



Cabinet
7 September 2020

**Report from the Strategic Director
of Regeneration and Environment**

**Proposed New Article 4 Directions To Replace The Existing
Directions For Brent's Residential Conservation Areas**

Wards Affected:	Barn Hill, Brondesbury Park, Dollis Hill, Fryent, Kenton, Kilburn, Mapesbury, Northwick Park, Queensbury, Queen's Park, Tokyngton and Welsh Harp.
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt:	Open
No. of Appendices:	Appendix 1: Draft Article 4 Direction Appendix 2: Map showing conservation areas
Background Papers:	None.
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1.0 Purpose of the Report

- 1.1 The purpose of the report is to seek Cabinet approval to proceed with proposals for new Article 4 Directions to replace the existing directions for its residential conservation areas. An article 4 direction allows for greater control of physical changes to buildings and features in an area and is often used to protect against such change harming a particular quality or character of that location.
- 1.2 The report outlines the process involved in the making of new non-immediate Article 4 Directions (replacing the existing ones) which need Cabinet approval before coming into effect.
- 1.3 New Article 4 Directions will be made in the following conservation areas:

Conservation area		
Barn Hill	Mapesbury	Roe Green Village
Brondesbury	Mount Stewart	St Andrews
Buck Lane	Neasden Village	Sudbury Cottages
Homestead Park	North Kilburn	Sudbury Court
Kensal Green	Northwick Circle	Wembley High Street
Kilburn	Queen's Park	

A map of the Borough showing show the conservation areas where the new Article 4 Directions will be made can be seen in Appendix 2.

2.0 Recommendations

- 2.1 That Cabinet notes the regulatory requirements for the cancellation of existing Article 4 Directions and the making of new Article 4 Directions, as prescribed by The Town and Country Planning (General Permitted Development) (England) Order 2015.
- 2.2 That Cabinet notes the making of new Article 4 Directions outlined below on a non-immediate basis to withdraw permitted development rights in the conservation areas listed at paragraph 1.3 and as set out in Appendix 1.
- 2.3 That Cabinet delegate authority to the Strategic Director for Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning to carry out the necessary publicity, notification, consultation and subsequent decision on whether to cancel and confirm the new Article 4 Directions, as prescribed by the Town and Country Planning (General Permitted Development) (England) Order 2015, in that respect.

3.0 Detail

- 3.1 There are many changes and alterations a homeowner can undertake without the need for planning permission. These are known as Permitted Development (PD) rights. This implied consent of Permitted Development is granted by the Government through The Town and Country Planning (General Permitted Development) (England) Order 2015.
- 3.2 However, an Article 4 Direction can be put in place to retain architectural features particular to the area i.e. window designs, front walls, doors and chimneys that make it special, removing PD rights. The Council has a general duty to pay special attention to the desirability of preserving or enhancing the character or appearance of its conservation areas.
- 3.3 An Article 4 Direction is therefore a special regulation that can be applied to help manage change in a way that maintains the character and appearance of the conservation area. It does not mean that an owner cannot make any alterations to the outside of their home, but it allows the Council to influence the design and specification of proposals in a sympathetic manner.
- 3.4 The Article 4 Directions generally only apply to front elevations and front gardens. As with the existing Article 4 Directions, public pavements, street lights, street trees and street furniture i.e. benches and litter bins remain out of the control of the new directions.
- 3.5 The Council has made various Article 4 Directions in the past in all of its residential conservation areas. Each of the existing Article 4 Directions are over 25 years old. In many cases, they are difficult to understand because the wording is unclear. In addition, the legislation on permitted development rights has changed since they were made, and therefore the classes of development controlled in the directions no longer relate to the current Town and Country Planning (General Permitted Development) (England) Order 2015.
- 3.6 Guidance is provided within the Government's Planning Practice Guidance (PPG) which states that the use of Article 4 Directions should be limited to situations where the making of a direction is necessary to protect local amenity or the well-being of the area, and that the potential harm that the direction is intended to address should be clearly identified (paragraph 38). There must also be justification for purpose and extent of the Article 4 Direction (paragraph 37).

