

---

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 5</b>
<b>DATE OF MEETING:</b>	<b>20 JANUARY 2015</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY AND PLANNING SERVICES</b>	
<b>MEMBERS' CONTACT POINT:</b>	<b>Chris Nash (ext 5926)</b>	
<b>SUBJECT:</b>	<b>Town and Country Planning (General Permitted Development) Order 1995 (as amended) Article 4 Direction affecting Victoria House, 33 High Street, Woodville (under guidance contained in National Planning Practice Guidance)</b>	
<b>WARD AFFECTED:</b>	<b>Woodville</b>	<b>TERMS OF REFERENCE: PO1</b>

---

## **1.0 Background**

1.1 On 5 August 2014 the Planning Committee resolved to:

- serve an immediate Article 4 Direction to remove permitted development rights that (among other things) would allow demolition of the building without the need for express planning permission; and
- that authority be delegated to the Head of Planning Services to consider any representations received, and to confirm the Direction in consultation with the Chair and Vice Chair.

A copy of the report for that meeting is attached at Appendix 1.

1.2 Consultation on this Direction was undertaken as defined in the legislation over a 6 week period by way of direct notification to interested parties, a site notice and a press notice with the latest publicity (the press notice) expiring on 26 September 2014. This report summarises and addresses representations received through consultation and makes the following recommendation.

## **2.0 Representations received**

2.1 The National Planning Casework Unit (NPCU) responded on behalf of the Secretary of State with no request for the matter to be referred to him for consideration, instead reminding the Council of the need to advise when the Direction is or is not confirmed.

2.2 The landowner has provided a copy of their representation to the NPCU. This sets out the history of contemporary discussions between the landowner and Council officers relating to development of the property as well as the chronology of progress around the Prior Notification for demolition to which this Direction prevents. The landowner

considers that the Direction does not relate to “exceptional circumstances”, as advocated in national guidance, and that they have seen no evidence that the demolition would cause material harm in the interests of local amenity or proper planning of the area. They advance that the building, if left empty, would gradually fall into disrepair and that the best option is to redevelop the site with a modern development. They also note that officers have accepted that retail development would be acceptable in principle. Finally they make a position statement in that in the event the Direction is confirmed, they reserve the right to make a claim for compensation should a future planning application for demolition be refused based on additional costs associated with satisfying archaeological matters under the Prior Notification and loss of profit from a missed retail opportunity. The full representation is attached in Appendix 2.

### **3.0 Relevant legislation and guidance**

3.1 Articles 4, 5 and 6 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (“the GPDO”); and Sections 107 and 108 of the Town and Country Planning Act 1990 (“the Act”).

3.2 The National Planning Practice Guidance (NPPG) also provides relevant advice.

### **4.0 Assessment**

4.1 The landowner refers to a now out-of-date document. There is no longer an “exceptional circumstances” test under national guidance. The NPPG now 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”*. The principle of the Direction and the report to the Committee on 5 August is considered compliant with this guidance, and the views as to the degree of harm arising and the importance of this building to the area remains unchanged. The previous report to Committee is attached as Appendix 2.

4.2 The argument of the building falling into disrepair does not weigh heavily in the recommendation below. The landowner is obliged and likely to maintain the building to a reasonable degree, and with it in a watertight and reasonably well maintained condition a period of vacancy is not of concern. Ultimately without consent to demolish it will likely either fall to another use or be sold on to a more willing third party. Furthermore whilst it is not denied that officers have accepted that retail development would be acceptable in principle, this was advice on a matter of principle and pre-application discussions made it clear that it was preferential to see the existing building converted for such a use instead of it being replaced.

4.3 The representation made does not alter the stance as to the value of the building and the purpose of the Direction as set out in the August report.

### **5.0 Financial Implications**

5.1 Turning to the risk of compensation, this is discussed in the August report. The key tests for compensation are that it relates to expenditure associated with abortive work or other loss or damage directly attributable to the withdrawal of permitted development rights, as defined by Sections 107 and 108 of the Act. Any claim must also 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 (i.e. before 13 August 2015).

