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**REPORT TO:** PLANNING COMMITTEE **AGENDA ITEM: 6**

**DATE OF MEETING:** 20 JANUARY 2014 **CATEGORY:**  
**DELEGATED**

**REPORT FROM:** DIRECTOR OF COMMUNITY AND  
PLANNING SERVICES

**MEMBERS'**  
**CONTACT POINT:** Nicola Sworowski (ext 5983)

**SUBJECT:** Town and Country Planning  
(General Permitted Development)  
Order 1995 (as amended) Article 4  
Direction affecting Swadlincote  
Town Centre (under guidance  
contained in National Planning  
Practice Guidance)

**WARD** **TERMS OF**  
**AFFECTED:** Swadlincote **REFERENCE: PO1**

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## **1.0 Recommendations**

1.1 The Committee is requested to authorise the following in respect of Swadlincote town centre:

- Serve an Article 4 Direction (based on the Schedule and Plan appended to the end of this report, allowing for minor correction of addresses where necessary) to remove permitted development rights that (among other things) would allow for exterior painting of buildings, demolition and erection of walls, replacement of windows and doors, and changes to roofs within part of the Conservation Area without the need for express planning permission; and
- That authority for confirmation of the Direction is delegated to the Planning Services Manager in accordance with paragraph 3.47 of this Report.

## **2.0 Purpose of Report**

2.1 To seek the authorisation of the Committee to proceed with the Article 4 Direction in the interests of the local amenity of the area which would otherwise be harmed by extension or alteration of buildings or creation of boundary treatments as could currently take place without express planning permission. Also to advise the Committee of likely future intentions with respect of affording owners and occupiers a degree of flexibility back for the alteration of buildings.

## **3.0 Detail**

## Overview

- 3.1 Swadlincote Town Centre has seen major investments and enormous improvements over the past decade. It is essential to continue to build on these investments and further grow and improve. In February 2014 the Council was successful in being awarded a round 1 grant from the Heritage Lottery Fund (HLF). This is an important step towards being awarded the full grant of £413,900 subject to a successful round 2 bid. This grant would be combined with funding from both the District and County Councils of over £50,000, volunteer time of £2,600 and also private investment through the third party grants expected to be in the region of £150,000. In total this should bring in investment of over £600,000 to the Town Centre.
- 3.2 This investment is important for the town and essential if it is to grow and develop in a way that enhances and educates people about its special historic character and attractive green spaces. The Article 4 Direction sits within the Conservation Area Management Plan and this document is a key requirement for the HLF second round bid.
- 3.3 Many Conservation Areas have distinctive qualities that can easily be lost through piecemeal alterations to traditional features. Many such works carried out by owners or occupiers are classified as “permitted development” under the provisions of the Town and County Planning (General Permitted Development) Order 1995 (as amended) (“the GPDO”). This means that they can be carried out without the need for express planning permission, even in Conservation Areas.
- 3.4 Permitted development for dwellings and for commercial buildings and flats varies. Alterations allowed to residential properties include changes to the size of door and window openings, and the removal of local roofing materials or designs of chimney stack and local wall finishes. Shop owners can change the colour of shopfronts and paint walls, even where brickwork was not originally painted, and can remove parts of boundary walls.
- 3.5 An Article 4 Direction enables the Council to require owners and/or occupiers of specific properties to apply for planning permission for certain alterations, where there is concern that the character of the conservation area is under threat.
- 3.6 Local Development Orders (“LDOs”) give a grant of planning permission to specific types of development within a defined area. They streamline the planning process by removing the need to make a planning application, creating certainty and saving time and money for those involved.
- 3.7 In order to protect and preserve those traditional and historic elements of the environment within the Conservation Area, which are special to the character of Swadlincote, two actions are proposed:
  - creation of an Article 4 Direction, to remove permitted development rights from specific properties within the Area, (i.e. to withdraw a general planning permission granted by the GPDO); and

- subsequent introduction of an LDO to restore the permitted development rights allowing for the exterior painting of buildings already painted but limited to a palette of colours that would be acceptable to the Council.

Listed buildings would not be included as alterations to them are already controlled under separate legislation.

