



<b>Committee</b>	Strategic Planning Committee
<b>Date</b>	27/02/2024
<b>Subject</b>	Confirmation of Article 4(1) direction at Landguard Lodge, Manor Terrace, Felixstowe, IP11 2EL
<b>Cabinet Member</b>	Councillor Kay Yule Cabinet Member with responsibility for Planning and Coastal Management
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<b>Director</b>	Nick Khan Strategic Director <a href="mailto:nick.khan@east Suffolk.gov.uk">nick.khan@east Suffolk.gov.uk</a>

Key Decision?	No
Is the report Open or Exempt?	OPEN

Category of Exempt Information and reason why it is <b>NOT</b> in the public interest to disclose the exempt information.	Not applicable
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## Purpose/Summary

On 27<sup>th</sup> September 2023 an emergency direction was made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 removing the permitted development right to demolish Landguard Lodge, Manor Terrace, Felixstowe, IP11 2EL without prior consent from the local planning authority. This direction was made as it was considered that the demolition of this building would be prejudicial to the proper planning of the Local Planning Authority's area and would constitute a threat to the amenities of their area. This direction will expire on 27<sup>th</sup> March 2024 unless it is confirmed by the Council before that date.

This report is to provide background and inform the Committee of the decision taken by the Head of Planning and Coastal Management in consultation with the Chair and Vice-Chair of Planning Committee South and the Cabinet Member with responsibility for Planning and Coastal Management to serve the Article 4(1) direction; and to seek confirmation of said direction. If the direction is confirmed this building cannot be demolished without first seeking planning permission. If it is not confirmed then it will lapse on 27<sup>th</sup> March 2024 which would result in the permitted development right of demolition being reinstated.

## Recommendation(s)

That Strategic Planning Committee:

- 1) Agrees to confirm the direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 on 27<sup>th</sup> September 2024 removing the permitted development right of demolition from Landguard Lodge, Manor Terrace, Felixstowe, IP11 2EL (area shown on the plan in Appendix A).

## Strategic plan

### How does this proposal support Our Direction 2028?

<b>Environmental Impact</b>	Preserving the district's beauty and heritage by preventing the demolition of a landmark local building
<b>Sustainable Housing</b>	Making better use of our housing stock by preventing the demolition of a large, detached dwelling without the need for planning permission
<b>Tackling Inequalities</b>	Not applicable.
<b>Thriving Economy</b>	Supporting responsible tourism and visitor economy by preserving our local heritage
<b>Our Foundations / governance of the organisation</b>	There is significant interest in the local community about the preservation of this building, with local residents, the Felixstowe Society and Felixstowe Town Council asking the Council to take action to prevent demolition of this building.

## Justification for recommendations

### 1. Background

- 1.1. Prior notification of the intended demolition of the Landguard Lodge, Manor Terrace, Felixstowe, IP11 2EL was submitted to East Suffolk Council in July 2023 under reference DC/23/2745/DEM. This application was submitted to determine if Prior Approval would be required for demolition works under Schedule 2, Part 11, Class B (demolition of buildings) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)).
- 1.2. Demolition is development permitted under Class B of Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (“GPDO”), subject to a number of criteria relating to a variety of factors including if the building had been rendered unsafe or otherwise by the action or inaction of persons within an interest in the land, the last use of the building, and if a statue, memorial or monument is a listed building, a scheduled monument, or within a cemetery, within the grounds of a museum, art gallery or dwellinghouse.
- 1.3. This Class of the GPDO also requires the submission of an application to the local planning authority for determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site, unless the works are *‘urgently necessary in the interests of safety or health and the measures immediately necessary in such interests are the demolition of the building the developer must, as reasonably practicable, give the local planning authority a written justification of the demolition’*. The proposed demolition was not urgently required in the interests of safety or health and therefore the Prior Notification Application referred to above was submitted.
- 1.4. A direction under Article 4(1) of the GPDO was made by this authority on 27th September 2023. This had the effect of withdrawing the permitted development rights conferred by the GPDO under Class B of Part 11 of Schedule 2 relating to demolition of the building. The direction came into immediate effect as the Council considered the development (i.e. the demolition) would be prejudicial to the proper planning of its area and a threat to the amenities of its area.
- 1.5. The direction was made by the Head of Planning and Coastal Management in consultation with the Chairman and Vice-Chairman of Planning Committee South and the Cabinet Member with responsibility for Planning and Coastal Management. At the time there was no specific reference to Article 4 directions within East Suffolk Council’s constitution. However, a function of the area Planning Committee is to *“determine and advise the Council on all planning and development management applications and any local development proposals and other applications under the Town & County Planning Act 1990, Town & Country Planning Development Orders and all subordinate legislation (including the Town & Country Planning Act (Public Path Orders) Regulations 1993) and other associated legislation relating to planning, development and building control, including local plans and the National Planning Policy Framework, and including applications in relation to advertisements, listed buildings and any other notices, orders,*

*certificates demands, permissions, consents and grants under any such legislation” and to “delegate these functions, where appropriate, to employees of the Council or any subcommittee”.*

- 1.6. The effect of the Article 4(1) direction is that the building cannot be demolished unless a planning application is made and permission granted.
- 1.7. This direction will expire on 27<sup>th</sup> March 2024 unless it is confirmed by the Council before that date.
- 1.8. The East Suffolk Council constitution was updated on 23<sup>rd</sup> October 2023 to include the confirmation of Article 4 directions as a function of Strategic Planning Committee.

## **2. Introduction**

- 2.1. The Committee needs to make a decision whether to confirm the Article 4(1) direction which means that this building cannot be demolished without first seeking planning permission; or to let the direction lapse which would reinstate the permitted development right of demolition.

