

Executive

27 August 2020

Report of the Corporate Director of Economy and Place
Portfolio of the Executive Member for Economy and Strategic Planning

Proposal for an article 4 direction for the Heslington conservation area

Summary

1. CoYC has a number of adopted conservation area appraisals that include recommendations for article 4 directions that have not been taken forward. Heslington Parish Council has asked the Council to implement an article 4 direction within Heslington, and funding is available to pursue this project. Officers consider that an article 4 direction to protect the Heslington conservation area is justified and that this should be pursued as a discrete project.

Recommendations

2. Executive is asked to consider:
 - 1) Authorisation to prepare and serve a non-immediate article 4 direction covering parts of the Heslington conservation area (see map, Annexe A).

Reason: Officers consider that it is expedient to proceed with this project due to the convincing justification for strengthening planning control in Heslington Conservation Area; local pressure to do so; and the availability of external funding and adequate resources.

Background

3. The Heslington Conservation Area Appraisal adopted in 2009

recommended that consideration should be given to serving an article 4 direction on the conservation area. Since 2015 Heslington Parish Council ("PC") has been asking CoYC 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. Recently, the PC has offered a sum of £3000 (consisting of £2000 of ward funding and £500 each from the PC and Heslington Village Trust) to CoYC to fund the preparation and implementation of a direction.

4. 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.
5. At CMT the proposal for an article 4 direction for Heslington was discussed and Officers were asked to consider a strategic approach to the matter of article 4 directions within City of York conservation areas rather than responding only to individual requests.
6. A conservation area is a designated heritage asset identified by the local planning authority as an area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance. The City of York has 34 designated conservation areas, which divide approximately into 10 urban or suburban contiguous with the city and 24 discrete village areas. 10 conservation areas have appraisal documents carried out between 2006 and 2011. The majority of these documents recommended the consideration of article 4 directions to assist in managing development to ensure that the character and appearance of the

areas is preserved and enhanced (see Annexe B). Currently, East Mount Road is the only part of a conservation within the City of York that has an article 4 direction. It is understood that this was made in around 2000 in response to local pressure.

7. 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. Paragraph 53 of the NPPF advises that “*The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area*”. 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. They may cover a whole conservation area or particular properties within them. For example, the Central Historic Core Conservation Appraisal relating to the city centre adopted in 2011 includes specific recommendations for a limited number of principally residential streets around the city rather than a blanket direction on the city centre.
8. The Explanation to Policy D4 (Conservation Areas) of the CoYC 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.*”
9. The procedure for serving and confirming a direction is set out in Schedule 3 of the General Permitted Development Order 2015 and would involve: making the direction; giving notice, via local advertisement, site display and by post to affected owners and the

Secretary of State, following which a 6-week consultation period would apply (Historic England and the Parish Council would also be consulted); 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 would lapse. Explanatory leaflets would be provided to residents via postal correspondence. It is recommended that a direction comes into force 12 months from the date it was made.

10. Considering the Government's proposed reforms to the planning system, in relation to the historic built environment, para 2.8 of the white paper "Planning for the Future" (MHCLG, August 2020) states that conservation areas would be categorised as a "protected" zone *as a result of their particular environmental and/or cultural characteristics, would justify more stringent development controls to ensure sustainability.* Para. 329 states that *The planning system has played a critical role ensuring the historic buildings and areas we cherish are conserved and, where appropriate, enhanced by development. The additional statutory protections of listed building consent and conservation area status have worked well, and the National Planning Policy Framework already sets out strong protections for heritage assets where planning permission or listed building consent is needed.* Para. 330 states that *We also want to ensure our historic buildings play a central part in the renewal of our cities, towns and villages. Many will need to be adapted to changing uses and to respond to new challenges, such as mitigating and adapting to climate change. We particularly want to see more historical buildings have the right energy efficiency measures to support our zero carbon objectives.* Para 331 states that *We will, therefore, review and update the planning framework for listed buildings and conservation areas, to ensure their significance is conserved while allowing, where appropriate, sympathetic changes to support their continued use and address climate change.* The white paper is currently the subject of public consultation (to 29/10/20).
11. Recent changes to permitted development under The Town and County Planning (General Permitted Development) (England) (Amendment) (No. 2 & No.3) Order 2020 do not apply within

conservation areas and therefore they would not prejudice the effectiveness of the proposed article 4 direction.

