

EXETER CITY COUNCIL**EXECUTIVE
5 APRIL 2011****PROPOSED ARTICLE 4 DIRECTION TO CONTROL DEMOLITION OF
OR ALTERATIONS TO 60 – 66 UNION ROAD****1 PURPOSE OF REPORT**

- 1.1 To propose an Article 4 Direction (under the Town and Country Planning (General Permitted Development) Order 1995, as amended) to remove the permitted development right for demolition and alterations, and having immediate effect, be applied to 60 – 66 Union Road, Exeter.

2 BACKGROUND

- 2.1 60 – 66 Union Road is a group of 4 properties owned and managed by the Licensed Trades Association (formerly the Licensed Victuallers Association). The properties date from 1840 and are constructed with Flemish bond brickwork, stone mullioned windows and strong gabled dormers with stone finials. The properties are set gable end onto the road. (see photographs at Appendix 3).
- 2.2 In February, Planning Services was approached by an agent on behalf of the owners stating that they were considering their options for the site, one of which was demolition of the existing properties and redevelopment to provide better accommodation for the occupants.
- 2.3 The properties do not fall within a conservation area and, as such, demolition would be permitted development.
- 2.4 It was considered appropriate to protect the properties from any threat of speculative demolition or other alterations prior to any planning application so that any proposals could be measured against the merits of the existing buildings.
- 2.5 Under PPS5, Planning for the Historic Environment, any building that has been identified as possessing a degree of architectural or historic significance may be considered a non-designated Heritage Asset (Policy HE8.1). PPS5 further states that where the exercise of permitted development rights would undermine the aims of the historic environment, local authorities should consider the use of an Article 4 Direction to ensure that any development is given due consideration. (Policy HE4).

3 PROCEDURE FOR MAKING THE DIRECTION

- 3.1 Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, as amended by Statutory Instrument 2010 No. 654 allows for local authorities to remove certain types of permitted development to bring those specific items under planning control.
- 3.2 The proposed Direction must be advertised in a local paper, advertised on a site notice and the owner be sent copies of the formal notice and plan. The Secretary of State must also be informed. A period of not less than 28 days must be allowed for any representations to be submitted and the Direction may be confirmed by the local authority, subject to any representations being taken into account, by notification to the owners and Secretary of State and by local advertisement.

- 3.3 The Direction may have immediate effect where it relates only to development permitted by any of Parts 1 to 4 or 31 of Schedule 2 to the Order, and the local planning authority consider that the development to which the Direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area.
- 3.4 A draft Direction and Notice is attached in Appendix 1 and a plan showing the proposed Article 4 area is attached in Appendix 2.

4 CONSIDERATIONS

- 4.1 In proposing an Article 4 Direction, the local authority must take into account the possibility of a claim for compensation for losses directly attributable to the Direction, i.e. if planning permission is subsequently refused for what was, prior to the Direction being made, permitted development.
- 4.2 Compensation can be claimed under two headings: abortive expenditure (which would not appear to be relevant in this case) and other loss or damage, including depreciation in the value of the land.
- 4.3 It will not necessarily be the case that the Direction will affect the value of the land. For example, it would prevent the site owner from demolishing the dwellings without planning permission, but a vacant site would have less value than the existing 4 dwellings (unless the dwellings were in such poor condition as to be a liability, which seems very unlikely).
- 4.4 There would be a potential compensation liability if, on a planning application for redevelopment of the site, the planning authority (or an inspector on appeal) refused permission but indicated that the proposal was acceptable in all respects other than the loss of the existing dwellings. In reality the planning issues may not be so clear cut, but even if they were, the site owners would still have to show that the site with a potential for redevelopment (but for the inability to demolish the existing dwellings) is more valuable than as existing, taking into account all the costs of redevelopment. This could be quite difficult to show.
- 4.5 It is impossible to put any figure on potential compensation liability because the possible permutations (e.g. in terms of redevelopment options) are infinitely variable. In practice, the problems of showing a causal link to the Article 4 Direction (as opposed to other planning issues) and of valuation mean that making a compensation claim can be a complex and expensive business, and it may be for this reason that a report on research into the use of Article 4 Directions on behalf of English Historic Towns Forum (*RPS Planning, October 2008*) found no evidence for any compensation payments actually being made.

