

TRAFFORD COUNCIL

Report to: Planning and Development Management Committee
Date: 24 September 2020
Report for: Decision
Report of: Head of Planning and Development

Report Title

Chesham House, 101 Church Road, Urmston: Making of immediate Article 4 direction to remove permitted development rights for the demolition of the building.

Summary

This report sets out the reasons behind the proposal to make an immediate Article 4 Direction removing permitted development rights for the demolition of Chesham House.

This report seeks approval from the Committee to make the immediate Article 4 Direction including undertaking statutory consultation requirements.

Recommendation

That the Planning and Development Management Committee:

- (i) Resolve that the making of an immediate Direction pursuant to Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to withdraw the permitted development rights to demolish Chesham House, 101 Church Road, Urmston is appropriate, and justified, as demolition of Chesham House would be prejudicial to the proper planning of the area and constitutes a threat to the amenities of the area .
- (ii) Approve the making of the Article 4(1) Direction for Chesham House, 101 Church Road, Urmston the extent of which is shown in Appendix 2.
- (iii) Delegate authority to the Corporate Director of Governance and Community Strategy to make the Article 4(1) Direction for the land at Chesham House, 101 Church Road, Urmston shown on the plan attached at Appendix 1 and delegate to the Corporate Director of Place authority to carry out all necessary consultation following the making of the Direction, to notify the Secretary of State in accordance with statutory requirements and to take all other action considered necessary or expedient to give effect to the matters set out in this report.
- (iv) Confirm that the Article 4(1) Direction will be effective with immediate effect once made.
- (v) Delegate authority to the Corporate Director of Governance and Community Strategy to confirm the Direction in due course if there are no objections.
- (vi) Request that subsequent planning applications involving the demolition of Chesham House and where the Article 4 Direction remains in force to be

referred to the Planning and Development Management Committee for determination.

Contact person for access to background papers and further information:

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1.0 INTRODUCTION AND BACKGROUND

- 1.1 An application for Prior Notification under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) has been received for the demolition of the dwelling at Chesham House, 101 Church Road, Urmston (101835/DEM/20). This application has not yet been validated but the notification is due to expire on 2 October 2020.
- 1.2 Since January 2020, the Council has received two applications, 99782/FUL/20 and 100977/FUL/20, seeking the demolition of Chesham House and its replacement with a pair of semi-detached dwellings. These applications have been opposed by officers given their view that demolition of Chesham House would be prejudicial to the proper planning of the area and constitutes a threat to the amenities of the area.
- 1.3 Demolition is development permitted under Article 3, Schedule 2, Part 11 of the GPDO. This requires the developer to apply to the Local Planning Authority (LPA) for a determination as to whether the prior approval of the authority is required as to the method of demolition and any proposed restoration of the site. The LPA is not able to object to the demolition of a building in principle through this process.
- 1.4 Article 4 of the GPDO allows for an LPA to make a Direction that certain classes of development set out in this Order should not be carried out unless permission is granted for it on application to the LPA. An immediate Article 4 Direction can be made if the Council considers that the development would be prejudicial to the proper planning of the area or would constitute a threat to the amenities of the area.
- 1.5 Schedule 3 of the GPDO sets out the procedure for the making of an Article 4 Direction, including the requirement to publicise such a direction.
- 1.6 It is the view of officers that the demolition of Chesham House would be prejudicial to the proper planning of the area and constitutes a threat to the amenities of the area.
- 1.7 It is therefore proposed to make a Direction with immediate effect under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 1.8 The proposed Direction under Article 4 and Paragraph 2 of Schedule 3 of the GPDO will have the effect of withdrawing the permitted development rights

conferred by the GPDO Class B of Part 11 of Schedule 2, relating to the demolition of the building. The Direction will cease to have effect after six months unless confirmed by the Council during that period.

- 1.9 The effect of the immediate Article 4 Direction is that the building cannot be demolished unless a planning application is made and permission granted.
- 1.10 There is a current planning application, 100977/FUL/20 which seeks consent for the demolition of Chesham House and its replacement with a pair of semi-detached dwellings. This application is yet to be determined; the outcome will be reported in the Additional Information Report.

