

REPORT TO:	Executive Board
DATE:	15 th February 2023
SUBJECT:	Confirmation of Article 4(1) which was served 15 th September with immediate effect
PURPOSE:	To retain the requirement for planning permission for the demolition of 55 Eastfield Road Louth LN11 7AL.
KEY DECISION:	No
PORTFOLIO HOLDER:	Councillor Tom Ashton, Portfolio Holder for Planning
REPORT OF:	Planning – Assistant Director
REPORT AUTHOR:	Emilie Wales – Heritage Manager
WARD(S) AFFECTED:	Louth, Trinity Ward
EXEMPT REPORT?	No

SUMMARY

In July 2022 the council received an application for Prior Approval for the demolition of Former Douglas Electronic Industries Ltd, 55 Eastfield Road, Louth LN11 7AL. The process of Prior Approval only allows the local planning authority to control of how the site is left, and does not allow the council to refuse demolition. After receiving a number of responses from residents opposing its demolition on the grounds that it is a heritage asset, an Executive decision was made using emergency powers to impose an Article 4(1) with immediate effect. As a result, planning permission is now needed for demolition. This requirement will expire at the end of 6months (March 2023) if not confirmed. This report seeks to confirm the Direction to allow the requirement for planning permission to remain.

Confirming the Article 4(1) Direction will continue to withdraw the permitted development rights granted by Class B (Any building operation consisting of the demolition of a building), and Class C (Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure) of Schedule 2, Part 11 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), until which a point the Direction is revoked.

By confirming the Direction, Planning Permission will therefore be required for demolition allowing the proposal to be considered against local and national planning policies.

RECOMMENDATIONS

Option 5 - To confirm the Article 4(1). To remove permitted development rights for Class B (Any building operation consisting of the demolition of a building), and Class C (Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure) of Schedule 2, Part 11 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), concerning Land at Former Douglas Electronic Industries Ltd, 55 Eastfield Road, Louth LN11 7AL.

A copy of the Direction, including a plan defining the area covered, is available online on the council's website <https://www.e-lindsey.gov.uk/article/6141/Article-4-Directions-andLocal-Development-Orders>

REASONS FOR RECOMMENDATION

A number of objections were received with regard to an application for Prior Approval for the demolition of the Former Douglas Electronic Industries Ltd, 55 Eastfield Road, Louth LN11 7AL. Application reference: N/105/01648/22. The objections raised identified the building as a heritage asset, worthy of proper consideration in the planning process. Having reviewed the information available which is set out later in this report, the Council agreed that the building is a non-designated heritage asset and as such should be a material planning consideration.

Prior Approval does not give the council the ability to consider the proposal against local and national planning policy. Nor can it prevent the demolition. For the site to be considered against policy, permitted development rights would need to be removed in order to require a full application for the demolition.

A number of options were available to restrict permitted development rights but given the time constraints associated with the Prior Approval only one option, Article 4(1) with immediate effect was achievable. Prior approvals must be determined in 28 days. Therefore, an Executive decision was made using emergency powers to impose an Article 4(1) with immediate effect on 15th September 2022.

Unlike regular Article 4 Directions which require consultation in advance of implementation, a Direction with immediate effect requires this consultation to be carried out, for a minimum of 6 weeks after it is imposed, but expires at the end of 6 months (March 2023) if not confirmed.

This report seeks to confirm the Direction to allow the requirement for planning permission to remain. 6 weeks of consultation were carried out from the 15th September until the end of October 2022. Consultation included a press notice, direct notification of the owner, LCC and the Secretary of State, site notices, and a copy of the Direction and Report was available online on the Council's website and as a hard copy in the reception of Tedder Hall.

No responses were received. However, the owner's agent was in regular contact with the Planning Officer and acknowledged that a planning application would now be required and have begun pre-app discussions for the site.

