

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	19 September 2024
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Article 4 directions
REPORT NUMBER	CR&E/24/277
EXECUTIVE DIRECTOR	Gale Beattie
CHIEF OFFICER	David Dunne
REPORT AUTHOR	Laura Robertson
TERMS OF REFERENCE	3

1. PURPOSE OF REPORT

1.1 This report presents two draft proposals in relation to Article 4 directions as follows:

- Introducing new Article 4 directions relating to the removal of permitted development rights for replacing windows within Bon Accord/Crown Street, the City Centre and Old Aberdeen Conservation Areas; and
- Cancellation of Article 4 Direction for Burnbanks Village, reinstating permitted development rights.

1.2 The report also seeks approval to undertake public consultation for a 6 week period on these proposals, with the results of the consultation and any recommendations reported back to this committee for approval.

2. RECOMMENDATIONS

That the Committee:

- 2.1 Instruct the Chief Officer – Strategic Place Planning to publish the proposed Article 4 Direction changes for a six-week period of non-statutory public consultation; and
- 2.2 Instruct the Chief Officer – Strategic Place Planning to report the outcomes of the public consultation and any proposed recommendations on the Article 4 Directions to a subsequent Planning Development Management Committee within the next six months.

3. CURRENT SITUATION

- 3.1 The report has been split into two sections; firstly, the proposal to introduce Article 4 Directions for the Bon Accord and Crown Street Conservation Area; City Centre Conservation Area; and Old Aberdeen Conservation Area and;

secondly the proposal to remove the Article 4 Directions from Burnbank's village.

Bon Accord and Crown Street; the City Centre and Old Aberdeen Conservation Areas permitted development rights

- 3.2 The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ('the 1992 order') allows certain classes of development to be undertaken without express planning permission being granted by the planning authority. It also sets out the procedures for withdrawing these permitted development rights through an Article 4 Direction.
- 3.3 The latest amendments to the [1992 order](#), the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2024](#) came into force on 24 May 2024.
- 3.4 The Scottish Government has stated that the aim of the 2024 Order is to improve energy efficiency through allowing alteration and replacement of windows.
- 3.5 [Article 8](#) of the 2024 Order inserts new Class 7A into the 1992 order. This provides permitted development rights for the alteration or replacement of windows in both domestic and non-domestic buildings, where the works materially affect the external appearance of the building (and hence constitute development which would normally requiring planning permission).
- 3.6 New Class 7A is intended to provide greater flexibility for homeowners and businesses to improve the thermal efficiency of their properties by extending Permitted Development Rights for replacement windows to a wider range of locations and a wider range of building types.
- 3.7 In summary, within Conservation Areas **Class 7A**:
- permits the **alteration or replacement** of a window that is part of the building's **rear or side elevation, unless the side elevation fronts a road**.
 - permits the **alteration or replacement of a window** that is part of the building's **principal elevation (or side elevation that fronts a road) if the window as altered/replaced would be the same or substantially the same as the existing window, as regards the** - manner in which the window is opened and closed, number, orientation and colour of panes comprised in the window, and dimensions and colour of the frame of the window or any astragal bars comprised in the window.
- 3.8 **Class 7A introduced a system of prior notification. Prior notification is required** for changes to the design and external appearance of windows in conservation areas, this allows the planning authority to determine if proposed replacement window(s) that would be substantially different from the existing windows, would harm the character or appearance of the conservation area. If the window(s) are deemed to potentially harm the character then the planning

authority can request submission of prior approval which would then either be refused or approved accordingly.

3.9 Prior notification is required if:

- the window is part of the building's principal elevation (or side elevation that fronts a road), and
- the window as altered/replaced would not be the same or substantially the same as the existing window in respect of the criteria listed above in paragraph 3.7.

3.10 The new permitted development rights regarding windows and associated prior notification process, results in the Planning Service having limited control over replacement windows being installed in buildings in conservation areas.

