

**TUNBRIDGE WELLS BOROUGH COUNCIL  
RECORD OF DECISIONS**

**CABINET**

**Thursday 30 July 2009**

**CONSIDERATION OF REPORT FROM OVERVIEW AND SCRUTINY SELECT COMMITTEE –  
FRONT GARDENS CONVERTED INTO PARKING SPACES AND THE USE OF ARTICLE 4 DIRECTIONS**

CAB037/09

The Local Economy and Housing Select Committee submitted a report regarding the use of Article 4 Direction to remove permitted development rights for hard-standings laid in place of front gardens in the borough as a whole, priorities for the Planning Service and possible resources available to fund the use of Article 4 Directions. These issues were discussed at the Select Committee's meeting on 9 July 2009, when members of the Town Forum and Civic Society were interviewed. Attached as an appendix to the report was an action implementation plan compiled by the Select Committee for members' information.

The Select Committee put forward the following recommendations:

(1) That Article 4 Direction should be urgently pursued in relation to specific roads in the Royal Tunbridge Wells area identified by officers working in collaboration with the Civic Society and the Royal Tunbridge Wells Town Forum. Particular focus should be given to Front Garden conversions into parking spaces; and

(2) That, if resources are unavailable from the Planning Service, it is suggested that funding be allocated from the strategic plan reserves or any other available source.

**RECOMMENDED –**

- (1) That the Local Economy and Housing Select Committee be thanked for their report; and
- (2) That the Select Committee recommendations be considered as part of the Cabinet discussions for decision reference CAB054/09 below.

>>>> **REPRORT**

## **FRONT GARDENS CONVERTED INTO PARKING SPACES AND THE USE OF ARTICLE 4 DIRECTIONS**

**Item No. 7(B)**

### **Notification of outcome of Select Committee Considerations (090730/CAB003)**

**To:** Cabinet - 30 July 2009

**From:** Local Economy and Housing Select Committee

**Submitted by:** Kat Hicks – interim Manager Scrutiny & Overview Committees

**Classification:** Non-Exempt

**Ward:** All wards

**Subject matter:**

#### **FRONT GARDENS CONVERTED INTO PARKING SPACES AND THE USE OF ARTICLE 4 DIRECTIONS**

This notification provides Cabinet with the recommendations made at the Local Economy and Housing Services Select Committee meeting on 9 July 2009. The Committee interviewed representatives of the Royal Tunbridge Wells Town Forum, Civic Society, and the Council's Principal Design and Heritage Officer and investigated the impact of the conversion of front gardens into parking places in the town. The Committee discussed the use of Article 4 Direction to remove permitted development rights for hard-standings laid in place of front gardens in the borough as a whole, priorities for the Planning Service and possible resources available to fund the use of Article 4 Directions.

#### **Outcome:**

The Local Economy and Housing Select Committee recommends the following to Cabinet:

- (1) That Article 4 Direction should be urgently pursued in relation to specific roads in the Royal Tunbridge Wells area identified by Officers working in collaboration with the Civic Society and Royal Tunbridge Wells Town Forum. Particular focus should be given to Front Garden conversions into parking spaces; and
- (2) That, if resources are unavailable from the Planning Service, it is suggested that funding be allocated from the strategic plan reserves or any other available source.

**Contact Officer:** Kat Hicks, Interim Overview and Scrutiny Manager, 01892 554085 int.2083

**Appendix A:** Select Committee Recommendation Action Implementation Plan (SCRAIP), this will be updated by Alan Legg, the responsible officer, following the Cabinet Meeting.

**DECISION NO. CAB054/09 NON-EXEMPT**

**PORTFOLIO: PLANNING AND ECONOMIC DEVELOPMENT**

**PORTFOLIO HOLDER: Councillor Mrs Thomas**

**REPORT TITLE:** [Use of Article 4 Directions \(090730/CAB020\)](#)

**PRIORITIES:** Prosperous, Green and Confident

**DISCUSSION:** **The Principal Design and Heritage Officer** submitted a report examining how to progress the making of Article 4 Directions and the resource implications in doing so. The report proposed that Article 4(2) Direction should be applied to a particular part of the Royal Tunbridge Wells Conservation Area, namely Prospect Road and Claremont Road.