- 5.2 In terms of abortive work it would be for the landowner to demonstrate that work undertaken in order to satisfy the County Archaeologist under the Prior Notification has been abortive. The County Archaeologist's representation under that Notification was that the principle of demolition (as detailed in the method statement at that time) was not acceptable and further evidence needed to be prepared. If a planning application for redevelopment of the site is made, involving demolition of the building in the same manner, the response from the County Archaeologist would undoubtedly be the same. It is therefore tenuous to suggest that the costs of preparing the additional evidence are "abortive" since they will be necessary costs in order to establish an acceptance on this point – whether it be through Prior Notification or a planning application.
- 5.3 In terms of lost profit, this is a weak argument. The test under Section 107 of the Act is that the loss or damage has to have been sustained and it is directly attributable. Not only can there be no loss or damage sustained at this point, given that the premises cannot be used lawfully for retail, but it would be virtually impossible to demonstrate a directly attributable cost. This is because there is no evidence that a retailer is currently standing in the wings to take on this site; no certainty that a planning permission could and would be implemented; and the inherent and variable delays to development and level of profit caused by other legislative requirements, availability of finance, market forces and other influences. In short it is virtually impossible to estimate costs which represent a direct impact given the numerous influences.
- 5.4 The risk of compensation is not considered to weigh heavily in the balance.

## **6.0 Recommendation**

- 6.1 That the Direction be confirmed without modification.

---

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM:</b>
<b>DATE OF MEETING:</b>	<b>5 AUGUST 2014</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY AND PLANNING SERVICES</b>	<b>EXEMPT PARAGRAPH NO: 6</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Chris Nash (ext 5926)</b>	
<b>SUBJECT:</b>	<b>Town and Country Planning (General Permitted Development) Order 1995 (as amended) Article 4 Direction affecting Victoria House, 33 High Street, Woodville (under guidance contained in National Planning Practice Guidance)</b>	
<b>WARD AFFECTED:</b>	<b>Woodville</b>	<b>TERMS OF REFERENCE: PO1</b>

---

### **1.0 Reason for Exempt**

- 1.1 The Direction proposed would affect the rights to development otherwise granted deemed planning permission by virtue of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the GPDO"), prior publication of which may prejudice the effectiveness of the Direction.

### **2.0 Recommendations**

- 2.1 The Committee is requested to authorise the following in respect of Victoria House, at 33 High Street, Woodville:
- Serve an immediate Article 4 Direction to remove permitted development rights that (among other things) would allow demolition of the building without the need for express planning permission; and
  - That authority be delegated to the Head of Planning Services to consider any representations received, and to confirm the Direction in consultation with the Chair and Vice Chair.

### **3.0 Purpose of Report**

- 3.1 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 the demolition of the building, as could currently take place without express planning permission.

#### 4.0 Detail

- 4.1 Victoria House represents the last remaining part of the former Brunt and Bucknall Brewery on the High Street frontage, with buildings to the side and rear having been first put to alternative uses after the second World War and then demolished to allow for the creation of Viking Business Park in the 1990s. It is a uniform red brick building with a slate tile roof, gable detailing including one gable inscribed with a date stone "B.B. and Co. / 1896", double height windows serving a single internal space with basement below, and iron railings to the frontage which define the curtilage to the building and contribute to its setting. There is a rear projection which was extended in the 1990s (ref: 9/392/1117). The Brunt and Bucknall Brewery was the first to be established in Swadlincote in 1832. It was also the longest lived, surviving until 1927. This building is understood to have been a bottling store and is referenced as such in local publications. It is recorded in the Derbyshire County Council Historic Environment Record.
- 4.2 Victoria House is not a listed building, nor is it within a Conservation Area. Nevertheless the Development Control Archaeologist (DCA) observes that the building is of local significance, with architectural and evidential value in relation to the brewing industry of the 19<sup>th</sup> and 20<sup>th</sup> Century. The Derbyshire Conservation and Design Officer observes that whilst the building has architectural merit and is of local historic significance, it is considered English Heritage are unlikely to recommend the building be included on the national statutory list given it no longer has any "group value". Notwithstanding this, it is considered to be a building of substantial merit to the historical amenities of the area and positively contributes to the public realm given its dominant streetside location. Furthermore it appears to have survived largely unaltered during its nearly 120 year standing. Representations received under advertisement of the prior notification (see below) provide observations that this building is the only remaining building from the historic brewery with little else of historic interest left in Woodville despite significant industrial and commercial activity in the past.
- 4.3 Officers entered into pre-application discussions as to the re-use of the building in 2013, but following these discussions no further contact was had with the owner. In June 2014 the Council received a prior notification under Schedule 2, Part 31 of the GPDO of the intention to demolish the building. This action is significant in clearly setting out an intention for the future of the building and raises an immediate threat to its survival. In such circumstances the Council can either (1) confirm no objection and allow demolition; (2) not intervene allowing an automatic "grant" of permission to accrue after 28 days; or (3) seek further information as to the method of demolition and restoration of the site. At time of writing, given the Development Control Archaeologist considers a proper scheme of archaeological recording is undertaken, the third option has been activated. However once the applicant provides an appropriate scheme which satisfies the DCA, it would be unreasonable to delay determination further. In this light there is a degree of urgency when considering the appropriate manner of Article 4 Direction if it is decided to protect the building from demolition.

