

# North Tyneside Council

## Report to Cabinet

### Date: 14<sup>th</sup> August 2017

**ITEM 6(a)**  
Title: Article 4(1) Direction  
– Chirton Dene Quays

**Portfolio(s):** Housing & Transport

**Cabinet Member(s):** Councillor John Harrison

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#### Report from Service

**Area:** Environment, Housing & Leisure

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

**Wards affected:** Riverside

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## PART 1

### 1.1 Executive Summary:

1.1.1.1 Cabinet considered on 13<sup>th</sup> February 2017 the potential to bring into effect an Article 4(1) Direction that would remove some permitted development rights from household properties located at Chirton Dene Quays in North Shields. It was resolved that a Draft Direction would be prepared and a consultation with relevant stakeholders would be undertaken. The consultation took place over six weeks between May 2017 and July 2017 where five representations were received: three in favour of a Direction, one opposed to a Direction and one from the Secretary of State that acknowledges the consultation. Following the consultation, the matter now returns to Cabinet for consideration. If agreed by Cabinet, the Article 4(1) Direction would be brought into effect on 14<sup>th</sup> August 2018. It is prudent to allow a 12 month period before implementation to minimise the opportunity for those affected by the Direction to make a claim for compensation.

### 1.2 Recommendation(s):

1.2.1 It is recommended that Cabinet:

- 1) notes the consultation feedback received in respect to the draft Article 4(1) Direction; and
- 2) authorises the Head of Environment, Housing and Leisure, in consultation with the Head of Law and Governance and following notification to the Secretary of State, to bring into force on 14 August 2018 an Article 4(1) Direction (made under Section 3 of the General Permitted Development Order 2015 (“the Order”) to remove some permitted development rights from household properties located at Chirton Dene Quays in North Shields as set out in the report.

### 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 17 July 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

- 1.5.2 Cabinet resolved on 13<sup>th</sup> February 2017 that a draft Article 4(1) Direction for Chirton Dene Quays be prepared and be consulted upon. The purpose of this report is to consider the feedback received to that six week consultation and to seek confirmation on the bringing into effect that Article 4(1) Direction, which would 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. If confirmed, the Direction would be brought into effect on 14<sup>th</sup> August 2018.

#### 1.5.3 Background to Chirton Dene Quays

- 1.5.3.1 Chirton Dene Quays is a residential development located in the North Shields, facing onto the Royal Quays Marina. The area was formerly an enterprise zone. The Tyne and Wear Development Corporation (TWDC) brought forward housing development in the area in the 1990s.
- 1.5.3.2 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 14.11.97 at the location shown in Appendix A. At the time of making this decision, the TWDC attached a planning condition to the application that 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 that 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.
- 1.5.3.3 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:
- 1.5.3.4 *"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 [condition is incomplete – missing wording. See 1.5.3.7].*

*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.”*

- 1.5.3.5 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 TWDC in 1997 was no longer effective due to errors in the original condition listed above.
- 1.5.3.6 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.
- 1.5.3.7 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 1.5.3.4. The condition also refers to seeking permission from the ‘Development Corporation as local planning authority’ – the Development Corporation has not existed for some years.
- 1.5.3.8 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.
- 1.5.3.9 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 TWDC.

1.5.3.10 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.

1.5.3.11 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 TWDC to remove this permitted development right, and again this highlights the failure of the condition.

1.5.3.12 However the Authority must also 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."

#### 1.5.4 Legislative Provisions

1.5.4.1 The General Permitted Development Order 2015 (GDPO) (the Order), sets out a government grant of planning permissions that 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 that includes 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.

1.5.4.2 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. Removing permitted development rights can also be achieved by applying a planning condition to the planning permission. 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.

1.5.4.3 The Authority has the power to make an Article 4 Direction to withdraw certain permitted development rights. The legal requirement for making a Direction is that the Authority 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 through an application.

1.5.4.4 The purpose of an Article 4(1) Direction would be to require residents of dwelling houses at Chirton Dene Quays to apply for planning permission for works that 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.

#### 1.5.4.5 Case for Making an Article 4(1) Direction at Chirton Dene Quays

1.5.4.6 Cabinet resolved on 13<sup>th</sup> February 2017 that a draft Article 4(1) Direction for Chirton Dene Quays be prepared. It was agreed that it was clear that the TWDC 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, which exists today except from one building. Whilst the buildings are of a design that is not uncommon, this part of the Quay is an attractive place that no doubt benefits from the uniformity brought about by the removal of the permitted development rights. There is considered sufficient planning merit to reinstate the removal of the permitted development rights at the site and in doing so, restore the legislative control that the LPA had until 2015.

#### 1.5.5 Government Guidance

1.5.5.1 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)”.

1.5.5.2 Further guidance is provided in the National Planning Practice Guidance (NPPG). Paragraph 038 Reference ID: 13-038-20140306, 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”.

#### 1.5.6 Statutory Procedural Requirements

1.5.6.1 Cabinet resolved on 13<sup>th</sup> February 2017 that a draft Article 4(1) Direction be consulted upon, as per the process set out in Schedule 3 of the Order. As required, the Direction was published for consultation for over 21 days in the local press, on site and by notice to the owners and occupiers of the dwelling houses to which the draft Direction relates. A plan of the properties that would be affected by the Direction and were consulted is attached as Appendix B. Feedback received from the consultation is provided at Appendix D.

