

**North Tyneside Council
Report to Cabinet
Date: 13th February 2017**

**ITEM 6(f)
Title: Article 4
Direction – Chirton
Dene Quays**

Portfolio(s): Housing & Environment

Cabinet Member(s): Councillor John Harrison

Report from Service

Area: Environment & Leisure

Responsible Officer: Phil Scott – Head of Environment, Housing and Leisure **Tel: (0191) 6437295**

Wards affected: Riverside

PART 1

1.1 Executive Summary:

1.1.1 The purpose of this report is to determine whether to bring into effect an Article 4(1) Direction (made under Section 3 of the General Permitted Development Order 2015 (“the Order”) which would remove some permitted development rights from household properties located at Chirton Dene Quays in North Shields. The direction would remove permitted development rights afforded to household properties under Schedule 2, Part 1, Class A, B & E and Part 2, A & B of the Order. The effect of this would mean that properties would have to apply for planning permission for works such as the building of extensions, roof alterations, replacing windows and erecting fences.

1.2 Recommendation(s):

1.2.1 It is recommended that Cabinet:

- 1) authorises the Head of Environment, Housing & Leisure, in consultation with the Head of Law and Governance to draft an Article 4(1) Direction and to carry out the required statutory consultation and notification of the Secretary of State, pursuant of Section 3 of General Permitted Development Order 2015 (“the Order”); and
- 2) receive a further report following the appropriate consultation to consider whether a direction under Article 4(1) should be confirmed and referred to the Secretary of State.

1.3 Forward Plan

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 16 January 2017.

1.4 Council Plan and Policy Framework

- 1.4.1 This report links to 'Our North Tyneside' Council Plan, Priority 1 – Our People - Be listened to, and involved by responsive, enabling services and Priority 2 – Our Places – Be great places to live, and attract others to visit or work here.

1.5 Information

1.5.1 Background to Chirton Dene Quays

- 1.5.1.1 Chirton Dene Quays is a residential development located in North Shields, facing onto the Royal Quays Marina. The area was formerly part of the Tyne and Wear Development Corporation (UDC) which brought forward housing and other development in the area in the 1990s. There are a number of homes in the vicinity of Chirton Dene Quays as well as other retail and employment development along the River Tyne. The development is located nearby to the Port of Tyne Ferry Terminal.
- 1.5.1.2 Planning permission granted under reference 97/01540/FULUDC was for the 'Erection of 48 flats, 23 townhouses and 14 terraced houses with associated landscaping and car parking, as amended and supplemented by drawings received on 14 November 1997 at the location shown in Appendix 1. At the time of making this decision the UDC attached a planning condition to the application which removed certain permitted development rights from the properties, with the aim of preserving the design features of the development. The effect of this had been that dwelling houses at Chirton Dene Quays had to apply for planning permission for works which would usually benefit from permitted development rights. This condition did not apply to the flats that were constructed, as flats do not benefit from the same permitted development rights as dwelling houses.
- 1.5.1.3 The condition removing the permitted development rights was listed as condition 5 on the decision notice of application 97/01540/FULUDC and is listed below:
- 1.5.1.4 '5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no development otherwise permitted by reason of Part 1 (Classes A & E) and Part 2 (Classes A & B) to Schedule 2 to that Order, shall be carried out to any properties within the application site, without prior consent of the Development Corporation as local planning authority.

The classes referred to in this condition are as follows:

Part 1

Class A: the enlargement, improvement or other alteration of a dwelling house

Class E: the provision within the curtilage of the dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwelling house as such, or the maintenance, improvement or alteration of such a building or enclosure.

Part 2

Class A: the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Class B: the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with [gap here to highlight the condition miswording].

The reasons for the above condition are:

1. As required by section 91 of the Town and Country Planning Act 1990
2. To ensure that the development shall not vary from the approved plans
- 3,4&5 To ensure a satisfactory form of development, in the interests of amenity of the area.'

