effect and the Direction is then consulted upon. The Direction will lapse after 6 months from when it was made unless it is confirmed by the Council following the consultation within the six month period. An immediate direction should only be used where there is an urgent, justified requirement for protection.
- 2.6 The right to compensation (payable by the Local Planning Authority) arises if an application is made for planning permission for development formerly permitted by the GPDO and this application is refused, or granted subject to conditions more limiting than those in the GPDO

Compensation can be claimed:-

- (i) For abortive expenditure (this would be expenditure incurred in the preparation of plans for the purpose of any development).
- (ii) For other loss or damage directly attributable to the revocation. This includes depreciation of land value in certain circumstances, where permitted development rights are taken away and loss is suffered which is directly attributable to their removal. “Directly attributable” suggests a close causal link e.g. a claimant can show that they had a business, and that as a result of removal of permitted development rights, they have lost future profits.

- 2.7 It is relevant to take into account the potential financial consequences to the public purse of making an Article 4 Direction.

Role of the Secretary Of State (SoS)

- 2.8 Whilst Local Planning Authorities have the power to make and confirm their own Article 4 directions and do not require the SoS's approval in this respect, the SoS does retain the power to cancel or modify Article 4

directions made by an LPA. This power can be exercised by the SoS at any point (i.e. either before or after the direction has been confirmed by the LPA). Accordingly, the SoS essentially has the jurisdiction to oversee and review directions made by an LPA. Thus the imposition of an Article 4 Direction should be carefully considered as any that fail to convincingly meet the criteria described in the relevant legislation and guidance may be cancelled by the SoS.

## Ministerial Guidance

- 2.9 Guidance on the use of Article 4 Directions is contained within Department of the Environment Circular 9/95 (Replacement Appendix D). This states that local planning authorities should consider making article 4 directions *only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.*
- 2.10 For all Article 4 directions the legal requirement is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. Additionally, for directions with immediate effect, the legal requirement is that the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenity of their area.
- 2.11 In deciding whether an Article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.
- 2.12 In deciding whether an Article 4 direction might be appropriate, Circular 9/95 states that local planning authorities may want to consider whether the exercise of permitted development rights would (amongst other things):
- Undermine the visual amenity of the area or damage the historic environment;
  - Undermine local objectives to create or maintain mixed communities;

## Consultation

- 3.1 Due to the urgent nature of the case, no consultation has been undertaken. In the case of an immediate Article 4 Direction, permitted development

rights would be removed with immediate effect and the Direction would then be consulted upon.

## Options

- 4.1 Members can either agree that an immediate Article 4 Direction be made, or alternatively reject the request. In either case, reasons should be given.

## Analysis

- 5.1 The following is a précis of the case put forward by the applicant, in favour of an Article 4 Direction:

- A public house is classed as a community facility within the National Planning Policy Framework (NPPF)
- The NPPF seeks to guard against the loss of valued facilities and services (paragraph 70), and Article 4 Directions can be used to remove national permitted development rights in order to protect local amenity or the wellbeing of an area (paragraph 200).
- The Punch Bowl is a thriving and irreplaceable local amenity offering valued facilities not available elsewhere in the immediate neighbourhood.
- It is an asset for residents in The Groves, including pensioners, families, disabled clientele and local sports teams (e.g. darts, dominoes and pool).
- There is a large function room used for karate instruction and as a training facility, as well as wedding receptions, birthdays and other social events. There is also a large ground floor games room. Other nearby venues (e.g. Conservative Club, Clarence Club, Castle Howard Ox, Brigadier Gerard) do not match the facilities provided at the Punch Bowl.
- No other local pub has three separate facilities in one building that can all be used at the same time by different groups.
- Residents should not have to travel long distances to visit a public house or have to travel into York for “a quiet pint”.
- A supermarket does not have the same place in society for community cohesion as a public house
- The area around The Punch Bowl is not well served by a good variety and availability of public houses and risks becoming a “pub desert”.
- The removal, one by one, of pubs in the area makes that more of a possibility in the future.
- A supermarket has the potential to harm the viability of existing established businesses, for example, by undercutting prices.
- It would have a large stock of aggressively priced alcoholic drinks, sandwiches, snacks and other foodstuffs all in competition with other shops and stores within the area.
- A new supermarket would threaten other remaining pubs in the area due to the sale of discounted alcohol.

