

Item No. 5	Classification: Open	Date: 17 January 2023	Decision Taker: Planning Committee
Report title:		Confirmation of Article 4(1) direction to withdraw the Permitted Development Rights for the demolition of no. 41 Linden Grove, SE15 3LW	
Ward(s) or groups affected:		Nunhead and Queen's Road	
From:		Director of Planning and Growth	

RECOMMENDATION

That the Planning Committee

1. Confirms the Article 4(1) direction (Appendix A) to withdraw the permitted development right granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which would otherwise permit the demolition of no.41 Linden Grove (site identified in Appendix B) that has been identified as a heritage asset.

BACKGROUND INFORMATION

Site Location and description

2. On 26 July 2022 the Planning Committee resolved to place an immediate Article 4(1) direction to withdraw the Permitted Development Rights for the demolition of no. 41 Linden Grove, to consult locally and with the Secretary of State for a minimum of 6 weeks and to return to the Planning Committee for a final recommendation.
3. An Article 4(1) direction is made permanent if it is confirmed by the council within 6 months of its issue. If it is not confirmed this Article 4(1) direction will lapse on 25 January 2023.
4. Site notices were placed on the property and in the immediate vicinity on 27 July 2022 and at the same time a notice was served on the owner, the occupier and the scheme architects inviting them to comment on the Article 4(1) direction. A press notice was published in Southwark News and a webpage set up on the Southwark Council's website.
5. The Secretary of State was notified on 4 August 2022 and, in response to a request of 4 October, additional information was supplied to central government on the 18 October.
6. No. 41 Linden Grove is a well-proportioned, 3-storey early Victorian villa

that is three windows wide and over lower ground, upper ground and first floor level, and with a low-rise hipped roof and overhanging eaves. The architecture has a simple classical style, comprising brickwork with camber arched window openings with an evident hierarchy, centred around the front entrance with its simple stucco surround and stoop. The building appears to retain its original fenestration, including shutters, whilst the brickwork is London stock with an attractive patina. The roof is slate, but looks worn. The building is not listed and is not within a conservation area.

7. The property includes a two-storey gabled outbuilding that abuts its west flank and a single-storey outbuilding that abuts to its east. Both outbuildings are in the same brickwork and are likely to be contemporaneous with the house, albeit modified. The property is set within good-sized front and rear gardens, although the plot tapers towards the rear, being on the inside curve on Linden Grove.
8. The building is located on the north side of Linden Grove: a long mainly residential road that arcs between its junction with Nunhead Lane to the northwest and Oakdale/ St Asaph Road to the west. Linden Grove forms the main entrances to Nunhead Cemetery and to Nunhead Reservoir, which border much of the south side of the road, with a wooded section of the reservoir's grounds sitting directly opposite the property.
9. The building sits back within its plot, contributing to the general building line, and is flanked by residential properties to both sides. Those to its west comprise a short block of six 2-storey interwar terraced houses (no.37-39b) in the Arts and Crafts style; whilst the property to the east is a modern 4-storey flatted block constructed in 2005, and which steps down to two storeys onto the adjacent Nunhead Grove.
10. It is a tall building relative to its surroundings and is in a prominent position on a curve on the road. It is thus a recognisable landmark for many local people and contributes positively to the local townscape.
11. On 25 August 2022 the council refused a planning application (ref No: 21/AP/3580) for the redevelopment of the site for residential, providing a new 4-storey flatted block. However, the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended) ("GPDO") still allows for the demolition of buildings outside conservation areas without planning permission. As such, in the absence of an Article 4(1) direction, the possibility that No.41 Linden Grove could be demolished without planning permission for its replacement would remain.
12. It is therefore considered appropriate to confirm the Article 4(1) direction to permanently remove the following permitted development rights from No.41 Linden Grove.