- 3.8 The proposed Article 4 Direction is specifically aimed at both residential properties and commercial properties. Within the Swadlincote Conservation Area there are 39 residential properties that are of traditional form, although only 4 retain their original sash windows. Of these residential properties, most fall within terraced rows, with one or two exceptions. It is the rhythm of repeated elevations, unified roof finishes and consistent boundary treatments which are the most important element of the design of terraced rows, particularly in oblique views along the streets.
- 3.9 The vast majority of the historic properties within the Conservation Area are in commercial and past industrial use and although these tend to have survived with many more original features intact, these are under threat from unsympathetic alterations, even where they have received grant assistance in the past. This is illustrated by Appendix A.
- 3.10 The buildings that would be included within the Article 4 Direction all in some way make a contribution to the local character of the place because they share common traditional characteristics such as traditional roof materials and eaves details, boundary treatments, door surrounds and chimney stacks. Many of the commercial properties have original or restored Victorian shopfronts, but not all. It is proposed to include all of the traditional commercial buildings, where there is potential to restore shopfronts, as there is a continual process of enhancement in Swadlincote, and many more opportunities for restoring shopfronts and continuing the excellent work of town centre regeneration.
- 3.11 An LDO would allow for sympathetic application of paint to already painted elevations of properties, allowing for contrast with a considerable range of pre-approved colours, but with sufficient control to ensure harsh or unsympathetic treatments are resisted in the wider interests of the appearance of the Conservation Area. Details of the LDO are yet to be specified and will be presented to Committee at a later date.

#### Case for the Article 4 Direction

- 3.12 An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the Council for that development. English Heritage advises that Article 4 Directions can increase the public protection both of designated and non-designated heritage assets, and help the protection of the setting of all heritage assets, including listed buildings.

- 3.13 The Article 4 Direction would cover the retail/commercial centre of the town, including the buildings along High Street, West Street, The Delph, Belmont Street and Midland Road, and residential properties along Church Street. Most of the buildings along the High Street are shops, but there are a mixture of tenancies and a number of office and residential uses. The predominant building material is brick, with terracotta or stone dressings, with a few examples of painted and rendered brick. Roofing is mostly of Welsh slate, with a few examples of clay tiles. The buildings of High Street were constructed during a short timeframe during the late Victorian period and share common details and a consistent character, which unifies the street frontage. They were largely built as commercial properties and therefore retain key characteristics – broad frontages with large shop windows, a steady rhythm of identical shopfronts, repeated first floor sash windows, entrances to flats and passages between groups of buildings.
- 3.14 Victorian and Edwardian shopfronts survive and there are a large number of restored shopfronts, largely based on photographic evidence, which have replicated the Victorian details. The 19<sup>th</sup> century shopfronts have particular characteristics such as the use of glazed brick for stall risers, the use of curved glass to frame entrances, the use of encaustic tiles for recessed shop doorways, decorative spandrels, plate glass first floor shop windows and clerestory glazing.
- 3.15 Many original timber panelled doors have been retained or reinstated under arched doorcases. These generally provide access to residential accommodation above the retail units, and are separate from the shop front entrances. At first floor level many of the original timber windows survive, or have been reinstated with grant assistance. In addition to the sash and casement windows there are occasional examples of large, first floor plate glass shop windows, which reflect the commercial prosperity of the town during the last decades of the 19<sup>th</sup> century.
- 3.16 Along West Street the properties are more individual in character, larger in scale and there are a number of landmark properties. These reflect a much longer and older phase of development and redevelopment. Church Street contains a mixture of commercial and residential properties. Many of these were terraced houses, which were adapted as demand for shops grew, and these are often smaller in scale, with smaller and more intimate shopfronts than those along the High Street. Terraced houses have unified and bespoke details, such as the use of encaustic tiles, moulded terracotta and moulded stone, ornate decorative details and sash windows.
- 3.17 The NPPF states at 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...”*.

- 3.18 National Planning Practice Guidance (“the NPPG”) advises that provided *“there is justification for both its purpose and extent, an Article 4 Direction can... cover an area of any geographic size, from a specific site to a local authority-wide area; remove specified permitted development rights related to operational development or change of use; and remove permitted development rights with temporary or permanent effect”*. It also advises 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 [and] the potential harm that the Direction is intended to address should be clearly identified”*. It goes on to say that *“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 [and] the installation of micro-generation equipment.”*
- 3.19 A photographic building record of all properties within the Conservation Area was undertaken by the Council in 2005. Since that record was undertaken, a number of alterations have occurred which have damaged the special character of the Conservation Area. The difference in the detail is illustrated at Appendix A. These alterations have occurred because planning permission was not required. They include painting brickwork, painting glazed brick stall-risers, and the introduction of garish colours into the streetscene. Repainting shopfronts can dramatically affect and alter the traditional appearance of an historic building, particularly if the fascia is treated differently, with the elevation becoming disjointed. In many instances these alterations can be controlled through the removal of permitted developments rights for the minor operation of painting.
- 3.20 A number of residential properties have also been altered by the removal of original sash windows, the introduction of concrete roof tiles in place of slate and the alteration of the traditional boundary walls and replacement with concrete. Now that residential properties are included in new grant initiatives, it will be important to protect the public investment in the streetscape and the historic town centre.
- 3.21 Boundary walls are particularly vulnerable in Swadlincote. These are generally built from local brick, often of stock bricks, with the locally available clay or salt-glazed copings. Salt-glazed copings are no longer manufactured. Whilst these details were once commonplace in Swadlincote, so many have been removed over the years that they are becoming a rarity. Many walls have recently been reinstated and new copings added to enhance the Conservation Area and restore enclosure where this was lost. Boundaries or enclosures within the Conservation Area do not require express planning permission for total demolition unless they are over 1 metre high on the highway frontage, or 2 metres high on any other boundary. In practice this means that most of the walls within the Conservation Area could be demolished following a prior notification for such works. This is a significant threat to the character of the Conservation Area and to the programme of reinstatement of boundaries, which the Council and funding partners have supported with grant-aid and have identified as a priority.
- 3.22 The special historic and architectural interest of the buildings and spaces in this area was recently recognized by undertaking an appraisal of the special qualities of Swadlincote town centre. The Swadlincote Conservation Area Character Statement (SCACS) was adopted in October 2014.