- 4.4 English Heritage advises that Article 4 Directions can increase the public protection both of designated and non-designated heritage assets. They may be used to require planning permission for the demolition of a non-designated heritage asset by removing demolition rights. The glossary to and paragraph 135 of the National Planning Policy Framework (“the NPPF”) allude to the use of “Local Lists” to elevate the status or importance of heritage assets which might not be afforded statutory interest. Whilst a Local List has not yet been finalised, this building is certainly a suitable contender given the above historical significance and contribution to local amenity.
- 4.5 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”*.
- 4.6 The NPPF states *“in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”*. The scale of the harm arising has already been set out above. Balanced against this harm is the applicant’s evidence of a marketing exercise. It is claimed there has been no meaningful interest in the premises. However this marketing has been focussed towards a retail use only – not reflecting the last lawful use of the premises as a soft play centre under planning permission ref: 9/2004/1491. It is not considered unreasonable that an alternative use for the building might be found (such as offices or residential) which is viable, has comparable or better outward impacts, and allows for the building to be retained. Furthermore representations received under the Prior Notification demonstrate a number of parties are interested in taking on ownership or a lease of the building for uses other than retail. At this point in time it is considered that the harm arising through the total loss of this heritage asset would outweigh the benefits arising through demolition and redevelopment of the site.
- 4.7 An Article 4 Direction with immediate effect may be made where there is an urgent, justified requirement for protection because the Local Planning Authority believes that development, to which the Direction relates, would constitute a threat to the amenities of the area. The loss of this building would represent a significant step in the evolution of Woodville, removing one of the few surviving heritage assets. Woodville carries a strong industrial past, not only in terms of the significance of the Brunt and Bucknall Brewery as outline above, but also the former pottery kilns and works. Making a Direction in respect of Victoria House is considered appropriate in regard to the protection of the amenities of the area in terms of its local historic significance.

- 4.8 The effect of the Direction would be to require the submission of a planning application for express permission for demolition that would otherwise benefit from permitted development rights (deemed planning permission) under Part 31, Classes A and B.
- 4.9 The Direction would come into force immediately on a provisional basis for 6 months. Following the serving of notices, including notification to the Secretary of State, there is a 21 day period to allow for full public consultation. After fully considering the representations received and after 28 days, if the Secretary of State has not intervened and it is considered appropriate, the Direction can be confirmed under delegated powers. If it is not confirmed within 6 months it will lapse.

### **5.0 Financial Implications**

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.

### **6.0 Corporate Implications**

- 6.1 Protecting local amenity contributes towards the Corporate Plan theme of Sustainable Development.
- 6.2 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.

### **7.0 Community Implications**

- 7.1 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.

## **8.0 Summary**

- 8.1 The Article 4 Direction mechanism is the only way to control demolition at the property, as this type of activity could otherwise go unregulated.
- 8.2 The Direction would help to preserve the building in the interests of the amenity of the area in terms of its local historic significance.