Members noted that to achieve this would require additional capacity through the use of external consultants at an estimated fee of up to £10,000. They considered monitoring this as a pilot area to determine its efficacy and resource implications, to inform any future use of Article 4 Directions.

The Cabinet recognised that householders would wish to provide space for vehicles on their sites wherever possible. However, they agreed that some control may be necessary to prevent cars from dominating the street scene and the setting of buildings.

The Principal Design and Heritage Officer advised members of the advice on the use of Article 4 Directions contained in paragraph 81 of DCLG Circular 02/2006 and Appendix D to DOE Circular 9/95. This stated that generally permitted development rights should only be withdrawn in “exceptional circumstances”, and only where there is a real and specific threat.

**Councillor Woodward** advised the Cabinet of the discussions that had taken place at the Local Economy and Housing Select Committee on 9 July 2009. It was noted that the Select Committee had expressed concern that the urban area should be protected and it was considered that an Article 4 Direction would ensure that any such development would be subject to scrutiny. The Select Committee had suggested that voluntary support could be engaged to undertake the work that was required, such as members of the Civic Society and Town Forum. It was also suggested that resources from the Planning Service could be utilised for this purpose.

**Councillor Dr Hall** addressed the Cabinet in her role as the Council’s Heritage Champion. She expressed her concerns regarding the inappropriate development in Conservation areas.

**The Chief Executive** reminded members that Article 4 Directions were a discretionary service and, although she fully supported the use of volunteers, these would require training and co-ordinating and resources would have to be redirected from other sources to provide the required enforcement action.

In response to a question asked querying the fact that only 13% of local authorities had Article 4 Directions, members were advised that the number was so low because of the resource issues and the fact that it was problematic to administer.

The Cabinet agreed that it would need to consider this proposal as part of the Council’s priorities and in relation to other proposed activities.

It was suggested that the Cabinet had an obligation to protect conservation areas and that this activity was not new business. Cabinet discussed whether the funding for the proposal should come from Strategic Plan reserves or out of existing budgets.

A vote was taken on the recommendations as set out in the report and this was rejected. After discussion on an alternative recommendation, an amendment was then put forward which proposed agreement of recommendations (1) and (2) in the report, with the addition that the Director of Planning and Development be given delegated authority, in consultation with the Planning and Economic Development Portfolio Holder and the Finance and Governance Portfolio Holder, to decide upon the timing of implementing recommendations (1) and (2) in the context of the Council's other priorities.

**DECISION  
MADE:**

(1) That Article 4(2) Directions should be pursued in relation to particular roads in *Royal Tunbridge Wells*, with specific attention to loss of front boundaries and gardens to parking. To be undertaken in partnership with local interest groups;

(2) That an Article 4(2) Direction be initiated in the identified area of Claremont Road/ Prospect Road (*Royal Tunbridge Wells*), addressing the issues identified in the English Heritage Conservation Areas at Risk Survey;

(3) That the Director of Planning and Development be given delegated authority, in consultation with the Planning and Economic Development Portfolio Holder and the Finance and Governance Portfolio Holder, to decide upon the timing of implementing recommendations (1) and (2) above in context of the Council's other priorities; and

(4) That a future report is brought to Cabinet assessing the outcomes, and to consider any future programme and resources.

>>>> REPORT

[Use of Article 4 Directions \(090730/CAB020\)](#)

## **Use of Article 4 Directions (090730/CAB020)**

**To:** Cabinet

30 July 2009

**Main Portfolio Area:** Planning & Economic Development

**Author of report:** Alan Legg, Principal Design & Heritage Officer

**Classification:** Non Exempt

**Ward:** Park, Pantiles & St Mark's

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### **Executive Summary**

This is a further report requested by Cabinet examining how to progress the making of Article 4 Directions and the resource implications in doing so. It proposes that Article 4(2) Direction should be applied to a particular part of the Royal Tunbridge Wells Conservation Area. To achieve this would require additional capacity through the use of external consultants at an estimated fee of up to £10,000. Additionally that this is monitored as a pilot area to determine its efficacy and resource implications, to inform any future use of Article 4 Directions.