1.5.6.2 When the Direction was published for consultation, a copy was also sent to the Secretary of State. The Secretary of State would have the power to amend or revoke the Article 4(1) Direction. In cases where permitted development rights are removed under Parts 1, 2, 3, 4 and 11 of Schedule 2 to the Order may not be modified by the Secretary of State if they are immediate. This Article 4(1) Direction would not be immediate. The Secretary of State gave thanks for the notification and asked to be informed of future decisions relating to this proposal.

1.5.6.3 Should Cabinet resolve to bring into force an Article 4(1) Direction, the relevant landowners and the Secretary of State would be informed. Should the Secretary of State have no objections, in line with the Section 108 of the Town and Country Planning Act 1990, the Article 4(1) Direction would come into effect 12 months from this Cabinet meeting: 14<sup>th</sup> August 2018. It is prudent to allow this 12 months as it would prevent owners and occupiers from being able to make a claim for compensation.

1.5.6.4 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(1) 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 this proposed Article 4(1) Direction has provided an opportunity to invite

representations from local residents and given the Authority the opportunity to outline the demand for the Direction linked to the Authority's fiduciary duty.

1.5.6.5 Within the 12 month 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 could obviously make the subsequent need for making the order redundant however the Authority could reasonably assume it had used best endeavours to invoke an Article 4(1) Direction in the most cost effective and reasonable way.

#### 1.5.7 Conclusion

1.5.7.1 The reason the permitted development rights are now in effect at Chirton Dene Quay is due to an error made by the TWDC in writing a poorly worded condition in the planning permission issued in 1997 and a subsequently poorly worded restrictive covenant. Bringing an Article 4(1) Direction into force would now remove again those permitted development rights. A consultation in accordance with the statutory requirements has had a supportive response.

### 1.6 Decision options:

1.6.1 The following options are available for consideration by Cabinet:

#### Option 1

Confirm that an Article 4(1) Direction to remove permitted development rights under Schedule 2, Part 1, Class A, B & E and Part 2, Class A & B of the Order, attached at Appendix C, to household properties at Chirton Dene Quays identified on the map attached as Appendix A and B should be brought into effect on 14<sup>th</sup> August 2018.

#### Option 2

Confirm that it is not considered to be in the public interest to make an Article 4(1) Direction to remove those permitted development rights.

Option 1 is the recommended option.

### 1.7 Reasons for recommended option:

1.7.1 Option 1 is recommended for the following reasons:

1.7.2 It appears it was the genuine intention of the TWDC 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.

1.7.3 There appears a majority local desire to see permitted development rights removed from households. Feedback received to the consultation on this matter can be viewed at Appendix D.

### 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 that would be included in the Article 4(1) Direction and that were directly consulted.

Appendix C: Proposed Article 4(1) Direction.

Appendix D: Schedule of responses to the public consultation on the draft Article 4(1) Direction.

## **1.9 Contact officers::**

Jackie Palmer, Planning Manager, tel. (0191) 643 3663

Laura Craddock, Senior Planning Officer, tel. (0191) 643 6310

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 has 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](#)
4. [North Tyneside Council Report to Cabinet 13th February 2017 - Article 4 Direction Chirton Dene Quays](#)

## **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 that 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 that 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 that 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 informing residents about the Article 4(1) Direction, 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

Cabinet authorised on 13<sup>th</sup> February 2017 a statutory consultation in line with 1.5.7.1, pursuant to Schedule 3 of the Order. This involved informing the Secretary of State, a notice in the local press, site notices put in place in two locations at Chirton Dene Quays and a

letter to the 37no. properties at Chirton Dene Quays that would be affected by the Article 4(1). The letter was dated 30<sup>th</sup> May 2017 and requested that any representations to be made by 10<sup>th</sup> July 2017, thus offering a longer time period than the statutory 21 days.

Five representations were made. One was received from the Secretary of State via the Department for Communities and Local Government. The Secretary of State gave thanks for the notification and asked to be informed of future decisions relating to this proposal. The other four respondents appeared to be local residents (addresses not provided in all cases). Three of which expressed concern about alterations implemented at no.47 Chirton Dene Quays and the potential for future inappropriate alterations to properties. These three respondents gave their support for an Article 4(1) Direction at Chirton Dene Quays. One local resident opposed the Article 4(1), concerned that it would restrict homeowners in modernising their properties.

Representations and an officer response can be read at Appendix D.

## **2.4 Human rights**

Implementation of an Article 4(1) Direction at this location would not represent a moratorium on landowners undertaking development to their properties, but would allow the LPA the opportunity to ensure that any development that did take place would not be harmful to the area's character.

## **2.5 Equalities and diversity**

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

## **2.6 Risk management**

Failure to implement the Article 4(1) Direction would reduce the Authority's ability to ensure that new development would not be harmful to the area's character.

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 this Article 4(1) Direction has provided an opportunity to inform local residents of the Authority's intentions.

Within the 12 month period owners would benefit from their current permitted development rights and therefore the situation may arise where a majority invoke their right. Feedback to the recent consultation referred to in this report suggests there may not be a local appetite to do this. Nevertheless, this is not something the Authority could prevent and would obviously make the subsequent need for making the Direction redundant however the Authority could reasonably assume they have used best endeavours to invoke an Article 4(1) Direction in the most cost effective and reasonable way.

## **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