- A supermarket represents a threat to the social and mental health balance of the area. The surrounding area is York`s central hub for mental health services, including Arc Light, Bootham Park Hospital, Sycamore House and 98 Union Terrace.
- Whereas the public house permits drinking in a managed environment, the sale of alcohol for consumption off the premises would encourage more anti-social behaviour
- There is a highly persuasive argument for an Article 4 Direction on two counts, i.e. the protection of a local amenity, and the protection of the wellbeing of the area
- Although Council`s are averse to Article 4 Directions, CAMRA is aware of a number of precedents and to their knowledge there have not been any successful claims for compensation.

### **Officer response:**

5.2 Central Government guidance on the use of Article 4 Directions makes it clear that they should only be used in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Paragraph 200 of the National Planning Policy Framework (NPPF) states that Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. Thus prior to imposing an Article 4 Direction, Members would need to be satisfied that the change of use of the Punch Bowl public house to a shop falls within the category of “exceptional circumstances” and would harm local amenity or the proper planning of the area, such that it warrants being brought within planning control.

5.3 In support of their request, CAMRA have included a copy of a policy briefing published by the Local Government Information Unit “*Public Houses: How councils and communities can save pubs*”. This includes a number of case studies relating to the protection of public houses, and makes reference to Interim Planning Guidance (IPG) published by Cambridge City Council (“Protection of public houses in the City of Cambridge”). However, the Cambridge document recognises that it is possible to use permitted development rights contained in the Use Classes Order to change the use of a pub to a restaurant/café (Class A3), financial or professional services office (Class A2) or retail shop (Class A1) (paragraph 4.11). It goes on to say that *the council considers it is important to allow the flexibility for pubs to pass in and out of pub use according to market conditions, and recognises that no permission is required to change use from a pub to a restaurant, office or shop*. Thus the IPG does not override national permitted development rights and could only be applied in cases where

planning permission is actually required for a change of use (e.g. to residential use), for the complete redevelopment of a public house site, or in situations where an Article 4 Direction is already in place. It is of no direct relevance to the present situation.

- 5.4 The document also refers to specific examples of public house that have been protected by Article 4 Directions, including the Baring Hall Hotel in Lewisham. However, in this case the proposed development related to the demolition and redevelopment of the site rather than a change of use. Thus it is not directly comparable to the present case. Any alterations to the Punch Bowl public house arising out of a change of use to shop could be controlled through a subsequent planning application. In the case of the Catford Bridge Tavern (also in Lewisham), which was the subject of a planned conversion to a supermarket, there was a perceived conflict with policies that seek to protect the viability and vitality of town centres that is not applicable in the case of the Punch Bowl. The Catford Bridge Tavern was also locally listed and was already covered by an Article 4 Direction prohibiting conversion from its existing Class A4 use.
- 5.5 A further case relates to The Highbury Barn in Great Cornard, Suffolk. Once again this related to the demolition and redevelopment of the site rather than a change of use. It is also located within a village context rather than within an urban area. An Article 4 Direction was imposed and a subsequent planning application refused. In dismissing the appeal the Inspector referred to the loss of a significant local heritage asset which makes a positive contribution to the street scene and local distinctiveness and which provides a historic link to the area's past. Clearly this could not be argued in the case of a proposal for change of use, particularly as any external changes could be controlled through a subsequent planning application.
- 5.6 CAMRA have also referred to an Article 4 Direction that was recently made in respect of The Maiden Over public house, Silverdale Road, Earley (Wokingham Borough Council), in order to prevent it becoming a convenience store. This was approved against officer recommendation in August 2014. However, the Council has subsequently rescinded the Article 4 Direction, following representations from the retailer and further legal advice. The particular concern was that the retailer would have been entitled to compensation, which was expected to be a substantial sum. A similar situation could arise should an Article 4 Direction be imposed on the Punch Bowl.
- 5.7 As stated above, the imposition of an Article 4 Direction would not, in itself, prevent the change of use from going ahead; it would merely bring it within

planning control by requiring a formal application for planning permission to be submitted. Any such application would then need to be considered against national and local planning policies and any other relevant material planning considerations.

5.8 Paragraph 70 of the NPPF states that in order to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environment;
- guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community; and
- ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

5.9 In terms of the NPPF, therefore, community facilities include both shops and pubs. The proposed change of use would not, therefore, result in the net loss of a community facility, rather the substitution of one community facility with another. Indeed, whilst the loss of the public house would result in the loss of a particular type of community facility, there is a possibility that some residents may attach similar or even greater value to a shop or supermarket. It is unlikely that the change of use would harm visual amenity or damage the historic environment, or undermine local objectives to create or maintain mixed communities. Whilst the loss of a public house in a small village or rural community may be of concern where it is the only such facility in the area, it is not considered that similar weight could be attached to a public house within the urban area where there is a wider choice of similar facilities available.