Why

3.11 Article 4 directions were previously in place for the City Centre; Old Aberdeen; Bon Accord and Crown Street; Albyn Place and Rubislaw; Marine Terrace, and Footdee conservation areas from 29 February 1972 and Great Western Road; Cove Bay; Ferryhill; and Pitfodells from 12 February 1982. These Article 4 Directions covered the two classes below, which included the replacement of windows, and restricted the permitted development rights of householders meaning that planning permission was required for the following categories of development -

- Class 1 (The enlargement, improvement or other alteration to dwelling houses); and
- Class 2 (Any alteration to the roof of a dwelling house including the enlargement of a dwelling house by way of an addition or alteration to its roof).

3.12 The directions were in place until the introduction of the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2011](#). This amendment negated the need for Article 4 Direction Orders in all conservation areas, by automatically removing these rights at national rather than a local level. Since they were no longer required, Aberdeen City Council formally removed the Article 4 Directions, through the committee reporting process after a report was presented to Planning Development Management Committee of 17 March 2016 ([PDMC 170316](#)).

3.13 Now, with the introduction of the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2024, the Council's control over the replacement of windows in conservation areas has been very significantly weakened. Though, initially, the changes to the permitted development regulations may not be noticed, the incremental change will likely result in significant loss of place distinctiveness and have an impact on the character of the Conservation Areas. This is covered in more detail later in this report. The only way to ensure the same level of control, thus prevent loss of character through incremental change, would be via the reintroduction of Article 4 Directions. As detailed above, these controls are not something new but

would allow the return to a system that was worked well across the City since the 1970s.

What is proposed?

- 3.14 Given the potential negative impact on the special character of Aberdeen's conservation areas it is proposed to reinstate Article 4 directions to remove class 7A of the General Permitted Development Order within three of the City's Conservation Areas, which are considered the most sensitive to the changes and have received the most investment over the years (e.g. grant funding). These are:
- City Centre Conservation Area (designated outstanding 25 March 1977)
 - Old Aberdeen Conservation Area (designated outstanding 24 November 1978)
 - Bon Accord and Crown Street Conservation Area (designated outstanding 24 November 1978)
- 3.15 Both the City Centre Conservation Area and Bon Accord and Crown Street Conservation Area have received substantial investment through building repair grants over the last 10+ years, through various funding streams. Failure to protect that investment would potentially undermine future grant applications and negatively impact on the historic built environment. Old Aberdeen is an excellent example of a relatively unaltered conservation area with a distinctive and unique character. Not reinstating the previous level of protection could potentially lead to this character being lost through incremental change.
- 3.16 These most recent changes to permitted development rights mean that any windows on the rear or side elevations (unless fronting a road) could be significantly changed without consent of any sort. Original sash and case windows could be changed to uPVC casement windows. On the front elevation there would be more restrictions but changes from timber to uPVC would be permitted as long as all the proportions, opening mechanisms, colour etc are still the same as existing. This could result in the loss of historic windows which play such an important part to the character of a conservation area. Though, initially, the changes to the permitted development regulations may not be noticed, the incremental change will likely result in significant loss of place distinctiveness and have an impact on the character of the conservation areas. Furthermore, this would result in the loss of positive gains achieved through previous investment of public funds and decades of work dedicated to conserving the character and appearance of conservation areas. The introduction of the new Permitted Development rights in relation to conservation areas has potential to undermine this investment and effort.
- 3.17 Even with the changes in legislation over the years, planning permission has been required to replace windows in these conservation areas since 1972. This continuity has protected the historic fabric and special character of the historic buildings. The proposed Article 4 direction would reinstate a system of control that has worked well since 1972.

