

Subject:	Directions restricting permitted development in conservation areas (Article 4 directions).
Head of Service:	Head of Planning and Regeneration
Decision Issues:	These matters are within the authority of the Executive
Decision type:	Non-key
Classification:	This report is open to the public.
CCC Ward(s):	All Canterbury, Heron, West Bay, Harbour, and Gorrell,
Summary:	<p><i>The article 4 direction in Canterbury restricting permitted development for dwellinghouses has been in place for over 35 years. The direction is generally well understood and has had a positive effect in controlling alterations to dwellings, especially those to windows and doors. This direction does not explicitly include all of the current classes of permitted development as it was made under 1977 legislation. The Canterbury direction now needs to be updated.</i></p> <p><i>Directions for the Herne Bay and Whitstable conservation areas were introduced in 1997. Directions for locally listed buildings in conservation areas were made in 2004. The Herne Bay direction has led to a number of issues regarding enforcement of the policy and the scope of the direction has been questioned. The report reviews these directions and makes recommendations concerning amendments.</i></p>
To Resolve:	<p>i) That the Canterbury Article 4 direction is re-designated under article 8 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).</p> <p>ii) To consult on the proposed amendment to the Herne Bay article 4 direction so as only to include pre-1914 dwellinghouses.</p>
Next stage in process	To advertise the amended directions for comments and present reports to the Herne Bay Area Members Panel and Development Management Committee.

SUPPORTING INFORMATION

1. Introduction

Permitted development is the term used to describe the works that householders are allowed to carry out without the need to apply for planning permission. These rights are set out in article 3 of the Town and Country Planning (General Permitted Development) Order 1995, as amended (the GPDO). These permitted development rights can be restricted under article 4 of the GPDO. This has the effect of requiring householders to apply for planning permission for certain types of work which would otherwise be permitted. Article 4 directions are usually made when the character of an area of acknowledged importance would be threatened by the 'permitted' development. Such designations are therefore most common in conservation areas. The Government introduced a simplified designation procedure to allow local authorities to restrict permitted development rights in conservation areas on 30 March 1994 known as article 4(2) directions. Previously to this directions required the consent of the Secretary of State.

An Article 4 direction was made for the Canterbury City conservation area on 22nd November 1985 under the General Development Order 1977 regulations. Article 4(2) directions have also been made for: the Herne Bay conservation area (confirmed on 30th September 1997); the Whitstable Town conservation area (confirmed on 16th April 1997); and all locally listed dwellinghouses in conservation areas (42 separate directions confirmed on 22nd May 2004 and 1st December 2004). The properties affected were leafleted and were given a six month period in which to comment on the proposed direction. Following designation leaflets and letters explaining the effect of the direction were distributed to all properties affected.

The classes of development affected by the article 4(2) directions are described in Appendix 1. Since the introduction of the direction in Herne Bay there has been a number of contentious cases some of which have resulted in planning appeals and enforcement action. The Development Control committee considered a report concerning 10 enforcement cases in the Herne Bay conservation area in October 2001. At this meeting the committee agreed the following criteria for article 4(2) applications involving the alteration of windows. The adopted criteria are as follows:

1. Use of purpose made, or high quality factory made timber sash windows. *Planning permission not required if windows are an exact copy or replica.*
2. Use of factory made timber sash windows or UPVC vertical sliding sash windows as replacements for Victorian/Edwardian one over one or two over two sash windows (i.e. windows with one or two panes, not Georgian styles which are divided into six or eight small panes). *Approve subject to choice of manufacturer and detailing, ensure that vertically sliding sashes are proposed.*
3. Use of UPVC replacement windows in suburban houses (post 1920). *Approve subject to choice of window style. In many cases the UPVC replacements can match the appearance of original joinery.*
4. Applications to replace inappropriate modern windows in pre 1920 houses (i.e. houses originally built with timber sashes). *Approve subject to choice of style of replacement unit. The replacement should match the appearance of traditional sashes as far as possible.*
5. Applications to replace traditional vertical sliding timber sash windows with standard UPVC units (i.e. side hung, top hung, bottom hung, horizontal pivot, vertical pivot or louvre). *Refuse*

The criteria above have been subsequently been applied to the Herne Bay, Whitstable and the locally listed building directions, but not to the Canterbury direction.

