

CONSIDERATION OF AN ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR SINGLE STOREY REAR EXTENSIONS OF OVER 4M DEPTH

Cabinet Member	Councillor Keith Burrows
Cabinet Portfolio	Planning, Transportation and Recycling
Officer Contact	James Rodger – Residents Services
Papers with report	N/A

HEADLINE INFORMATION

Summary	To consider proposals to protect Hillingdon's residents from the impacts of proposed legislative changes which would enable extensions of up to 6m and 8m depth (dependent on house type) to be built without the need for planning permission.
Contribution to our plans and strategies	This report would support Hillingdon being a clean and attractive Borough.
Financial Cost	There would be an administrative cost of introducing an Article 4 Direction, but this would not exceed £10,000. There would be a reduction in planning fee income as applications for extensions of over 4m depth would be exempt from a fee (this could be up to £100,000 a year).
Relevant Policy Overview Committee	Residents' and Environmental Services Policy Overview Committee
Ward(s) affected	All

RECOMMENDATIONS: That

- (i) officers be authorised to prepare an Article 4 direction withdrawing permitted development rights for single storey rear extensions over 4m depth. The Article 4 Direction to cover all wards in the Borough.
- (ii) officers be authorised to implement the Article 4 Direction (taking into account any statutory notification period to avoid compensation) immediately following any legislative change that enables single storey rear extensions of over 4m depth to be undertaken without the need for planning permission such direction to have effect after 12 months prior notice has been given.

Reasons for recommendation

The proposed recommendation seeks to protect Hillingdon's residents from the impacts of proposed legislative changes which would enable extensions of up to 6m and 8m depth (dependent on house type) to be built without the need for planning permission.

The impact of over-sized single storey rear extensions on Hillingdon's largely suburban housing stock (where rear gardens are modestly sized and the space between properties is limited) would result in a dramatic impact on the character and appearance of the Borough. Furthermore extensions of over 4m depth would have a dramatic impact on residential amenity with regard to loss of light and over-dominance.

Alternative options considered / risk management

Not to authorise officers to commence work on an Article 4 Direction. This would not be in the public interest given the likely adverse impact of single storey rear extensions exceeding 4m depth.

Policy Overview Committee comments

None at this stage.

INFORMATION

1. Cabinet at its meeting on 14 February considered a report which outlined the consultation response sent to Central Government regarding proposals to relax the planning regulations regarding single storey rear extensions. The Council raised very strong objection to the proposals, not least because the impact on Hillingdon's largely suburban housing stock where rear gardens are modestly sized and space between properties limited would result in a dramatic impact on the character and appearance of the Borough. Furthermore extensions of either 6m or 8m depth (dependent on house type) would have a dramatic impact on residential amenity with regard to loss of light and over-dominance.
2. The Government is proposing changes to permitted development (PD) in 5 areas:
 - increasing the PD limits for the depth of single-storey domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses), in non-protected areas, for a period of three years. No changes are proposed for extensions of more than one storey.
 - increasing the PD size limits for extensions to shop and professional/financial services establishments to 100 sq m, and allowing the building of these extensions up to the boundary of the property (except where the boundary is with a residential property), in non - protected areas, for a period of three years.
 - increasing the PD size limits for extensions to offices to 100 sq m, in non-protected areas, for a period of three years.
 - increasing the size limits for new industrial buildings within the curtilage of existing industrial premises to 200 sq m, in non-protected areas, for a period of three years.
 - removing some prior approval requirements for the installation of broadband infrastructure for a period of five years.

Note: Non protected areas in the above context are virtually all of Hillingdon.

3. Of perhaps greatest concern is the proposal to enable permitted development rights for extensions over the existing thresholds of 3m and 4m respectively (dependent on house type) under permitted development rights and up to 6m and 8m in depth respectively. It should be stressed that on roads on hillsides where one property is higher than another (e.g. A lot of Northwood Hills unsurprisingly, but also many other parts of the Borough) the impact of a 6m or 8m deep extension could be especially pronounced. This is because under permitted development rights height restrictions are taken from the applicants property not the neighbours property (re: A 2.5m high extension can be 3.5 high from the neighbours garden where the neighbours garden is 1m lower).
4. For single storey rear extensions the impact on both the adjoining properties and the extended house are considered excessive in terms of the proposal itself and in conjunction with existing PD rights for outbuildings by;
 - Creating an overbearing relationship and a loss of outlook and light to adjoining homes. This includes creating properties with rooms that do not benefit from natural daylight, which is both un-sustainable and not conducive to good living conditions.
 - Reducing the remaining 'garden' area in terms of its use and appearance that would also be contrary to the Government's expressed concern about the effects of 'garden grabbing' on local character.
 - Significantly increasing water run-off and reducing soft landscaping.
 - Allowing for enlarged extensions and 'pd' outbuildings would encourage building over much of the rear gardens of the typical smaller house types and plot sizes seen in large geographic areas of the Borough.
5. Officers consider that many single storey rear extensions that could be proposed exceeding 4m depth will not be for large kitchens or lounges, but will be for additional bedrooms to be rented out or to enable sub-divisions to occur. Such extensions represent a major headache for Building Control officers as the consequent layouts that result are likely to involve 'rooms within rooms', within the newly created spaces, thus creating fire safety issues. At present over-sized extensions are refused planning permission, therefore such issues rarely arise, but if 6m to 8m deep extensions were permitted development a number of health and safety issues arise which are of considerable concern to LBH Building Control officers.
6. Single Storey rear extensions between 3-4m depth are usually granted planning permission, where they are not granted permission is often on very dense new housing estates where planning conditions are withdrawing permitted development rights for all types of single storey rear extension. The proposed legislation would not override these existing planning conditions. In essence it is the extensions of over 4m depth that would cause the harm to both visual and residential amenity if no planning controls existed.
7. Article 4 Directions are a tool whereby for a specific geographic area the Council can override normal permitted development rights and require a planning application for a specific type of development outlined in the Article 4 Direction. In the case of this report it is considered that the whole of Hillingdon would be the relevant geographic area as there is no individual ward that does not contain suburban housing stock that would be adversely affected by the proposed relaxation of planning regulations.
8. Officers have considered whether the Council could introduce an Article 4 direction to require anyone wishing to build extensions over 4m depth to first apply for planning permission thus overriding the Government's proposed changes to permitted development rights. At this stage the Government has not introduced legislation to

