


Agenda Item No:	7	
Committee:	Cabinet	
Date:	5 September 2022	
Report Title:	Proposed Mud Walls Article 4 Direction for Whittlesey	

1 Purpose / Summary

- 1.1 To seek authority from Cabinet (under the Part 3, Table 1 of the Council's constitution: Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000) to confirm the Article 4 Direction to remove permitted development rights for removal and alteration of the mud walls in Whittlesey listed in para 1.13.

2 Key Issues

- 2.1 The mud walls of Whittlesey are an important architectural and historic feature. Whilst some have been Listed by Historic England others have no protection and can be subject to removal and alteration under permitted development allowances. These important features are at risk of inappropriate loss or alteration.

3 Recommendations

- 3.1 That the Article 4 Direction as set out in Appendix 1 be approved for public consultation.

Wards Affected	Bassenhally Ward, St Andrew's Ward, Benwick, Coates and Eastrea Ward,
Forward Plan Reference	N/A
Portfolio Holder(s)	Councillor Dee Laws - Planning
Report Originator(s)	Nick Harding – Head of Planning

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Background Papers	<p>General Permitted Development Order Development National Planning Policy Framework (NPPF) Planning Policy Guidance (NPPG).</p>

1 BACKGROUND AND INTENDED OUTCOMES

- 1.1 Whittlesey benefits from 27 surviving sections of mud wall and one in Eastrea. These walls are constructed from local surface clay mixed with chopped straw and a little water, built in tapering lifts – that is without supporting formwork – and so each layer dried before the next one was added, produced in stages over several months. The walls are generally built on a footing of either brick or stone, rendered in lime and lime washed, and protected by copings of pantile, board, or thatch. They range in size and scale but are typically 30-40cm thick and between 1.5m and 2m in height. In length they range from over 28.5m (97ft) to 1.6m (5ft).
- 1.2 Believed to have been constructed between the 1780s and the 1850s it is likely that the imposition of the Brick Tax in the 1780s (raised to fund the British against the American War of Independence), was a factor in the construction of these walls, coupled with a growing need to define property boundaries during a period of land enclosures at the end of the 18th and early 19th centuries. The creation of these boundary structures would have helped to settle property disputes and to manage the land. Stone and timber were not convenient resources for this purpose in the Fens, but high-quality clays, exposed by drainage and land reclamation, were available. Though the town would later have a significant brick making industry, with four brickworks in operation at the end of the C19, large quantities of cheap bricks were not so easily available a century before. Given the very long nature of many of these burgage boundaries, and the fact that the walls themselves were not intended to be polite structures for the display of status, the use of mud walling was a cheap and highly practical vernacular solution to an otherwise expensive problem. They are difficult to date precisely, especially as they are found on long-standing property boundaries, and their materials can routinely be replaced.
- 1.3 In 1981, the first Mud Wall Survey in Whittlesey was undertaken. This accounted for forty-two sections of mud wall. However, by the late 20th century the necessary maintenance for these walls was at odds with building fashions.

- 1.4 It was far easier and cheaper to use whole sections of ready-made fence which could replace a dilapidated section of wall. This tendency, combined with the frequent subdivision of burgage plots to accommodate new housing or alterations to the road network, have resulted in a significant loss of the town's mud walls.
- 1.5 The 2016/17 Mud Wall Survey identified only 28 sections of wall. This has made it very clear that these hugely significant assets (for the contribution they make to the character and appearance of the conservation area) remain extremely vulnerable.
- 1.6 Of the 28 sections of surviving wall, only 16 of them fall within the Conservation Area boundary and due to their size and scale few are protected from alteration or demolition under the terms of the General Permitted Development Order. Those outside a conservation area are more vulnerable still. The walls therefore require some formal protection.
- 1.7 The 2016/17 Mud Wall Survey led to a request by the Whittlesey Mud Wall Society for the Council to apply an Article 4 direction to the walls and for Historic England to carry out a designation review.
- 1.8 Historic England completed that work in 2021 with the result that 5 new sections of wall were designated and there are now 7 grade II listed walls in total. That leaves 21 sections of wall, with little or no formal protection. This is despite their prominence in the Whittlesey Conservation Area Management Plan, which states that:

“The Council will encourage the retention and proper repair of Whittlesey’s mud walls by:

(i) exercising planning controls (where applicable) to prevent the demolition of mud walls and consider using Article 4 Directions to protect mud walls,

(ii) where a mud wall maybe beyond repair securing replacement with a new section of mud wall and

(iii) encouraging the repair of mud walls by providing repair advice and financial support through the S57 Grant Scheme (subject to budget availability) and

(iiii) fostering a greater understanding and appreciation of this aspect of Whittlesey’s heritage in collaboration with community groups such as the Whittlesey’s Mud Wall Group, Whittlesey Museum and The Whittlesey Society”,

and Policy 8 in the draft Neighbourhood Plan for Whittlesey.

- 1.9 Article 4 directions are used to bring under planning control a range of works authorised under article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amended) Order 2015.
- 1.10 Many small scale “permitted development” works such as the replacement of traditional timber or metal windows with unsustainable plastic windows in inappropriate modern styles, natural roofing materials such as slate and clay

tiles with concrete or plastic tiles and front gardens with hard standing for vehicles, can significantly harm the character and appearance of historic buildings and areas. Where the buildings are listed, this problem is avoided by the requirement for listed building consent to be obtained for any works of demolition, alteration or extension that would affect the building's special interest. In the case of unlisted buildings article 3 of the GPDO allows a vast range of works to be carried out without the need to apply for planning permission. Within conservation areas, the permitted development rights are more limited than elsewhere but even so those works can still degrade the character of individual buildings and consequently whole areas over time, as a result of a succession of inappropriate changes.