- 3.23 Strenuous efforts have gone into protecting the character of Swadlincote town centre and in enhancing its special interest, through grant schemes funded by local partners and property owners. The Council offers free pre-application advice on all aspects of design and conservation issues relating to the historic environment. In many instances this advice, combined with grant initiatives in partnership with the County Council and English Heritage, has led to building owners undertaking detailed restoration and enhancement. It is important that all of that investment is protected through the control of inappropriate works and works which undo or undermine the grant-aided projects and any future grant-aided work. The introduction of a requirement for planning permission to alter or demolish walls will protect the investment that has gone into the public realm and protecting this overlooked area of significance and will enable each proposal to be assessed on its own merits; with potentially more walls and copings being restored/reinstated.
- 3.24 The removal of permitted development rights does not apply to all buildings in the Conservation Area, but only to those where the special architectural or historic interest is vulnerable. The following selection criterion has been used to identify buildings that should be included within the Article 4 Direction:
- all properties that date from before circa 1930 that survive in anything like their original condition (i.e. with roofing materials and walling materials preserved); and
  - modern buildings with a traditional Victorian style shopfront design (in this case, the Direction applies to painting only).
- 3.25 In practice, therefore, most of the mid-late 20<sup>th</sup> and 21<sup>st</sup> century buildings are not included in the Article 4 Direction, unless they have been designed in such a way as to replicate historic details. For the majority of the mid-late 20<sup>th</sup> century buildings, there is no specific requirement for the retention of traditional, rich or Victorian colours. In addition these buildings tend to have larger fascias incorporated into the design, tend to be self-regulating as a result of the landlord control, and there is a much greater consistency in the treatment of elevations. A number of these sites are also included in the list of priority sites for redevelopment.
- 3.26 There are specific areas where there is not considered to be a local problem requiring additional control, such as the introduction of solar panels and satellite antennae. There is no history of solar panels being provided for the south-facing roofs of the commercial properties along High Street. Satellite antennae have been erected intermittently on a few domestic properties along Church Street, but they are generally quite discreet and small.
- 3.27 Residential terraces along Hill Street, Russell Street and Alexandra Road are generally tucked out of sight from the main views and have already been extensively altered by the removal of traditional doors and windows. As these properties have generally been excluded from grant initiatives, there has been no history of public investment. There are considered to be sufficient controls within the current provisions of the GPDO to control demolition and the larger alterations to these terraced properties.

- 3.28 Commercial properties are afforded some permitted development rights, with some also applicable to residential property. The District Council seeks to control the use of appropriate period colours to renders and stucco, painted stonework/brickwork, all joinery work to both original and new shop fronts and for picking-out, window/door joinery. It also seeks to prevent the inappropriate painting of existing un-painted brickwork.
- 3.29 Churches are also excluded from the Article 4 Direction. Emmanuel Church is grade II listed, whilst West Street Methodist Church and Hill Street Baptist Church have both received grant-aid funding for restoration works and there is not considered to be any threat to these.

#### Effect of the Article 4 Direction

- 3.30 Reference should be made to the Schedule and Plan at Appendix A. These would form part of the Direction, indicating each address affected, the type of property, the permitted development rights to be removed and the relevant Schedule, Part and Class of the GPDO. The Schedule has been established to remove as few rights as possible taking into account existing restrictions on Conservation Area properties within the GPDO, and where the execution of works would be considered to have a detrimental impact on the character and appearance of the Conservation Area.
- 3.31 For ease of reference the following quoted Parts and Classes are firstly grouped to those which apply to both residential and commercial property, before dealing with just commercial permitted development rights. The Schedule includes properties in both residential and non-residential use (for planning purposes non-residential use includes shops, estate agents, restaurants/cafes, public houses, takeaways, offices, opticians, halls and mixed use premises).
- 3.32 In order to assist readers of the following paragraphs, the specific permitted development rights to be removed are grouped into residential only, residential and commercial, and commercial only. Each section is accompanied by relevant extracts of the GPDO for ease of reference.