The Louth Civic Trust were pivotal in requesting the council step in to prevent demolition, but did not submit formal comments during the consultation period. They have however kept in touch with the Council for updates and support the continuation of the Article 4 Direction. It may be useful to note that the Louth Civic Trust have also submitted the site for listing. This application was rejected. Had it of been successful there would not have been any need to confirm the Article 4 Direction, as listed buildings do not benefit from permitted development for demolition, and in addition require Listed Building Consent for alterations or extension. However, the Civic Trust have appealed this decision and are currently awaiting a response. This may take months.

OTHER OPTIONS CONSIDERED

1. Do nothing let the Article 4 Direction expire – reverting to Prior Approval for future demolition after 15th March 2023
2. Serve a “Building Preservation Notice” under Section 3 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended) - spot list
3. Submit for Listing [normal process] - in process with appeal submitted by Louth Civic Trust
4. Extend Louth Conservation Area under Section 69 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended) – to be considered in future
5. Confirm Article 4(1) under Schedule 3, Article 4(1) 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Preferred option is Option 5 to confirm the Article 4(1) Direction. The listing process (Option 2 and 3) is already in motion but looks unlikely to be implemented. Extending the Conservation Area (Option 4) to include the building remains an option but one which needs more time to consider as it would involve included a number of other properties as well, and further consultation is required.

Therefore Option 5 is considered the most appropriate response to this matter.

The need for planning permission does not prevent demolition, but requires an application for planning permission to be submitted and can be determined having had full consideration of any representations received and the local and national planning policies.

1. BACKGROUND

1.1. 55 Eastfield Road, Louth LN11 7AL is thought to have been built in the 1830's by Local Canal merchant Robert Norfolk. It's a prominent red brick property with slate roof.

Although the front elevation has been rendered, its elaborate stonework is still visible. More research is needed in the form of a statement of significance to fully understand its value. This would usually form part of the documents needed to support an application for planning permission or would be submitted alongside an application for listing. See:

[55 Eastfield Rd - Google Maps](#)



1.2. Application reference: N/105/01648/22 has been submitted for Prior Approval for its demolition. Prior Approval does not give the council the ability to consider the proposal against local and national planning policy. Nor can it prevent the demolition. For the site to be considered against policy, permitted development rights would need to be removed in order to require a full application for the demolition.

- 1.3.** A number of objections have been received with regard to the application for Prior Approval for demolition. The objections raised are from people wishing to prevent the demolition on the grounds that the building is a heritage asset.
- 1.4.** As a result, the council has considered the merits of the building and agree due to its architectural and historic interest it is a non-designated heritage asset. The level of its significance at this stage not fully understood. The following report sets out the reasons for this and the options available to delay its demolition to allow proper consideration in the planning process.

2. REPORT

- 2.1.** A number of options are available to the council to restrict permitted development rights which would result in requiring a full planning or listed building application for demolition:
- 2.2. Option 1: Do nothing let the Article 4 Direction expire** – does not respond to the public concerns raised. The building can be demolished anytime from 15th March, subject to conditions.

Schedule 2, Part 11 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended -

Class B – demolition of buildings

Permitted development

B. Any building operation consisting of the demolition of a building.

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.

- 2.3. Option 2: Serve a “Building Preservation Notice” under Section 3 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended)** – by doing so the Council agrees that it considers the building to be of listable value (a building of special architectural and historic interest). This option is temporary expiring after 6 months or if the Secretary of State (SoS) notifies the local planning authority that they do not propose to include the building on the ‘list’. This notice can be served under Section 4 in urgency and implemented on the same day. If the SoS finds in favour the building will remain a listed building, if they decide it’s not of listable value then protection will be removed. Under Section 29 the council could be liable for compensation. Without further investigation, of which there is insufficient time to complete, Officers are unable to advise the Council whether or not the building is of listable value.

Planning (Listed Building and Conservation Areas) Act 1990 as amended Section

3 - Temporary listing in England: building preservation notices.

(1) If it appears to a local planning authority in England who are not a county planning authority that a building in their area which is not a listed building—
(a) is of special architectural or historic interest; and
(b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest, they may serve on the owner and occupier of the building a notice (in this Act referred to as a “building preservation notice”).