Burnbanks Village

- 3.18 The current Article 4 Direction for Burnbank's Village dates back to February 1991, and was put in place *"for the purpose of preserving the character of the original dwellings in the fishing village of Burnbanks, Nigg which are to be restored and rehabilitated and in the interest of maintaining the high standard of design and layout of the new residential development which will henceforward form an integral part of the village and averting possible future erosion of the intended environment."* Appendix 1 of this report shows the original Article 4 Direction and the area it covers.
- 3.19 The current Article 4 Direction removes the followings permitted development rights - Restriction of Classes I and II of Town and Country Planning(General Permitted Development)(Scotland)Order 1981: Schedule 1, Part 1, Class I, Column 1 (Development within the curtilage of a dwellinghouse) & Class II, Column 1 (Sundry Minor Operations).
- 3.20 A number of the properties were designated as category C listed buildings on 26 January 1981, pre-dating the refurbishment/ rebuilding that took place in the early 1990s. This said, Historic Environment Scotland (HES) received a proposal from a member of the public to remove the listed designation of LB15635 on 16 February 2024 which relates to the category C listed buildings at the following addresses:
- 1, 6, 9, 10, 12, 13, 18, 19 and 22 Burnbanks Village, Former Aberdeen Agricultural Museum
 - 5 Burnbanks
 - 7 and 8 Burnbanks
- 3.21 Historic Environment Scotland (HES) carried out consultation from 03 May 2024 to 24/ May 2024. They consulted directly with owner(s)/occupier(s) and/or tenant(s) and with the planning authority. The planning authority are a statutory consultee regarding planning matters but not in relation to whether a building should be listed or not, this is entirely the remit of HES.
- 3.22 HES concluded the following:
- "3.2.3 Architectural or historic interest. In our current state of knowledge, we have found that the cottages at Burnbanks do not meet the criteria for listing for the following reasons:*
- *Later alterations and the loss of fabric have affected the buildings' ability to convey their architectural and historic interest.*
 - *The buildings' historic character has been adversely affected by later alterations and extensions.*
 - *The buildings form part of a historic fisher settlement however the later alterations have adversely affected their special interest. The buildings now largely appear as a later 20th century housing development that has retained some of the profile and dimensions of the earlier grouping.*

• *As a former fisher houses settlement, there is some social historical interest for its connection to Aberdeenshire’s coastal and fishing history, but in its current form, this interest is no longer sufficiently demonstrated.”*

3.23 To add to HES comments, there have been a number of alterations over the years to both the formally listed properties and the other properties within the Burnbanks Village and as such the historic character has been adversely affected.

Why

3.24 The original cottages were rebuilt and new cottages added to the village. The once modest single storey cottages have all been extended in some form or another over the years. As a result, the original planned form and historic character of the village has been fundamentally altered. It could also be argued that the properties have all maximised their development potential – with, for instance, front porches and rear extensions added to almost every property. The two aerial photos below show the changes in the village and the footprint of the houses between 1988 and the current Google aerial view.



1988 Aerial Photograph



Google Aerial View now

3.25 Since the introduction of the Article 4 direction in 1991, 68 planning and listed building consent applications have been submitted to the planning authority for Burnbanks Village. Given the age of these applications, the status of some is unknown, but of those known, 48 were approved and two were refused, with one withdrawn and one pending. Of those approved, the majority were in the 1990s and 2000s with 22 applications in the 1990s and 30 in the 2000s. The applications were for a variety of proposals including installation of fence doors, greenhouse and fence, painting walls, installation of a conservatory, erection of a porch, replacement windows, attic conversions including rooflight installation, oil tanks, extensions to rear, log cabin, replacement doors and the installation of a rustic arch. From this planning history, it is clear that a significant number of alterations, additions and changes have occurred to Burnbank’s since the introduction of the Article 4 directions in 1991.

3.26 Given the statements from HES, and the fact that all the properties have changed over the years such that none of the properties have their original form, character or historic features, it is considered to be unreasonable and

unjustifiable to continue to control the householder permitted development rights in this area and retain the Article 4 Direction.

Proposed public consultation

- 3.27 For the reasons set out above, it is requested that the committee instructs the Chief Officer – Strategic Place Planning to carry out a six week period of non-statutory public consultation, on the following proposals: -
- Reinstatement of three Article 4 directions within the City Centre; Bon Accord and/Crown Street; and Old Aberdeen Conservation Areas.
 - Cancellation of the Article 4 direction for Burnbanks Village.
- 3.28 The consultation would be undertaken electronically via the Council's new consultation website, Commonplace.
- 3.29 There would also be an opportunity to provide comment via email or letter if wished.
- 3.30 An advert identifying the consultation period and ways to comment would be made available on the website and the local newspaper. This would also include details of any drop-in sessions.
- 3.31 For the City Centre; Bon Accord/ Crown Street; and Old Aberdeen Conservation Areas, letters would be sent to the community councils. A drop in session would be organised for Old Aberdeen and at all other times during the consultation period and normal working hours, appointments could be made with Laura Robertson via the contact details below.
- 3.32 For Burnbanks Village, letters would be sent to the community council and every property within the Village. Furthermore, two event/drop-in sessions would be organised, with dates and times advised within the letter to allow for any questions residents may have.
- 3.33 Subject to committee approval, the results of the public consultation would be reported back to a future meeting of this committee (within the next 6 months) including the recommendations on how to move forward.