*Town and Country Planning (General Permitted Development)
(England) Order 2015 (as amended)*

Article 4 direction

13. An Article 4 direction can be used to remove specific permitted development rights in all or parts of a local authority's area. It does not restrict development altogether, but instead ensures that development requires planning permission. A planning application for the demolition would need to be submitted and that would then be determined in accordance with the development plan. Demolition could only be undertaken lawfully with express planning consent, and would otherwise be a breach of planning control and subject to enforcement action.
14. The government's national planning practice guidance (NPPG entitled 'When is permission required?') sets out guidance on the use of Article 4 directions. The NPPG states that an Article 4 direction 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. It also states that in deciding whether an Article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address (paragraph 038).
15. An Article 4 direction can be either immediate or non-immediate depending upon the date given within the notice as to when it is to come into force. An immediate Direction can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 045).
16. In the case of this report, the council made an immediate Article 4(1) direction, the procedure for which is set out in Schedule 3 of the GPDO and can be summarised as follows:

Stage 1 Direction-making (current)

The council makes an Article 4(1) direction withdrawing permitted development rights with immediate effect.

Stage 2 Publication and consultation

The council:-

- i) publishes the notice of the direction in a local newspaper;
- ii) serves notice on the site owner and occupier, where practicable;
- iii) displays notices on site for a period of not less than 6 weeks; and
- iv) specifies a period of at least 21 days during which representations may be made.

The direction comes into force on the date on which the notice is served on the owners / occupiers of the land, or where such service is not practicable, on the date of publication in the press.

Stage 3 SoS Notification

On the same day that notice is given under Stage 2 above, the council refers its decision to the Secretary of State who has wide powers to modify or cancel a Direction.

Stage 4 Confirmation

The council may confirm the Direction not less than 28 days from the latest date of service or publication of notice of the Direction, taking into account any representations that have been received. The council must then give notice of the confirmation and issue a copy of the direction to the Secretary of State.

If the council does not confirm the Direction within 6 months, it lapses.

Compensation

17. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 directions. Under sections 107 and 108 of the Town and Country Planning Act 1990 Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 direction withdraws, if they:
 - Refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction; or
 - Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 direction being in place.
18. The compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 'Abortive expenditure' includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
19. Loss or damage directly attributable to the withdrawal of permitted development rights can include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.

Planning applications

20. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. The policy context is set out below.
21. It should be noted that where permitted development rights are withdrawn, the standard planning application fees nonetheless apply. As of January 2018, an earlier fee exemption for those properties affected by Article 4 directions is no longer valid.

KEY ISSUES FOR CONSIDERATION

22. This report sets out the proposal to confirm the Article 4(1) direction for no.41 Linden Grove to remove the rights of the owners to demolish the building without first gaining express consent from the council as the local planning authority.
23. Under the current GPDO, the building could be demolished prior to the submission of or during the processing of a planning application. As such, the building would be demolished without any consideration of its heritage value. The Article 4(1) direction seeks to avoid this. In effect, it requires the application to consider actively whether and how the building could be retained and its heritage contribution conserved.
24. It is important to note that in agreeing the Article 4(1) direction this does not predetermine a planning application. It simply allows for a full assessment of the planning merits of a scheme, including the potential loss of the existing building's heritage contribution. It does not preclude the building's loss, but ensures that its replacement is justified and appropriate.
25. Where an Article 4(1) direction has been made removing Schedule 2 Part 11 Class B rights, demolition without a grant of planning permission would be a breach of planning control and subject to enforcement action.
26. Officers therefore recommended that the Committee confirm the Article 4(1) direction removing permitted development rights for demolition to protect no.41 Linden Grove in perpetuity, which is not listed or in a conservation area and needs protection.

Contribution of no.41 Linden Grove

27. As described above, no.41 Linden Grove is a good example of a fine early Victorian villa in terms of its built form and surviving detailing. The villa's simple classical style is attractive, albeit the 3-storey building appears to be in poor condition.
28. The building is one of the few survivors of the early 19th century suburbanisation of the local area, which initially saw the development of large villas and townhouses along Linden Grove between its junctions with Nunhead Lane and Nunhead Grove. The urban form predates the arrival of Nunhead Cemetery (1840) and railway station (1871), and the subsequent densification of the area towards the end of the 19th century with infill development of more modest terraced housing. Many of the villas were lost during the 1930s, initially replaced by large flatted residential blocks, which in turn were redeveloped to provide modern housing estates at the beginning of this century.

