

Ward: Central and Heene

## Proposed Article 4(2) Direction for Marine Parade, Worthing

### Report by the Director for the Economy

#### 1.0 Summary

1.1 This report outlines proposals for introducing measures to protect the buildings along Worthing seafront from Splash Point to Heene Terrace from inappropriate development by the withdrawal of permitted development (PD) rights for any painting or works of external redecoration to the front elevations and any visible side elevations of these properties via an Article 4 Direction. These buildings lie within three conservation areas; The Steyne, South Street and The Seafront and Hinterland. It advises members of the power of the Article 4(1) of the Town and Country Planning (General Development Order) 1995 and subsequent Amendments to issue a Direction withdrawing PD rights within Conservation Areas, where an Article 4(2) direction cannot be made.

#### 2.0 Introduction

2.1 Minor Development such as alterations to features such as doors and windows, or the painting of buildings can normally be carried out without planning permission under the provisions of the General Permitted Development Order 1995 and the 2008 and 2010 GPD Amendment Orders (GPDO). Article 4 of the GPDO gives local planning authorities the power to restrict these 'permitted development rights' where they have the potential to undermine protection for the historic environment. Using the provisions of Article 4 of the GPDO brings certain types of development back under the control of a local planning authority so that potentially harmful proposals can be considered on a case by case basis through planning applications.

2.2 The Town and Country Planning (General Permitted Development Order) (Amendment) 2010 made changes to the requirements for making an Article 4(1) Direction. Prior to April 2010, Secretary of State approval was required to make an Article 4(1) Direction.

2.3 The difference between an Article 4(1) Direction and an Article 4(2) Direction is:

- i) Article 4(2) Directions can be made only to restrict the enlargement of a dwelling house, any alteration to its roof, the construction of a porch, the provision within its curtilage of a building or enclosure, the provision of a hard surface and the installation of a satellite antenna. These directions can also be used to control demolition, alteration or construction of any gate, fence, wall or other means of enclosure within the curtilage of a dwelling house, and

the painting of its exterior or of any building within this area. One of these directions may also be made to restrict the removal, alteration or construction of a chimney on a dwelling house despite fronting on a highway, waterway or open space.

- ii) In contrast, Article 4(1) Directions can be made not only to restrict permitted development works to dwelling houses in conservation areas that do not front on to highways, waterways or open spaces, but also to other types of property such as flats and commercial buildings within conservation areas.

### **3.0 Background**

- 3.1 Under the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 the Council has a duty to review its Conservation Areas from 'time to time'. Section 71 requires LPA's to formulate policies for their protection.
- 3.2 The cumulative effect of the loss of historic features and inappropriate alterations within conservation areas through permitted development can undermine their special character. Conservation Area designation alone offers limited protection against undesirable change. For example, small extensions can be built and windows and doors can be altered without the need for planning permission.
- 3.3 Article 4 Directions can have the effect of discouraging and controlling development, and LPA's are more likely to take enforcement action over unauthorised development.
- 3.4 The 2008 Amendment to the GPDO which came into force on October 1<sup>st</sup> 2008 has impacted on the type of development in conservation areas that can take place without the need for permission. The provision of a solar panel on the roof of a principal or side elevation no longer requires planning permission. Restrictions have become more rigorous with regard to rear and side extensions, type of materials used on the exterior of dwellings and chimneys.
- 3.5 It is only appropriate to remove permitted development rights where there is a real and specific threat and exclude properties where there is no need for the direction to apply.

### **4.0 Need for an Article 4 Direction**

- 4.1 Worthing's fine seafront terraced buildings along Marine Parade range from the early 19<sup>th</sup> century Regency period, through grand Victorian, to modern contemporary. Despite a great variation in style and form, the vast majority of the buildings are finished in render and painted in light colours, which not only harmonises their compositions, but also adds to the special character of this street.
- 4.2 In November 2013, 10A Marine Parade was repainted in a dark shade of matt grey when a new business, The Wandering Goose, opened in the premises. Earlier this

month, March 2015, the owner of 107 Marine Parade, the old lifeboat house, choose to paint her dwelling house bright pink. The visual effect of these paint schemes results in these particular buildings becoming overly dominant in the street scene and an erosion of the character that defines Worthing's historic seafront. Although both of these buildings are within conservation areas, the owners have not needed to apply to the Council for permission to redecorate using a significantly different colour, due to their permitted development rights.

4.3 This undermining of the visual amenity of the historic area is considered to be a strong justification for the withdrawal of permitted development rights relating to the painting of the exterior of a building where a significant change in colour is proposed, or where the building has not previously been painted.