#### Residential Properties

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class A**

**Permitted development**

**A. The enlargement, improvement or other alteration of a dwellinghouse.**

**Development not permitted**

**A.1.** Development is not permitted by Class A if—

- (i) it would consist of or include—
  - (i) the construction or provision of a veranda, balcony or raised platform,
  - (ii) the installation, alteration or replacement of a microwave antenna,
  - (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
  - (iv) an alteration to any part of the roof of the dwellinghouse.

**A.2.** In the case of a dwellinghouse on article 1(5) land, development is not permitted by Class A if—

- (a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;
- (b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or
- (c) the enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse.

**Conditions**

**A.3.** Development is permitted by Class A subject to the following conditions—

- (a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

3.33 Doors and windows often reveal the age of a building and their loss can have a most damaging impact on the character and appearance of the individual building or a group, if it is part of a terrace.

3.34 There is a serious threat to the character of the area by the removal of original sash windows and their replacement with inappropriate designs and materials. There has been a successful, widespread campaign to reinstate sash windows along the High Street. Other prominent residential areas with terraces along Church Street and West Street have equal, if not greater, architectural interest and would have originally had sash windows. The terraces selected within the Conservation Area still retain some sash windows. The insertion of modern uPVC double glazed units requires significantly thicker frames to be inserted which appear bulky and out of character with the building, and often alter the size and pattern of the actual glass panes and the depth of the window disrupting the original proportions of the window.

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class C**

**Permitted development**

**C. Any other alteration to the roof of a dwellinghouse.**

**Development not permitted**

**C.1.** Development is not permitted by Class C if—

- (a) the alteration would protrude more than 150 millimetres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;
- (c) it would consist of or include—
  - (i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
  - (ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.

3.35 With the exception of a few examples of clay tiles, the predominant roof covering material within the area is natural slate (Welsh), with this applied to almost all properties providing uniformity to the appearance of the roof-scape throughout the Conservation Area. There are a few examples of concrete roof tiles; this is not a traditional roof covering and is unsightly and detrimental to the character and appearance of the Conservation Area.

3.36 The Direction seeks to control any alteration to the roof covering of the residential properties within the area covered by the Direction, as this would have a detrimental impact on the character and appearance of the Area. The Direction also seeks to prevent any loss of the traditional chimneystacks and original chimneypots that still remain, many of which have been reinstated or repaired with grant aid (see Class G below). Chimneys are often highly decorative within Swadlincote.

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class D**

**Permitted development**

**D. The erection or construction of a porch outside any external door of a dwellinghouse.**

**Development not permitted**

**D.1.** Development is not permitted by Class D if—

- (a) the ground area (measured externally) of the structure would exceed 3 square metres;
- (b) any part of the structure would be more than 3 metres above ground level; or
- (c) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.

3.37 Many of the terraced houses are set back within small front gardens and have highly decorative doorcases and inset porches. Whilst there are currently no porches attached to these frontages along Church Street, these could be significantly disfigured with porches.

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class G**

**Permitted development**

**G.** The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

**Development not permitted**

**G.1** Development is not permitted by Class G if—

- (a) the height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more; or
- (b) in the case of a dwellinghouse on article 1(5) land, the chimney, flue or soil and vent pipe would be installed on a wall or roof slope which—
  - (i) fronts a highway, and
  - (ii) forms either the principal elevation or a side elevation of the dwellinghouse.

3.38 The decorative chimneys and pots are part of the special character of the Conservation Area, often decorative with ornate pots. These sit on multiple roofs and at different levels. Many of these have been repaired or reinstated with grant aid. The town sits on hilly terrain and the loss of chimney stacks would affect the wider townscape and roofscape, as seen from a number of vantage points.

**Residential and Commercial Buildings**

**Schedule 2, Part 2 (Minor Operations)**  
**Class A**

**Permitted development**

**A.** The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

**Development not permitted**

**A.1.** Development is not permitted by Class A if—

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—
  - (ii) in any other case, one metre above ground level;
- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;
- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater.