The implementation of the criteria requires applicants to provide design details of the proposed windows. A recent appeal in Herne Bay involved the replacement of traditional timber sash windows with double glazed UPVC windows. The information submitted with the application in the respect of design was very limited and as is common relied on an extract from a generic product brochure. There were no scaled drawings and sections of the proposed replacement windows. The planning inspector considered that the existing traditional timber sash windows were a prominent feature of the front elevation and that the application lacked “adequate design details of the proposed window elements and the way in which these elements would relate to the window surrounds. It is precisely these details that will determine whether the proposed windows would sufficiently replicate the qualities of those existing, to ensure that they would sit comfortably within the building and preserve the cohesiveness of the terrace”. The appeal was dismissed.

The assessment of proposed designs for windows and other alterations to article 4 buildings does therefore require additional work by both the applicant and planning officers to ensure that an acceptable level of detailed design information is provided. Although article 4 direction applications do not require the payment of a fee the provision of the necessary information does entail time and a cost for applicants and additional work for officers given the poor quality of many submissions.

None of the directions includes the ‘installation of domestic microgeneration equipment’ (Part 40 of the GPDO). Solar PV and solar thermal equipment is permitted development in a conservation area if it is installed on a roof and does not project 200mm above the plane of the roof. If the installation is mounted on a wall forming the principal or side elevation of the house then planning permission is required. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2011 introduces permitted development rights for stand alone solar, ground source heat pumps, biomass flues, air source heat pumps, and wind turbines. These classes of development (Classes A to I of Part 40) could be included in a new article 4 direction, which would then require the submission of planning applications for these categories of development. However there is, as yet, no evidence of harm being caused to conservation areas by the installation of such equipment. This is mainly due to the limited number of such installations. However if such installations are perceived to be a future threat then they can be brought under planning control.

2. **Detail**

The Canterbury direction

The article 4 direction for Canterbury was designated in 1985 under the General Development Order 1977. The direction included the following categories of development:

1. enlargement or alteration of a dwellinghouse where this affects the external appearance of the building
2. replacing or painting roofing materials
3. cladding or rendering walls
4. altering doors and windows
5. erection of a porch
6. erection of a fence, gate or boundary wall

7. painting external walls.

Since designation there have been several changes to the legislation concerning article 4 directions. The Canterbury designation remains in force by virtue of sections 17(2)(b) and 23 of the Interpretation Act 1978. However the Canterbury direction is out of date and makes no reference to satellite dishes or alterations to roofs (i.e. rooflights and dormer windows – classes C and H of the current GPDO). The direction refers to ‘any alteration that affects the external appearance of the building’, whereas the article 4(2) under the 1990 Order (as used for Herne Bay, Whitstable and the locally listed buildings) only affect those elevations of a house fronting a ‘relevant location’ (i.e. the road or an open space). The Canterbury direction does not relate to the classes of permitted development outlined in Appendix 1 and the permitted development restrictions apply to all elevations, not just the road frontage.

For the avoidance of any confusion and in order to apply the same permitted development restrictions uniformly across the district it is proposed that the Canterbury article 4 direction be re-made utilising the current legislation. This would mean that the restrictions in permitted development rights would only apply to elevations fronting a relevant location. In addition it is proposed that the adopted criteria concerning the alteration of windows in Herne Bay and Whitstable would also apply to the new Canterbury direction so that there is a uniformity of policy across the district.

The Herne Bay direction

Although criteria for window alterations were agreed in 2001 there have continued to be several problem cases involving planning appeals, enforcement action and the ombudsman. The majority of cases involve householders wishing to install double glazed windows in order to reduce heating bills. The other issue that can cause concern is the erection of satellite dishes. Article 4 restrictions concerning alterations to roofs, addition of porches and demolition of garden walls appear to be generally accepted.