enable the relaxation of permitted development rights for single storey rear extensions. The legal difficulty the Council has is that it cannot withdraw permitted development rights that do not already exist (in plain English we cannot withdraw permitted development rights until after the changes are made to legislation). Therefore it is recommended that Full Council give prior authorisation for the Article 4 Direction so that the Council can act swiftly once the Government relaxes permitted development rights. There will still be a 12 month gap between making the Article 4 Direction and it taking effect and during this time people will be free to exercise permitted development rights in the usual way.

9. Despite the fact that there would be an adverse fee impact of an Article 4 Direction meaning applications for extensions of over 4m depth would not need a fee, the harm caused from such over-sized extensions would outweigh the fee impact in the opinion of officers.
10. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by full Council or another appropriate Council Committee.
11. In summary were the government to enact legislation enabling extensions of over 4m in depth officers consider it to be in the interest of our residents to swiftly introduce an Article 4 Direction to the effect that planning permission would still be required in Hillingdon. It is therefore recommended that Full Council authorises officers to prepare all necessary paperwork to immediately commence the legislative process to implement an Article 4 Direction should legislation be enacted as proposed by Government (re: To enable extensions of greater than 4m depth to be built without the need for planning permission). The Article 4 Direction will take effect 12 months after it is published.

Financial Implications

12. The report recommendation is to impose an Article 4 Direction at the point that the government makes legislative changes to permitted development with a 12 month notice period to avoid the risk of potentially large compensation claims. The cost of notifying all householders in the borough has been broadly estimated to be up to £10,000 for materials, postage and officer time, based on prior experience. This should be contained within existing planning budgets.
13. At the point that the Article 4 Direction is put in place, which is likely to be in the 2014/15 financial year, all and any planning applications greater than the 4 meters and up to the 8 meters will be subject to planning application process. However planning regulation will require that all such applications will not be chargeable. Applications for extensions in excess of the government's revised permitted development dimensions (i.e. greater than 8 meters) will continue to attract planning application fees. The broad estimate of fee income impact has been estimated up to £100,000 per annum. This will be a pressure on planning fee income targets and will need to be fed into the MTFF process and will begin to be reflected in the 2014/15 budget.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

It will enable Council to determine whether an Article 4 Direction should be created.

Consultation Carried Out or Required

If an Article 4 Direction is implemented then there would need to be extensive consultation. This would be via a press notice, communications strategy (e.g. Articles in Hillingdon People) and writing to all local residents (although this could be done as part of other Borough wide correspondence to reduce postage costs).

CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and concurs with the financial implications set out above, noting that while implementation costs of an Article 4 Direction will be contained within existing planning budget it will be necessary to factor the long term loss of planning income in the Medium Term Financial Forecast from 2014/15.

As noted within the report, there may be scope to minimise the period in which larger extensions are permitted by introducing an Article 4 Direction with immediate effect, however this is not recommended due to practical issues and the potential impact on planning income during the 2013/14 financial year.

Legal

Under Article 4 of the General Development Order 1995 (as amended) local planning authorities can make directions withdrawing permitted development rights. For all Article 4 Directions the legal requirements are set out in paragraph (1) of article 4 of the General Permitted Development Order 1995 (as amended). The local planning authority must be satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. Furthermore, the National Planning Policy Framework 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 report explains why the future relaxation of the rules in relation to single storey rear extensions would hinder the local amenity and well being of the whole area of the Borough. Although Article 4 Directions are more commonly used for specific areas within an administrative area, it is possible to cover the entire borough as is proposed here.

The Council has the option of introducing an Article 4 Direction within 28 days notice of the Article 4 Direction being published. However, if an Article 4 Direction is brought into force with immediate effect then compensation is payable to anyone who applies for and is then refused planning permission for development that is controlled by the Article 4 Direction. Compensation is what the capital value of the property would have been if planning permission had been granted, compared with the capital value of the property without the permission. Other loss or damage can also be claimed (for instance wasted professional fees). Therefore, compensation payments could be substantial as an extension generally adds value to a property. However, under Part IV of the Town and Country Planning Act 1990 the Council can avoid having to pay compensation if it gives 12 months advance notice of the Article 4 Direction, which is intended by the Local Planning Authority. The risk involved in providing the 12 month notice period is that residents will be able to build extensions in line with permitted development rights until the Article 4 Direction comes into force.

Article 5 of the General Development Order 1995 (as amended) sets out the procedure and requirements for public consultation. At the same time as public consultation takes place the Council must notify the Secretary of State of its intention to issue an Article 4 Direction. The Secretary of State does have the power to revoke Article 4 Directions made by local authorities.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that approval to make an Article 4 Direction is not a Cabinet function and therefore must be carried out by Full Council.

Corporate Landlord

The Corporate Landlord is in support of the recommendations of this report.