29. No.41 Linden Grove retains its villa form and appearance, and is a notable outlier, the other surviving villas being located close to the junction of Nunhead Road and within the Nunhead Green conservation area. Its prominent position on the curve of the road and notable architecture make for a local landmark along this stretch of Linden Grove, close to the cemetery. It contributes positively to the local townscape. Given its history, fine architecture and prominent position, the building is regarded by officers as a Non-Designated Heritage Asset (NDHA).



Image of no.41 Linden Grove

Policy context

30. The National Planning Policy Framework (NPPF) identifies that heritage assets contribute to the social and environmental roles of sustainable development. These are at risk from demolition without planning permission or an assessment of their heritage value. In the instance of this Article 4(1) direction, the requirement of removing permitted development rights at no.41 Linden Grove seeks to comply with the social and environmental role of the NPPF.
31. The social role: Removing the permitted development rights for demolition of no. 41 Linden Grove will ensure that the contribution to the cultural well-being they provide to the community can be considered within a planning application and it is not lost without consideration through the demolition without a forthcoming scheme.

32. The environmental role: the NPPF supports the conservation and enhancement of the historic environment, recognising that heritage assets are an irreplaceable resource. No.41 Linden Grove contributes to the character and historic fabric of the area.
33. As set out in paragraph 189 of the NPPF, 'Heritage Assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value.' It highlights that the council should identify and assess the particular significance of any heritage asset that may be affected by a proposal taking account the available evidence and necessary expertise.
34. Not all heritage assets are designated. Nonetheless, the NPPF expects the local planning authority to take into account the effect of an application on the significance of a non-designated heritage asset when determining a planning application (para. 203). Removing the permitted development rights for demolition of no.41 Linden Grove will allow the council to consider the significance of the heritage value through the planning application process.
35. The London Plan (March 2021) believes London's diverse range of designated and non-designated heritage assets contributes to its status as a world-class city. It therefore advocates the identification and sensitive management of London's heritage assets, in tandem with promoting the highest standard of architecture. This, it regards, as 'essential to maintaining the blend of old and new that contributes to the capital's unique character.' (para 7.13). It supports the creative re-use of heritage assets and the historic environment, requiring development proposals to conserve a heritage asset's significance and to promote the effective integration of London's heritage in regenerative change (policy HC1).
36. The Southwark Plan requires development to conserve and enhance the significance of designated and non-designated heritage assets and their settings, and to enable the viable use of the heritage asset that is consistent with its on-going and long-term conservation (Policy P21). This Article 4(1) Direction will ensure a planning application is required to allow the council's assessment of the viable retention of no.41 Linden Grove

Methodology

37. The NPPF advises in para.53 that the use of Article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the NPPG, which also states local planning authorities should identify clearly the potential harm that the direction is intended to address and that immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.

38. The council considers no.41 Linden Grove to be a non-designated heritage asset. This Article 4 direction is necessary to allow a full assessment of any subsequent planning application, unfettered by the risk of its interim demolition, and thereby ensure the proper planning of the site.

Areas affected

39. The NPPG states that an Article 4 direction 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. For the reasons outlined above it is considered this Article 4 direction should relate only to the building plot of no.41 Linden Grove (extent illustrated at Appendix B) due to the heritage significance as outlined above.