4. FINANCIAL IMPLICATIONS

- 4.1 The cost of the consultation would be covered within existing budgets and by existing staff.
- 4.2 Removal of permitted development rights would not have a significant impact on income.
- 4.3 'Any financial implications relating to the removal of the Article 4 Directions will be covered by existing budgets.

5. LEGAL IMPLICATIONS

5.1 There are no known direct legal implications arising from the recommendations of this report

6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no direct environmental implications arising from the recommendations of this report

7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
Strategic Risk	Not have controls in place which may erode previous grant and Council funded investment.	Ensure a transparent consultation is undertaken to raise awareness and gauge opinion on both proposals.	L	Yes
Compliance	No significant risks identified	N/A	N/A	N/A
Operational	No significant risks identified	N/A	N/A	N/A
Financial	Not consulting would mean that article 4 directions could not be implemented in the suggested Conservation Areas leading to a waste of investment from previous funding schemes.	The proposal would ensure that control over areas of grant funding can be managed and investment and staff resources spent on these areas is not abortive.	L	Yes
Reputational	Erosion of the historic fabric in the 3 identified Conservation Areas would be abortive of all the work and investment made in these areas over the years.	The proposal would ensure that control over areas of grant funding can be managed and investment and staff resources spent on these	L	Yes

		areas is not abortive.		
Environment / Climate	Not consulting on this proposal would mean that Article 4 directions could not be implemented and there would be potential for the historic environment to be eroded.	The proposal would ensure that control over areas of grant funding can be managed and investment and staff resources spent on these areas is not abortive.	L	Yes

8. OUTCOMES

<u>Council Delivery Plan 2024</u>	
Impact of Report	
Aberdeen City Council Policy Statement <u>Working in Partnership for Aberdeen</u>	The proposals within this report support the delivery of the following aspects of the policy statement:- <ul style="list-style-type: none"> • Tourism and culture are enhanced by a high-quality historic environment, • Moving the CCMP forward by investing in the City Centre, Grant funding helps repair historic buildings and the improvements made need to be protected.
<u>Local Outcome Improvement Plan</u>	
Prosperous Economy Stretch Outcomes	The proposal has no impact on the Prosperous Economy Stretch Outcomes of the LOIP
Prosperous People Stretch Outcomes	The proposal has no impact on the Prosperous People Stretch Outcomes of the LOIP
Prosperous Place Stretch Outcomes	The proposal has no impact on the Prosperous Place Stretch Outcomes of the LOIP
Regional and City Strategies Local Development Plan and National Planning Framework 2	This report supports the Local Development Plan and National Planning Framework 2 where it identifies the importance of protection and preserving the historic environment for current and future generation.

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	This report relates to a request to carry out a non-statutory consultation on a proposal, a full Integrated Impact Assessment is being developed as part of the process and would be reported to committee at the next

	<p>stage after the consultation process has taken place and fed into the findings. If members agree to the recommendation of this report the follow up report would make include the full IIA..</p> <p><i>I confirm this has been discussed and agreed with David Dunne, Chief Officer Strategic Place Planning on 05.09.24.</i></p>
Data Protection Impact Assessment	Not required
Other	No other impact assessments are required as part of this proposal.

10. BACKGROUND PAPERS

10.1 For ease of reference all legislation links have been included in the report above.

10.2 Committee Paper Review of Article 4 Direction Orders - [Committee report](#)

11. APPENDICES

11.1 Original Article 4 Direction - Burnbanks Village 1991

12. REPORT AUTHOR CONTACT DETAILS

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