- 3.7 As part of the evidence base to support Brent's Local Plan, a survey was undertaken of the borough's heritage, which formed the basis of a Historic Environment Place-making Strategy 2019 (attached as a background document). The purpose of the Strategy is to set out a clear plan for Brent to guide and provide priorities for conservation and heritage activities in the borough. It is an up-to-date evidence base for the historic environment.
- 3.8 A clear objective identified within the Strategy (at Section 13) is to update the Article 4 Directions. It makes the point that the directions were all made some time ago and do not reflect the current legislation contained in The Town and Country Planning (General Permitted Development) (England) Order 2015. It also makes the point that they are therefore difficult to interpret or simply no longer adequately cover the elements of the building that are significant and are in need of protection. Therefore, the Historic Environment Place-making Strategy advises that the current Article 4 Directions are reviewed for each of the conservation areas and that fresh Article 4 Directions are made.
- 3.9 It is proposed to make new Article 4 Directions in the following conservation areas:

Conservation area		
Barn Hill	Mapesbury	Roe Green Village
Brondesbury	Mount Stewart	St Andrews
Buck Lane	Neasden Village	Sudbury Cottages
Homestead Park	North Kilburn	Sudbury Court
Kensal Green	Northwick Circle	Wembley High Street
Kilburn	Queen's Park	

- 3.10 The proposed new directions will all restrict the same suite of permitted development rights, as illustrated in Appendix 1. The restrictions are proposed to, on the whole, apply to street elevations only. Restrictions will therefore affect the front elevations of dwellings and side elevations where the side elevation fronts a highway. The types of development which will be controlled as result of the new directions include:
- Removal of front walls and piers
 - Paving over of front gardens
 - Removal of windows
 - Infilling front porches
 - Demolition of chimneys
 - Installation of satellite dishes
- 3.11 The one exception is for outbuildings in rear back gardens. Mapesbury and Roe Green Village are the only two conservation areas that have existing Article 4 Directions that restrict the erection of outbuildings in rear back gardens. The difficulty is that over time the size of outbuildings that are permissible under permitted development rules has considerably increased. So much so that even in conservation areas it is permissible to construct an outbuilding that is half the area that surrounds the original home. Many of the gardens in Brent's conservation areas are very large and it means the size of the plan form could be bigger than the original house. On this basis, and in addition to the types of development listed above, it is proposed that all the conservation areas listed at 3.8 will have an Article 4 Direction that restricts the erection of outbuildings in rear back gardens.
- 3.12 As stated, the above are already under the Council's control due to the existing directions but the new directions will be much clearer to interpret, making it easier for a home owner to understand.

- 3.13 The proposed new directions will not apply to rear elevations of dwellings. Properties will therefore retain permitted development rights relating to rear extensions.
- 3.14 The procedures which must be followed in making, modifying or cancelling any Article 4 Direction are set out in Schedule 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015. There is no separate procedure in the legislation for modifying existing Article 4 Directions. Instead, the existing directions will need to be cancelled and replaced with new directions.
- 3.15 Section 107 of the Town and Country Planning Act 1990 provides for property owners to claim compensation. This includes in certain circumstances where ordinarily planning permission is not required but then is subsequently refused, or conditions applied by the Local Planning Authority over and above those otherwise required. However, compensation cannot be claimed on any subsequent planning application decision after a period of 1 year following initial notification of an intention to adopt an Article 4 Direction. To avoid compensation, a period of 1 year will follow before the Article 4 Directions are confirmed.
- 3.16 The effect of a non-immediate direction is that permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation for at least 28 days. Regulations set out the extent to which a Local Planning Authority has to consult on an Article 4 Direction. After it decides on its intention to adopt an Article 4 Direction, the Council has to consult for a minimum of 28 days with those likely to be affected and statutory consultees.
- 3.17 In relation to the Article 4 Directions being considered, public notices and some site notices across the borough, together with letters to those on the Local Plan consultation list will be used. Given the number of properties in the areas, it is not considered proportionate to serve an individual notice on each owner and occupier.