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### **Corporate Priorities**

Prosperous, Green, Confident

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### **Report status**

For review and consideration

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### **Route to Implementation/Timetable:**

For determination by Cabinet

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## Report of Head of Planning Services (cont)

### Background

1. At its meeting of 12 February 2009, Cabinet considered the notification from the Local Economy & Housing Select Committee on front gardens being converted into parking spaces.
2. Among the resolutions, Cabinet wished to receive a further report on the actions in pursuing an Article 4(2) on selected conservation areas across the Borough.

### Issue & need

3. The alteration of front gardens to provide off street parking is not a new occurrence but one which has been happening for a number of years. Whilst in the past, the quality of the environment itself perhaps limited this, the Planning Service (and others), have noticed that with the increase in the number of cars and the increasing problems of on street parking that there is more pressure for gardens being turned over to car parking.
4. The cumulative impact that this change can have on an area can be harmful but will vary in degrees from area to area. The concern expressed to the Cabinet through Select Committee is that the Council should now consider what action it can take to address this issue.
5. In preparing our Conservation Area Appraisals as part of the LDF, it has become apparent that one of the recurring issues that has been highlighted, is the sensitivity of front boundaries to change and the often detrimental effect this can have on the character of the area if lost or degraded. Hedges, railings, fences or masonry walls, are characteristic elements, which can often be unique to conservation area or a particular identity area within it. They provide a cohesive element which helps to define space and which complements the setting of buildings but are particularly susceptible to erosion or complete loss through the paving over of forecourts and gardens to allow for parking.
6. It is recognised that householders will wish to provide space for vehicles on their sites wherever possible. However, some control may be necessary to prevent cars from dominating the street scene and the setting of buildings. Proposals for vehicle hard standings should be refused unless they could be located or screened to minimise the impact on the street scene and surrounding conservation area. Careful attention to paving and landscaping is also required, including the works to public footpaths and crossovers.
7. Members should also be aware that there can be other equally damaging changes to the character of Conservation Areas. These include replacement UPVC windows, change of doors and the addition of flues, satellite dishes. A very recent publication from English Heritage (23 June) shows the results from a national survey and how conservation areas are at risk from inappropriate alterations and neglect. A national raising of awareness has been launched, highlighting the fact that our conservation areas are under pressure from a range of damaging changes. (Appendix 1 is the extract from the press notice which summarises this.) This serves to reinforce the local concern on this issue and also the fact that there are other issues than just forecourt parking.

### **Current permitted development rights**

8. Last October's General Permitted Development Order (GPDO) amendment significantly extended the amount of development that can be carried out in residential curtilages without planning permission. Under Class F of Part 1 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 the following applies: Development consisting of –
  - (a) The provision within the curtilage of a dwelling house of a hard surface for any purpose incidental to the enjoyment of the dwelling house as such: or
  - (b) The replacement in whole or in part of such a surface.
9. This means that planning permission is not required for a new hard surface in the front garden of a house. The one condition though is that the hard surface must be porous or direct run-off to a permeable or porous surface. This is set out in Sept 2008 guidance from the Environment Agency and DCLG

### **Article 4 Directions**

10. Advice on the use of Article 4 Directions is contained in paragraph 81 of DCLG Circular 02/2006 and Appendix D to DOE Circular 9/95. This states that generally permitted development rights should only be withdrawn in "exceptional circumstances", and only where there is a real and specific threat.
11. The effect of an Article 4 Direction is not that development within the particular category of permitted development can not be carried out, but simply that it is no longer automatically permitted by Article 3 of the General Permitted Development Order, but must instead be subject to a specific planning application. This does not mean that the local planning authority will refuse permission for the works but it does enable the authority to retain some control over the design and detailing of the proposed development and to grant permission subject to appropriate conditions.
12. The application would need to be considered against the Local Plan, and any other material consideration including a Conservation Area Appraisal SPD, in many cases it may be considered appropriate to allow such developments. This type of application would not attract a planning fee so the additional costs would be borne by the Council in determining the application.
13. It should be noted that any Article 4 Direction cannot be applied retrospectively to works that have already been carried out.
14. Compensation is potentially liable to be paid by the Council to the applicant if an Article 4 Direction were confirmed and a subsequent planning application refused. Compensation would be based on any abortive expenditure or any other loss or damage incurred.