1.11 The effect of an Article 4 direction is not that development cannot be carried out, but simply that it is no longer automatically permitted by article 3 of the GDPO but must instead be subject to a specific planning application. This does not necessarily mean that the local planning authority will refuse permission for the works, but it does enable the authority to retain some control over the design and detailing of the proposed development and to grant permission subject to appropriate conditions.

1.12 The following mud walls are listed at grade II and therefore protected in law:

- Old Crown Lane/ 24 Syers Lane
- 5 Delph Street
- Conservative Club/ 36 Whitmore Street
- 4 West End
- 9 Horsegate/ 13 Horsegate
- Wades Yard/ 14 Horsegate
- Black Bull Public House/ Queen St Car Park/ 7c Queen Street

2 REASONS FOR RECOMMENDATIONS

2.1 Supporting this recommendation would fulfil policy LP18 of the Local Plan which states that 'The Council will protect, conserve and seek opportunities to enhance the historic environment throughout Fenland. This will be achieved through.....making use of Article 4 Directions, where appropriate, to prevent unsympathetic alterations to buildings in conservation areas.

2.2 Supporting this recommendation would also fulfil Policy 8 of the Whittlesey Neighbourhood Plan and Whittlesey Conservation Area Management Plan.

2.3 Supporting this recommendation would help ensure the preservation of a unique type of structure in Whittlesey and Eastrea to the benefit of the historic character and appearance of the area and to the benefit of its residents in creating a strong sense of place and local pride.

2.4 The Article 4 direction is simple in its aim and in its articulation: to promote the protection of these vulnerable walls by requiring planning permission for their alteration or demolition.

3 CONSULTATION

- 3.1 Where a local planning authority makes a direction under article 4 it must publicise it by inserting a notice in a local newspaper and serve a notice on the owner and occupier of every dwelling house affected by the direction, unless this is impracticable.
- 3.2 The direction comes into force on the date on which the notice is served on the owner or occupier, or the date of the press advertisement. While there is no right of appeal against the making of an article 4 direction, the local planning authority must consider any representations made in response to the notices. It may then confirm the direction, not less than 28 days after the last notice was published and not more than six months after it was made.
- 3.3 Where a local planning authority makes a direction under article 4 it has to send a draft to the Secretary of State for Communities and Local Government for approval. When approved the local authority must notify every owner and occupier of the land affected by the direction immediately since the direction takes effect only on the date on which it is notified to the owner and occupier. If the local planning authority considers that individual notification is impracticable, it may rely on a notice in the press.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The alternative that has been considered is to do nothing. This would leave the walls at risk of loss / partial loss of these important architectural / historic assets.

5 IMPLICATIONS

5.1 Legal Implications

The Council can be liable under section 108 of the Town and Country Planning Act 1990 (as amended) to pay compensation to those whose permitted development rights have been withdrawn but only if, within 12 months of the effective date of the Article 4 Direction, the Council 1) Refuses planning permission for development which would otherwise have been permitted development, or 2) Grants planning permission subject to more limiting conditions than the General Permitted Development Order (GPDO). The grounds on which compensation may be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. Abortive expenditure includes the preparation of plans for the purposes of work and other similar preparatory matters but no more. 'Other loss or damage directly attributed to the withdrawal of permitted development rights' includes the depreciation of the land. The onus is on the claimant to prove a financial loss resulting from the refusal to grant permission or from the grant subject to conditions formerly granted by the permitted development. There are various factors that are taken into account in a determination of whether or not compensation is payable

5.2 **Financial Implications**

See above legal implications above.

5.3 **Equality Implications**

There are no equality issues for consideration

Appendix 1

THE WORDING OF THE PROPOSED ARTICLE 4 DIRECTION

Remove permitted development rights under Articles 4(1) and 4(2) of Schedule 2 Part 11:

Class C – demolition of gates, fences, walls etc

Permitted development

C. Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

For the Mud Walls located at:

- Grosvenor Road, Eastgate Car Park
- Blunts Land/ Grosvenor Road Bus Stop
- 7 Arnolds Lane/ 25 Arnolds Lane
- 6c Delph Street/ 4 Delph Street
- 6b Delph Street/ 8 Delph Street
- Delph Court/ 8 Delph Street (2.13m)
- 27c Windmill Street/ 20 Low Cross
- 87 Gracious Street/ 89 Gracious Street
- 87 Gracious Street/ St Mary's House (2.26)
- St Mary's House/ 87 Gracious Street
- 50 Low Cross/ 46 Low Cross
- 4 Finkle Lane (2.29m)
- Finkle Court Car Park/ 10&12 Finkle Court
- 2 Willow Close/ 3 Willow Close
- 45 Hallcroft Road
- 8 Horsegate/ 14 Horsegate
- 8 Horsegate/ Wades Yard parking area
- Black Bull Public House/ Former Cinema
- 30 Bassenhally Road/ 28a Bassenhally Road
- 30 Bassenhally Road/ 1 Bassenhally Court
- 72 Mayfield Road/ 78 Mayfield Road, Eastrea (2.11m)

(n.b - Development not permitted

C.1 Development is not permitted by Class C if the demolition is "relevant demolition" for the purposes of

section 196D of the Act (demolition of an unlisted etc building in a conservation area).

In other words, planning permission for relevant demolition in a conservation area' (also commonly known as 'conservation area consent') is required to do the following:

(1) Demolish a building with a volume of 115 cubic metres or more.

(2) To demolish any gate, fence, wall or other means of enclosure with:

- a height of one metre or more if next to a highway (including a public footpath or bridleway), waterway or open space; or
- a height of two metres or more elsewhere.

However, as this applies to only a few of the mud walls and of them, only those that are within a conservation area, it is advised that a blanket direction is applied removing any and all permitted development for works to mud walls.)