

**REPORT TO:** East Lothian Council

**MEETING DATE:** 25 June 2024

**BY:** Executive Director for Place

**SUBJECT:** Proposed Article 4 Direction for East Lothian Conservation Areas

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## **1 PURPOSE**

- 1.1 To seek approval for a new Article 4 Direction for East Lothian's Conservation Areas.

## **2 RECOMMENDATIONS**

- 2.1 That Council approves a new Article 4 Direction for East Lothian's Conservation Areas, which would replace the existing Article 4 Directions; and
- 2.2 That the proposed Article 4 Direction is submitted to Scottish Ministers for approval in accordance with the requirements of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

## **3 BACKGROUND**

- 3.1 The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO) controls the types of development that are permitted or which require planning permission. This is done through a series of different classes of development. An Article 4 Direction is made under the GPDO and can withdraw certain classes of permitted development in a specified geographical area. Commonly, these are used to restrict permitted development in a designated conservation area to ensure that development is even more carefully controlled.
- 3.2 In East Lothian there are two existing Article 4 Directions dating from 1978 and 1981 that apply in defined areas within designated conservation areas.

- 3.3 Over the years a number of amendments have been made to permitted development rights. More recently the Scottish Government, as part of its Modernising Planning programme has been undertaking a Permitted Development review and has brought in many more changes to the GPDO. The last phase of permitted development changes came into effect on 24 May 2024.
- 3.4 One of the most significant changes that has come into effect relates to the replacement of an existing window. Prior to this change planning permission was required for the replacement of windows of buildings within a conservation area.
- 3.5 In October 2018 the Council adopted Supplementary Planning Guidance on Cultural Heritage and the Built Environment. It contains the following policy in respect of replacement windows:
- “The replacement of a window in a building in a conservation area must preserve or enhance the area’s special architectural or historic character. This will normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions to this will be:
- 1) Multiple glazing where there is no visible difference between that proposed and the original style of window.
  - 2) If the building itself does not contribute positively to the character of the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area;
  - 3) If the window cannot be seen from a public place.”
- 3.6 Such control ensures that the character and appearance of our conservation areas is preserved.
- 3.7 The recent changes include the introduction of a new class of permitted development, Class 7A, which covers replacement windows.
- 3.8 The effect of Class 7A is that planning permission is no longer required for the installation of replacement windows on the back of the property or on the side, where the side of the property does not front a road.
- 3.9 Class 7A also means that planning permission is no longer required for the installation of replacement windows on the front of a property within a conservation, or on the side, where the side fronts onto a road. Depending on how similar the proposed window is to the existing one, property owners may need to notify the planning authority of their proposal (before carrying out the works) and submit some additional information so that the planning authority can take a view on whether the design is acceptable. This process is called “prior notification/prior approval.”
- 3.10 Property owners will not need to notify the planning authority and submit additional information if the proposed window matches (i.e. is the same or substantially the same as) the existing window as regards:

- Opening mechanism (e.g. sash and case);
  - The number, orientation and colour of panes within the window (e.g. six-over-six configuration); or
  - The dimensions and colour of the window's frame and any astragal bars.
- 3.11 The material of the proposed and existing windows do not need to match. So if, for example, the proposed window would be the same or substantially the same as the existing one in respect of the three criteria above but the proposed window is made of a different material to the existing window, no prior notification/prior approval is required.
- 3.12 The effect of Class 7A is that replacement windows with modern materials such as UPVC could potentially be installed in place of traditional timber framed windows on elevations visible from public places, without the need for planning permission. Such a development would generally not preserve or enhance the character or appearance of our conservation areas. Such a change would also generally be contrary to the Council's policy on replacement windows contained within the adopted Supplementary Planning Guidance on Cultural Heritage and the Built Environment.
- 3.13 It is the view of planning officers that the new system will lead to confusion, and the new prior notification/prior approval process will be cumbersome. The previous system for replacement windows worked effectively and in the interests of preserving the architectural and historic character of the designated conservation area as required by the Planning (Listed Buildings and Conservation Areas Act) (Scotland) 1997. East Lothian has a history of careful management of change in its designated conservation areas ensuring that proposed changes to any individual property does not harm the overall character of that conservation area. Every small detrimental change cumulatively adds up to a significant deterioration in the overall quality of a conservation area in time.
- 3.14 Furthermore, for many years a series of Town Schemes, Townscape Heritage Initiatives and Conservation Area Regeneration Schemes have offered grant assistance in particular areas of conservation areas to reinstate traditional materials including traditional timber sash and case windows for eligible properties, the effects of which would be negated in time with loss of traditional fabric such as timber window frames, period glass and traditional dimensions of windows and doors in conservation areas. East Lothian conservation areas contain only a very few non-traditional windows, which could change in future.
- 3.15 The proposed replacement Article 4 Direction would maintain the current situation whereby it is clear to prospective applicants that planning permission is required for window replacement in conservation areas. It would bring under control those specific classes of development that are appropriate to the individual character of each conservation area.