### **Process- Procedures for making article 4(2) Directions**

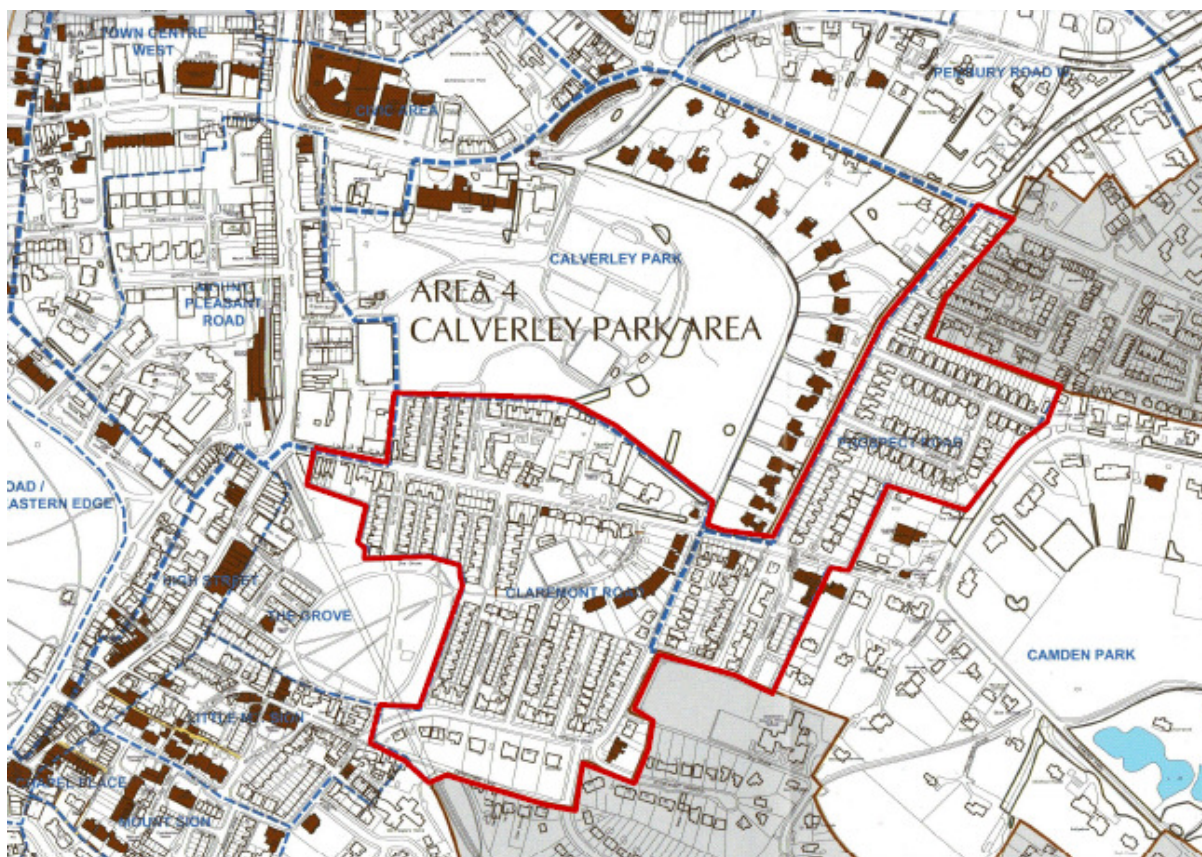
15. Where a local planning authority makes a direction under Article 4(2) it must publicise it by inserting a notice in a local newspaper and serve a notice on every separate dwelling affected by the direction, unless this is impracticable.