12. The proposed article 4 direction would affect works which are currently 'permitted' under the General Permitted Development Order that help to improve the energy efficiency of private houses, namely the installation of double glazing and the erection of solar panels and other micro generation equipment. The Climate Change Act 2008 is the basis for the UK's approach to tackling and responding to climate change. It requires that emissions of carbon dioxide and other greenhouse gases are reduced and that climate change risks are prepared for. The Act also establishes the framework to deliver on these requirements. The UK's long-term emissions target is to reduce the emissions of carbon dioxide and/or greenhouse gases by at least 100% of 1990 levels (net zero) by 2050. Mitigating and adapting to the effects of climate change is a priority for the Council (CoYC declared a 'Climate Emergency' in March 2019 and agreed to set a target to become carbon neutral by 2030) as well as the Government. The effects of the proposed article 4 direction in these regards are considered under the Analysis section of this report.

Consultation

13. So far, consultation has taken place with Heslington Parish Council and Heslington Village Trust via their nominated representative. When individual article 4 directions are served statutory consultation would entail consultation with all interested parties including affected householders before Councillors decide whether the direction should be confirmed.

Options

14. Councillors may wish to consider:
 - a) Proceeding with the preparation and service of an article 4 direction for Heslington conservation area. (**Recommended**)
 - b) The nature of the article 4 direction for Heslington in terms of its geographical coverage and types of permitted development

affected.

c) Not proceeding with an article 4 direction for Heslington.

Analysis

15. Heslington conservation area was considered to merit an article 4 direction when assessed in 2009. Recent re-inspection by officers confirms that the area still retains a high degree of preservation of traditional features on dwellings. A small number of harmful alterations, for example PVC windows and insertion of rooflights on front elevations, indicate that there is a tangible threat to the character of the area. Officers consider that an article 4 direction would be justified to bring under planning control the alteration or installation of roofing materials, rooflights, micro generation equipment/solar panels, chimney stacks, porches or small extensions, boundary treatments, windows, doors and satellite dishes, on the basis that all of these features can affect the special qualities of the conservation area identified in the Heslington Conservation Area Appraisal and the Heslington Neighbourhood Plan (a draft article 4 direction is appended at Annexe C, which may be subject to minor amendment in accordance with Legal advice). The direction should apply to development on relevant elevations only – those facing or clearly visible from the public sphere. The area proposed for an article 4 direction is illustrated on the map at Annexe A, being edged in red (this may be subject to minor amendment during the process of developing the scheme in discussion with the Parish Council). This area excludes listed and the majority of non-conforming modern buildings to avoid imposing unnecessary regulation.

16. Councillors may wish to give further consideration to the types of development covered by the direction, for example with regards to development that contributes to energy efficiency. It should be noted that works of maintenance or 'like for like' replacement would not require permission; that the replacement of single glazed windows with double glazed windows would not normally require permission where all other elements of the construction (material, dimensions, mouldings) can be replicated; that

a 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 that permitted development rights remain on elevations not affected by the direction (usually on rear elevations).

17. The protection and enhancement of the built and historic environment is one of the core tenets of sustainable development within the NPPF, along with mitigating and adapting to climate change. The Government is clear in its current white paper that it wishes to see built heritage assets have “the right energy efficiency measures” to ensure their significance is conserved while allowing, where appropriate, sympathetic changes to support their continued use and address climate change. With respect to double glazing, the character of traditional windows can be preserved through the replication of appropriate joinery details whilst incorporating double glazing. With reference to solar panels, there is often potential to install equipment in locations that avoids or reduces harm to visual amenity, for example on secondary elevations, outbuildings or ground mounted.
18. Officers consider that it is important that within conservation areas these matters can be managed in order to ensure that works that are harmful to the significance of heritage assets are avoided and that desirable development is implemented optimally. This would most effectively be achieved through a combination of appropriate planning controls and the production of ‘good practice’ guidance, covering such matters as the significance of historic and traditional fixtures, methodologies for achieving energy efficiency, what may be undertaken through permitted development and the most appropriate locations, design and methodology for installations. Omitting these types of development from the direction would reduce its effectiveness in controlling harmful alterations such as the installation of poorly designed PVC windows or solar panels on the prominent roofslopes of significant buildings.
19. Historic England and the Sustainable Traditional Buildings Alliance have produced extensive guidance on enhancing the energy