- 3.16 These classes include the following types of development; chimney flues (Class 6C and 6F); means of enclosure in non-residential situations (Class 7); replacement windows (Class 7A); means of access to a road which is not adopted (Class 8); change of use of a shop or professional service to class 4 business use (Class 11B); private road maintenance or improvement of a private road (Class 27); works by a local authority not exceeding £250,000 (Class 33); harbour works (Class 35); and water undertakings of a specific nature (Class 38).
- 3.17 Before bringing this report to Council a public consultation exercise was undertaken that involved a public announcement in the local press, community council awareness through the Association of East Lothian Community Councils, copies of the proposals in all East Lothian libraries and publication and associated survey on the Council's Consultations Hub on the webpage.
- 3.18 A total of five responses were received to the consultation and raised the following points:
- 3.19 The Architectural Heritage Society of Scotland are supportive of the need to protect conservation areas better and felt that the classes of development that the Council proposes to remove permitted development rights, namely Class 7 relating to the proposed relaxation of controls on gates and fences, Class 7A relating to the relaxation of controls over windows in conservation areas and Class 35 relating to harbours were all classes that should be withdrawn.
- 3.20 The Musselburgh Conservation Society is supportive of the Council's proposal to include Class 7A and retain the previous requirement for planning permission for the replacement of windows in a conservation area.
- 3.21 The Inveresk Village Society welcomes the Council's proposals to update the Article 4 Direction and agrees with the stance that the Council proposes in respect of Class 7A which will maintain current control through the need for planning permission.
- 3.22 North Berwick Community Council were generally supportive though consider that each conservation area should be considered individually rather than setting an overall policy.
- 3.23 A local resident of North Berwick opposes the Council's proposals to update the Article 4 Direction suggesting that all conservation areas should be assessed and boundaries reviewed as stage 1 of a process only following which would the need for an Article 4 Direction review be assessed and that the process is premature in the absence of full understanding of the character and appearance of each and every conservation area.
- 3.24 In response to these comments those in support of the proposed Article 4 Direction are noted. With regard to the comment on a review of conservation areas it is recognised that it is important that designations of

all types are kept up to date and this is carried out through the development plan process. Through the process of preparation of the East Lothian Local Development Plan 2 work is already underway in reviewing conservation areas, their boundaries and the preparation of conservation area character assessments in readiness for the Proposed Plan stage. Any subsequent changes to conservation area boundaries may require future changes to Article 4s. This includes an assessment of each conservation area though in practice the same potential issues arise with each of the classes, except Class 35 which covers harbours.