2.0 JUSTIFICATION FOR IMMEDIATE ARTICLE 4 DIRECTION

- 2.1 Chesham House is a substantial suburban villa, constructed in the 1890s/early 1900s to the south side of Church Road, Urmston. It is understood that it was constructed as a residential property however was last in use as a bed and breakfast.
- 2.2 The Council has received three recent planning applications of relevance to this report which have generated notable local objection:
 - 99782/FUL/20- Consent sought for demolition of property and erection of two replacement semi-detached dwellings. Withdrawn March 2020 following concerns on heritage and design grounds. 17 objections.
 - 100977/FUL/20- Consent sought for demolition of property and erection of two semi-detached replacement dwellings. Current application. 25 objections, Cllr call-in if minded to approve.
 - 100987/FUL/20- Consent sought for extensions and subdivision into two semi-detached dwellings. Current application. 11 objections, 3 support.
- 2.3 Chesham House is not a listed building and is not located within a conservation area. Nevertheless, it is the view of officers that the property is a non-designated heritage asset in that it has a degree of heritage significance meriting consideration in planning decisions but does not meet the criteria for designated heritage assets. The significance of Chesham House derives from the following:

Chesham House is a substantial, suburban villa, constructed in the late 1890s/early 1900s. One of a number of large, good quality, detached properties built for the middle classes along the south side of Church Road. There is coherence to the ensemble of houses through scale, form, appearance, architectural detailing and use of materials. They illustrate the expansion of Urmston during this period following the arrival of the railway in the town in 1873 and are identified in the Trafford Urban Historic Landscape Characterisation Survey [HGM5047].

The house is believed to have been built by Joseph Spark & Son Ltd, an eminent firm of local builders founded in Urmston in 1880. Designed in the domestic revival style, the asymmetrical composition is dominated by a large two storey canted bay capped with a partial spire. The principal elevation is constructed from Ruabon brick laid in a Flemish Bond denoting a higher status house. There is an advanced brick plinth at ground level and string course between ground and first floor levels adding interest to the elevations. At ground floor there are arched brick headers infilled with a decorative terracotta motif and brick patterns. Window openings have painted stone cills and lintels across both floors. The hierarchy of the floors is displayed through the pattern of fenestration with painted timber tripartite casements at ground floor [these may be historic replacements] and single/pairs of painted timber vertical sliding sashes at first floor. The house is accessed via a flight of steps and centrally placed door. The roof is hipped and a prominent feature of the building, laid with blue Welsh slate, large overhanging eaves, decorative ridge tiles and several substantial chimneys. There is a half-timbered gable on the east elevation resulting in an intriguing partial hipped detail on the north and south elevations.

The house is two storeys in height with a half attic storey and cellars. To the east is a single storey room showcasing Victorian eclecticism with a crenelated parapet and large decorative vent. The form, materials and construction suggests this is contemporary to Chesham House and appears to be a former smoking and/or billiard room.

The building occupies a large front and rear gardens set back from Church Road and bounded by a local buff sandstone wall with ingress and egress. Only one of the four gate piers survives which includes a shaped stone pier cap.

Chesham House is significant for its architectural and historic values. There is a good level of architectural integrity and survival of historic fabric. The coherence with adjoining dwellings of a similar period amplifies this significance and the experience of one another. The dwelling also illustrates the historic development of Urmston during the late 19th and early 20th centuries and is associated with local building form Joseph Spark & Son Ltd.

- 2.4 The loss of Chesham House would therefore be detrimental to the visual amenity of the area and be harmful on heritage grounds; both as a property in its own right and due to the role that it plays within the Church Road street scene where it is part of a larger group of attractive historic properties, which are also non-designated heritage assets (albeit with no known threat to their future). The demolition of the property would lead to the total loss of its significance. It is therefore the view of officers that the demolition of Chesham

House would be prejudicial to the proper planning of the area and constitutes a threat to the amenities of the area.