- 1.5.1.5 In 2015, following the refusal of a planning application at Chirton Dene Quays, the Authority became aware that the condition applied in the decision made by the UDC in 1997 was no longer effective due to errors in the original condition listed above.
- 1.5.1.6 The condition restricting permitted development rights was written into the Transfer of Sale as a restrictive covenant when the properties were sold. However the covenant only restricted rights as long as the original Town and Country Planning (General Permitted Development) Order 1995 was in force. The 1995 Act was superseded by the General Permitted Development Order 2015 and the wording of the restrictive covenant had been such that it does not apply to future Acts.
- 1.5.1.7 Since the 1995 Act is no longer in force there is no restriction on the permitted development rights of the owners of dwelling houses. Currently their rights are the same of any other as detailed in Schedule 2 of the General Permitted Development Order 2015. There were also other failings in the condition such as where it refers to Schedule 2, Part 2, Class B of the Order, which is incomplete, as shown in 1.5.3.1. The condition also refers to seeking permission from the 'Development Corporation as local planning authority' – the Development Corporation has not existing for some years.
- 1.5.1.8 Following discovery of the newly acquired permitted development rights, a planning application was made by the owner of 47 Chirton Dene Quays. That application was approved and construction commenced on the single storey rear extension with balcony, two storey side extension and alterations to the rear fenestration of that property.
- 1.5.1.9 Residents at Chirton Dene Quays have been concerned and claim considerable harm has been caused by the extension due to the visual effect it has had on the appearance of the Royal Quays Marina, and have campaigned through their ward Councillor to have the permitted development rights removed, in line with the original intentions of the UDC.
- 1.5.2 The only way the Authority can now remove those permitted development rights is by implementing an Article 4(1) Direction to the remove the permitted development rights again.
- 1.5.2.1 In doing so the Authority would be ensuring that the intention of the original condition is preserved. It would also be expedient for the Authority to remove permitted development rights pursuant to Schedule 2, Part 1, Class B of the Order which would also remove the permitted development rights for '*B. The enlargement of a dwelling house consisting of an addition or alteration to its roof*'. It is considered that it would have also been the desire of the UDC to remove this permitted development right, and again this highlights the failure of the condition.

- 1.5.2.2 The Authority must be cautious when making their decision as there has already been an extension at Chirton Dene Quays as detailed above and a Planning Inspector remarked in 2005 that “it would take relatively few changes to reach a point where the consistency in the appearance of the terraces and the wider group of buildings would become permanently eroded.”.
- 1.5.3 Legislative Provisions
- 1.5.3.1 The General Permitted Development Order 2015 (GDPO) (the Order), sets out a government grant of planning permissions which permits certain works without the requirement of attaining planning permission from the Local Planning Authority (LPA). For household dwellings the Order allows a variety of changes to properties which include extensions, window changes, roof changes, erection of fences as well as number of other common projects. More information on the permitted development can be found in the Order.
- 1.5.3.2 Permitted development rights are usually removed at locations where there is something that would be preserved by preventing the incremental changes that are allowed in the Order. The most common use of an Article 4 Direction is to remove permitted development in an area of acknowledged importance such as a Conservation Area or an area of historical interest. In North Tyneside there are examples of this, such as in parts of Tynemouth Village and at Spanish Battery. Removing permitted development rights can also be achieved by applying a planning condition to the planning permission. When bringing forward sustainable development and when there are design features of merit worthy of preservation, conditions have been applied to planning permissions in modern developments. This is the case at a number of locations in North Tyneside, including the Chirton Dene Quays development where many of the properties have matching balconies and fenestration.
- 1.5.3.3 LPAs have the power to make an Article 4 Direction to withdraw certain permitted development rights. The legal requirement for making a Direction is that the LPA must be satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application.
- 1.5.3.4 The purpose of an Article 4 Direction would be to require residents of dwelling houses at Chirton Dene Quays to apply for planning permission for works which would be permitted development under Schedule 2, Part 1, Class A, B and E and Part 2, Class A and B of the Order. This is a situation that existed from 1997 until 2015, albeit with the removal of Part 1, Class B. A number of residents are familiar with this limitation.
- 1.5.3.5 Case for Making an Article 4 Direction at Chirton Dene Quays
- 1.5.3.6 In making a Direction the Authority must be satisfied that it is expedient that the development that would now benefit from permitted development rights should not be carried out unless planning permission is granted. In reaching this conclusion Cabinet will need to consider whether there is a compelling need for the making of a Direction taking into account the intended use of Article 4 Directions set out in the National Planning Policy Framework (NPPF).
- 1.5.3.7 In this case it is clear that the UDC had intended to remove permitted development rights from the dwelling houses to preserve the uniformity and general appearance of the buildings at Chirton Dene Quays. This is something that had been in place since the construction of the development and as such residents should have been aware that

