



Report To: Planning Committee
Lead Officer: Planning and New Communities Director

8 January 2014

Article 4 direction to remove permitted development rights for change of use from Class A4 (drinking establishments) to other uses within Class A of The Town and Country Planning (Use Classes) Order 1987 (as amended), including retail (class A1), financial and professional services (Class A2) and food and drink establishments such as restaurants and cafes (Class A3) at The Pear Tree Public House, Hildersham

Purpose

This report is for information purposes only.

Reasons for the report being brought before the planning committee

Background

1. This report is brought before the Planning Committee for information purposes only as it details the actions taken and the matters that were considered in relation to a request that has been made by Councillor Roger Hickford, on behalf of the local community of Hildersham for the Council to immediately issue an article 4 direction to remove the permitted development rights enjoyed by the 'Pear Tree Public House' to change its use from a pub into a shop or any of the other permitted changes in the 'A Class' of the Use Classes Order. This request came about as the pub is on the Council's 'Community Asset Register' and there are concerns that the contribution that the building makes socially to the local community would be lost if the applicant was able to use his permitted development rights to change the use of the property into a different retail use without proper controls being in place.

Background to legislation

2. The Town and Country Planning (Use Classes) Order 1987 (as amended) gives property owners some rights to alter the use of their premises without having to apply for planning permission. Class A of the Order relates to retailing and is split into 5 separate uses. These being class A1 (shops), A2 (Financial and professional, e.g. banks etc.), A3 (Food and Drink e.g. cafes), A4 (drinking establishments e.g. public houses) and A5 (hot food takeaways). The Act allows any of the higher numbered uses to be changed into a lower order use e.g. A4 into an A2, A2 into an A1 and A5 into A3 etc. without requiring the need for planning permission as the government considers these uses to be interchangeable as they all contribute in one way or another to the economy of an area. The 2013 changes to the use classes order also allows until 2016, for former drinking establishments such as public houses (use class A4) that have been turned into shops (Use Class A1), to be turned back into public houses via the simplified prior approval notice procedure.
3. The aim of the Assets of Community Value Regulations 2012 is to give the local community the right to ensure that buildings and amenities can be kept in public use and can remain as part of community life. Local communities can nominate an asset

and request that the Council includes it on 'a list of assets of community value'. Should the owner of a property wish to sell a property that is included on the list, then the intention of the legislation is that a moratorium is put in place for a set period of up to 6 months to allow the local community to raise money to make a bid to purchase the property. The requirements of the Assets of Community Value Regulations do not apply to buildings where the property stays in the same ownership and the owner wishes to carry out another 'permitted business use' from the premises.

4. Part 4 of 'The Town and Country Planning (General Permitted Development) Order 1995 (as amended), which is more commonly known as article 4, gives a local authority additional controls over any individual property or geographical area within its boundaries to restrict:
 - Permitted development rights related to operational development or change in the use of land;
 - Permitted development rights with temporary or permanent effect.
5. The 1995 act states that article 4 directions should only be issued where it is necessary and expedient to do so and can be used by a local planning authority where it considers that development could be prejudicial to the proper planning of their area or constitute a threat to the amenity of their area. Article 4 directions can be imposed where development would:-
 - Undermine the visual amenity of the area or damage the historic environment;
 - Undermine local objectives to create or maintain mixed communities;
 - Lead to the subdivision of agricultural land other than for purposes reasonably necessary for agriculture, or to the loss of agricultural land;
 - Lead to an intensification of development in close proximity to a military or aviation safeguarding zone;
 - Have a direct and significant adverse effect on a flood risk area, flood defences and their access, the permeability of ground, and management of surface water or flood risk;
 - Lead to an intensification of development or use in areas affected by coastal erosion.
 - There should be a particularly strong justification for the withdrawal.
6. Paragraph 200 of the National Planning Policy Framework (NPPF) provides a recent government steer on the appropriateness of using article 4 directions to control the use of land. It 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 an area (although the meaning or extent of this is not defined).
7. An article 4 direction does not have the effect of preventing the article that it covers from occurring. It merely requires that the owner of the property has to apply for planning permission for the use or development that the Council has chosen to restrict through the Article 4 direction.
8. Document SN/SC/485 from the House of Commons Library which was published on the 11 December 2013 makes it clear that in issuing article 4 directions, councils must use their powers carefully and they may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:

- Refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or
 - Grant planning permission subject to more limiting conditions than the Town and Country Planning (General Permitted Development) Order 1995 would normally allow, as a result of an article 4 direction being in place.
9. The replacement annex D to government circular 9/95 makes it clear that compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development rights. It states that the withdrawal of development rights does not necessarily mean that planning consent would not be granted. It merely means that an application has to be submitted, so that the planning authority can examine the plans in detail.
10. Article 4 directions can be issued as an 'emergency measure' with the result that an 'immediate direction' will withdraw permitted development rights straight away. However, there must be a formal consultation period of 21 days following the service of the order. Representations submitted in response to this consultation must be taken into account by the Council when deciding whether to confirm the Direction. Any amendments to the Direction will require another period of consultation. Once the Direction is issued by the Council it must be confirmed within six months or it will lapse. The Secretary for State no longer has to confirm the direction. However, he remains as a consultee on any new directions and he has powers to modify or cancel proposed orders at any time if he feels that this is necessary.
11. Document SN/SC1301 which was published by the House of Commons on the 10th December 2013 is also applicable. Paragraph 5.2 of the document deals with the change of use of village pubs into supermarkets and makes it clear that CAMRA (Campaign for Real Ale) has been lobbying the government to alter the Use Classes Order to give councils additional controls to be able to restrict/control the change of use of public houses to shops/supermarkets. On the 7th January 2013, the Planning Minister Nick Boles made it clear that councils could use Article 4 Directions to restrict when a pub could be changed into a shop/supermarket but he was only aware of one such occurrence throughout the country. He stated that it was not the planning system that was causing pubs to change into shops, it was the economy and that it was the government's public policy objective to not put disproportionate restrictions on the change of use of pubs into shops which could ultimately result in more empty buildings which would harm local amenity and the broader local amenity. Therefore, the Government has not supported CAMRA's recent calls to change the permitted development regulations nationally in terms of restricting the ability to change a pub into a shop without requiring planning permission.