16. The direction comes into force on the date on which the notice is served on the owner or occupier, or the date of the press advertisement. While there is no right of appeal against the making of an article 4(2) direction, the local planning authority must consider any representations made in response to the notices. It may then confirm the direction, not less than 28 days after the last notice was published and not more than six months after it was made.
17. If the local planning authority confirms the direction, it has to give further notice of the confirmation in the same way that it notified the making of the order. If the local planning authority does not confirm the order within six months of making, it will lapse.

### **The task**

18. Within Tunbridge Wells Borough there are 25 conservation areas, which include some 11,914 separate properties. In the case of the Royal Tunbridge Wells conservation area there are 7,971 properties.
19. Possible approaches to applying an article 4(2) Direction, could be through a non-selective or a blanket approach covering a large area over a number of permitted development issues. Alternatively a more selective approach could be adopted, focussing on specific properties within the CA or specific to an area where the issues of concern are prevalent. In view of the extent and numbers of properties involved the latter is thought to be more achievable.
20. It must also be pointed out that Part 1 Rights were only granted by Parliament in October 2008. The thrust of the recent changes is to make development more permissive with less development requiring planning permission. It is therefore not considered that the application of a 'blanket Article 4(2) Direction' would be in accordance with the recent changes and could not be considered as "exceptional circumstances" of sufficient weight to comply with advice in DOE Circular 9/95.
21. It is therefore considered that because of the exceptional circumstances test, consideration must be based on a thorough understanding of the issues and harm to character. To take this forward it is suggested that we focus on particular area which is sensitive to this issue, and which appears to exhibit particular current pressure or prevalence.
22. By focussing on a discrete area, this would also have the benefit of enabling the Borough Council to pilot and to assess what is involved in drawing up and administering Article 4(2) Directions, and to assist in possible future programming and the most effective way in dealing with such issues. Although several candidate areas present themselves including those referred to in the select committee report, some have already undergone changes and there are limited benefits in pursuing these.
23. It is suggested that we examine an area where we are possibly at the outset of possible activity and there has been some interest in forecourt inquiries and applications. It is considered that within the Royal Tunbridge Wells CA, that the special identity areas (sub areas in CAA) of Prospect Road and Claremont Road represents a good candidate. (See plan) This is also an area already highlighted in the CA Appraisal, which is particularly sensitive or highly visible and represents a candidate where there is already an identified issue.





### **Proposed Article 4(2) Direction – Identity Area of Claremont Road & Prospect Road**

#### **Next steps/ Resourcing**

24. To achieve this, the project is likely to involve-
  - Survey and assessment of the actual harm and future potentials for harm.
  - Photographic record of each property as a baseline record.
  - Preparation of a schedule of households with permitted development issues.
  - Developing the case and justification to meet the exceptional circumstances test,
  - Prepare and service of notices, review representations & report
  - Preparation of good practice guidance
  
25. Whilst there are particular conservation skills in Planning Services, the capacity to currently take on such additional projects is limited. Unless members consider that there is an imperative in timescales, it is suggested that provision is made in next year's budget allocation to take this forward through the engagement of consultants. Whilst it is difficult to assess, it is estimated that to engage a conservation consultant for this would be in the order of £7,000 to £10,000.
  
26. Additionally there could be a significant legal input required in sourcing land charges information and in preparing and serving notices and the subsequent confirmations.
  
27. There will be costs in the processing of additional planning applications associated with the removal of permitted development as they do not attract a fee. However it is anticipated that the number of additional applications coming forward as a result is estimated as being small. The financial implications of this on the planning service are therefore likely to be minimal.

28. One of the real issues may be enforcement and policing. Whilst this will be an additional burden for enforcement, it is anticipated that in the case of central Tunbridge Wells, it may be self policing, although this is difficult to predict with any certainty. This will need to be a major part of the monitoring of any Article 4, and the implications on council services.
29. Any enforcement matters that do arise will need to take their place within the enforcement compliance strategy in terms of priority. Members are also reminded that any Article 4 Direction cannot be applied retrospectively.
30. Refusal of planning permission may give rise to a claim for compensation. The opportunities to claim compensation are however very limited

#### **Other matters**

31. Although an Article 4 is principally concerned with character and visual amenity, other aspects that will need to at least be acknowledged as part of this work should include understanding of and the implications of-
  - Sustainability. As already mentioned, the sustainability aspects and that paving over front gardens affects water run off. Addressed through the requirement for permeable surfaces.
  - Safety. In considering any applications the geometry and whether the front garden is physically capable of accommodating vehicles without overhanging footways or resulting in poor sight lines.
  - Parking capacity. Be aware of Parking Teams examination of factors contributing to increase in pressure and the implications of forecourt parking on street parking capacity.