**Schedule 2, Part 31 (Demolition Of Buildings)**

**Class B**

**Permitted development**

**B.** Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

**Development not permitted**

**B.1** Development is not permitted by Class B where the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area).

3.39 Along Church Street, the residential properties share boundary walls and unifying details. These are all too easily lost through the partial demolition of walls to create off-street car parking or pull-ins. The proposed removal of permitted development rights for demolition of boundary walls for residential properties along Church Street seeks to protect an important characteristic of the conservation area, as recognized in the Character Appraisal. This requirement extends to those commercial properties along High Street, where the public realm has changed to reveal the backs of terraces fronting Ernest Hall Way. Many of these have been repaired and restored with grant aid.

3.40 The Direction would remove permitted development rights with regard to all types of enclosure for the traditional properties affected in the Area, ensuring that the Council can control the design and materials used for any walls, fences or other types of enclosure.

**Schedule 2, Part 2 (Minor Operations)**

**Class C**

**Permitted development**

**C.** The painting of the exterior of any building or work.

**Development not permitted**

**C.1.** Development is not permitted by Class C where the painting is for the purpose of advertisement, announcement or direction.

**Interpretation of Class C**

**C.2.** In Class C, “painting” includes any application of colour.

**Schedule 2, Part 42 (Shops Or Catering, Financial Or Professional Services Establishments)**  
**Class A**

**Permitted development**

**A. The extension or alteration of a shop or financial or professional services establishment.**

**Development not permitted**

**A.1.** Development is not permitted by Class A if—

- (e) any alteration would be on article 1(5) land;
- (f) the development would consist of or include the construction or provision of a veranda, balcony or raised platform;
- (g) any part of the development would extend beyond an existing shop front;
- (h) the development would involve the insertion or creation of a new shop front or the alteration or replacement of an existing shop front; or
- (i) the development would involve the installation or replacement of a security grill or shutter on a shop front.

**Conditions**

**A.2.** Development is permitted by Class A subject to the following conditions—

- (a) any alteration shall be at ground floor level only;
- (b) any extension shall, in the case of article 1(5) land, be constructed using materials which have a similar external appearance to those used for the building being extended; and

3.41 A number of retail premises have been considerably extended to the rear in the past, of which many are visible from public aspects such as Civic Way or the Pipeworks development. Whilst the height and extent of any extensions are already controlled by way of the limitations quoted above, as well as how much curtilage remains undeveloped, there are numerous examples where unsympathetic brick, render or tile choices, as well as eaves and verge details, have been implemented. Furthermore partial demolition of properties within a Conservation Area is possible, including existing extensions, without the need for any prior consent from the Council. In this light it is felt important to control such works in the interests of securing appropriate materials and detailing to any extensions erected.

3.42 The proposed removal of permitted development rights for painting seeks to protect the character of the Conservation Area, which can be easily harmed by garish colours and disjointed colour schemes and by painting brickwork or render which has historically been painted with a soft or neutral colour palette, or painting previously unpainted brickwork, which can affect the unified character of terraced rows. The Direction would remove permitted development rights with regard to all types of painting from affected properties in the Area, ensuring that the Council can control the colour used for any walls, windows, doors and shopfronts.

**Procedure for the Article 4 Direction**

3.43 The immediacy of any threat and potential compensation liability are considerations in determining whether to use a non-immediate or immediate Direction. An immediate Direction is not considered to be justified in this circumstance as there is not understood to be an immediate threat to properties within the Conservation Area, and it could also give rise to claims for compensation – especially given the large number of landowners affected.

3.44 The GPDO provides for the making of a “non-immediate” Article 4 Direction where permitted development rights are only withdrawn upon confirmation of the Direction following local consultation. Before April 2010 the Secretary of State confirmed certain Article 4 Directions, but it is now for the Council to perform this action. The Secretary of State will only exercise their powers in relation to Article 4 Directions if there are very clear reasons why intervention is necessary.

3.45 As soon as practicable after the Direction has been made, the Council should give notice by:

- publication of the notice in at least one newspaper circulating in the locality to which the Direction relates;
- by site display at no fewer than two locations within the area to which the Direction relates, for no less than 6 weeks;
- by serving the notice on every owner and occupier affected by the Direction unless the number of owners or occupiers affected makes individual service impracticable; and
- by notifying the County Council.

The notice must specify a period of at least 21 days in which any representations may be made. The Secretary of State (SoS) should be notified on the same day that the notice of an Article 4 Direction is first published or displayed locally. Given there is a need to display site notices for a minimum of 6 weeks, and the potential need to consider any representations made in confirming the Direction, an overall consultation period of 6 weeks is recommended.

