

**Regeneration, Culture and Adult Education Scrutiny Committee –  
6<sup>th</sup> November 2012**

**Report of the Director of the Urban Environment**

**Planning Application P12/0905 - Prior approval under Part 31 for demolition of 7,  
Straits Road, Lower Gornal, Dudley.**

**Purpose of Report**

1. To provide information on to background to, and process of determination of, P12/0905 and the subsequent making of an Article 4 Direction.

**Background**

2. The Council received application reference P12/0905 requesting confirmation of the prior approval of the Local Planning Authority in regard to the demolition of the building at 7, Straits Road, Hopyard Lane, Gornal Wood under permitted development rights granted by Government legislation.
3. The building is considered to be of Local Historic and Architectural Interest and is a Heritage Asset as defined in the National Planning Policy Framework (NPPF). The building has been on the Council's Local List since its inception in 1996. The decision to include a building on the local list is made by Development Control Committee.
4. Number 7, Straits Road, is a typical example of a simple cottage building in a large plot (used as smallholdings) that are typically found in a Black Country industrial "squatter" settlement such as Gornal Wood.
4. Black Country Core Strategy Policy ENV2 states that all development should aim to protect and promote the special qualities, historic character and local distinctiveness of the Black Country and particular attention should be paid to the preservation and enhancement of locally listed historic buildings. Saved Policy HE5 of the adopted Unitary Development Plan (2005) states that the Council will resist proposals for the demolition of locally listed buildings.
5. The demolition of buildings is normally permitted development, but this is conditional on an applicant applying to the Local Planning Authority (LPA) only as to whether its prior approval is needed "to the method of demolition and any proposed restoration of the site". Where a LPA determines that its prior approval

is required, it can only consider these two elements (method of demolition and proposed restoration) of the development.

6. In this instance it was considered that the demolition of the building could be prejudicial to the proper planning of the area and would constitute a potential detriment to the amenities of the area as it would result in a large vacant space in the historic core of Gornal Wood. This could have wider implications for the general character and appearance of the area for the future.

#### **Article 4 Direction**

7. Guidance from the Government's advisors on Heritage (English Heritage 2012) states, in line with the NPPF, Para 200) that LPA's may consider the use of an Article 4 Direction where the exercise of permitted development rights would undermine the aims for locally listed heritage assets.
8. Article 4 of the Permitted Development Order (as amended in 2010) allows a LPA to apply a Direction to withdraw the permitted rights granted by the Order where it is satisfied it is expedient that development should not be carried out, unless permission is granted for it by planning application.
9. Ensuring that the demolition of the building requires planning permission does not prevent the owner pursuing development of the site, but allows the Development Control Committee to fully consider the significance of the heritage asset, the wider implications of the works, and ensure that the views of others, with an interest in this matter, are able to be fully taken into account before a decision is taken. It also allows greater consideration of the development of the site post demolition should this ultimately be granted by the Committee.

#### **Process/Chronology**

10. The constitution allows for full onward delegation for the determination of a Prior Approval application but in the case of the making of an Article 4 Direction it requires that this is undertaken by the relevant Cabinet Member in consultation with Development Control Committee. This is normally , but not exclusively, by consideration at a Development Control Committee meeting.
12. The application prior approval (P12/0905) was invalid when it was received and could not be registered by the LPA until 16<sup>th</sup> July 2012. The application was received (and registered) after the closing date for the next Development Control Committee (30<sup>th</sup> July 2012) and therefore it was targeted for the next possible Development Control Committee on 28<sup>th</sup> August 2012.
13. Once registered the Local Planning Authority has 28 days to determine a prior approval proposal and during this time the case officer has to consider the submitted documentation (demolition statement, restoration plan and in this case a structural survey also) to ascertain if the level of information is sufficient to consider the proposal and if the demolition is to be supported.
12. The assessment established that the submission was deficient and the case officer requested further information. Following full assessment of the submission the case officer determined that prior approval should not be granted. There was therefore insufficient time to assess the submission, received the additional information and reach a conclusion in time for consideration as an emergency

item for July Committee, and the matter was placed on the agenda for the 28<sup>th</sup> August meeting.

13. It was accepted that the application period of 28 days would expire prior to the August committee date (it expired at the time of August committee closing). However, at the time of putting the matter on the agenda it was considered that the risk to the building was relatively low and that the level of risk was at that point acceptable. This was influenced by the fact that a demolition notice had not been submitted and the applicant stated on the application that they did not intend to demolish until 3<sup>rd</sup> September 2012. Had the Article 4 direction progressed to be considered at the August meeting the building would potentially have been “at risk” of demolition for a period of 20 days, with little or no recourse open to the Local Planning Authority.
14. Given the short period of time from the August meeting and the stated intended date of demolition (3<sup>rd</sup> September) the urgent decision sheet was commenced and Cabinet Member for Economic Regeneration visited the site with Head of Planning and Assistant Director for Planning and Environmental Health on 17<sup>th</sup> August in advance of him signing the decision sheet post committee. Accordingly, the Chair of Scrutiny Committee was briefed and agreed to the process on 17<sup>th</sup> August. The Mayor was briefed on 20<sup>th</sup> August and agreed to the process on 21<sup>st</sup> August 2012.
15. Simultaneously with the agenda being “published” (17<sup>th</sup> August 2012), officers received soft intelligence that there was an increased level of activity regarding the site. This intelligence was from frequent contact with colleagues outside of the Local Planning Authority. This occurred between the 17<sup>th</sup> and 22<sup>nd</sup> August.
16. The soft intelligence led to the conclusion that demolition prior to the serving of the Article 4 was then a real possibility, increasing the risk to the building. On the 22<sup>nd</sup> August 2012 the Head of Planning reviewed the case and decided in consultation with the Assistant Director of Law and Property that urgent action needed to be taken before the date of committee. That action meant consultation with Development Control Committee by email with the signing of the decision sheet by the Cabinet Member the next morning. The process followed was based exactly on that legal advice on the basis that the implications of this course of action were far less significant (and less permanent) than the demolition of the building.
17. The Cabinet Member and the Chair of Development Control Committee were further briefed by the Head of Planning on 22<sup>nd</sup> August and agreed to the course of action proposed. The action taken reduced the period of the building being exposed to risk.
18. The serving of an Article 4 Direction results in a development that was “permitted development” requiring planning permission. The applicants were already in the process of preparing an application for the wider redevelopment of the site which would cover the issue of 7 Straits Road and whether or not there is justification for either its retention or its removal.
19. The planning history on the site indicates, and indeed the applicant has been previously advised, that the removal of 7 Straits Road would not be supported by officers. The owner has therefore not been unduly disadvantaged and the consideration of a full planning application is a more transparent process allowing