#### **Cross cutting issues**

##### **Legal**

32. The Councils Legal Department would be involved in the drafting and issuing of any potential Article 4(2) Directions, both notices and confirmations.

##### **Finance and other resources, including ICT**

33. Consultants or additional staff time to assess the area, consider the relevance or otherwise of Article 4(2) Directions.  
If an Article 4(2) was made, any subsequent planning application would not attract a planning fee. Additional staff resources for this would be required and this would have to be met from existing Council budgets.  
There is also the potential liability for compensation if planning permission is refused following the serving of an Article 4 Direction.

##### **Staffing**

34. Existing staff resources to oversee consultants and to deal with additional planning applications and enforcement.

##### **Value for money**

35. N/A.

### **Risk Management**

36. Consideration must be given to the potential liability for compensation if planning permission is refused following the serving of an Article 4 Direction. However this would be limited to 12 months after the order was confirmed and would only apply to abortive expenditure, not the loss of rights. Risk of paying compensation considered to be relatively low.

### **Equalities**

37. None.

### **Safer & Stronger Communities**

38. None.

### **Health and Well-Being**

39. None.

### **Environment / Sustainability**

40. Report under consideration is part the negative environmental and visual impacts of the changes to front gardens due to hard surfacing them. Also English Heritage concerns of Conservation Areas at Risk

### **Human Rights Act**

41. None.

### **Communication and Consultation**

42. The removal of Permitted development rights would generate the need for close cooperation with the Communications Department as it is likely that such a move would generate considerable interest. Consultations with organisations such as the Tunbridge Wells Town Forum and Royal Tunbridge Wells Civic Society would be undertaken, albeit there is already support for Article 4 Directions being made.

### **Conclusion**

The impact on the character of the area through changes to front gardens to allow the parking of cars is acknowledged, together with other issues. The thrust of Government changes to permitted development rights has reduced the number of developments which require planning applications. Recognising local concerns on the erosion of conservation areas, also the recent national perspective. There would be additional cost for the Council in terms of assessing and preparing any Article 4 Direction. Dealing with any subsequent planning applications which do not attract a fee and paying any compensation due as set out above. Consideration at the Local Economy and Housing Select Committee of 9 July, urged early progress on the use of Article 4 Directions, particularly on the loss of front gardens to parking.

### **Recommendations:**

1. That Article 4(2) Directions should be pursued in relation to particular roads in Tunbridge Wells, with specific attention to loss of front boundaries and gardens to parking. To be undertaken in partnership with local interest groups.
2. That an Article 4(2) Direction be initiated in the identified area of Claremont Road/ Prospect Road, addressing the issues identified in the English Heritage Conservation Areas at Risk Survey. To be undertaken through use of consultants.
3. That provision of £10,000 be made to facilitate (2)
4. That subject to the approval of the above, a future report is brought to Cabinet assessing the outcomes, and to consider any future programme and resources.

**Reasons for recommendations:**

To address local and national concerns

Note: It is considered that the recommendations could be implemented in the following way:

1. With the Town Forum & Royal Tunbridge Wells Civic Society inputs, to immediately commence survey of the Town Centre West Identity Area\* (includes Mount Ephraim, Dudley Road, York Road & Church Road). Focus is to be on forecourt parking & front boundary removal.
2. Following 1 above, with the Town Forum & Royal Tunbridge Wells Civic Society inputs, to carry out survey of the St James North Identity Area\* (includes St James Road, Beulah Road). Focus to be on forecourt parking & front boundary removal.
3. With engaged consultants, to undertake survey of the Prospect Road and Claremont Road Identity Areas\*. This is to cover all permitted development issues affecting the character of the conservation area, including, forecourt parking, front boundary detailing, replacement windows, replacement doors, painting. (To be based on the English Heritage Conservation Areas at Risk survey). Also include the production of appropriate conservation guidance. Timing of this would be dependent of availability of funding from strategic plan reserves.
4. Further to outcomes from the above, to consider and report on future Article 4 programme and required resources.