3.46 In addition to the above, the notice must specify the date on which it is proposed that the Direction will come into force. This must be at least 28 days, but no longer than two years, after the start of the 21 day consultation period. However the Direction cannot have effect unless it has also been confirmed by the Council, after fully considering representations received and if the Secretary of State has not intervened. Without prior confirmation the Direction cannot have effect and any material changes to the Direction resulting from consultation in intervention by the SoS will require re-consultation. In this respect it is proposed that the date the Direction should come into force be set as 6 months from the date of the notice so to allow sufficient time for consultation, subsequent consideration and reporting of representations, any longer period as may be specified by the SoS, and modification and/or confirmation of the Direction.

3.47 It is proposed that if the SoS has not intervened and no material changes to the Direction are required as a result of representations received, the Direction be confirmed under delegated powers in consultation with the chair and vice chair of the Committee. In any other case the matter would be referred back to Committee.

3.48 The Council must ratify the process and serve notice locally and notify the SoS as soon as practicable after the Direction has been confirmed, giving details of the date the Direction will come into force.

#### **4.0 Financial Implications**

- 4.1 Article 4 Directions cannot apply retrospectively to address development which has previously occurred, nor to development that has been commenced at the time that a Direction comes into force. Extant planning permissions would also be unaffected. In this respect the Direction would have no financial bearing on such circumstances.
- 4.2 The Economic Development Manager has been consulted on the proposed Direction. He advises that an attractive and high quality town centre environment is a key aim of the Swadlincote Town Centre Vision and Strategy (2012). Recognising the wider value of its historic buildings and landmarks can help Swadlincote to compete for footfall with neighbouring centres and online retailing, providing wider financial benefits and resilience. However he also recognises there could be instances where the Direction might lead to additional costs and constraints on town centre businesses, many of which are small independent enterprises. In order to provide for an appropriate balance so not to stifle enterprise, it will be important to consider their needs sympathetically in implementation of the Direction and any subsequent LDO, and to offer grant support wherever funding for improvement programmes can be secured.
- 4.3 Any planning application required as a consequence of an Article 4 Direction is exempt from the usual planning application fee.
- 4.4 The costs relating to the issue of the Article 4 Direction can be contained within the current revenue budget provision within Community and Planning Services. However, there is no budget provision to cover the costs of any compensation claims arising from the issue of the Direction.
- 4.5 If the Local Planning Authority refuses planning permission for development which would have been permitted development if it were not for an Article 4 Direction, or if permission is granted subject to more limited conditions than permitted development rights would normally allow, then the Local Planning Authority may be liable for compensation.
- 4.6 Compensation can be claimed for abortive work expenditure or other losses *directly attributable* to the withdrawal of permitted development rights, as defined by Section 107 of the 1990 Act. Any claim must be made within 12 months of the refusal of a planning application. In addition to this, claims can only be made against the refusal of a planning application submitted within 12 months of the effective date of the Direction.

## **5.0 Corporate Implications**

- 5.1 Protecting local amenity contributes towards the Corporate Plan theme of Sustainable Development.
- 5.2 In accordance with the Council's Constitution and Scheme of Delegation, the decision to make an Article 4 Direction rests with the Planning Committee. The decision is amenable to the normal requirements of local authority decision making (lawfulness, rationality, reasonableness and procedural fairness). The decision is open to challenge through judicial review. An application for judicial review must be made on grounds of illegality, irrationality or procedural impropriety.

## **6.0 Community Implications**

- 6.1 Built development that is protected for its value to local amenity, which enhances the character of an area and therefore is of community benefit for existing and future residents, helps to achieve the vision for the 'Vibrant Communities' theme of the Sustainable Community Strategy.

## **7.0 Summary**

- 7.1 The Article 4 Direction mechanism is the only way to control the painting of buildings, demolition of curtilage walls, removal of roofscape features and the use of unsympathetic materials in extensions, as this type of activity could otherwise go unregulated.
- 7.2 The Direction would help to preserve the intrinsic qualities of buildings and curtilage features within the Swadlincote Conservation Area in the interests of the amenity of the area in terms of local historic significance.

## **8.0 Background Papers**

Swadlincote Conservation Area Character Statement (2014);

The Town and Country Planning (General Development Development) (England) Order 1995 (as amended);

The National Planning Policy Framework

([www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2))

The National Planning Practice Guidance website

([planningguidance.planningportal.gov.uk](http://planningguidance.planningportal.gov.uk)); and

English Heritage Guidance ([www.english-](http://www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/)

[heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/](http://www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/))

## **APPENDIX A**

Illustrative justification for Article 4(1) Direction – Examples from 2005 and 2014

**SWADLINCOTE TOWN CENTRE**

**ARTICLE 4(1) DIRECTION – SCHEDULE**

Note: where this Schedule refers to commercial properties, this may include flats to the upper floors which are not separately listed. Every attempt has been made to identify each and every instance. In addition some current use classes specified are based on an informal decision as opposed to an established and known lawful use through passage of time or planning permission.