3.0 USE OF AN IMMEDIATE ARTICLE 4 DIRECTION

- 3.1 An Article 4 Direction can be used to remove specific permitted development rights from all or part of a local authority's area. It does not restrict development altogether but means that the development would require planning permission. This means that the demolition of Chesham House would need to be assessed against the Development Plan through a planning application in which the loss of Chesham House would be a material consideration.
- 3.2 Paragraph 53 of the NPPF states that "The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so."
- 3.3 Planning Practice Guidance (PPG) states that "The use of article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to:" ... "cases where prior approval powers are available to control permitted development".
- 3.4 In relation to immediate Article 4 Directions, the PPG states "The circumstances in which an immediate direction can restrict development are limited. Immediate directions can be made in relation to development permitted by Parts 1 to 4 and 11 of Schedule 2 to the General Permitted Development Order, where the development presents an immediate threat to local amenity or prejudices the proper planning of an area."
- 3.5 PPG also states that "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."

- 3.6 Article 4 Directions can be either immediate or non-immediate. A non-immediate Direction requires the local planning authority to serve notice by way of a local advertisement, site notice and by writing to the owner and occupier of the land. The site notices must be in place for a period of not less than 6 weeks. This would go beyond the date by which the demolition notice would expire and deemed consent for demolition would apply. Chesham House could therefore lawfully be demolished between this expiry date and the non-immediate Article 4 Direction taking effect, should this route be taken.
- 3.7 An immediate Article 4 Direction can be issued by the Planning and Development Management Committee and will take effect straight away. This will immediately remove the permitted development rights relating to demolition at Chesham House and will last for a 6 month period before which the Direction will either expire or be confirmed.
- 3.8 Following an immediate Article 4 Direction, the Council is required to give notice of the decision by way of local advertisement, site notice and by serving notice to owners and occupiers of the land. The Direction must also be referred to the Secretary of State. After a period of 28 days, and not longer than 6 months, the Council decides whether to go ahead and confirm the Direction, taking into account any representations which have been received and depending on the outcome the Council can confirm the Direction to permanently withdraw the permitted development right.
- 3.9 The issue of compensation is considered further in sections 6.0 and 7.0 below.
- 3.10 There is no formal right of appeal against the making of an immediate Article 4 Direction. However, the owner or proposed developer of a building the subject of an Article 4 Direction may apply for planning permission for its demolition. If, following the making of an immediate Article 4 Direction, such an application was made it would have to be considered by the Council in the proper manner.

4.0 OTHER OPTIONS

4.1 Option 1- Do nothing

Chesham House would be lost from the Church Road street scene which would be detrimental to the character and appearance of the area. If the most recent proposals were implemented a pair of semi-detached dwellings would be erected which would make a very modest contribution (one dwelling net) to meeting the Borough's housing land targets.

4.2 Option 2- Make a non-immediate Article 4 Direction

A non-immediate Direction could be made which, if it comes into force 12 months after the Direction being issued, would remove the possibility of paying compensation. A demolition notification has already been submitted and so it is likely that Chesham House would be demolished within the intervening 12 months with the visual and heritage harm that that would entail.

5.0 CONSULTATION

- 5.1 Consultation has been carried out with the LPA's Heritage Development Officer for the purpose of providing evidence for this report.
- 5.2 Consultation is required to be carried out with the owners and occupiers of Chesham House in line with the regulations set out in the GPDO.

6.0 LEGAL IMPLICATIONS

- 6.1 There is no statutory appeal against the making of an Article 4 Direction. However, such a decision would be open to challenge by way of judicial review. In order to make an Article 4 Direction, the LPA must be satisfied that it is expedient that the permitted change of use should not be carried out unless permission is granted for it (see Article 4(1)). In making any such decision, it is important that the LPA takes into account all relevant guidance. Overall, provided that a LPA takes into account all relevant considerations, and applies the correct test, it is unlikely there would be a successful judicial review of an Article 4 direction.
- 6.2 Section 108 of the Town and Country Planning Act 1990 includes a provision that compensation can be sought where (i) the LPA makes an Article 4 Direction, (ii) an application is made for planning permission to carry out development that would formerly have been permitted by the GPDO and (iii) the LPA refuses that application or grants permission subject to conditions differing from those in the GPDO.
- 6.3 However, where 12 months' notice is given in advance of a Direction taking effect there will be no liability to pay compensation (provided that the development authorised by the new changes had not started before the notice was published). Where Directions are made with immediate effect or less than 12 months' notice, compensation will only be payable in relation to planning applications which are submitted within 12 months of the effective date of the Direction and which are subsequently refused or where permission is granted subject to conditions.
- 6.4 Compensation may only be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The preparation of the Article 4 Direction can be undertaken using existing officer resource.
- 7.2 A claim for compensation can only arise if a subsequent planning application for demolition is refused. The level of compensation would be a material consideration in the determination of a subsequent planning application and so is an issue that would be considered at that point. There is no direct risk of compensation from the issuing of an immediate Article 4 Direction alone. It is