- 3.25 However, the reason for this early update of the Article 4 Direction is because Phase 3 of the Scottish Government GPDO changes came into force on 24 May 2024 and this could result in development that harms the overall quality of East Lothian's conservation areas in the period before LDP2 is produced. Additionally, it could place additional pressure on the Planning Service. It is important that the position is rebalanced in favour of the current approach that has served East Lothians conservation areas well with good planning management over time.
- 3.26 In terms of energy consumption, studies have shown that uPVC windows can have a much shorter lifespan than timber frames and when they reach the end of their life they have to be replaced as a whole unit, as opposed to timber framed windows which can be repaired. uPVC window frames cannot be easily recycled and add to waste and energy use in the making of their replacement. Timber framed windows can also be effective in energy efficiency as well as having the ability to be repaired which is effective in terms of whole life costs.
- 3.27 Therefore, the use of modern materials such as uPVC in conservation areas does not have a positive climate related impact and could have an immediate negative impact on the character of East Lothians conservation areas.
- 3.28 The proposed Article 4 Direction would therefore withdraw permitted development rights for the following classes of development under the GPDO in all of East Lothians conservation areas:

**Class 6C** – This Class permits the installation, alteration or replacement of a chimney flue, forming part of a biomass heating system, on a dwellinghouse or building containing a flat.

**Justification:** While Class 6C does not permit a flue on the principal elevation of a building in a conservation area, many of East Lothian's conservation areas contain buildings where other elevations of a building are also prominent. Without planning control on materials and design the provision of a flue on any part of a building in a Conservation Area could have a significant visual impact on the area without control over materials or design. A flue can often be manufactured in a shiny metal and therefore could be a visually prominent fixture and if prominent, is considered could have a significant visual impact to the detriment of the conservation area.

**Application:** The removal of Class 6C will apply to all 30 designated conservation areas in East Lothian.

**Class 6F** – This Class controls the installation, alteration or replacement of a flue, forming part of a combined heat and power system, on a dwellinghouse or building containing a flat.

**Justification:** While this Class does not permit a flue that would protrude more than 1m above the highest part of a roof or if it would be fixed to the principal elevation of a building in a conservation area, many of East Lothian's conservation areas contain buildings where other elevations of a building are also prominent such as on a corner plot. Without planning control on materials and design the provision of a flue on any part of a building in a Conservation Area could have a significant visual impact on the area as there would be no control over its materials or design. A flue is often made of a shiny metal and therefore could be a visually prominent fixture and if prominent, is considered could have a significant visual impact to the detriment of the conservation area.

**Application:** The removal of Class 6F will apply to all 30 designated conservation areas in East Lothian as listed in Table 1.

**Class 7** – In summary, this class relates to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure in a non-residential situation that is not permitted if over 1m in height and within 20m of a road or 2m elsewhere.

**Justification:** Not all buildings in a conservation area are residential and the appearance of walls fences and gates could harm the character and appearance of the conservation area and should be subject to control.

**Application:** The removal of Class 7 will apply to all properties within all 30 designated conservation areas in East Lothian as listed in Table 1.

**Class 7A** – This Class permits the alteration or replacement of an existing window in a building in a conservation area where the window is part of the principal elevation or a side elevation where that elevation fronts a road and the window as altered or replaced would not be the same, or substantially the same, as the window to be altered or replaced in the following respects (i) the manner in which the window is opened and closed, (ii) the number, orientation and colour of the panes comprised in the window, (iii) the dimensions and colour of the frame of the window or any astragal bars comprised in the window subject to the prior notification of East Lothian Council as planning authority in respect of the design and external appearance of the proposed alteration to or replacement window, and a written description of the proposed development, the materials to be used and a plan indicating the site. The planning authority must respond within 28 days.

**Justification:** The process of prior notification permitted by this class does not provide sufficient detailed information in the form of detailed drawings to ensure that the proposed window in a principal or prominent elevation of a building in a conservation area would adequately match the qualities of the existing window in particular its dimensions and any detailed architectural mouldings. Without planning control on materials and design the provision of a replacement or altered window could have a significant visual impact on the conservation area. Since their earliest designation in

1969 East Lothian as planning authority has managed its conservation areas carefully including the encouragement of traditional materials in its window replacements to the stage where there are very few non-traditional windows in its conservation areas. The heritage benefits and resultant cumulative economic benefits in terms of tourism that this brings to East Lothian is sufficiently important to justify the removal of this Class of permitted development in East Lothian conservation areas. Similar standards of energy efficiency in replacement windows can be made in timber windows. It is also worth noting that without this it would negate the effect of various grant schemes in East Lothian conservation areas that encouraged the installation of traditional window materials.