Considerations in relation to the Hildersham request

12. Article 4 directions are more commonly used by local authorities to control development within a larger geographical area where the aim is to limit the ability of the property owners to physically alter their properties. This more often occurs within Conservation areas where the authority has highlighted a threat to the character and appearance of the area by development through a conservation area review.
13. However, article 4 directions as explained above are not exclusive to Conservation Areas, they can also be used to control the use of individual properties and they can also be issued in an emergency situation. Whilst this avenue is open to local authorities, it appears that only a handful of article 4 directions have been issued in relation to restricting the abilities of pubs to change their use into shops across the

Country. Research suggests that the Local Authorities in Lewisham and Eastbourne have brought in article 4 directions to control such uses, but these are currently the subject of challenges.

14. In the Hildersham case, the above was considered and also the fact that should an article 4 direction have been imposed, that the government has made it clear that the planning system should not be used to impose disproportionate restrictions on businesses, particularly as the proposed shop use is considered on a national level to be interchangeable with that of a public house. To impose local restrictions to control a situation that is no different to that which occurs elsewhere in other districts across the country could result in the Council's actions being deemed to be unreasonable and should a subsequent application, for that limited by the article 4 direction come in and be refused, or approved but with more stringent conditions than imposed in the act, then it is likely that a successful application for costs against the council would be inevitable.
15. The applicant has been in communication with the Council in connection with his current application for a lawful development certificate (the purpose of which is to confirm that the property does benefit from the rights to change its use from a pub into a shop by virtue of the criteria that is in the Use Classes Order 1987) and he has confirmed that works to physically alter the premises to facilitate the change the use of the public house to a shop have nearly completed. To date, the pumps and the seating within the public house have been removed and works are in place to put in new flooring following the removal of the existing floor covering. The beer pumps and the bar area have also been removed within the premises as has the hanging pub sign on the exterior. The applicant has advised that he is soon to submit a new advertisement consent application for new shop signage on the premises. The applicant has also confirmed that the public house use of the property ceased a number of months ago and that the property is currently in use and trading as a general second hand furniture shop. Photographic evidence has been provided showing that this is the case and this has been verified by a planning officer who has recently visited the site. The applicant has also confirmed that they have notified the Council's Business Rates team of the change in the use of the property. In its current state, the property could not be reinstated as a public house without substantial works to its interior, and it is clear from the evidence at hand that the use of the property as a pub has ceased and that it is now lawfully trading as a shop.
16. As the property is unlisted, the Council does not have any control over any of the internal works that the applicant has carried out within the property. The fact that the property is in a conservation area is also irrelevant as this does not in this instance restrict the works of the type as carried out by the applicant. The imposition of an article 4 direction after the change of use has taken place would not legally have the effect of requiring the applicant to return the internal fixtures and fittings of the building to their former state or revert it back to its former use, as its sole function is to require the applicant to apply for planning permission for the matter that the article 4 restricts rather than acting as a form of enforcement notice.

The Future

17. Nationally, CAMRA is lobbying the government to change the terms of the Use Classes Order to remove the automatic right of property owners to change their public houses into shops. This campaign is being actively supported by Lewisham Borough Council and the local MP for the area, Sadiq Khan. The basis for this request is that the Use Classes Order ignores the social contribution that public houses make to the local community over and above some of the other uses in the 'A Class' of the Use

Classes Order 1995 and also directly contradicts the purpose of designating properties as community assets. The Government is of the view that all of the uses that are part of the 'A Class' of the order are interchangeable and put more emphasis on the economic development benefits that the permitted changes bring as opposed to any social consequences that the permitted changes may cause or any contradiction which occurs with the community asset legislation. The government has made it clear that at this moment in time, it is not intending to change the Use Classes Order; however there is an opportunity for each local authority to lobby the government to support CAMRA and Lewisham to seek the required change to the Use Classes Order.

Background Papers

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

List documents and link to relevant page on the public website.

The Town and Country Planning (Use Classes) Order 1987 (as amended)
Part 4 of 'The Town and Country Planning (General Permitted Development) Order 1995 (as amended),
Replacement annexe D to government circular 9/95
Document SN/SC/485 from the House of Commons Library which was published on the 11th December 2013
Document SN/SC1301 which was published by the House of Commons on the 10th December 2013

Report Author: Dylan Jones – Planning Team Leader
Telephone: (01954) 713256