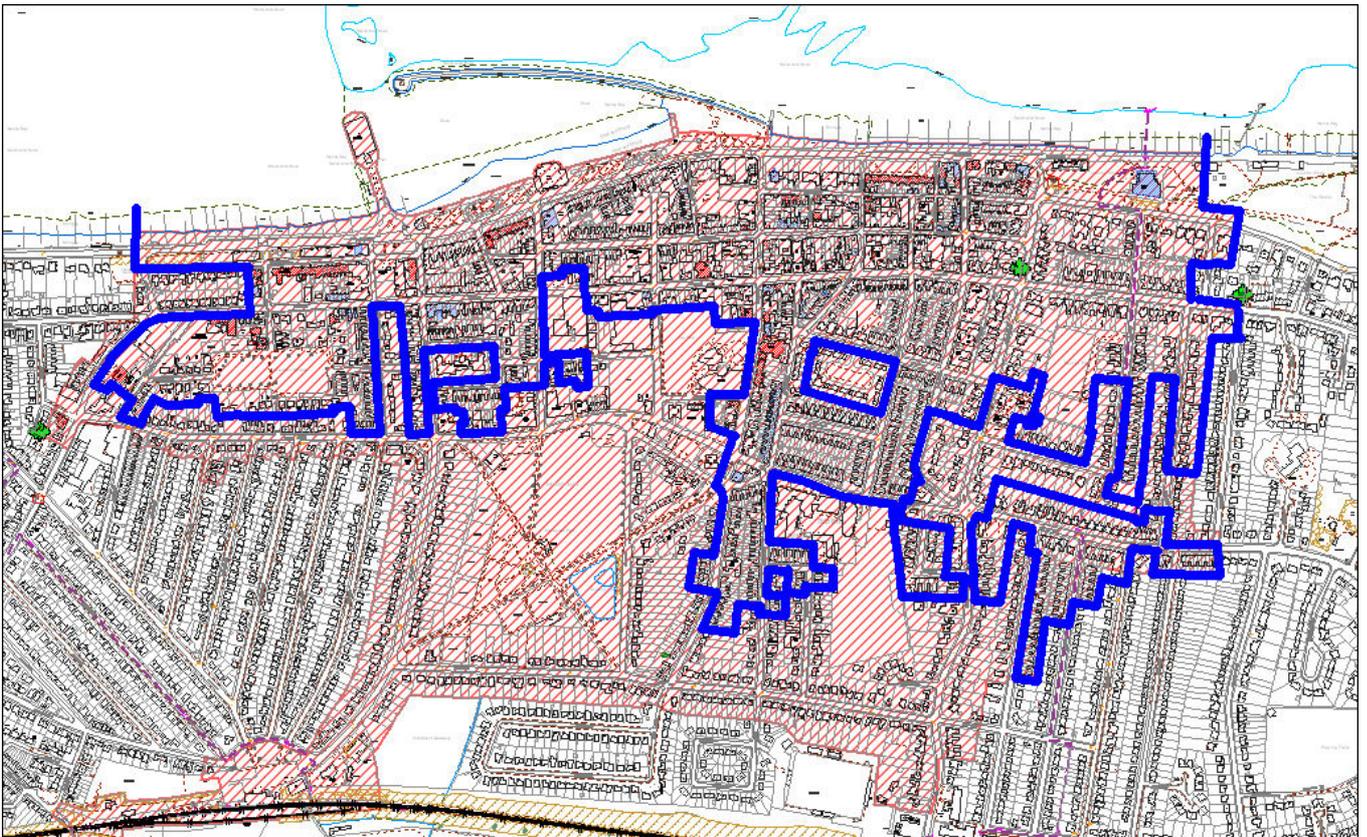
The problem with window replacement is that the conservation area contains a mix of window styles and types. When members considered the introduction of the direction in 1996/7 they agreed that certain styles of UPVC and aluminium windows (top hung windows with a fixed light, or louvres) were damaging the appearance of the conservation area. Before the introduction of the article 4 direction many traditional timber sash windows were replaced. Householders applying for permission since 1997 feel that they are being treated unfairly compared to those people who installed new windows before the direction was introduced. When a street has a wide mix of traditional and replacement windows it is difficult for the applicant to agree that the special character of the area will be damaged by allowing another property to alter its windows. The provision of adequate information concerning the design of replacement windows has also been a cause of concern and has led to several planning appeals. The majority of cases that have gone to appeal however have been dismissed by the planning inspectors and the council’s position upheld.

