

5 FEBRUARY 2019

REPORT NO. EPSH1908

KEY DECISION? NO

## ARTICLE 4 DIRECTION FOR CHURCH CIRCLE

### SUMMARY AND RECOMMENDATIONS:

This report seeks Cabinet's approval for the making of an Article 4 Direction to withdraw permitted development rights relating to the replacement of windows, alterations or removal of chimneys, removal of front boundary walls and the laying out of hard surfacing on the front garden areas of identified properties in Church Circle Farnborough, which forms part of the South Farnborough Conservation Area.

The proposed direction will enable the Council to protect the architectural and historic character of this part of the Conservation Area by requiring property owners to make a planning application for the replacement of windows, removal of chimneys and the conversion of front garden areas to provide off-street parking. Permitted development rights remove the requirement to obtain such consent from local planning authorities.

The Cabinet is asked to:

- Approve the making of an Article 4 direction under the *Town and Country Planning (General Permitted Development) (England) Order 1995* (as amended).
- Delegate authority to the Corporate Manager - Legal Services, in consultation with the Head of Economy, Planning and Strategic Housing to take all necessary steps in making, serving and publicising an Article 4 direction to remove permitted development rights as set out in paragraphs 3.1 and 3.2 below.

### 1. INTRODUCTION

- 1.1 There are currently eight buildings within the inner ring of Church Circle, a significant and visually coherent development which forms part of the South Farnborough Conservation Area. No 14 and a further six of the buildings (Semi-detached properties at 1-12 constructed between 1898 and 1912) are finished in red brick with slate roofs and sash windows. The eighth building (14a) is a block of flats constructed following the grant of planning permission on appeal in June 1987 prior to the designation of the conservation area.
- 1.2 All twelve of the semi-detached original buildings retain original sliding sash windows in their main front elevations. These windows feature

oversailing upper sashes with downward projecting 'horns' many also feature central pull handles on the lower edge of the upper sashes.

- 1.3 In July 1987 the South Farnborough Conservation Area was designated and included all buildings in the inner and outer parts of Church Circle. The Conservation Area is described as follows in the Council's 1992 guide:

**"South Farnborough** – (Designated 1987). This area retains much of its Victorian character, including wide roads bordered with mature trees and many villa style houses designed by local architects, using predominantly red brickwork with grey slate roofs."

- 1.4 No. 14 was changed to a 5 bedroom nursing home with ancillary staff accommodation following the grant of planning permission in February 1990.
- 1.5 In 1997 planning permission was granted for replacement of the original timber framed sash windows with timber framed, double glazed units.
- 1.6 When a subsequent planning permission for the erection of a two storey rear extension and change of use of the building from community home to 3 two bedroom and 2 one bedroom flats was implemented in May 2014. The sash windows were removed and UPVC windows of an inappropriate design were installed both in the original building and in the approved extension without planning permission.
- 1.7 Following the issue of an enforcement notice and an unsuccessful appeal, an Inspector's decision of 30<sup>th</sup> August 2018 upheld the requirement for the unauthorised windows at No.14 to be replaced with units matching those removed without permission. The property owner is understood to be in the process of commissioning replacement windows to comply with this requirement which has a deadline of 28<sup>th</sup> February 2019.
- 1.8 In determining the appeal the Inspector made the assessment:

*"The character and appearance of this smaller area is defined in large part by the group of two-storey houses that line the inner circumference of Church Circle. These buildings are of similar design and appearance, typically featuring a central pedestrian entrance flanked by full height bay features. There is consistency within this group of buildings in terms of the use of materials and detailing. The latter extends to the fenestration which, aside from the appeal property at present and the adjoining No 14A, comprises of timber framed sash windows on the principal elevations. Because of this consistency of form and detail, combined with their spatial relationship around the inner circumference of Church Circle, these buildings comprise a strong distinctive and cohesive group that both individually and collectively make a positive contribution to the character and appearance of the South Farnborough Conservation Area."*

- 1.9 In addition, the buildings of Church Circle, both within the inner and outer circles, have largely retained their brick chimney stacks and pots, and their

front gardens, which also contribute to the cohesive and distinctive character of the Conservation Area. Removal of chimney stacks from unlisted dwelling houses within a conservation Area and laying out of hardsurfacing in front gardens is not development requiring planning permission under current legislation

## **2.0 Other Properties in Church Circle**

- 2.1 Of the 12 semi-detached original houses in the centre of Church Circle, records indicate three (2, 3 & 12) are sub-divided into flats, four (7-10) comprise a care home, and five (1, 4, 5, 6 & 11) are single dwellings.
- 2.2 By virtue of Schedule 2, Part 1 Class A of the GPDO 2015, replacing the windows in a (single) dwelling house would not require planning permission providing "...the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the exterior of the existing dwellinghouse."
- 2.3 Consequently, those properties which remain single dwellings currently benefit from permitted development rights which would allow them to replace the existing sash windows with any design and configuration providing the external materials are of a 'similar appearance' to those existing. This offers no protection to the sash configuration, design, set-in or glazing bar profiles which make such a positive contribution to the character and appearance of the group. Similarly these properties could at present remove their original chimney stacks and turn over their front gardens to hard surfacing without the need for planning permission.