they would be required to apply for planning permission for works that would normally benefit from permitted development.

- 1.5.3.8 Specifically at the rear of properties which look onto the marina this has led to all of the buildings bar one to have a continued uniform appearance, with fenestration and detailing in accordance with the original design of the buildings. Whilst the buildings are of a design which is not uncommon, this part of the Quay is an attractive place which no doubt benefits from the uniformity brought about by the removal of the permitted development rights.
- 1.5.3.9 There have been attempts to apply for planning permission at the rear of buildings at Chirton Dene Quays, and these have been met with resistance from both the LPA and from the Planning Inspectorate at appeal. In an appeal from 2005 made under reference APP/W4515/A/04/1160538 the Inspector found that 'almost all of the buildings on this development continue to display their original architectural features'. More recently in appeal reference APP/W4515/D/15/3035777 from 2015 an Inspector outlined that 'The rear elevations of this group of buildings have a very high degree of consistency in their design, fenestration patterns and detailing with all balconies being of the same metal design'.
- 1.5.3.10 That being said, development has now taken place at the rear elevation of 47 Chirton Dene Quays which is significant in altering the uniform building lines at the rear of Chirton Dene Quays. Notwithstanding this, the rear facades of buildings at Chirton Dene Quays do still have a largely uniform appearance and fenestration for there to be planning merit in the removal of the permitted development rights at the site. By removing the permitted development rights this would restore the legislative control which the LPA has had until 2015.

1.5.4 Government Guidance

- 1.5.4.1 Advice in the NPPF sets out in 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 (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)".
- 1.5.4.2 Further guidance is provided in the National Planning Practice Guidance (NPPG). Paragraph 038 Reference ID: 13-038-20140306, which states 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. The potential harm that the direction is intended to address should be clearly identified".

1.5.5 Statutory Procedural Requirements

- 1.5.5.1 The process for making an Article 4 Direction is set out in Schedule 3 of the Order. Following the drafting of the Direction this must then be published for consultation for at least 21 days in the local press, on site and by notice to the owners and occupiers of the dwelling house and every part of the land to which the Direction relates. A plan of the properties which would be affected by the Direction is attached as [Appendix 2](#).
- 1.5.5.2 Once the Direction is drafted and the consultation period has ended, a further report will be set before Cabinet for consideration. At that time the date that the Article 4 Direction would come into effect will be outlined. In line with the Section 108 of the Town and

Country Planning Act 1990, this date will be 12 months from the date that Cabinet confirms the Direction following the consultation process. It is prudent to allow 12 months consultation as this removes the potential for any claims for compensation.

