



Report To: Economic Development Portfolio Holder
Lead Officer: Director of Health and Environmental Services

26 March 2015

Article 4 directions and public houses: a review of the results of the public consultation

Purpose

1. To review the results of the public consultation on the use of article 4 directions to require planning permission prior to the demolition and/ or change of use of public houses; to determine whether to recommend to the Planning Committee the adoption of this restriction for use in the case of a select number of public houses in the district.
2. This is a not a key decision because it does not directly effect communities living or working in the district; it is for the Planning Committee to determine the approach adopted by this district with respect to the use of article 4 directions.

Recommendations

3. It is recommended that:
 - (a) The Portfolio Holder makes a recommendation to Planning Committee that this Council adopts in principal the use of article 4 directions to restrict the development rights of pubs with respect to demolition and change of use on the basis of the results of the public consultation.
 - (b) The Portfolio Holder commissions the requisite research to substantiate the nominations resulting from the public consultation (see paragraph 29) and that an assessment is made of the potential claims for compensation which could arise.
 - (c) The Portfolio Holder requests a process to be put in place via which subsequent nominations for article 4 directions may be received and assessed.

Reasons for Recommendations

4. The public consultation has provided evidence of support for the use of article 4 directions among parish councils and the general public. The consultation revealed support for the principal of the removal of permitted development rights in respect of both demolition and change of use, irrespective of whether the pub was the last to remain in the village.
5. The Cambridge and District branch of the Campaign for Real Ale (CAMRA) made representation on behalf of its almost 4,000 branch members. They urged the council to adopt the use of article 4 directions with respect to demolition and change of use and believed this should not be limited to the sole remaining pub to serve a village.
6. Since responsibility for determining whether this council should adopt the use of article 4 directions lies with the Planning Committee, the results of the consultation

help provide the Economic Development Portfolio with the necessary information to present to the Planning Committee for their further consideration.

7. The recent experience of Islington Borough Council (see paragraph 25) suggests the Department for Communities and Local Government (DCLG) is prepared to accept the use of article 4 directions to address pressures towards a change of use where the local authority can demonstrate evidence that the exercise of permitted developments rights would harm local amenity.
8. The consultation results indicate the public values the contribution of pubs in terms of visual amenity and their contribution to the range of local amenities available to them and suggest the quality of village life would be greatly diminished without them. The consultation identifies numerous pubs where the public believes this applies.
9. There were 519 individual nominations made identifying a total of 132 pubs across the district. Further details of the pubs identified and the level of support for each is given in Appendix 2.
10. Given the threshold of evidence required, further research would be required to substantiate these nominations i.e. to describe the mix of amenities within each village to which the public houses identified contribute.

Background

11. There has been a progressive loss of village pubs across the district, mirroring a national trend as the industry contracts in response to macro-economic pressures and changes in drinking culture.
12. The resultant pressures on pub businesses has on occasion led owners to exercise their permitted development rights to change the use of pubs, or in certain cases (seen elsewhere in the country) to circumvent these restraints by demolition.
13. Government has relaxed permitted development rights in order to aid economic recovery (The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013). In a rural context this added flexibility may lead to an acceleration of the loss of village pubs, undermining the local objective to maintain mixed communities.
14. Article 4 directions are a tool available to local authorities to re-assert control with respect to this objective, providing a balance between local planning considerations and the economic drivers which propel the loss of village pubs.
15. Article 4 directions can also be employed where the exercise of permitted development rights could undermine the visual amenity of the area or damage the historic environment, a further consideration for this district where pubs often occupy key central locations within the villages.
16. DCLG guidance states "Local authorities should consider making article 4 directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area".
17. A neighbouring authority has relatively recently authorised the use of article 4 direction. In January 2014 Cambridge City Council approved the use of article 4 directions for public houses and buildings of historic interest.

18. The Economic Development Portfolio Holder endorsed further work to develop a proposal and consultation timetable at his 10 September 2014 Portfolio Holder Meeting based on the proposals contained within a report to that meeting.
19. The text used for consultation interpreted the relevant paragraphs of the report "South Cambridgeshire District Council's Support for Village Pubs, (i.e. paragraphs 20 and 21) received at that meeting and can be found in Appendix 1.
20. The programme for consultation proceeded as set out below:

Article 4 direction public consultation programme	
Consultation opened	05 January 2015
Consultation closed	23 February 2015
Consultation responses analysed	February -March 2015
Preparation of report, ongoing	March 2015

Considerations

21. The consultation was conducted both in an online format, using the JDI online consultation system to capture responses through this council's website, and via written responses using a standard format. Responses were also accepted via e-mail and in letter format.
22. The following groups of consultees were specifically targeted:
 - Parish councils, via parish e-bulletin with link to online consultation
 - Members, via weekly bulletin with link to online consultation
 - Resident panel, via email with link to online consultation
 - CAMRA and the British Institute of Innkeeping

In addition the following consultees were approached by letter

- Existing licensed premises (using Licensing dataset) inviting participation, thereby targeting landlords and owners of pubs.
- PubCos and breweries with existing business interest in the district

Paper copies of response forms were distributed to Parish Councils, and also made available at the reception of the Council offices, South Cambridgeshire Hall.

