

URGENT ITEM

By reason of special circumstances, which are that the article 4 direction being considered in this report would be likely to be ineffective if not made within 28 days of 2 November 2017, the chairman is of the opinion that this item should be considered as a matter of urgency.

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
HEAD OF PLANNING & HOUSING	PLANNING COMMITTEE	8 NOVEMBER 2017	URGENT ITEM
272-280 CLIFTON DRIVE SOUTH, ST ANNES: ARTICLE 4 DIRECTION			

EXEMPT ITEM

This item contains exempt information under paragraph 6 of schedule 12A to the Local Government Act 1972 and is likely to be considered in a part of the meeting not open to the public.

SUMMARY

The report considers the possibility of the council making a direction under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to prevent demolition of the buildings at 272-280 (evens) Clifton Drive South, St Annes without an application for planning permission.

The report sets out the legislative background for article 4 directions and considers whether it is expedient that demolition should not be carried out unless permission is granted on application and therefore that permitted development rights granted by article 3 should not apply. It also considers that such a direction can, in some cases, give rise to a compensation liability.

RECOMMENDATIONS

1. Make a direction under article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to remove the permitted development rights granted by paragraph B of part 11 of schedule 2 to the order in respect of the buildings at 272-280 (evens) Clifton Drive South, St Annes shown hatched in the plan to this report.
2. Make the direction with immediate effect as set out in paragraph 2 of schedule 3 to the Order.

SUMMARY OF PREVIOUS DECISIONS

No previous decisions on this item concerning Article 4 Direction.

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	
Delivering the services that customers expect of an excellent council (Clean and Green)	
Working with all partners (Vibrant Economy)	
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

1. This report requests the committee to authorise making an article 4 direction to remove certain permitted development rights in relation to the properties at 272-280 (evens) Clifton Drive South, St Annes. The permitted development rights relate to demolition.
2. The site contains the rear part of the Dalmeny Hotel which consists of three red brick buildings, two being three storey and the third two storey which front Clifton Drive South. The buildings are located outside of a conservation area and are not nationally or locally listed. The plan identifying the site is at appendix 1.
3. An outline planning application for the demolition of the three buildings and their replacement with a development of 34 apartments (16/0374) was approved in principle by the Planning Committee in March 2017. However, the application was subsequently withdrawn by the applicant prior to the completion of a Section 106 agreement and so a decision was never issued. The application as originally submitted proposed the demolition of 280 Clifton Drive South, but following negotiations with officers, that application was amended to secure the retention of 280 Clifton Drive South and the replacement of 272-278 with a new development.
4. A Prior Notification submission was lodged on 1 November 2017 seeking demolition of number 280 Clifton Drive South. Although the application is solely for the demolition of the building, a note on the submitted plan indicates an intention to leave the site open to provide a temporary car parking area for hotel guests. The Prior Notification application must be determined within 28 days of the receipt of a valid application, although this particular application is not currently valid as no application fee has been paid. In its consideration of such a Notification as required by the Order the relevant matters for the local planning authority are specifically: whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site. The council cannot consider the heritage value of the building.

PERMITTED DEVELOPMENT

5. Paragraph B of part 11 of schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for any building operation consisting of the demolition of a building, subject to certain exceptions and conditions. None of the exceptions apply to the proposed demolition of these buildings and, while the conditions include the prior notification requirement, they would not allow the council to block the demolition on the basis of heritage value.
6. Even though the buildings in question are considered to have particular architectural and historic merit, they do not have protection against demolition because they are not nationally listed nor within a conservation area. Without an article 4 direction, the owner could use permitted development rights to demolish the buildings, thereby removing the heritage assets to the disbenefit of the built environment.
7. The retention of 280 Clifton Drive South is desirable because of the particular merits of the building which is a late Edwardian villa, constructed 1909-10, with Baroque features originally designed with a doctor's surgery by Arnold England, prominent local architect.
8. While the buildings at 272-278 Clifton Drive have less intrinsic heritage value, their presence makes an important contribution to the townscape, which would be lost if they were demolished without being appropriately replaced. This was recognised by the previous scheme, which, as amended, would have preserved 280 Clifton Drive South and ensured that 272-278 Clifton Drive South would only have been demolished on the condition that a suitable replacement building were provided. Accordingly it is considered that all the properties from 272 – 280 (evens) Clifton Drive South should be protected from demolition without express planning consent.

SCOPE OF ARTICLE 4 DIRECTIONS

9. Article 4(1) of the order allows a local planning authority ("LPA") to make a direction that development described in any part, class or paragraph of schedule 2 to the Order should not be carried out unless permission is granted for it on application. There are certain exceptions, which are not relevant to this report.

