

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**6 JULY 2012****DELEGATED DECISION REPORT****MAKING OF A NON-IMMEDIATE ARTICLE 4 DIRECTION –
NORLAND NEIGHBOURHOOD AREA AND 133-159 HOLLAND PARK
AVENUE**

The Executive Director for Planning and Borough Development is requested to authorise the making of a Non-Immediate Article 4 Direction to remove permitted development rights for certain types of development, as set out in Appendix 1, in the respect of the properties listed in Appendix 2.

FOR DECISION**1. INTRODUCTION**

- 1.1 The purpose of this report is to request that the Executive Director for Planning and Borough Development authorises the making of a Non-Immediate Article 4 Direction to remove permitted development rights for certain types of development, as set out in Appendix 1, in respect of the properties listed in Appendix 2.

2. BACKGROUND

- 2.1 The Town and Country Planning (General Permitted Development) Order 1995, as amended ('GPDO'), allows certain types of development to take place without requiring planning permission. However, in some instances an Article 4 Direction could be used by the Local Planning Authority to remove certain permitted development rights. An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the Local Planning Authority for that development.
- 2.2 There are two types of Article 4(1) Directions: Immediate and Non-Immediate. An Immediate Direction can be used to withdraw a small number of permitted development rights but can only be used where the Local Planning Authority consider that the development to which the direction relates would be prejudicial to the proper planning of their area or would constitute a threat to the amenities of their area. Immediate Directions remove permitted development rights immediately but need to be confirmed by the Local Planning Authority within six months, else the direction will lapse. A Non-

Immediate Article 4 Direction can be used where the threat from the exercise of permitted development rights is not immediate or where permitted development rights cannot be withdrawn by an Immediate Direction. Non-Immediate Directions are subject to a minimum of 21 days public consultation. Any objections will be considered by the Council before it considers whether to confirm the Direction, or not. A Non-Immediate Article 4 Direction is used where there is not an urgent requirement to remove permitted development rights, which we consider to be the case in Norland Neighbourhood Area (and 133-159 Holland Park Avenue).

- 2.3 The Department for Communities and Local Government have issued two papers providing policy and procedural advice on Article 4 Directions as follows – Communities and Local Government guidance to Local Planning Authorities: New procedure for making a non-immediate Article 4 direction (May 2010) and Communities and Local Government : Replacement Appendix D to Department of the Environment Circular 9/95 : General Development Consolidation Order 1995 (June 2012).
- 2.4 Replacement Appendix D mentioned above states that Local Planning Authorities should only consider making Article 4 directions in those exceptional circumstances where evidenced suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Therefore, it is necessary to identify the potential harm that the intended direction is intended to address. Other considerations might include whether the exercise of permitted development rights would:-
 - Undermine the visual amenity of the area of damage the historic environment;
 - Undermine local objectives to create or maintain mixed communities;
- 2.5 There are several existing Article 4 Directions in this area which have been made over the years. These remove permitted development rights for exterior painting, boundary enclosures, the creation of hardstandings and the alteration of architectural features in some of the conservation area, but there are anomalies and important omissions. It is proposed to replicate these extant directions into this proposed direction and to revoke the same in due course (if this direction is made and subsequently confirmed by the Council).
- 2.6 This report seeks authority to introduce a Non-Immediate Article 4 Direction to remove certain permitted development rights listed in Appendix 1 for properties within the Norland Neighbourhood Area and 133-159 Holland Park Avenue as listed in Appendix 2. Subject to the procedures set out below and following consideration of any representations received, a further delegated report will consider

whether or not the aforementioned direction should be confirmed by the local planning authority. If the Direction is confirmed in due course, then permitted development rights would be removed and planning permission would be required to carry out any of the development covered by the Direction. Planning applications which are then received would be judged against national and local and neighbourhood planning policy and other material planning considerations and would be exempt from the usual planning fee.

- 2.7 Appendix 2 lists the properties covered by the Article 4 direction. The Article 4 Direction area comprises properties within the Norland Neighbourhood Area, and in one case, a terrace of houses within the Ladbroke Conservation Area. These areas are either recognised to be suffering from some, or all, of the harmful impacts of the types of development identified below.

3. NEED

- 3.1 An Article 4 Direction is being introduced to address the impact on visual amenity and damage to the historic environment, which is threatened by certain types of development in Norland Conservation Area and Norland Neighbourhood Area and the terrace of houses within the Ladbroke Conservation Area.
- 3.2 The Norland Conservation Area has been subject to planning pressure resulting in the redevelopment of some properties including rear garden and roof extensions to provide more interior space.
- 3.3 At the same time, the scope of permitted development has been extended and poses new threats to the streetscape in Norland. This request to introduce a further Article 4 Direction in the conservation area is intended to bring the most obtrusive kinds of permitted development back within planning control, and thus prevent repetitions of some unfortunate mistakes in the recent past.
- 3.4 Alterations and development to properties in the area has, in some cases, threatened the integrity of certain terraces, through the painting of important brick detailing and the installation of inappropriate architectural details. The alteration of front boundary enclosures and introduction of car parking in front gardens impacts negatively on the character of the conservation area.
- 3.5 The Core Strategy (Dec 2010) supports the conservation of the Borough's historic built fabric set. This Article 4 Direction would require that certain types of development would be assessed against Policy CO5 and therefore will help support the objective of renewing the legacy "*...by taking great care to maintain, conserve and enhance the glorious built heritage we have inherited and to ensure that where new development takes place it enhances the Borough.*"
- 3.6 Specifically, the Direction will focus on five types of permitted development to be removed:

- 3.7 **The enlargement, improvement or other alteration of a dwellinghouse** – The preservation or restoration of original architectural details such as cornices, fenestration, architraves, stucco embellishments, door design, door furniture and ironwork, railings, balconies and foot scrapers, is important to maintain the character of the conservation area. These original architectural features and details are very important to the appearance of individual buildings and the integrity of terraces, and form the characteristic rhythm of the street scene. The aim of these Directions is to protect and ensure the architectural integrity of all front elevations, and prevent alterations which would conflict with their original design.
- 3.8 **The provision of garden buildings** - Many private gardens contribute to the landscape, open spaces and streetscape by virtue of their mature trees and shrubs. It is important to the character of the conservation area that these open spaces are preserved, and in some cases, it is considered that permitted development allowing a building of one storey to cover up to 50% of the total garden area will have a negative impact. Rear gardens have a crucially important role in sustainable urban drainage and are an important oasis for biodiversity.
- 3.9 **The creation of hard standings in front gardens and forecourts** – This destroys the character of the street, not least because it is also widely used for car parking. In addition to the visual harm, parked cars often overhang the pavement, and create an obstruction.
- 3.10 **The erection or alteration of a gate, fence or wall** - Railings or other enclosures are of unoriginal designs or missing altogether throughout the conservation area; on Addison Avenue, for example, and on St Ann’s Villas. By bringing this under control, the Direction aims to maintain the character of the conservation area.
- 3.11 **The painting of external facades** - The painting of the brickwork of individual properties breaks up those terraces which were originally intended to have brick above ground floor level, and can hide interesting brick detailing. Once brickwork is painted it is difficult and costly to remove, damages the brick work, and downgrades the whole terrace. Where properties are of stucco facade, and in cases where they form part of significant terraces such as Norland Square and Royal Crescent, a specified and uniform colour throughout is necessary so that individual properties do not detract from the cumulative architectural effect of these pieces.

4. **CONSULTATIONS**

- 4.1 **Procedure for making a Non-Immediate Article 4 direction**
- 4.2 Requirements to increase the coverage of Article 4 Directions in the area were initiated from the Norland Conservation Area Society and contained within their emerging draft Neighbourhood Plan.

- 4.3 This report seeks authorisation to make a Non-Immediate Article 4 direction in the forms attached in Appendix 1 for the properties listed in Appendix 2 and shown in Appendix 3.
- 4.4 Article 5(13) GPDO states that a LPA can, when making a subsequent direction, cancel any previous Directions. Article 8 says that 'any power conferred by this order to give a Direction includes a power to cancel or vary the direction by a subsequent Direction'. It is therefore considered that the best approach would be to have a direction which would consolidate and encompass all of the previous Article 4 Directions in this new Direction. This would make it easier to understand rather than trying to read through various directions made under different Permitted Development orders.
- 4.5 The Royal Borough of Kensington and Chelsea will give notice of the Direction by way of site and press notices and representations will be sought in accordance with the requirements of the Town and Country Planning (General Permitted Development) Order 1995, as amended. It is considered that because of the extent of the Article 4 Directions area it is impracticable to serve individual notices on all owners and all occupiers, as permitted by Article 5(2) of the above Order. Copies of the Direction will also be served on the Secretary of State.
- 4.6 There will be a notice in the local press and site notices displayed in the affected area for a period of no less than six weeks. The Council's website will advise people of the changes and give them the opportunity to make representations.
- 4.7 Any representations received will then be taken into account when considering whether to confirm the Article 4 Direction or not. This will be by way of a further delegated report. If confirmed the Article 4 direction will then come on a later specified date.

5. OPTIONS

- 5.1 Make the Non-Immediate Article 4 Direction;
- 5.2 Make the Non-Immediate Article 4 Direction but requesting amendments to Appendix 1 or Appendix 2 or Appendix 3; or
- 5.3 Decide not to make the Non-Immediate Article 4 Direction.

6. Financial and Property, Legal, Sustainability, Risk, HR and/or Equalities Implications

Implications for Council Policy and Governance

- 6.1 The Article 4 direction will require that an application for planning permission be submitted for all development specified in the Article 4 Direction. Planning applications will be judged against national and local planning policy.

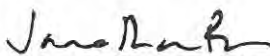
- 6.2 Planning applications which are required for any development as specified within the Article 4 direction area will not require a planning fee. The implications of this on the resourcing of the Planning Department need to be taken into account. It is not considered, however, that there will be many applications, and thus, any applications can be dealt with within existing resources.
- 6.3 The Council will have liability for potential compensation claims in respect of the loss of permitted development rights for a 12 month period after the making of the Direction, though the Council has not assessed this as a high risk. The Council considers that the benefit of making the Direction within 12 months, in protecting and enhancing the character of the area, is considered to outweigh the risk of potential compensation.

7. RECOMMENDATION

- 7.1 I recommend that the Executive Director for Planning and Borough Development authorises the making of a Non-Immediate Article 4 Direction as set out in Appendix 1 for the properties listed in Appendix 2 as defined by an area set out in Appendix 3 (Option 1).

Penelope Tollitt
Head of Policy, Design and Consultation

I agree with the recommendation.

Signed: 
Jonathan Bore, Executive Director for Planning and Borough Development

Date: 6/7/12

Background papers:

Appendix 1: Classes of Permitted Development Rights to be removed and list of properties affected by each class.

Appendix 2: Maps showing the extent of the Non-Immediate Article 4 Direction

Contact officer: Victoria Hinton, Neighbourhood Planning
Tel: 0207 361 3265 **E-mail:** victoria.hinton@rbkc.gov.uk

Cleared by Legal (officer's initials)	LLM
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