for full and proper consideration by Development Control Committee on any subsequent proposals.

20. However, it is accepted that the constitution as it stands could be improved to take into account the case of reactive (rather than pro active) consideration of Article 4 Directions. To prevent a reoccurrence in the future consideration needs to be given to a process that can allow officers and Members to react swiftly whilst also ensuring that there is sufficient time for consideration.
21. In addition it is considered that a wholesale review of the Local List is undertaken to remove any buildings no longer worthy of inclusion, to put forward for statutory listing those of national significance and for those buildings remaining on the list following that review a decision taken to pro actively and pre-emptively serve Article 4 directions on those where exceptional circumstances indicated that it is appropriate to require their demolition to be subject to a full planning application.
22. Following the making of the Article 4 Direction Councillor Caunt submitted a complaint to the Chief Executive regarding the matter and the Chief Executive has responded to Councillor Caunt as per this report.

### **Finance**

23. The application for a Part 31 proposal is subject to a nationally set fee which covers part of the costs of determination the remainder is covered by existing budgets. Preparation of the Article 4(1) direction is allowed for within existing work programmes and budgets.
24. It should be noted that, refusal of planning permission following the making of an Article 4 Direction, or conditions of planning permission more restrictive than would have been permitted, may give rise to a claim for compensation. This would only be for abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development rights.
25. However, it should also be noted that in Dudley no such claims for compensation have been pursued and national research carried out for the English Historic Towns Forum (RPS Planning 2008) involving 72 planning authorities equally found no evidence of any incidences of such claims having been made. Should such a claim ever be made it would be met within existing budgets.

### **Law**

26. The relevant law is:
  - The Town and Country Planning Act 1990 (as amended)
  - Planning and Compulsory Purchase Act 2004
  - The Town and Country Planning (General Permitted Development) Order 1995
  - The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2012
  - Circular 9/95: General Development Order Consolidation 1995
  - Circular 10/95: Planning Controls over Demolition 1995
27. Before making an Article 4(1) direction, the Council as local planning authority must consider it expedient that development should not be carried out without a

planning application first being made and approved. (An article 4(1) direction can relate to specific or general development.)

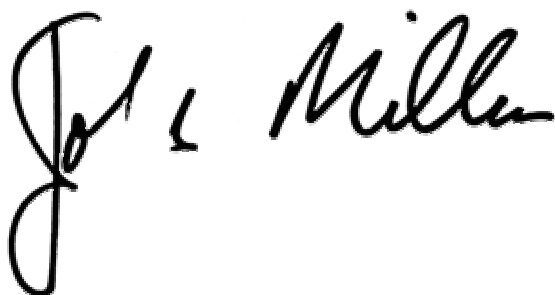
28. The law is clear that permitted development rights should only be withdrawn in exceptional circumstances. However, an Article 4 direction does not constitute an absolute prohibition of development; it simply requires that an express application for planning permission is to be made and then considered on its merits.

### **Equality Impact**

29. The proposals take into account the Council's Equal Opportunities Policy and seek to enable all sections of the community (including young children and young people) within the Borough to gain from the effective implementation and planning obligations and the associated benefits envisaged.

### **Recommendation**

30. It is recommended that the Regeneration, Culture and Adult Education Scrutiny Committee note and supports the proposed process improvements as set out in paragraph 20 and 21 of the report.



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**J. B. MILLAR**  
**DIRECTOR OF THE URBAN ENVIRONMENT**

Contact Officers:

Helen Martin      Telephone: 01384 814186 Email: [helen.martin@dudley.gov.uk](mailto:helen.martin@dudley.gov.uk)

**List of Background Papers**

*The Town and Country Planning (General Permitted Development) Order 1995*  
*The Town and Country Planning (General Permitted Development) (Amendment)*  
*(England) Order 2012*  
*Circular 9/95: General Development Order Consolidation 1995*  
*Circular 10/95: Planning Controls over Demolition 1995*  
*National Planning Policy Framework (March 2012)*  
*Black Country Core Strategy (February 2011)*  
*Dudley Unitary Development Plan 2005*  
*Good Practice Guide for Local Listing Identifying and Managing Significant Local*  
*Heritage Assets. English Heritage 2012*  
*Research into the use of Article 4 Directions on behalf of the English Historic Towns*  
*Forum (RPS Planning 2008).*