23. The invitation to participate in the consultation remained on the front page of the SCDC website for the entire duration of the consultation period and the consultation was profiled in the local press and was featured in local radio broadcasts.
24. The results of the public consultation are summarised in Appendix 2. There were 519 individual nominations made identifying a total of 132 pubs across the district.
25. The consultation results indicate the public values the contribution of pubs in terms of visual amenity and their contribution to the range of local amenities available to them and suggest the quality of village life would be greatly diminished without them. The consultation revealed strong support for the principal of the removal of permitted development rights in respect of both demolition and change of use, irrespective of whether the pub was the last to remain in the village.
26. The consultation identifies numerous pubs where the public believes this applies. Further details of the pubs identified and the level of support for each is given in Appendix 2.

27. The consultation responses can form part of the evidence base on which a decision could be taken as to whether this council should pursue article 4 directions to support its objectives.
28. Given the threshold of evidence required, further research would be required to substantiate these assertions i.e. to describe the mix of amenities within each village to which the public houses identified contribute, the likely level of compensation claims which may arise should article 4 directions be made and a process by which future nominations of pubs for article 4 direction could be received and assessed.
29. Initially, a focus on the 15 pubs receiving repeated nominations (7 or more) through the public consultation could be the subject of these further investigations.
30. The recent experience of Islington Borough Council (see 41) suggests the Department for Communities and Local Government (DCLG) is prepared to accept the use of article 4 directions to address pressures towards a change of use where the local authority can demonstrate evidence that the exercise of permitted developments rights would harm local amenity.
31. The public consultation has provided evidence of support for the use of article 4 directions among parish councils and the general public.
32. The Cambridge and District branch of the Campaign for Real Ale (CAMRA) made representation on behalf of its almost 4,000 branch members. They urged the council to adopt the use of article 4 directions with respect to demolition and change of use and believed this should not be limited to the sole remaining pub to serve a village. Having reviewed all the South Cambridgeshire pubs within their branch area they suggest 118 of them should be subject to an article 4 direction.
33. All of those who identified themselves as owners of pubs, or as having owned pubs previously, objected to any restriction to permitted development rights for pubs.
34. Since responsibility for determining whether this council should adopt the use of article 4 directions lies with the Planning Committee, the results of the consultation help provide the Economic Development Portfolio with the necessary information to present to the Planning Committee for their further consideration.
35. In the midst of the consultation period, the government announced that all pubs listed as an Asset of Community Value (ACV) through the Community Right to Bid (under The Localism Act, 2011) will automatically have their permitted development rights curbed (26 January 2015, see the [Statement by Community Pubs Minister](#), Kris Hopkins), removing the entitlement to demolition and change of use through permitted development rights. The necessary secondary legislation will be brought into force 06 April 2015.
36. Although this reform to the legislation may afford protection to those pubs with an ACV listing, it pre-supposes that every public house that the public may wish to see protected in this way has been nominated and included on the register. There has been concerted effort on the part of this Council to promote the use of the Community Right to bid. At present there are 16 pubs on the asset register, but the community consultation identified additional pubs which are not presently on the asset register but which the public has suggested should be considered as candidates for article 4 directions.

37. Following a relevant disposal a local authority is obliged to remove a community asset from the register, producing a window of vulnerability during which the sale could be followed by a change of use (despite the community being able to re-nominate a pub following its removal from the list). As there are likely to be limitations on the longevity of the planning restrictions an ACV listing will afford therefore there is doubt as to whether this provision will in fact afford the expected safeguard.
38. The Secretary of State may overturn any decision to use an article 4 direction. The experience of Islington Borough Council is worth noting – this council published an article 4 direction in July 2013 to remove the permitted development rights allowing conversion from offices to flats (B1 (a) office to C3 residential) across the district. This was overturned by the then planning minister, Nick Boles. Islington Borough Council then proposed a reduced geographical area over which the Article 4 direction would apply, which was also refused, as it was judged to be “unacceptably expansive and unjustified”. Subsequently the DCLG has agreed (September 2014) with Islington Borough Council the use of an article 4 direction, much reduced in scope, applying to “the most strategically significant locations outside the Central Activities Zone (which is already protected from permitted development rights)”.
39. The use of article 4 direction to remove permitted development rights must work in concert with planning policy. There is an adopted policy in the Development Control Policies Development Plan Document which seeks to protect the services and facilities within villages in South Cambridgeshire and this includes village pubs. In the draft Local Plan this policy has been reviewed and additional services have been added to the list to be protected. The policy in the draft plan is as follows:

Policy SC/3: Protection of Village Services and Facilities

1. *Planning permission will be refused for proposals which would result in the loss of a village service, including pubs, shops, post offices, banks and building societies, community facilities, where such loss would cause an unacceptable reduction in the level of community or service provision locally*
2. *The following matters will be considered in determining the significance of the loss:*
 - a. *The established use of the premises and its existing and potential contribution to the social amenity of the local population;*
 - b. *The presence of other village services and facilities which provide an alternative, with convenient access by good public transport services, or by cycling or walking; and how these remaining uses will cope with displaced users; and any unacceptable impact of those alternative services or facilities;*
 - c. *The future economic viability of the use including the results of marketing of the premises for a minimum of 12 months at a realistic price and in appropriate cases financial information.*

This policy recognises the vital function in rural communities performed by village services and facilities. The National Planning Policy Framework (NPPF) advises that plans should guard against unnecessary loss of valued facilities and services, where this would reduce the community’s abilities to meet its day to day needs. During the consultation of the Proposed Submission Plan in the summer of 2013, the Campaign for Real Ale submitted a representation supporting the inclusion of public houses in the policy.

Options

40. The Portfolio Holder may agree
- (a) To make a recommendation to Planning Committee that this Council adopts in principal the use of article 4 directions to restrict the development rights of pubs with respect to demolition and change of use on the basis of the results of the public consultation and the specific pubs identified therein ; to commission the requisite research to substantiate these nominations (see paragraph 29) and the potential for claims for compensation; to request a process be put in place by which subsequent nominations may be received and assessed.
 - (b) To take no further action with regard to the use of Article 4 direction;
 - (c) To take no further action with the regard to use of Article 4 direction, accepting that ACV listing provides an acceptable safeguard and to intensify efforts to promote the Community Right to Bid to communities where pubs have been nominated.
 - (d) To agree that further detailed work should be undertaken to determine whether or not a positive recommendation to the Planning Committee is justified and to identify the pubs to which this might apply.

Implications

Financial

41. The use of article 4 directions may leave the local planning authority liable to pay compensation to those whose permitted development rights have been withdrawn. The extent of any likely liability could only be properly assessed once the pubs identified by public consultation thought to warrant protection via article 4 directions are known. Therefore, it is recommended this aspect is best explored in any subsequent report to Planning Committee should the use of article 4 direction be recommended or further research commissioned. If this requires unbudgeted resource the Portfolio Holder will be made aware.

Risk Management

42. There is a risk that the consultation may have raised public expectation regarding the strength of planning powers in respect of article 4 directions if adopted, namely creating the misapprehension that planning permission would inevitably be refused where an article 4 direction is in place. This can be mitigated by continuing to make clear the limitations of this power in any subsequent communications.
43. The use of article 4 directions may leave the local planning authority liable to pay compensation to those whose permitted development rights have been withdrawn if
- planning permission for development is refused which would have been permitted development if it were not for an article 4 direction
 - planning permission is granted subject to more limiting conditions, as a result of an article 4 direction being in place.

This matter is addressed above, in paragraph 41, as a financial implication.

Consultation responses

44. See paragraphs 24 to 26 of this report and results summary given in Appendix 2.

Effect on Strategic Aims

Aim 1 – Wellbeing – Ensure that South Cambridgeshire continues to offer an outstanding quality of life for our residents

45. For many of our communities the retention of the village pubs is an important aspiration, as they are felt to promote community cohesion and thereby wellbeing.

Aim 2 – Engagement – Engage with residents, parishes and businesses to ensure we deliver first class services and value for money

46. The public consultation allowed all sections of the community to have their voice heard as the council considers its approach to this planning matter. There will be further opportunities to engage with residents, parishes and businesses if further research is taken into this matter.

Background Papers

Economic Development Portfolio Holder's Meeting, 10 December 2014

<http://modern.gov/ieListDocuments.aspx?CId=1060&MId=6338&Ver=4>

Economic Development Portfolio Holder's Meeting Wednesday, 10 September 2014

<http://scams.modern.gov.co.uk/ieListDocuments.aspx?CId=1060&MId=6337&Ver=4>

Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5679/2160020.pdf

Statutory Instruments 2013 No. 1101 Town and Country Planning, England, The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

[http://www.islington.gov.uk/publicrecords/library/Planning-and-building-control/Publicity/Public-consultation/2013-2014/\(2013-05-30\)-The-Town-and-Country-Planning-\(General-Permitted-Development\)-\(Amendment\)-\(England\)-Order-2013.pdf](http://www.islington.gov.uk/publicrecords/library/Planning-and-building-control/Publicity/Public-consultation/2013-2014/(2013-05-30)-The-Town-and-Country-Planning-(General-Permitted-Development)-(Amendment)-(England)-Order-2013.pdf)

Statement by Community Pubs Minister Kris Hopkins, 26 January 2015

<https://www.gov.uk/government/speeches/community-pubs>

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