efficiency of historic buildings through upgrading fabric and appropriate retrofitting which is available at <https://historicengland.org.uk/advice/technical-advice/energy-efficiency-and-historic-buildings/>. It is very often the case that thermal enhancements to historic buildings can be achieved without harming the significance of the asset that are broadly comparable in their effectiveness to more harmful measures, and much national guidance on appropriate measures is available.

20. The DCSD team is currently working on the production of a local guidance document covering double glazing, but will extend the scope of guidance to include solar panels subject to resource and priorities. In producing guidance attention will be paid to documents produced by other historic cities, and a process of benchmarking our building conservation approach with other local authorities with respect to mitigating and adapting to climate change has commenced with the city of Bath. Guidance on double glazing will be prepared before any article 4 direction took effect, but 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.
21. Officers consider that the implementation of the proposed article 4 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. Due to the principle of restricting permitted development rights there is potential for negative reaction from those affected. In Heslington, this is mitigated by the fact that the proposal was consulted on via the conservation area appraisal in 2008; the non-immediate nature of the direction which means that if confirmed no restrictions would come into force for 12 months; and that the initiative for the direction came from the PC and the Village Trust, and therefore enjoys an important level of local support. In all cases,

Councillors would determine whether to confirm a direction following the statutory consultation period, and the proposed 12 month delay following the making of a direction before it became effective would avoid the risk of compensation and give householders a period of notice of the additional planning controls they would face.

23. Officers consider that the service of an article 4 direction in Heslington should proceed. Delay could jeopardise the local funding available for this project; and/or cause reputational harm from the failure to support long-standing local aspirations to strengthen planning controls to protect the conservation area in accordance with Policy D4 (Conservation Areas) of the CoYC Local Plan Publication Draft Feb 2018.

24. Officers consider that the production of a broader strategy for implementing article 4 directions in the city's conservation areas is a desirable aspiration because adopted CoYC conservation area appraisal documents recommend broader consideration of article 4 directions, in particular within the central historic core conservation area for which detailed proposals exist; there is tangible threat to the character of many of the City's conservation areas from unsympathetic alterations; York has an outstanding and internationally significant historic environment in which conservation areas have less protection than many other local authority areas. However, in contrast to the Heslington proposal, it is unlikely that most of the costs of pursuing article 4 directions could be secured from external parties, especially if directions were implemented on a priority rather than reactive basis, therefore, for any strategy to be effected, additional funding would be required in the future to implement the proposals. The costs in relation to staffing and financial resources required to pursue a strategic approach and serve multiple directions are significant and this is not considered to be a current priority for the Council. Instead, it is considered most appropriate to consider the use of article 4 directions in response to local concerns on a case-by-case basis and as resources permit.

Council Plan

25. The targeted making of 4 directions would support the CoYC Plan 2015-19, in particular key priority one, with respect to protecting the unique character of the city, environmental sustainability and enjoyment of heritage; and three, with respect to listening to residents to deliver the services they want and working in partnership with local communities.

Implications

26.

- **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 can be accommodated within the DCSD section budget. The service of a non-immediate article 4 direction precludes any risk of CoYC 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 article 4 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** The Better Decision Making tool has been completed and no impacts on Equalities or Human Rights have been identified.

- **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.

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

27. There are no known risks.

Contact Details

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Report Date 13/08/20
Approved

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Wards Affected: *List wards or tick box to indicate all*

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: Draft map showing proposed boundary of article 4(1) direction

Annex B: Review of conservation area appraisals: article 4(1) direction
recommendations

Annex C: Draft article 4(1) direction for Heslington

Annex D: Better Decision Making Tool for Article 4 Directions report