5 CONCLUSIONS

- 5.1 60 – 66 Union Road have been identified as having historic and social interest and as such it is a Heritage Asset that warrants protection from uncontrolled demolition or unsuitable alterations. The most appropriate protection the local authority can impose is an Article 4 Direction that will remove certain permitted development rights without the need for a planning application to be made.

5.2 By applying this Direction, demolition and other alterations will be brought under planning control. The owners may still submit a planning application for the demolition and rebuilding of the properties and they will have to submit their reasoning and justification for wanting to do this. Members will then have the opportunity to comment on the proposals and justification and determine the application accordingly.

6 RECOMMENDATION

6.1 Executive is recommended to resolve:

- (i) That it considers that the development to which the proposed Direction relates would be prejudicial to the proper planning of the Council's area or constitute a threat to the amenities of the Council's area;
- (ii) To delegate to the Head of Planning and Building Control, in consultation with the Portfolio Holder for Sustainable Development and Transport, the responsibility to make an Article 4 Direction relating to 60 – 66 Union Road in the form of (or substantially in the form) of the draft Direction in Appendix 1, to consider any representations and to decide whether to confirm the Direction with or without amendments.

**RICHARD SHORT
HEAD OF PLANNING AND BUILDING CONTROL**

ECONOMY AND DEVELOPMENT DIRECTORATE

**Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:**

Town and Country Planning (General Permitted Development) Order 1995, as amended by Statutory Instrument 2010 No. 654

Research into the Use of Article 4 Directions (*RPS Planning, on behalf of English Historic Towns Forum, October 2008*)

EXETER CITY COUNCIL

**TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
ORDER 1995 AS AMENDED**

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 6 APPLIES

WHEREAS: Exeter City Council (“the Authority”) being the appropriate local planning authority within the meaning of article 4 (4) of the Town and Country Planning (General Permitted Development) Order 1995 as amended (“the 1995 Order”), is satisfied that it is expedient that development of the description set out in the First Schedule below should not be carried out on the land described in the Second Schedule below, 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 Authority in pursuance of the power conferred on it by article 4 (1) of the 1995 Order HEREBY DIRECTS that the permission granted by article 3 of the 1995 Order shall not apply to development of the description set out in the First Schedule below, on the land described in the Second Schedule below.

THIS DIRECTION is made under Article 4(1) of the 1995 Order and, in accordance with Article 6(7), shall remain in force until..... (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 paragraphs (9) and (10) of Article 5 before the end of the six month period.

FIRST SCHEDULE

1. Development consisting of the demolition of a building, or the demolition of the whole or any part of any gate, fence, wall or other means of enclosure, being development comprised within Class A and Class B of Part 31 of Schedule 2 to the 1995 Order and not being development comprised within any other Class.

2. Development consisting of:
 - (a) The enlargement, improvement or other alteration of a dwellinghouse;

- (b) The enlargement of a dwellinghouse consisting of an addition or alteration to its roof;
- (c) Any other alteration to the roof of a dwellinghouse;
- (d) The erection or construction of a porch outside any external door of a dwellinghouse;
- (e) The provision within the curtilage of a dwellinghouse.....[are we concerned about Class E, or all elements of it?]; or
- (f) The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse;

being development comprised within Class A, Class B, Class C, Class D, Class E and Class G of Part 1 of Schedule 2 to the 1995 Order.

SECOND SCHEDULE

The land situated at and known as Nos. 60 to 66 Union Road, Exeter, EX4 6HU, comprising four dwelling houses and their curtilage, shown edged red on the attached plan.