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
<b>BELMONT STREET</b>				
1	Extreme Gamez	A1	Painting and extensions	Part 2 Class C Part 42 Class A
10	Moza HQ Indian Restaurant	A3	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
Brook House	Hughes and Owen Dental Care	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>CHURCH STREET (Odd)</b>				
3, 5, 7, 17, 19, 21, 23, 25 & 27		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
1	Sweet Shop & Convenience Store	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
9	The Blue Brick Salon	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
11	The Biz	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C
13	Love Hair	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
15	<Vacant – formerly Bliss Bridal Wear>	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
<b>CHURCH STREET (Even)</b>				
6, 10, 12, 14, 16, 18 & 20		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
8a	Reflections Beauty	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
34	Buckler Spencer Chartered Accountants	A2	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>COPPICE SIDE</b>				
12-16		Sui-generis (flats)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
Unit 1 The Pipeworks	Subway	A1	Painting	Part 2 Class C
Unit 18 The Pipeworks	Swadlincote Veterinary Surgery	D1	Painting and means of enclosure	Part 2 Classes A and C
Unit 20 The Pipeworks	The Tall Chimney	A4	Painting	Part 2 Class C
<b>ERNEST HALL WAY</b>				
1, 2, 3, 4 & 5		Sui-generis (flats)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>GROVE STREET</b>				
48	South Derbyshire Voluntary Services Centre	B1(a)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>HIGH STREET (Odd)</b>				
1	Ministry of Design	A1	Painting	Part 2 Class C
3	Firefly Tattoo Studio	Sui-generis	Painting	Part 2 Class C
5	The Air Ambulance Service	A1	Painting	Part 2 Class C
7	British Heart Foundation	A1	Painting	Part 2 Class C
9	<Vacant – formerly Jewellers>	A1	Painting	Part 2 Class C
11-13 (First Floor)	Anarchy Tattoo Studio	Sui-generis	Painting	Part 2 Class C
11-13	Thomson Travel	A2	Painting and extensions	Part 2 Class C Part 42 Class A
15-17	Boots PLC	A1	Painting and extensions	Part 2 Class C Part 42 Class A
19	Cadley Cauldwell Estate Agents Ltd.	A2	Painting and extensions	Part 2 Class C Part 42 Class A
23	William Hill	A2	Painting and extensions	Part 2 Class C Part 42 Class A
23a		Sui-generis (flat)	Painting and extensions	Part 2 Class C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
25	Reach South Derbyshire	A1	Painting and extensions	Part 2 Class C Part 42 Class A
27	Card Factory	A1	Painting and extensions	Part 2 Class C Part 42 Class A
29	Happy Homes YMCA Charity Shop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
33	Max Spielmann The Photo Expert	A1	Painting and extensions	Part 2 Class C Part 42 Class A
35-39	Telegraph News Shop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
41	HSBC Bank	A2	Painting and extensions	Part 2 Classes A and C Part 42 Class A
45	Hallmark Cards	A1	Painting and extensions	Part 2 Class C Part 42 Class A
49	Newton Fallowell	A2	Painting and extensions	Part 2 Class C Part 42 Class A
49 (rear of)		Sui-generis (flat)	Painting	Part 2 Class C
49a	Hairs and Graces	A1	Painting and extensions	Part 2 Class C Part 42 Class A
51-53	Swinton Insurance	A2	Painting and extensions	Part 2 Class C Part 42 Class A
55	Friston Small	A2	Painting and extensions	Part 2 Class C Part 42 Class A
55a		Sui-generis (flat)	Painting	Part 2 Class C
57	S. Colliers Butchers Ltd.	A1	Painting and extensions	Part 2 Class C Part 42 Class A
59	Lloyds Bank	A2	Painting and extensions	Part 2 Class C Part 42 Class A
61-63	Jon Paul Formal Menswear	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
61-63 (off Pipe Yard Passage)	The Cutting Room	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
61-63 (off Pipeyard Passage)	Slinkki Tattoo Studio	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C
67	Foresters Arms (with managers flat above)	A4	Painting	Part 2 Class C
69	Empire Computers	A1	Painting and extensions	Part 2 Class C Part 42 Class A