POLICY

10. Government guidance on the use of article 4 directions is given in paragraph 038 of the Government's Planning Practice Guidance. So far as relevant to this site, the guidance says:

'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. The potential harm that the direction is intended to address should be clearly identified. There should be a particularly strong justification for the withdrawal of permitted development rights relating to...cases where prior approval powers are available to control permitted development.'

While prior approval powers are available in the present case, those powers are not directed to the preservation of a heritage asset and could not control the demolition of the building in this case.

PROCEDURE

11. An article 4 direction does not normally come into force until it is confirmed. The procedure requires the order to be made by the LPA and served and publicised in conformity with detailed requirements. The LPA may then confirm the direction. If there are objections to the direction, the LPA can only confirm it after taking the objections into account
12. The LPA can use an accelerated procedure if they consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. Under this procedure, the direction comes into force immediately upon service, but automatically expires after six months unless they confirm it before then.
13. The Secretary of State does not need to confirm a direction, but has the power to cancel one.

EXPRESS CONSENT

14. It is worth emphasising that an article 4 direction does not prohibit development. It merely means that there must be an application for express planning permission to the LPA for development that would otherwise be permitted under the General Permitted Development Order.
15. An application for planning permission to demolish the building would need to be considered by the council against the background of the development plan and national policy. The application would need to be decided in accordance with the development plan unless material considerations indicate otherwise. This would include balancing the public benefits of any proposed redevelopment against the retention of the heritage value of the present building within its setting.
16. This suggests that there needs to be some consideration of the likely outcome of any such planning application. There would be little point in making a direction if it appears that the council as LPA would be unlikely to be able to refuse the anticipated development or significantly influence it by the use of conditions or planning obligations. However, in this case, as Committee has recently considered the potential redevelopment of the site, it is clear that it wishes to see 280 Clifton Drive South retained and to ensure that, if the other buildings on the site are demolished, they are replaced by a suitable building that would retain the character of the local townscape. In the absence of the Article 4 Direction there is the prospect of the site being cleared with the obvious resulting loss of the buildings.
17. Requiring the owner to seek planning permission would enable the council to properly consider the effect on the historic environment of the removal of the heritage asset from the land. Without the requirement for planning permission the owner would be lawfully permitted to demolish the heritage asset without full consideration.
18. This analysis suggests that an article 4 direction would be a valuable tool to enable the council to preserve the positive contribution made by the heritage asset building. Further, it suggests that the demolition of the building would be prejudicial to the proper planning of the council's area, such that it would be appropriate to use the accelerated procedure to bring the article 4 direction into effect.

COMPENSATION

19. Compensation can be payable where planning permission is refused if permitted development rights for the development have been removed by an article 4 direction.
20. Compensation is assessed under section 107 of the Town and Country Planning Act 1990. It covers abortive expenditure and depreciation in the value of land directly attributable to the withdrawal of consent by the direction. The Upper Tribunal assesses compensation if agreement cannot be reached.
21. In this case the Article 4 Direction would bring the control of demolition within the scope of planning permission. In effect it would of itself only prevent demolition i.e. preventing the clearance of the site. The Council has previously indicated that it would accept the principle of the redevelopment of the site, subject to that redevelopment being of a form that preserves the local townscape. Accordingly, whilst there is a risk that a compensation claim may be made, this risk would be reduced if planning permission were to be granted for an alternative development that might enhance the value of the site. In any event, were planning permission be granted for redevelopment in the future the Article 4 Direction would become irrelevant.

CONCLUSION

22. In its consideration of the recent planning application, Committee has acknowledged the heritage value of 280 Clifton Drive South and the importance of 272-274 Clifton Drive South to the character of the local townscape. The LPA can only exercise control over whether the building is demolished by making an Article 4 Direction to remove the permitted development rights for the demolition of the building granted by of Schedule 2, Part 11 Class B to the Town and Country Planning (General Permitted Development) (England) Order 2015.

IMPLICATIONS	
Finance	If the Council were to make an article 4 direction to withdraw permitted development rights as described in the body of this report the Council could, at some point in the future, be required to pay compensation should planning permission be refused in respect of permitted development rights that have been rescinded by the Council's actions in this regard. There is currently no approved budget for any such compensation payments should they become payable and consequently an unfunded revenue budget increase request may be made at some future date in the event of such payment being necessary.
Legal	Covered in the body of the report
Community Safety	None in relation to this report
Human Rights and Equalities	Article 8 of the European Convention rights is engaged, as it is by the wider restrictions imposed by the planning system as a whole. However, any interference with article 8 rights would be justified and proportionate because of the need to achieve the proper planning of the area.
Sustainability and Environmental Impact	None in relation to this report
Health & Safety and Risk Management	None in relation to this report

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Prior Approval application 17/0920 Planning application 16/0374	submitted 2/11/2017 submitted 14/06/2016	Council web site www.fylde.gov.uk

Appendix 1

Plan identifying site