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| DECISION-MAKER: | CABINET | | |
| SUBJECT: | ETHELBURT AVENUE (BASSETT GREEN ESTATE) CONSERVATION AREA APPRAISAL AND MANAGEMENT PLAN | | |
| DATE OF DECISION: | 20 DECEMBER 2016 | | |
| REPORT OF: | LEADER OF THE COUNCIL | | |
| <u>CONTACT DETAILS</u> | | | |
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| STATEMENT OF CONFIDENTIALITY | |
| N/A | |
| BRIEF SUMMARY | |
| <p>The Ethelburt Avenue (Bassett Green Estate) Article 4 Direction was made by the Council, and went out to public consultation on 23rd January 2014, coming into force on 1st May 2014. The Article 4 Direction was included within the review of the Ethelburt Avenue (Bassett Green Estate) Conservation Area Appraisal and Management Plan, which was part of the same report. The order must be confirmed within two years from 23rd January 2014. This reports asks Cabinet to confirm the Order. Under the Constitution Cabinet are required to confirm such Orders, regardless of whether Cabinet has previously agreed to the Article 4 Direction.</p> | |
| RECOMMENDATIONS: | |
| (i) | To confirm Article 4 Direction for the Ethelburt Avenue (Bassett Green Estate) Conservation Area, removing permitted development rights for the properties set out in Appendix 1. |
| REASONS FOR REPORT RECOMMENDATIONS | |
| 1. | To enable the Council to manage changes to the Conservation Area within a clear framework. |
| ALTERNATIVE OPTIONS CONSIDERED AND REJECTED | |
| 2. | Not to approve revised CAAMP. Not to confirm the Order, in which case the previous (and outdated) Article 4 Direction will remain in force, and will not comply with the current version of the General Permitted Development Order. |
| DETAIL (Including consultation carried out) | |
| 3. | At their meeting on 20 October 2015 Cabinet agreed to make an Article 4 Direction for the Ethelburt Avenue (Bassett Green Estate) Conservation Area, which was included within the revised Conservation Area Appraisal and Management Plan. |
| 4. | This Order has to be confirmed within two years of the serving of the Order (20 October 2017), otherwise it will lapse, and the area will be subject to the existing (and outdated) Article 4 Direction. |

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| 5. | <p>On 28 October 2016 formal consultation on a proposed revised Article 4 Direction commenced, with letters sent out to all household within the conservation area (see Appendix 2). This consultation ended on 21 November 2016. In total 35 responses were received, 34 of which were objecting to the revised Article 4 Direction, and 1 in support.</p> |
| 6. | <p>Generally all respondents were supportive of the need to restrict Permitted Development (PD) Rights within the conservation area, however three paragraphs (paragraphs d f) and g)) caused particular concern. These proposed the removal of PD rights from within the curtilage of properties. This was an error, and these paragraphs have been amended to remove PD rights from the front and sides of properties only. These amendments appear to have reassured objectors who have responded to this proposals that the Council are only seeking powers sufficient to control harmful development.</p> |
| 7. | <p>Additionally concern was expressed that paragraph e) if approved would require planning permission for the erection of a garden shed in rear gardens. This paragraph essentially replicates paragraph (d) from the existing Article 4 Direction (see appendix 3). While Planning Permission is required for a structure where:</p> <ul style="list-style-type: none"> • It is 2.5m high (or above) and within 2m of any boundary, or • It is more than 2m from a boundary and 4m high (or above) with a dual pitched roof, or 3m high (or above) in any other case • the eaves exceed 2.5m in height • it covers more than 50% of the curtilage; <p>Permission is not, and has never been required for the erection of a garden shed.</p> <p>It is not proposed that this paragraph is amended.</p> |
| 8. | <p>Proposals for development within conservation areas are tested against both the primary legislation (the Planning (Listed Buildings and Conservation Areas) Act 1990, and the policies set out in the national Planning Policy Framework (NPPF). Section 72 (1) of the 1990 Act requires that local authorities pay special attention to <i>the desirability of preserving or enhancing the special character of that area</i>'. The NPPF couches this duty in terms of <i>harm to the significance of a designated heritage asset</i> (in this case the designated heritage asset is the whole of the conservation area). Any proposals for development that are (or have been) covered by part (d) of the existing article 4 Direction, or part e) of the proposed revised Article 4 Direction have to be assessed against these criteria before a balanced judgement can be reached. Only proposals that would (or could) harm the special significance of the conservation area would require a planning application. Clearly, a garden shed in a garden (unless of a size or in a location to require planning permission, see 5, above) could not be considered harmful, and no planning application would be required. It is not therefore proposed to amend part e) to exclude the rear of properties.</p> |
| | <p>The effect of the revised Article 4 Direction is to clarify the somewhat ambiguous wording of the existing direction. For example part (a) of the existing Article 4 Direction removes PD rights for <i>the enlargement, improvement or other alteration of a dwelling house on its front or side elevation</i>. This generalised statement has often caused confusion as to exactly what is covered. While this is repeated in the revised Direction, it is</p> |