Conclusions

40. An Article 4(1) direction can be made if the council is satisfied that it is expedient that demolition should not be carried out unless planning permission is granted and that in the case of immediate direction, there is an immediate threat to local amenity or prejudices the proper planning of an area
41. Officers consider no.41 Linden Grove to be a fine example of an early Victorian house that makes a significant contribution to the architectural and historic interest and visual impact of the area, forming a non-designated heritage asset. Given the site is not within a conservation area, there is a risk of demolition of the building without recourse to planning, which would constitute a threat to the amenity of the area.
42. The use of an Article 4 direction would not restrict development altogether, but instead ensure that demolition requires planning permission and that the building's loss as a non-designated heritage asset would actively form a material consideration in determining the planning application.
43. Consultations on the Article 4(1) direction have been carried out in accordance with the statutory process. No representations were received during the relevant period.
44. For the above reasons, it is therefore recommended that the immediate Article 4(1) direction preventing the demolition of the property now be confirmed.

Policy framework implications

45. The Southwark Plan (February 2022)
Policy P21 - Conservation of the historic environment and natural heritage

The London Plan (March 2021)

Policy HC1 - Heritage conservation and growth.

The National Planning Policy Framework (NPPF) July 2021

Community, equalities (including socio-economic) and health impacts

Community impact statement

46. Southwark Council is committed to achieving the best quality of life for its residents. This includes maintaining a strong local economy and revitalised neighbourhoods for the communities within Southwark. It is vital that a strong policy framework ensures the borough's heritage and community values continue to be protected for the benefit of local residents. The Article 4(1) direction seeks to protect the demolition of no.41 Linden Grove without a robust analysis through the planning process.
47. The equalities analysis (Appendix C) has concluded that the Article 4(1) direction will have a positive impact on equalities and they will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

Equalities (including socio-economic) impact statement

48. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making and considering these Article 4 direction, including under Article 1 of the First Protocol (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". Both public and private interests are to be taken into account in the exercise of the council's powers and duties as a local planning authority. Any interference with a Convention Right must be necessary and proportionate.
49. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4 direction have been considered under the Human Rights Act 1998 and it has been determined that the Articles will not be triggered.
50. In consulting upon the introduction of the Article 4 direction the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010.
51. The PSED is only one factor that needs to be considered when making a

decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups

52. The Council has given consideration to all the protected characteristics in the Equality Act 2010 to ensure that any potential impacts of the proposed immediate Article 4 direction on these groups of people have been considered and where possible mitigated (Appendix C).

Health impact statement

53. The Article 4 direction is a legal matter in requiring planning permission first be obtained for the demolition of an existing building. It does not preclude demolition per se, but would allow for a planning condition to confirm the demolition and waste removal process, which could in themselves present health concerns and would require careful control.

Climate change implications

54. The Article 4 direction does not preclude demolition of the building should a reasoned and justifiable case be made, the retention of the existing building as a non-designated heritage asset would also preserve the embodied energy within the building fabric, helping the Council to meet its net zero carbon climate change goals.

Resource implications

55. The notification and public consultation process will not result in resource implications for the staffing of the Department of the Chief Executive. Such undertakings are part of the management of the historic environment and as such will be carried out by the Department's Conservation and Design Team within its existing staffing resources.
56. Other resource implications will be the cost of advertising the Article 4 direction for the purposes of public consultations, which can met within the Department of the Chief Executive's revenue budget. The cost is a standard charge.
57. The Article 4 direction would not generate additional planning casework per se. It would require the need to obtain planning permission for the building's demolition, which would form part of a planning application for the site's development.

Legal implications

58. The legal implications that arise from the Article 4 direction relate to the requirements to undertake statutory consultations as part of the direction-

making process; and in the outcome of the immediate Article 4 direction itself. The latter would legally require the applicant to obtain express planning consent for the demolition of the property prior to the commencement any such works. The Council would consider the case for demolition as part of the application decision-making process, weighing the planning benefits and dis-benefits of the scheme, including heritage. There would be no additional legal implications for the Council beyond these statutory processes.