therefore recommended that future applications for the demolition of Chesham House be referred back to the Committee to allow appropriate oversight of this issue.

- 7.3 Any future report to the Committee in association with a relevant planning application would set out the level of compensation likely to be payable, underpinned by specialist advice from the Council's Estates Service. Members will be able to take this information into account in the determination of that application.

8.0 HUMAN RIGHTS AND EQUALITIES

- 8.1 Section 6 of the Human Rights Act 1998 requires public authorities to act in a way that is compatible with the European Convention on Human Rights. Various Rights may be relevant to this direction including Article 1 (protection of property) and Article 8 (Right to respect for a private and family life). The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Any interference must be necessary and proportionate.
- 8.2 The rights of the individual have been considered against the wider public interest and it is determined that the Articles will not be triggered.
- 8.3 The Local Planning Authority has had regard to the provisions of the Equality Act 2010 in making this recommendation. The issuing of an Article 4 Direction would not have an adverse impact on protected groups.

9.0 RECOMMENDATIONS

That the Planning and Development Management Committee:

- (i) Resolve that the making of an immediate Direction pursuant to Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 to withdraw the permitted development rights to demolish Chesham House, 101 Church Road, Urmston is appropriate, and justified, as demolition of Chesham House would be prejudicial to the proper planning of the area and constitutes a threat to the amenities of the area .
- (ii) Approve the making of the Article 4(1) Direction for Chesham House, 101 Church Road, Urmston the extent of which is shown in Appendix 2.
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- (iv) Confirm that the Article 4(1) Direction will be effective with immediate effect once made.
- (v) Delegate authority to the Corporate Director of Governance and Community Strategy to confirm the Direction in due course if there are no objections.
- (vi) Request that subsequent planning applications involving the demolition of Chesham House and where the Article 4 Direction remains in force to be referred to the Planning and Development Management Committee for determination.

Background Papers

None.

APPENDIX 1

DRAFT ARTICLE 4 DIRECTION



TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 2015, AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH PARAGRAPH 2 OF SCHEDULE 3 APPLIES

CHESHAM HOUSE, 101 CHURCH ROAD, URMSTON, M41 9FJ

WHEREAS Trafford Borough Council being the appropriate Local Planning Authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) Order 2015, as amended, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged in red on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990, as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015, as amended, hereby direct that the permission granted by Article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below.

THIS DIRECTION is made under Article 4(1) of the said Order and, in accordance with Paragraph 2(6) of Schedule 3, shall remain in force until(*insert date*) (being six months from the date of this direction) and shall then expire unless it has been confirmed by the appropriate Local Planning Authority in accordance with Paragraph 7 of Schedule 3 before the end of the six month period.

SCHEDULE

Any building operation consisting of the demolition of a building being development comprised within Class B of Part 11 of Schedule 2 to the said Order and not being development comprised within any other Class.

**1. Made under the Common Seal of Trafford Borough Council
thisday of.....2020**

**The Common Seal of the Council was affixed to this Direction in the presence
of
Authorised Signatory**

**2. Confirmed under the Common Seal of Trafford Borough Council
thisday of.....2021**

**The Common Seal of the Council was affixed to this Direction in the presence
of
Authorised Signatory**

APPENDIX 2

ARTICLE 4 DIRECTION PLAN BOUNDARY

LOCATION