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| | clarified by parts d); f); g); i); j) and k). |
| 9. | The proposed amendments are beneficial, in that they allow residents in the conservation greater freedoms than the originally drafted version. It is therefore not felt that they are material, and that there is no requirement to re-consult on the proposed revised Article 4 Direction. |
| | Legal Procedure |
| 10. | Once Cabinet give approval for confirming the Order the Council must then Seal the Order, serve notice locally and notify the Secretary Of State. |
| RESOURCE IMPLICATIONS | |
| <u>Capital/Revenue</u> | |
| 11. | There are no capital implications arising from this report. There are revenue implications, which are that there will be a confirmation process in which the Council will have to advertise the Confirmation of the Order locally, and send letters to residents. A copy of the Order will also need to be sent to the Secretary of State for Communities and Local Government. The revenue costs will be met from existing planning service budgets. |
| <u>Property/Other</u> | |
| 12. | There are no property implications for the Council arising from the recommendations contained within this report. |
| LEGAL IMPLICATIONS | |
| <u>Statutory power to undertake proposals in the report:</u> | |
| 13. | The Town and Country Planning (General Permitted Development) (England) Order 2015. |
| <u>Other Legal Implications:</u> | |
| 14. | Before confirming the Order the Council must consider any objections or representations made during the consultation period. |
| 15. | In some circumstances and subject to a time limit the Council may be liable to pay compensation when a planning application is refused or granted subject to conditions resulting from an Article 4 Direction. The claim must relate to abortive expenditure or other loss or damage directly attributable to the withdrawal of the permitted development rights. A claim must be made within 12 months of the date on which the application is determined; for certain rights a claim can only be made within 12 months of the direction being made. Historic England guidance advises that compensation claims have been extremely rare. |
| 16. | The Council must be satisfied that any Article 4 Direction conforms to the requirements of the Human Rights Act 1998, in particular Article 1 of the First Protocol in relation to the Protection of Property. Any interference with property rights (including restricting development opportunities, etc.) must be necessary and proportionate in order to control the use of property in accordance with the general public interest. |
| POLICY FRAMEWORK IMPLICATIONS | |
| 17. | The recommendations set out in the Ethelburt Avenue (Bassett Green Estate) Conservation Area Appraisal and Management Plan are based on and complement the existing policies set out in the Core Strategy and the saved policies of the City of Southampton Local Plan Review. |

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| KEY DECISION? | No |
| WARDS/COMMUNITIES AFFECTED: | Swaythling |
| <u>SUPPORTING DOCUMENTATION</u> | |
| Appendices | |
| 1. | Revised Article 4 Direction |
| 2. | Letter to Householders (properties in Field Close, Stoneham Lane, Leaside Way, Bassett Green Road, Ethelburt Avenue) |
| 3. | Existing Article 4 Direction |
| Documents In Members' Rooms | |
| 1. | None |
| Equality Impact Assessment | |
| Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out. | No |
| Privacy Impact Assessment | |
| Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out. | No |
| Other Background Documents | |
| Other Background documents available for inspection at: | |
| Title of Background Paper(s) | Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable) |
| 1. | |
| 2. | |