5.10 Policy L1b "Loss of Leisure Facilities" of the Development Control Local Plan states that planning permission will only be granted for a change of use that would result in the loss of a leisure facility where it can be demonstrated that:



- a) a need for the leisure facility no longer exists; or
- b) appropriate alternative facilities exist within the catchment area.

- 5.11 The policy states that leisure facilities cover a variety of uses such as pubs, bingo halls, sports and leisure clubs. In considering applications for the change of use of these facilities, an assessment of provision in that area would be required to identify whether there are any alternative facilities which can be accessed using sustainable transport methods.
- 5.12 In terms of alternative facilities in the area, the Castle Howard Ox public house is approximately 60 metres to the south. The Gillygate is approximately 450 metres towards the centre of town, whilst The Brigadier Gerard in Monkgate is approximately 650 metres to the southeast. These public houses are considered to be reasonably well located to serve the local area.
- 5.13 A further consideration is that the imposition of an Article 4 Direction in this case may set a precedent for further requests to be made in respect of similar proposals which would otherwise not normally require planning permission, not just affecting public houses but also other uses/local amenities. It should be borne in mind that the General Permitted Development Order (GPDO) is national legislation which is intended (amongst other things) to provide a degree of flexibility between use classes and that an Article 4 Direction to bring a permitted change within planning control should only be imposed in exceptional circumstances. It is not recommended that Article 4 Directions be imposed on an “ad hoc” basis on individual sites in order to address particular situations as and when they arise.
- 5.14 In addition, the imposition of an “immediate” Article 4 Direction, as requested by CAMRA, would open up 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.
- 5.15 For these reasons, it is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction restricting the change of use from Class A4 to Class.

## Council Plan

- 6.1 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

- 7.1 **Financial** - the imposition of an “immediate” Article 4 Direction would open up 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.
- 7.2 **Human Resources (HR)** – There should be no Human Resources implications
- 7.3 **Equalities** - There are no known implications.
- 7.4 **Legal** – Whether to make 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 made if Members are satisfied that exceptional circumstances exist where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Members must consider whether the change of use would be prejudicial to the proper planning of the area or constitute a threat to the amenity of the area. The potential harm must be identified to justify making the Direction. If an Article 4 Direction is made, and a subsequent planning application is refused, the Local Planning Authority can be liable for compensation.

**Crime and Disorder** - There are no known implications

**Information Technology (IT)** – There are no known implications

**Property** – There are no known implications

**Other** – None

## Risk Management

8.1 The imposition of an “immediate” Article 4 Direction would open up 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. There are also concerns that a precedent would be set for other similar requests which would then have to be dealt with on an “ad hoc” basis.

## Recommendations

9.1 It is recommended that the Council does not use its 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) for the following reasons:

- Evidence does not show that exceptional circumstances exist whereby such a change of use would harm local amenity or the proper planning of the area
- The NPPF states that community facilities include both shops and pubs. The change of use would not result in the net loss of a community facility
- The change of use would not harm the visual amenity of the area
- The change of use would not damage the historic environment
- The public house is within the urban area where there is a wide choice of similar facilities.
- The circumstances outlined by CAMRA in which Article 4 Directions have been made by other authorities differ from this case, in that they concerned an isolated rural public house or an historic asset
- The Article 4 Direction in itself does not prevent the public house from changing to a shop, it merely requires a planning application to be made.
- The use of an Article 4 Direction gives rise to compensation (payable by the Council) 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 (s.108)

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|  | <b>Report Approved</b>  | √          | <b>Date</b> 26 <sup>th</sup> Sept 2014 |
| Specialist Implications Officer<br>Implication: Legal<br>Name: Alison Hartley<br>Title: Senior Solicitor<br>Tel No. 01904 553487 |   |            |  |
| <b>Wards Affected:</b> Guildhall, Clifton  |   | <b>All</b> |  |
| <b>For further information please contact the author of the report</b>   |   |            |  |

**Annexes – Annex A - Map****Background Papers:** online only

Formal request for an Article 4 Direction submitted by CAMRA with petition attached

Local Government Information Unit Policy Briefing: “Public Houses: How councils and communities can save pubs”

Cambridge Public House Study (GVA Humberts Leisure)

Protection of public houses in City of Cambridge – Interim Planning Guidance

List of abbreviations used in the report:

CAMRA – Campaign for Real Ale

GPDO - General Permitted Development) Order 1995

IPG - Interim Planning Guidance

LPA – Local Planning Authority

NPPF - National Planning Policy Framework

SoS - Secretary Of State