\*Special Identity Areas as defined in the Royal Tunbridge Wells Conservation Area Appraisal.

**Contact Officer:** Alan Legg, Principal Design & Heritage Officer x2080

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**Jim Kehoe**

Head of Planning Services

**Appendix 1:** Press Notice from English Heritage

**Background Papers:**

Local Economy & Housing Select Committee 15 January 2009 reports

Cabinet Report 12 February 2009 – Notification from Select Committee (090212/CAB001)

English Heritage web site- Conservation Areas at Risk -

<http://www.english-heritage.org.uk/server/show/ConWebDoc.16634>

## Appendix 1

### Conservation Areas at Risk – English Heritage News

England has some 9,300 conservation areas, places designated by local councils to protect their special character and appearance, but the latest edition of English Heritage's annual *Heritage at Risk* register, launched on Tuesday 23 June, 2009 reveals that 1 in 7 is at risk of neglect, decay or damaging change and many more give cause for concern.

The results of English Heritage's first ever survey of the condition of conservation areas shows the top threats to be:

- plastic windows and doors (83% of conservation areas affected)
- poorly maintained roads and pavements (60%)
- street clutter (45%)
- loss of front garden walls, fences and hedges (43%)
- unsightly satellite dishes (38%)
- the effects of traffic calming or traffic management (36%)
- alterations to the fronts, roofs and chimneys of buildings (34%)
- unsympathetic extensions (31%)
- impact of advertisements (23%)
- neglected green spaces (18%).

Based on the findings of the survey, English Heritage is launching a *Conservation Areas at Risk* campaign to get residents, local groups and councils working together to improve these special places before it is too late.

Dr Simon Thurley, Chief Executive of English Heritage, said: "To find out for the first time ever what condition the nation's conservation areas are in, we asked every local authority to complete questionnaires for each of its conservation areas. We are delighted that 75% responded, a heroic effort on behalf of council conservation teams.

"Analysing the results it is clear the problems fall into two main areas: what owners do to their properties and what councils do or fail to do to the streets, pavements, parks and public spaces.

"So, we are asking for three things. First, we want councils to make more use of Article 4 Directions – only 13% of conservation areas currently have one - to protect small but important original details such as windows, doors and front gardens. Lose these and slowly but inevitably you lose the character and the history that made the area special in the first place. And where there are neglected or derelict buildings, councils should use their powers to encourage owners to repair or sell them.

"Secondly, we want council departments to work together to take better care of the public areas. Highways and Environmental Services teams, even Health and Education departments whose buildings often dominate a conservation area, they all need to co-operate to save the public parts of conservation areas from decay. Conservation areas should not just be the responsibility of the council's Conservation Officer.

"Thirdly, we want local people to get involved. Our survey shows that conservation areas with community support are more than twice as likely to have improved over the last three years as those without.

And there are countless instances where civic societies and residents groups are helping councils by finding out what local people value, by doing street clutter audits, commenting on planning applications or helping to prepare local lists of historic buildings.”

There are also financial reasons why caring for your conservation area makes sense. An English Heritage poll of estate agents reveals that 82% think original features add value to a property and 75% think being in a well-kept conservation area enhances house prices.

Dr Thurley continued: “Millions of us live in, work in, pass through or visit conservation areas. They are the centres of historic towns and villages, 1930s suburbs, rural idylls or estates of industrial workers’ cottages: the local heritage which gives England its distinctiveness.

“These are difficult economic times but our research shows that conservation areas do not need time-consuming or costly measures, just prioritising as places people cherish, the commitment of the whole council and good-management by residents and councils alike. Well-cared for they encourage good neighbourliness, give a boost to the local economy and will continue to be a source of national pride and joy for generations to come.”