Herne Bay conservation area contains a large number of late Victorian terraced housing and early 20th century semi-detached and detached houses. The conservation area appraisal explains the reasons why these areas were included in the conservation area. There are many streets in Herne Bay that are of Victorian terraces or semi-detached houses with a high degree of cohesion and high quality traditional detailing. The article 4 direction in such areas has been upheld at appeal and has helped to preserve and enhance the conservation area. However not all of the conservation area has the same degree of quality and there are several neutral or

negative streets. Certain streets have also experienced a high percentage of replacement windows.

There would appear to be two options available:

1. To amend the area covered by the existing direction. Article 8 of the GPDO allows the area affected by the direction to be amended. The area would be reduced as shown on the plan below to those properties constructed before 1914. This would include the historic centre of the town and the Victorian and Edwardian houses. The interwar and post war suburban houses would be removed from the direction.



2. To cancel the direction apart for the locally listed buildings. Locally listed buildings in the conservation area would continue to be subject to the article 4 direction. These buildings have been identified as having local historic or architectural interest and it follows that their external appearance should be preserved or enhanced. Listed buildings would continue to require listed building consent for external and internal alterations.

The Whitstable article 4(2) direction.

The Whitstable direction has not led to the same level of planning enforcement difficulties that have arisen in Herne Bay. The adopted criteria for window replacement appear to have been accepted and are generally working well. This may in part be due to the 'gentrification' of Whitstable over the last 10 years. Houses and cottages with original windows and doors are generally more desirable than those

that have been 'restored' with UPVC doors and windows. No change is proposed for the Whitstable article 4(2) direction.

The Locally Listed buildings article 4(2) directions.

These directions have not been contentious and have been supported by the majority of owners affected. The directions affect the external elevation of the property facing the road and it is accepted that these buildings of local historic or architectural interest should be protected. No change is therefore proposed to these directions.

3. Relevant Council Policy

- a. Community Plan. An objective of the Community Plan is to maintain the built environment in keeping with its surroundings.
- b. Local Plan. Policies BE7 and BE9 of the adopted District Local Plan (2006) and paragraphs 6.94 to 6.96 refer to conservation areas and article 4 directions.
- c. Corporate Plan. Action 4 of Pledge 6 of the Corporate Plan is to 'ensure that our plans and activities give sufficient protection to heritage sites and the built and natural environment'.

4. Consultation planned or undertaken

The amendment of the Herne Bay article 4(2) direction and the re-designation of the Canterbury direction would not require a formal period of public consultation. Such directions can be made with immediate effect, but can only restrict those classes of permitted development listed in Appendix 1. In the case of Herne Bay where the area of the direction is to be altered, consultation with those properties affected would be carried out.

The consultation must specify the date on which the direction would come into force. The start date must be at least 28 days but no more than two years after start of the consultation period. The confirmation of the direction would be considered by the Executive within the specified period and formally confirmed, if considered appropriate, taking into account any representations received.

5. Options available

1. To leave the existing Herne Bay article 4(2) direction in place
2. To amend the area affected by the Herne Bay article 4(2) direction as shown on the enclosed plan (i.e. to remove post 1914 properties)
3. To cancel the Herne Bay article 4(2) direction apart from those locally listed buildings in the conservation area
4. To re-designate the Canterbury article 4 direction using current legislation.

6. Reasons for supporting option recommended

Options 2 and 4 are recommended. The reasons are discussed in section 2 of the report above.

7. Implications

- (a) Financial Implications - The costs for advertising the directions would be taken from the 2012/13 Conservation and Countryside Section budget.
- (b) Legal Implications – The amendment to the Herne Bay direction would be made using article 8 of the GPDO 1995 which gives power to "cancel or vary the direction by a subsequent direction". The Canterbury direction would be cancelled and a new article 4 direction made in its place.