Made under the Common Seal of Exeter City Council this day
of March 2011

THE COMMON SEAL of)
EXETER CITY COUNCIL)
was affixed hereto in the)
presence of:-)

Head of Legal Services/Chief Legal Officer

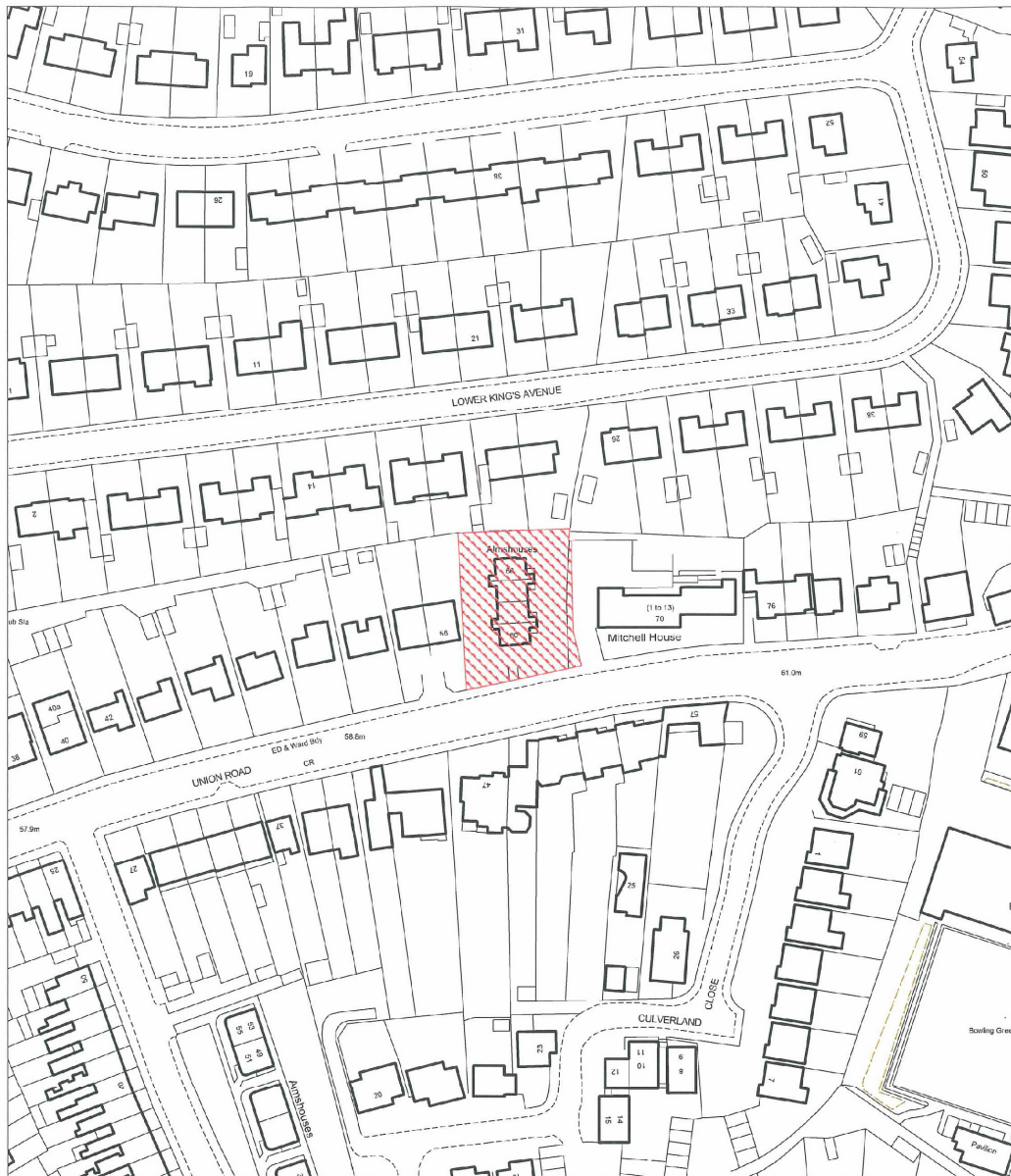
Confirmed under the Common Seal of Exeter City Council this
2011

day of

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Head of Legal Services/Chief Legal Officer

**APPENDIX 2
PLAN OF PROPOSED ARTICLE 4 AREA**



Scale 1:1250



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03/03/2011



Proposed Article 4 Direction area

Planning Services, Exeter City Council, Civic Centre, Paris Street, Exeter, EX1 1NN

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**APPENDIX 3
PHOTOGRAPHS**



Front elevation



Elevation from street