## **5.0 Monitoring and Enforcement**

5.1 Article 4 Directions are more likely to be effective if:

- there is a dated photographic record of the properties affected for the purposes of tracking any subsequent changes;
- guidance is provided for building owners on how the direction affects them with advice on appropriate repair and alteration.
- the local authority undertakes regular monitoring for compliance and appropriate enforcement;

The need for the Article 4 Direction is reviewed if circumstances change.

5.2 Local planning authorities have powers to make an Article 4 direction to remove permitted development rights. Guidance on the use of Article 4 directions was published by the Department for Communities and Local Government in November 2010.<sup>1</sup> It states that local planning authorities should only consider Article 4 directions where the use of the permitted development rights would "*harm local amenity or the proper planning of the area*" and where there is evidence to identify that potential harm. Article 4 directions must be made in accordance with the National Planning Policy Framework which states at paragraph 200 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 wellbeing of the area.

## **6.0 Implications of the Article 4 Direction**

6.1 In procedural terms there are two main types of Article 4 Direction:

- Non-immediate Directions (permitted development rights are only withdrawn upon confirmation of the Direction by the local planning authority following local consultation); and

- Immediate Directions (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the Direction will lapse).

6.2 It is proposed that the Article 4 Direction for Marine Parade within the Steyne, South Street and Seafront and Hinterland Conservation Areas would be an immediate Direction.

6.3 An Article 4 Direction does not mean that owners no longer able to change a building's colour scheme, but simply that it is no longer automatically permitted by Article 3 of the General Permitted Development Order and so will require a planning application to be submitted to the Planning Authority for planning consent.

6.4 This does not necessarily mean that permission will be refused, but it will enable the council to retain some control over the colour scheme and to grant permission subject to appropriate conditions.

6.5 It should be noted that this type of application would not attract a planning fee.

6.6 It should also be noted that an Article 4 Direction cannot be applied or imposed retrospectively to any works that have already been carried out.

## **7.0 Next Steps**

7.1 The legislation states that where a local planning authority makes a Direction under Article 4(1) it must publicise it by inserting a notice in a local newspaper and serve a notice on every separate premises affected by the Direction, unless this is impracticable.

7.2 The Direction comes into force on the date on which the notice is served on the owner or occupier (each household would be sent a letter), or the date of the press advertisement. While there is no right of appeal against the making of an Article 4(2) Direction, any representations made in response to the notices must be considered. The Direction may then be confirmed, not less than 28 days after the last notice was published and not more than six months after it was made.

7.3 Once the Direction is confirmed, further notice of the confirmation must be undertaken, following the same notification procedure. If the notice is not confirmed within six months of making, it will lapse.

## **8.0 Legal**

8.1 The Head of Legal Services comments that the withdrawal of permitted development rights has to be given careful consideration having regard to the need to protect the character and appearance of Conservation Areas.

## **9.0 Conclusions**

- 9.1 The making of this Article 4 Direction would give the Council control over the painting of a building where a significant change in colour is proposed, or where the building has not previously been painted. Permission would not be required to repaint a building the same or a very similar colour. This would halt the extent of erosion of character along Marine Parade. Conveying proposals to local residents and owners is also crucial in terms of minimising the impact on resources as a result of the confirmation of an Article 4 Direction.

## **10.0 Recommendation**

### **10.1 It is recommended that the Committee:**

**Give, in principle, approval to the making of an Article 4(1) direction covering all buildings along Marine Parade in the Steyne, South Street, and Seafront & Hinterland Conservation Areas and the associated consultation processes.**

### **Local Government Act 1972**

#### **Background Papers:**

None.

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## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 Supporting and improving the local economy

### **2.0 Specific Action Plans**

2.1 Promote and support projects and ideas that attract new and retain existing businesses, and generate investment in the area.

### **3.0 Sustainability Issues**

3.1 Matter considered and no issues identified.

### **4.0 Equality Issues**

4.1 Matter considered and no issues identified.

### **5.0 Community Safety Issues (Section 17)**

5.1 Matter considered and no issues identified.

### **6.0 Human Rights Issues**

6.1 Although the proposed Article 4 Direction seeks to retain take away normal permitted development rights it would not stop someone applying to change the colour of the front of their property not their rights of appeal is permission is refused. It is not considered therefore that the proposal would affect residents' human rights.

### **7.0 Reputation**

7.1 Recent work to properties within the seafront conservation areas has affected the character of the historic seafront and affected the reputation of the Council as such work has been beyond the control of the planning authority. The Article 4 Direction would enhance the Councils reputation by demonstrating a commitment to protect and enhance the essential character of the seafront conservation areas.

### **8.0 Consultations**

8.1 Consultations were undertaken with the Chairman of the Planning Committee and Executive Member for Regeneration.

### **9.0 Risk Assessment**

9.1 Matter considered and no issues identified.

## **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified.

## **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified.

## **12.0 Partnership Working**

12.1 Matter considered and no issues identified.