Other implications

- (c) Staffing/resource - None
- (d) Property Portfolio – The amendment to the Herne Bay would remove the 1970's council housing developments at Pier Avenue, Victoria Park, Elizabeth Court and Redgates (Canterbury Road) from the article 4 direction.
- (e) Environmental/Sustainability Implications – Traditional windows can be very durable. Many original Victorian windows are still in place whereas modern windows tend to be designed with only a 20 to 30 year life. Current calculation methods may be rather pessimistic about the thermal performance of traditional windows and the opportunities for improvement. English Heritage research has shown that the thermal performance of traditional windows can be improved to an acceptable standard rather than having to be replaced.
- (f) Planning implications – Discussed in report
- (g) Human Rights issues - None
- (h) Crime and Disorder - None
- (i) Biodiversity – Discussed in the appraisals
- (j) Safeguarding Children - None
- (k) Energy efficiency – The Building Regulations 2010, Part L, recommend a U value of 1.6 for replacement windows. A historic vertically sliding sash window would have a U value of 4 or 5 (the higher the U value the worse it is for heat loss). However with fairly simple methods, such as draught proofing, installing curtains, blinds, shutters and secondary glazing it is possible to dramatically improve the thermal performance of existing windows (reducing the U values to between 1.8 and 2.0). (A U value is the heat loss through a square metre of a building element – for example window glass – for each degree of temperature difference between inside and outside. It is normally expressed as Watts per metre squared Kelvin - W/m²K).

8. Conclusions

The article 4 direction for Canterbury should be re-made in order to ensure that it fully contains the range of permitted development restrictions. Making a new direction will ensure that all of the article 4 directions affecting dwellinghouses are based on the same statutory base and that consistent advice can be given.

The Herne Bay direction is proposed to be amended so that it only applies to pre 1914 houses. It is the appearance of these houses that is most affected by inappropriate alterations to windows and doors. Reducing the area will save both applicants and officers both time and expense in dealing with article 4 applications.

Contact Officer: David Kincaid Telephone: 01227 862185

Appendix 1

Town and Country Planning (General Permitted Development Order) 1995 – as amended

Permitted development rights that can be restricted by an article 4 direction with immediate effect (i.e. without Secretary of State approval):

- a) Class A of Part 1 of Schedule 2, (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 C of Part 1 of that Schedule, (alteration to the roof) where the alteration would be to a roof slope which fronts a relevant location;
- c) Class D of Part 1 of that Schedule, (erection of a porch outside an external door) where the external door in question fronts a relevant location;
- d) Class E of Part 1 of that Schedule, (the provision within the curtilage of: any building, enclosure or pool required for purposes incidental to the enjoyment of the house; or a container used for storage of heating oil or gas) where the building or enclosure, swimming or other pool to be provided would front a relevant location, or where the part of the building or enclosure maintained, improved or altered would front a relevant location;
- e) Class F of Part 1 of that Schedule, (the provision of a hard surface for any purpose incidental to the enjoyment of the house) where the hard surface would front a relevant location;
- f) Class H of Part 1 of that Schedule, (the installation of a microwave antenna) where the part of the building or other structure on which the antenna is to be installed, altered or replaced fronts a relevant location;
- g) Class A of Part 2 of that Schedule, (the erection of a means of enclosure) where the gate, fence, wall or other means of enclosure would be within the curtilage of a dwellinghouse and would front a relevant location;
- h) Class G of Part 1 of that Schedule, (the installation, alteration or replacement of a chimney on a dwellinghouse);
- i) Class C of Part 2 of that Schedule, (the painting of the exterior), which fronts a relevant location, of—(i)a dwellinghouse; or (ii)any building or enclosure within the curtilage of a dwellinghouse which fronts a relevant location;
- j) Class B of Part 31 of that Schedule, (the demolition of a means of enclosure) where the gate, fence, wall or other means of enclosure is within the curtilage of a dwellinghouse and fronts a relevant location.

(Note: a “relevant location” means a highway, waterway or open space).