- 1.5.5.3 In some circumstances the Authority can be liable to compensate developers or landowners whose developments are affected by an Article 4 Direction. However with this Article 4 Direction it is the intention for there to be a 12 month period of consultation and therefore there would be no ability to claim compensation. Undertaking consultation on an Article 4 Direction would provide an opportunity to invite representations from local residents and give the Authority the opportunity to outline the demand for the Direction linked to the Authority's fiduciary duty.
- 1.5.5.4 Within the 12 month consultation period owners would benefit from their current permitted development rights and therefore the situation may arise where a majority invoke their right. This is not something the Authority could prevent and would obviously make the subsequent need for making the order redundant however the Authority could reasonably argue that it has used best endeavours to invoke an Article 4 Direction in the most cost effective and reasonable way.
- 1.5.5.5 Conclusion
- 1.5.5.6 The reason the permitted development rights are now in effect at Chirton Dene Quay is due to an error made by the UDC in writing a poorly worded condition in the planning permission issued in 1997 and a subsequently poorly worded restrictive covenant, compounded by legislative changes in 2015. Consultation on the merits of bringing an Article 4 Direction would now again remove those permitted development rights.

1.6 Decision options:

- 1.6.1 The following options are available for consideration by Cabinet:

Option 1

Progress the drafting of a non-immediate Article 4(1) Direction,, carry out public consultation to remove permitted development rights under Schedule 2, Part 1, Class A, B & E and Part 2, Class A & B of the Order to household properties at Chirton Dene Quays identified on the map attached as Appendix A and B, and agree to consider a further report following public consultation prior to confirming any Direction.

Option 2

Indicate that it is not considered to be in the public interest to make an Article 4 Direction to remove those permitted development rights.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

- 1.7.1 It appears it was the genuine intention of the UDC to remove permitted development rights from the dwelling houses at Chirton Dene Quays. The fact the permitted development rights are now in effect is due an error in the writing of the original planning condition attached to the planning permission 97/01540/FULUDC and the wording of the restrictive covenant in the Transfer of Sale.

1.8 Appendices:

Appendix A: Map of Chirton Dene Quays showing the extent of the application made under reference 97/01540/FULUDC.

Appendix B: Map showing the properties which would be included in the Article 4 Direction.

Appendix C: Draft - Direction made under Article 4(1) of the order to which schedule 3 applies.

1.9 Contact officers::

Jackie Palmer, Planning Manager, tel. (0191) 643 6336

Andrew Holmes, Planning Officer, Planning, tel. (0191) 643 4822

Catherine Lyons, Regulatory Services Manager, tel. (0191) 643 7780

Tessa Crowe, Lawyer, tel. (0191) 643 5375

Alison Campbell, Senior Business Partner, tel. (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

1. [Town & Country Planning Act 1990 \(as amended\)](#)
2. [Town & Country Planning \(General Permitted Development\) Order 2015 \(as amended, revoked or re enacted\)](#)
3. [National Planning Policy Framework](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

If the Article 4(1) Direction is confirmed requiring planning applications to be submitted for works at this location which would otherwise have benefitted from permitted development rights, no planning application fee would be required to be paid to the LPA to cover any of the costs of processing such applications. As there was a condition which previously removed permitted development rights, the Authority had not previously received planning application fees for such applications. A fee would still be paid for works beyond the permitted development rights which apply to dwelling houses.

All preparatory work and background work to prepare this report and to draft an Article 4(1) Direction has been undertaken by existing staff and the costs of consultation, including the press notice, will be contained within existing budgets.

2.2 Legal

The legal implications are set out in the main body of this report.

2.3 Consultation/community engagement

External Consultation/Engagement

The request for a Direction to be made has come via Councillor Frank Lott with support from local residents initially. Going forward, if Cabinet select Option 1 this will give authorisation to commence a 21 day statutory consultation period in line with 1.5.4.1, pursuant to Schedule 3 of the Order.

As part of this consultation the Local Planning Authority would have to notify the land owner and any occupier of the land as well as local residents who live in the dwelling houses. Residents would also be aware of the Direction by way of a local press advertisement and notices posted around the site.

2.4 Human rights

There are no human rights implications directly arising from this report.

2.5 Equalities and diversity

There are no equalities and diversity implications directly arising from this report.

2.6 Risk management

At this stage in the process, no risk assessment has taken place.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive x
- Head of Service x
- Mayor/Cabinet Member(s) x
- Chief Finance Officer x
- Monitoring Officer x
- Head of Corporate Strategy x