## **9.0 Background Papers**

Prior notification application file ref: 9/2014/0559;

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

The National Planning Practice Guidance website ([planningguidance.planningportal.gov.uk](http://planningguidance.planningportal.gov.uk)); and

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

## APPENDIX 2

*"We act for the owners of Victoria House, Lear Investments/MY Real Estate, and have received notification from South Derbyshire District Council of their intention to make an Article 4 Direction in respect of this property. The Article 4 Direction will remove the permitted development rights under any building operation consisting of demolition of Victoria House. We understand that you have received a copy of the proposed Article 4 Direction. As part of your consideration on whether it is appropriate to allow the proposed Direction to proceed, could you please take into account these representations on behalf of our client. Our representations provide background information on the subject site and our reasons for making the case that the Article 4 Direction should be cancelled.*

*PlanIT were instructed by M7 Real Estate to provide planning Consultancy advice on the potential reuse of Victoria House in August 2013. At that time the tenant of the building was about to relinquish its lease and our Client was considering options for attracting a new occupier. A local commercial agent, Innes England, had been employed to market the property and initial expressions of interest had been received from retail developers on the basis of demolishing Victoria House and replacing it with a new retail unit.*

*On the 22nd October 2013 a site meeting took place with Mr Chris Nash, Area Planning Officer and the Council's Conservation Officer to discuss the potential for retail development on the site. At the time of that meeting it was confirmed that Victoria House was not a building on the English Heritage Statutory List and was not on the Council's local list of historical buildings. The officers did however express their preference for a scheme which retained part of the existing structure. It was agreed that the marketing exercise would be extended to try to attract interest from a retail occupier who would be prepared to retain and convert the building. A copy of the marketing literature is attached to these representations; you will note that it was on the basis of a refurbishment proposal. The marketing exercise was not successful on the basis of a refurbishment and retail developers made it clear that the building was not suitable for conversion and that their interest continued to be on a demolition and new build basis. In the meantime, PlanIT prepared and submitted a Retail Sequential Assessment to the local planning authority and the Officers confirmed that the principle of a retail unit (circa 500 sqm. gross) on the subject site would be acceptable.*

*The marketing campaign continued over many months and in June 2014 it was decided to submit an application for prior notification to demolish the Victoria House building. That application was submitted to South Derbyshire Council on the 18th June 2014. The application included a Method Statement to explain the demolition process.*

*On the 14th July 2014 South Derbyshire District Council confirmed that demolition should not proceed until a method statement for a historic building recording had been agreed with the local planning authority. Our client subsequently commissioned the preparation of a method statement for recording the demolition works. The method statement was submitted to the Derby and Derbyshire Development Control Archaeologist for comment; discussions were ongoing to agree the final method statement and the last communication was from the County Archaeologist dated 14th August 2014 which included suggestions for amending the method statement. In the meantime, our client has received the proposed Article 4 Direction to which these representations refer.*

*I now turn to the substance of our Client's representations and the reasons why the Article 4 Direction should be cancelled. You will be aware that Government advice is that "local planning 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" (reference para. 2.1. Replacement Appendix D 2 Department Environment Circa 9/95 - General Development Consolidation Order 1995).*

*The Circular advice echoes paragraph 200 of the National Planning Policy Framework which directs that there must be clear justification for removing national permitted developments rights. The Framework says:*

*"The use of Article 4 Directions to remove national permitted rights should be limited to situations where it is necessary to protect local amenity or the well being of the area (this could include the use of Article 4 Directions to require planning permission for the demolition of local facilities ....."*

*We have seen no information or evidence from the local planning authority that the demolition of Victoria House would cause material harm in the interest of local amenity or proper planning. Victoria House is not a listed building and is not within a conservation area. At the time of our initial engagement with the local planning authority Victoria House had not even made its way onto a local list of historical buildings and we are unsure if it has since been added to such a list. The consequence of leaving the building empty is that it will gradually fall into disrepair. The building does occupy a prominent position within the Woodville High Street and we consider that the best option for proper planning would be to redevelop the site with a modern development; the Council offices have previously accepted that retail development on the site would be acceptable in principle.*

*We wish to put your authority on notice that in the event that the Article 4 Direction is confirmed, our Client reserves the right to make a claim for compensation should a future planning application to demolish Victoria House be refused planning permission. That compensation claim will take account of additional costs which my client has incurred preparing a Historic Building Record Method Statement and the loss of profit from the missed retail opportunity as a consequence of not being able to exercise the permitted development rights on demolition."*