## **3. DETAILS OF THE PROPOSAL**

- 3.1 A direction is therefore proposed under Article 4. of the The Town and Country Planning (General Permitted Development) Order 1995 removing permitted development rights and bringing under planning control the replacement of any window, the removal of any chimney stack, part of any front boundary wall and the hard surfacing of front gardens of properties in the Church Circle portion of the South Farnborough Conservation Area. The properties affected would be 1-14 Church Circle; 23 and 24 Church Circle; 2 Church Road East; 28 & 30 Church Circle; Crowthorne 25 Oxford Road; The Chestnuts, 34 Church Circle; 31 Church Road West; 32 & 33 Church Circle; 38 Oxford Road & 89 Guildford Road East.
- 3.2 It is proposed under Article 4(1) of the GPDO to make the order removing PD rights within part of the South Farnborough Conservation Area. The matters which would be subject to the direction are:
  - (a) Class A of Part 1 of Schedule 2, consisting of the enlargement, improvement or other alteration of a dwellinghouse, where any part of the enlargement, improvement or alteration would front a relevant location;
  - (b) Class F of Part 1 of that Schedule, in relation to the provision of a hard surface which would front a relevant location;

(c) Class G of Part 1 of that Schedule, consisting of the erection, alteration or removal of a chimney on a dwellinghouse;

(d) Class A of Part 2 of that Schedule in relation to a gate, fence, wall or other means of enclosure which would be within the curtilage of a dwellinghouse and would front a relevant location.

- 3.3 The direction would come into force with immediate effect on the date it is made and would need to be confirmed by Cabinet within six months of that date, otherwise it would expire.

#### **4. Alternative Options**

- 4.1 An alternative option would be to make no order. The consequence could be that permitted development rights are used in a manner which will erode the character and appearance of a unified and distinctive development within the Conservation Area.

#### **5. Consultation**

- 5.1 The making of an Article 4 Direction must follow a statutory procedure requiring notification of, and consultation with affected parties. Those affected by the direction would have the opportunity to comment and make the case for amendments in the period following the making of the direction and prior to its confirmation.

#### **6. IMPLICATIONS**

- 6.1 If a local planning authority makes an Article 4 direction, it can be liable to pay compensation to those whose permitted development rights have been withdrawn, but only if it then subsequently:

refuses planning permission for development which would otherwise have been permitted development; or

grants planning permission subject to more limiting conditions than the General Permitted Development Order

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

- 6.2 The proposed direction would firstly affect a very limited number of properties, secondly, is not intended to prevent the replacement of windows, but rather to exercise appropriate control over their design and appearance, and thirdly, the retention of regard to chimneys and prevention of hard surfacing of front gardens, is considered likely to enhance the value of the properties affected. It is therefore considered that there would be a very limited risk of financial compensation claims against the Council. In the event one were successful it would be likely to constitute revenue expenditure

- 6.3 The principal costs of making and confirming an Article 4 direction include officers' time, printing notices for site display and advertising within a local newspaper. The costs of making and confirming a direction can be absorbed by the planning budget.

## **7. Legal Implications**

- 7.1 There is no statutory appeal against the making of an Article 4 direction. The proposed direction would therefore be open to challenge by way of a judicial review. However, if Rushmoor follows the prescribed process for making and confirming a direction, which includes considering objections to the proposed direction, and given that the Council would consider applications for the prescribed classes of development on a case-by-case basis, a successful judicial review is considered unlikely.

## **8. CONCLUSION**

- 8.1 The imposition of an Article 4 Direction would have considerable long term benefits in preserving the important and cohesive architectural character of this particular part of the Conservation Area. It may give rise to queries or requests suggesting further orders or action in relation to other Conservation Areas. The service is giving current consideration to an extensive programme of review and appraisal of the Borough's Conservation Areas. The need for further orders would be identified as part of this programme.

**Background documents:** Appeal Decision. 14 Church Circle Farnborough. 7<sup>th</sup> August 2018.

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