Next steps

- 3.18 If the making of the new Article 4 Directions to replace the existing Directions is approved by Cabinet on 7 September 2020, these will be made on a non-immediate basis to withdraw permitted development rights for types of development outlined in paragraphs 3.9 and 3.10.
- 3.19 This means, if confirmed, the Article 4 Directions will come into effect a year after initial making of the order occurs. It is proposed to give 12 months' prior notice of them coming into effect thereby minimising compensation risks to the greatest possible extent. The Council would, nevertheless, retain the existing Article 4 Directions until such date as it confirms and implements the new directions. On the assumption that Cabinet approves the making of the Article 4 Direction, confirmation will be made in December 2021
- 3.20 The process of adopting a non-immediate Article 4 Direction is set out in paragraphs 3.13 - 15.

4.0 Alternative Option Considered

- 4.1 As outlined, the Council has a general duty to pay special attention to the desirability of preserving or enhancing the character or appearance of its conservation areas. An Article 4 Direction protects features particular to the area from being lost i.e. windows, front walls and chimneys and therefore the reason for designation.
- 4.2 The Council has made various Article 4 Directions in the past in order to remove certain permitted development rights in all of its residential conservation areas. Each of the existing Article 4 Directions are over 25 years old. In many cases, they are difficult to understand because the wording is unclear. In addition, the legislation on permitted

development rights has changed since they were made, and therefore the classes of development controlled in the directions no longer relate to the current The Town and Country Planning (General Permitted Development) (England) Order 2015.

4.3 The Council's Historic Environment Place-making Strategy recommends that the current Article 4 Directions are reviewed for each of the conservation areas and that fresh Article 4 Directions are made.

4.4 For these reasons, leaving things unchanged would be highly undesirable and the nature of the legislation leaves alternative proposals very limited. The option proposed is considered to be the only sensible way of bringing this matter up to date.

5.0 Financial Implications

5.1 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 from 17 January 2018 allowed for the charging of fees for planning application resulting from permitted development rights being removed through an Article 4 direction. As the new Article 4 Directions are equal to the existing directions it is not envisaged that there will be a significant number of new applications as a consequence.

5.2 Under Section 107 of the Town and Country Planning Act 1990 it is possible to claim compensation from the authority if planning permission is refused, or is granted subject to onerous conditions, following a planning application that was only required as a result of an Article 4 direction. The Council will avoid compensation claims by making a non-immediate Article 4 direction, giving 1 year's notice before confirming the direction, as set out in 108 of the Act.

5.3 The cost of the implementation of the Article 4 directions will be met from existing planning budgets. Costs will be relatively low, limited to notices in the local press and production of site notices which will have to be displayed in the area affected, plus some minor printing for consultation materials to be placed in libraries.

6.0 Legal Implications

6.1 The process for Article 4 Directions is set out in Schedule 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015. The procedure for taking forward the Article 4 will be consistent with the regulations.

7.0 Equality Implications

7.1 The Equality Act 2010 introduced a new public sector equality duty under section 149. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council must, in exercising its functions, have 'due regard' to the need to:

- a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- c) Foster good relations between people who share a protected characteristic and those who do not.

7.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

7.3 The proposals in this report will involve minor changes to permitted development rights in the borough's residential conservation areas. Officers have completed the Council's Equalities Impact Assessment (EIA) screening tool. This indicated that a full EIA is not required. However, given that these conservation areas already have Article 4 Directions in place, and the new directions will be the same, it is not thought that it would impact upon groups that share protected characteristics. Moreover, public consultation will be undertaken on the proposals before they can be confirmed. This will provide the opportunity for any unforeseen equalities issues to be raised and the Council will have a chance to consider these before deciding on whether to confirm the proposals.

8.0 Consultation with Ward Members and Stakeholders

8.1 The consultation will be publicised in the members' bulletin and sent directly to councillors where the Article 4 Direction relates to their ward.

8.2 In terms of awareness raising for the consultation a public notice will be placed in the local press. There will also be a press release and awareness raising through the council's website, plus letters sent to statutory consultees and those on the Council's local plan consultation database. The documents will be made available in libraries and on the council's website. There will be public notices placed in each conservation area where the new Article 4 direction will be made. The statutory consultation period is a minimum 28 days.

Related documents:

Historic Environment Place-Making Strategy 2019

Report sign off:

Alan Lunt

Strategic Director of Regeneration
and Environment.