Financial implications

59. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by the GPDO (or grant planning permission but with more onerous conditions than would have the case under the GPDO) the council has a potential liability for compensation. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning permission or to abortive expenditure. Therefore, there is a risk that the proposed direction will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims.
60. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the Planning division's budget. This position will be monitored and if the award cannot be contained within existing departmental revenue budgets will be reflected in the council's revenue budget monitoring arrangements for funding from council reserves.
61. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.
62. Staffing and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

Consultation

63. Consultations were undertaken as part of the Article 4(1) direction process, complying with provisions set out in the GPDO. Notice of the direction was made by:
 - Local advertisement in the press;
 - Site notices placed outside no. 41 Linden Grove for a period of 6 weeks (27th July to 7th September); and
 - Written notification sent to every owner/ occupier, specifying a period of 21 days in which representations could be made.
64. The council did not received any representations during the six-week period. A request was received from the Secretary of State for additional

information regarding the red-line boundary and justification for the proposal. The information was supplied on 18th October, following which the Secretary of State chose not to comment.

65. As the consultation period has ended and without any representations, the recommendation is to confirm the article, noting that the Planning Committee remains within the statutory 6-month period of the initial direction for its decision-making.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

66. Planning Committee is being asked to confirm an Article 4(1) direction to withdraw the permitted development rights granted by Schedule 2, Part 11, Class B of the GPDO to restrict the demolition of the buildings forming no.41 Linden Grove without planning permission, and to note the equalities analysis annexed to this report.
67. Part 3F of the council's Constitution entitled "Matters reserved for decision by the Planning Committee" at paragraph 3 reserves to Planning Committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This confirms Planning Committee has authority to take the decisions being asked of it.
68. The Equality Act 2010 introduced the public sector equality duty, which merged existing race, sex and disability equality duties and extended them to include other protected characteristics; namely age, gender reassignment, pregnancy and maternity, religion and belief and sex and sexual orientation, including marriage and civil partnership. In summary those subject to the equality duty, which includes the council, must in the exercise of their functions: (i) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and (ii) foster good relations between people who share a protected characteristic and those who do not. This report notes the conclusion in the equalities analysis that the Article 4 direction is anticipated to have a positive impact on equalities. The report should however be considered in full.
69. In addition, the Human Rights Act 1998 imposed a duty on the council as a public authority to apply the European Convention on Human Rights; as a result the council must not act in a way which is incompatible with these rights. The most important rights for planning purposes are Article 8 (respect for homes); Article 6 (natural justice) and Article 1 of the First Protocol (peaceful enjoyment of property). It is important to note that few rights are absolute in the sense that they cannot be interfered with under any circumstances. 'Qualified' rights, including Article 8 and the First Protocol, can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by a local planning authority in the policy making

process against the potential interference with individual human rights. In this case it is considered proportionate to remove permitted development rights in order to protect the non-designated heritage asset at 41 Linden Grove.

Strategic Director of Finance and Governance

70. This report is requesting the planning committee to confirm the Article 4(1) direction (Appendix A) to withdraw the permitted development rights for demolition granted by the General Permitted Development Order 2015 (as amended) for the Stables and the Forge. Full details and background is provided within the main body of the report.
71. This report also notes the equalities analysis of the proposed Article 4(1) direction (Appendix C).
72. The strategic director of finance and governance notes that the proposed Article 4 direction may lead to potential compensation claims but it is not possible to gauge the magnitude of such claims. It is noted that any claim for compensation will be dealt through the council's official complaints procedure and sanctioned by the relevant cabinet member under the council's constitution as reflected in the report.
73. It is also noted that any agreed claims for compensation would be contained within the existing departmental revenue budgets where possible before funding from councils reserves are requested.
74. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

Other officers

75. None.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Local Development Framework and Development Plan Documents	Chief Executive's Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 0207 525 1513 Council website: www.southwark.gov.uk
https://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/new-southwark-plan		

APPENDICES

No.	Title
Appendix A	Sealed Immediate Article 4(1) direction to withdraw Permitted Development Rights granted by Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Richard Craig, Team Leader	
Version	Final	
Dated	28 November 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	Yes	
Strategic Director of Finance and Governance	Yes	
Cabinet Member	No	No
Date final report sent to Constitutional Team / Scrutiny Team		4 January 2023