(3) A building preservation notice under this section —

(a) shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates; and

(b) subject to subsection (4), shall remain in force for six months from the date when it is served or, as the case may be, last served.

(6) If, following the service of a building preservation notice under this section, the Secretary of State notifies the local planning authority that he does not propose to include the building in a list compiled or approved under section 1, the authority shall immediately give notice of that decision to the owner and occupier of the building.

Section 4 - Temporary listing in urgent cases.

(1) If it appears to the local planning authority to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.

(2) The affixing of a notice under subsection (1) shall be treated for all the purposes of [F1sections 3 and 3A,] this section, sections 5 and 10 to 26 and Schedule 2 as service of the notice.

(3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

Section 29 - Compensation for loss or damage caused by service of building preservation notice.

(1) This section applies where a building preservation notice in respect of a building situated in England ceases to have effect without the building having been included in a list compiled or approved by the Secretary of State under section 1.

(2) Any person who at the time when the notice was served had an interest in the building shall, on making a claim to the authority within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the local planning authority in respect of any loss or damage directly attributable to the effect of the notice.

(3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

2.4. Option 3: Submit for Listing [Normal process] – this option takes time. There is the ability to pay for a quicker decision but there is no guarantee for a decision prior to the 15th March 2023. Louth Civic Trust have submitted the site for listing. This application was rejected in October 2022. Had it been successful there would not have been any need to confirm the Article 4 Direction, as listed buildings do not benefit from permitted development for demolition, and in addition require Listed Building Consent for alterations or extension. However, the Civic Trust have appealed this decision and are currently awaiting a response. This process may take months. This process requires evidence to be submitted to Historic England via an online portal, this is considered and further investigations made and put forward for consultation, following this a report is written then passed to the SoS for consideration.

The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended Schedule 3, Article 4(1) of - Procedure for article 4(1) directions with immediate effect

2.—(1) This paragraph applies where—

(a) a direction relating only to development permitted by any of Parts 1 to 4, or Class B or C of Part 11, of Schedule 2 has been made by the local planning authority under article 4(1) and the 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; or

(2) Subject to sub-paragraphs (3), (4) and (9), paragraphs 1(1) to (3), (4)(a) to (d), (5), and (8) to (10) apply in relation to a direction to which this paragraph applies; and the planning authority must notify the Secretary of State of the direction on the same day that notice is given under paragraph 1(1).

(5) The direction comes into force in respect of any part of the land within the area to which it relates— (a) on the date on which the notice is served in accordance with paragraph 1(1)(c) on the occupier of that part of the land or, if there is no occupier, on the owner; or

(b) if paragraph 1(2) applies, on the date on which the notice is first published or displayed in accordance with paragraph 1(1).

(6) A direction to which this paragraph applies expires at the end of the period of 6 months beginning with the date on which it comes into force unless confirmed by the local planning authority in accordance with paragraphs 1(9) and (10) before the end of the 6 month period.

2.5. Option 4: Extend Louth Conservation Area under Section 69 of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended) – Louth Conservation Area boundary is only a few properties away from 55 Eastfield Road. The 2008 Conservation Area Appraisal split the area into character areas, one of which was focused on the Riverhead. The appraisal made recommendations to extend the conservation area further towards the site. A more recent rapid assessment carried out in 2021 confirmed this recommendation and further suggested extending to include 55 Eastfield Road, which would form a ‘book end’ to the conservation area. There is no permitted development for relevant demolition in a conservation area so an application for demolition would require planning permission. If in part of a conservation area, any proposal would be considered against local and national planning policies and the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).

Section 69 of the Planning (Listed Building and Conservation Areas) Act 1990 as amended

(1) Every local planning authority—

(a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and (b) shall designate those areas as conservation areas.

(2) It shall be the duty of a local planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine, they shall designate those parts accordingly.

(3) The Secretary of State may from time to time determine that any part of a local planning authority's area which is not for the time being designated as a conservation area is an area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance; and, if he so determines, he may designate that part as a conservation area.

Whilst this information has been used to inform the decisions to date, this option is discounted owing to the time and cost implications as well as the need for further consultation.