**Application:** The removal of Class 7A will apply to all properties in all 30 designated conservation areas in East Lothian.

**Class 8** – this Class permits the formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with development permitted by any class in this Schedule other than classes 3E or 7.

**Justification:** The construction of a means of access within designated conservation areas could be proposed in a way that could be harmful to the character of a conservation area.

**Application:** The removal of Class 8 will apply to all 30 designated conservation areas in East Lothian.

**Class 11B** – this Class permits the change of use of a building such as a shop or a professional or other service to a use within class 4 (business).

**Justification:** Many of East Lothian's conservation areas include designated town or local centres. A class 4 (business) use in such an area could be detrimental to that area in terms of being a more lightly used space that undermines the vibrancy and viability of the area and should therefore be subject to planning control.

**Application:** The removal of Class 11B will apply to all 30 designated conservation areas in East Lothian.

**Class 27** – this class permits the carrying out on land within the boundaries of a private road or private way of works required for the maintenance or improvement of the road or way.

**Justification:** Many conservation areas contain private roads, tracks and paths that form part of the character of the area. Without planning control on materials and design there could be a significant visual impact on the conservation area.

**Application:** The removal of Class 27 will apply to all 30 designated conservation areas in East Lothian.

**Class 33** – in summary, this class allows works by a local authority for work not exceeding £250,000.

**Justification:** Works by the local authority that cost less than the sum mentioned can still have a visual impact on the character and appearance of a conservation area and should be controlled.

**Application:** The removal of Class 11B will apply to all 30 designated conservation areas in East Lothian.

**Class 35** – in summary, this Class permits dock, pier, harbour, water transport, canal or inland navigation undertakings. Specific to East Lothian only harbours and piers are relevant for those conservation area which have these features.

**Justification** – Those conservation areas that include harbours and piers may require works to them from time to time. This class is only removed in Conservation Areas which contain harbours and seeks to control the appearance of permitted development works on operational land.

**Application:** The removal of Class 35 will apply to the designated conservation areas of Cockenzie and Port Seton, North Berwick and Dunbar.

**Class 38** – in summary, this Class permits water undertakings including the laying underground of mains, pipes and other apparatus; installation of associated booster station, valve or switch gear housing of up to 29 cubic metres in capacity above ground and extension or alteration to existing water infrastructure building of up to 1,000 square metres.

**Justification** – where water infrastructure is required in a conservation area control is required to ensure that such infrastructure does not harm the character or appearance of the conservation area and was included in the extant Article 4 Direction for East Lothian.

**Application** - The removal of Class 38 will apply to all 30 designated conservation areas in East Lothian.

## **4 POLICY IMPLICATIONS**

- 4.1 Introduction of the Article 4 Direction would ensure that the Council could continue to control replacement windows in accordance with the Council's policy on replacement windows contained within the adopted Supplementary Planning Guidance on Cultural Heritage and the Built Environment.

## **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report will not have a significant impact on equality and can be expected to have a positive impact on the wellbeing of the community and the environment.

## **6 RESOURCE IMPLICATIONS**

- 6.1 Financial - None
- 6.2 Personnel - None.
- 6.3 Other - None



## 7 BACKGROUND PAPERS

### 7.1 Appendix 1: List Of All Conservation Areas in East Lothian

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<b>DATE</b>	07 June 2024

## Appendix 1

### List of all Conservation Areas in East Lothian

Musselburgh	Haddington	Dunbar
Inveresk	Athelstaneford	Belhaven
Tranent	Gifford	West Barns
Preston, Prestonpans	Garvald	Innerwick
Harlawhill, Prestonpans		Oldhamstocks
Cockenzie and Port Seton	North Berwick	Stenton
Pencaitland	Aberlady	Spott
Ormiston	Gullane	Tynninghame
East Saltoun	Dirleton	East Linton
New Winton	Drem	
Glenkinchie	Whitekirk	