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
69a	Redz Barber Shop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
71	Nomad Tattoo and Retail	Sui-generis	Painting	Part 2 Class C
75	Fortune Garden	A5	Painting	Part 2 Class C
77	USA Chicken	A5	Painting	Part 2 Class C
79	John Mills Curtains and Blinds	A1	Painting and extensions	Part 2 Class C Part 42 Class A
<b>HIGH STREET (Even)</b>				
4	<Vacant – formerly Select>	A1	Painting and extensions	Part 2 Class C Part 42 Class A
6	Greggs	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
8-10	St. Giles	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
12 & outbuildings at rear	Hillfield Animal Home Charity Shop	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
16	Birds Bakery	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
16A	Prince and Bates Opticians	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
16A	Sixteen A Dental Care	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
18	Scrivens Opticians and Hearing Care	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
18A Flat 1 & 2		Sui-generis (flats)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
20	McQueens	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
22	Smith Partnership	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
24	Go Mobile	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
26C	<Vacant – formerly pawnbrokers/pay day loan shop>	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
26	Specsavers Opticians	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
26B	Cashino Gaming	Sui-generis	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
28	Yum Yum Sweet Company	A1	Painting and extensions	Part 2 Class C Part 42 Class A
28A	Swadlincote Jewellery Workshop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
30-32	Mind	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
38-40	Co-op Travel	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
42	Your Move	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
44	Clintons	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
46-48	Peacocks	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
52	Santander	A2	Painting and extensions	Part 2 Class C Part 42 Class A
56	AGE UK Derby & Derbyshire	A1	Painting and extensions	Part 2 Class C Part 42 Class A
58	Toxic Cherry	A1	Painting and extensions	Part 2 Class C Part 42 Class A
60	The Money Shop	A2	Painting and extensions	Part 2 Class C Part 42 Class A
62	Nelsons Insurance Brokers	A2	Painting and extensions	Part 2 Class C Part 42 Class A
64-66	Weddings R Us, Flowers R Us and Parties R Us	A1	Painting and extensions	Part 2 Class C Part 42 Class A
<b>HILL STREET (Even)</b>				
2	Swadlincote Footcare Clinic	D1	Painting and means of enclosure	Part 2 Classes A and C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
4	American and UK Nails	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C
6	Swadlincote Chiropractic Clinic	D1	Painting and means of enclosure	Part 2 Classes A and C
12	P3	B1	Painting and means of enclosure	Part 2 Classes A and C
<b>MARKET STREET</b>				
	Wesleyan Church Hall	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
	The Sir Nigel Gresley PH	A4	Painting	Part 2 Class C
<b>MIDLAND ROAD</b>				
2	<Ground floor vacant (former estate agents); first floor as estate agents>	A2	Painting	Part 2 Class C
4-6	Buttercups Giftware	A1	Painting	Part 2 Class C
8	<Vacant – formerly The Aquatic Pet & Garden Warehouse>	A1	Painting	Part 2 Class C
12	David Elks Opticians	D1	Painting	Part 2 Class C
14	Sweeney Swad the Barbers	A1	Painting	Part 2 Class C
18	Barclays Bank	A2	Painting	Part 2 Class C
22, Bank House	<Vacant – formerly South Derbyshire Mental Health Association >	B1(a)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
	Constitutional Club	D2	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>WEST STREET (North side)</b>				
8 & 8a	<Vacant>	A1	Painting, demolition and means of enclosure	Part 2 Classes A and C Part 31 Class B
12 & 14	The Fairer Choice	A1	Painting, demolition and means of enclosure	Part 2 Classes A and C Part 31 Class B
20	Ward and Brewin Funeral Services	A1	Painting	Part 2 Class C
22-24	New Empire Casino Lounge	Sui-generis	Painting	Part 2 Class C
	Autoquip	A1	Painting	Part 2 Class C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
<b>WEST STREET (South side)</b>				
17	The Bear	A4	Painting	Part 2 Class C
19	Rainbow	A5	Painting	Part 2 Class C
21	New Empire	A4	Painting	Part 2 Class C
23 & 23a	Timms Solicitors	A2	Painting and means of enclosure	Part 2 Classes A and C
25	Lloyds Cycles	A1	Painting and means of enclosure	Part 2 Classes A and C
27		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
29	Teddy's Baby Boutique	A1	Painting and means of enclosure	Part 2 Classes A and C
31	Home Instead Senior Care	B1(a)	Painting and means of enclosure	Part 2 Classes A and C
33	Design Hair by Imogen	A1	Painting and means of enclosure	Part 2 Classes A and C
35	Pupils School Wear	A1	Painting and means of enclosure	Part 2 Classes A and C
37 & 39		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
43	Ethos Hairdressing	A1	Painting	Part 2 Classes A and C
43A		Sui-generis (flat)	Painting	Part 2 Class C
47	Andrew Charles of Visage	A1	Painting	Part 2 Classes A and C
47A & 47B		Sui-generis (flats)	Painting	Part 2 Class C