2.6. Option 5: Confirm Article 4(1) under Schedule 3, Article 4(1) 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - This

option will require a full planning application for demolition allowing the historic significance of the building to be considered against planning policies until such a time as it was revoked. The need for planning permission does not prevent demolition but requires an application for planning permission to be submitted to the Council. The application can be determined having had full consideration of any representations received and the local and national planning policies.

2.—(1) This paragraph applies where—

(a) a direction relating only to development permitted by any of Parts 1 to 4, or Class B or C of Part 11, of Schedule 2 has been made by the local planning authority under article 4(1) and the 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; or

(2) Subject to sub-paragraphs (3), (4) and (9), paragraphs 1(1) to (3), (4)(a) to (d), (5), and (8) to (10) apply in relation to a direction to which this paragraph applies; and the planning authority must notify the Secretary of State of the direction on the same day that notice is given under paragraph 1(1).

(5) The direction comes into force in respect of any part of the land within the area to which it relates— (a) on the date on which the notice is served in accordance with paragraph 1(1)(c) on the occupier of that part of the land or, if there is no occupier, on the owner; or

(b) if paragraph 1(2) applies, on the date on which the notice is first published or displayed in accordance with paragraph 1(1).

(6) A direction to which this paragraph applies expires at the end of the period of 6 months beginning with the date on which it comes into force unless confirmed by the local planning authority in accordance with paragraphs 1(9) and (10) before the end of the 6 month period.

(7) *The local planning authority must, as soon as practicable after a direction has been confirmed—*

(a) give notice of their confirmation; and

(b) send a copy of the direction as confirmed to the Secretary of State.

(8) *Notice under sub-paragraph (7)(a) must be given in the manner described in paragraphs 1(1) and (4)(a) to (c); and paragraphs 1(2) and (3) apply for this purpose as they apply for the purpose of paragraph 1(1)(c).*

It is recommended that this option is followed as it allows the confirmation of the measures imposed to date, affords protection to the building, and would not result in any additional time or resource expense beyond formalising of the direction. Given the consultation undertaken since the temporary direction was put in place, it is considered that the risk of challenge is low.

3. CONCLUSION

3.1. The Article 4(1) Direction withdraws the permitted development rights granted by Class B (Any building operation consisting of the demolition of a building), and Class C (Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure) of Schedule 2, Part 11 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

3.2. This means that Option 5 will require a full planning application for demolition allowing the buildings historic value to be considered against relevant planning policies. This is considered to be the best overall option to secure the necessary protection.

3.3. It is therefore recommended that the Executive authorise Officers to confirm the Order. To not do so today, will result in the Article 4 Direction expiring 15th March 2023.

EXPECTED BENEFITS TO THE PARTNERSHIP

N/A

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

None

CORPORATE PRIORITIES

None

STAFFING

Results in the requirement for planning permission. The applications which can be dealt with by existing staffing.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

None – Legal and Constitutional advice has been sought.

DATA PROTECTION

None

FINANCIAL

None

RISK MANAGEMENT

None

STAKEHOLDER / CONSULTATION / TIMESCALES

This report is a result of representations made in objection to an application for Prior Approval. In approving the report Portfolio Holder for Planning and Heritage Champion have been consulted, as well as the Leader of the Council. The Local Member for Louth Trinity ward has been consulted and is aware of the course of action proposed.

Full public consultation will be carried out after the Article 4(1) comes into effect for a period of 6 weeks.

REPUTATION

None

CONTRACTS

None

CRIME AND DISORDER

None

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

None

HEALTH AND WELL BEING

None

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Requiring planning permission allows all aspects planning policy to be considered. This includes environmental aspects. Also, it results in preserving part of the building this preserves its embodied carbon.

ACRONYMS

None – those included are described in the text.

No Appendices

No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.

A report on this item has not been previously considered by a Council body

REPORT APPROVAL

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Signed off by:	Mike Gildersleeves – Assistant Director
Approved for publication:	Tom Ashton – Executive Councillor for Planning