## **3. Proposal**

- 3.1. That the Committee confirms the Article 4(1) direction made on 27<sup>th</sup> September 2023.

### Landguard Lodge, Manor Terrace, Felixstowe

- 3.2. Landguard Lodge is not listed, nor is it in a Conservation Area. It is the view of officers that Landguard Lodge nevertheless makes an important contribution to the character and appearance of this part of Felixstowe and is of local historical value sufficient to warrant its retention. This is for the following reasons:
  - a) The Lodge dates to the last quarter of the 19<sup>th</sup> century and is architecturally distinctive; incorporating a tower, castellated parapets, bay windows, prominent hood moulds, and mullion and transom windows. As a marine villa it is a relatively late example of its type in a national sense, but is locally among the first generation of such buildings to be constructed.
  - b) The Lodge is part of the early years of Felixstowe’s Victorian and Edwardian development as a resort. It is considered likely that Willian Henry Buxton, who made a significant contribution to the development of the town at this time, was the architect of the Lodge as there are records of him designing major additions and alterations in 1895.
  - c) Military association; there is a War Department boundary stone immediately adjacent to the building. The Landguard Nature Reserve Management Plan identifies it as ‘Old Officers mess, stables and stores’. The building was a working part of Felixstowe’s defences during the Second World War with records describing it as the site of the command post and accommodation buildings for Manor House Battery, an emergency battery constructed in 1940.

- d) The holiday park which has developed around them is all at low level, and Landguard Lodge is a prominent landmark sited on the northern boundary of the Landguard Nature Reserve.
- e) Historical associations; prominent judge George Darell Shee lived at Landguard Lodge and it is likely that he commissioned the house himself. His death was recorded there in 1894. In 1899 it was home to John Henry Balguy, a Major in the Royal Artillery.

3.3. It is the judgement, therefore, of officers that the demolition of Landguard Lodge would be prejudicial to the proper planning of the area and would constitute a threat to the amenities of the area.

3.4. Following the prior notification of demolition Landguard Lodge was put forward to Historic England for assessment whether it should be added to the National Heritage List for England. This action was not taken by East Suffolk Council but as local planning authority we were consulted on the assessment. The assessment concluded that:

*“Landguard Lodge and Landguard Cottage are clearly of local interest both in terms of their history and elements of their architecture but they lack the special interest required to meet the criteria for Listing in a national context.”*

3.5. Despite not meeting the high bar for inclusion on the national list the Historic England assessment clearly identifies the significant local interest of the building.

Use of an Article 4(1) Direction:

3.6. Guidance on the use of Article 4 directions is given within Article 4 (1) of the GPDO and Schedule 3 to that order. Article 4 (1) states that *“if the Secretary of State or the local planning authority is satisfied that it is expedient that development described in any Part, Class or paragraph in Schedule 2, other than Class K or M of Part 17, should not be carried out unless permission is granted for it on an application, the Secretary of State or (as the case may be) the local planning authority, may make a direction under this paragraph”*

3.7. Paragraph 53 of the National Planning Policy Framework (NPPF) states that: *“The use of Article 4 directions to remove national permitted development rights should: a) where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre) b) in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities) c) in all cases, be based on robust evidence, and apply to the smallest geographical area possible.”*

- 3.8. Schedule 3, 2 (1) (a) of the GPDO states that a direction can be made by the local planning authority under article 4(1) to restrict development that would otherwise be permitted by any of Parts 1 to 4, or Class B or C of Part 11, of Schedule 2 of the GPDO, if the authority considers that the implementation of 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. The Article 4(1) direction that has been made at Landguard Lodge is in accordance with what the GPDO prescribes.
- 3.9. The use of Article 4(1) directions to restrict the demolition of buildings is rare in East Suffolk as many of the historic buildings in the district are already protected from demolition (without consent) because they are listed buildings or within a Conservation Area. However, Landguard Lodge has no such protection and therefore, in this instance, the use of an Article 4(1) direction was deemed necessary for the reasons outlined above. A similar Article 4(1) direction was made and confirmed at Blythburgh Primitive Methodist Chapel in 2016.
- 3.10. In deciding whether to confirm a direction made under article 4(1), the local planning authority must take into account any representations received during the required 21 day consultation period. The local planning authority must not confirm a direction until after the expiration of a period of at least 28 days following the latest date on which any notice relating to the direction was served or published.
- 3.11. The 21 day consultation period ran from 27<sup>th</sup> September – 18<sup>th</sup> October 2023 and has now expired. Representations in support of the direction were received from the Suffolk Preservation Society, a resident of Felixstowe, and Felixstowe Town Council. See Appendix B for details. No representations were made by the owner of the site.
- 3.12. A direction to which this paragraph applies expires at the end of the period of six months beginning with the date on which it comes into force unless confirmed by the local planning authority before the end of the six month period (in this case the 27<sup>th</sup> March 2024).
- 3.13. However, the owner or proposed developer of a building the subject of an Article 4 direction may apply for planning permission for its demolition. If following the making of an Article 4 direction such an application was made it would have to be considered by the Council in the proper manner.
- 3.14. It is important to note that the making of an Article 4 direction may give rise to a claim for compensation should a subsequent planning application be refused (see Section 4).

#### **4. Financial Implications**

- 4.1. There are no direct financial risks from making an Article 4 direction. A claim for compensation may arise should a subsequent planning application be refused.
- 4.2. Compensation is payable in certain circumstances following the making of an Article 4 direction. This would be payable where planning permission is applied for and refused for development which would, but for the Article 4 Direction, have been able to be

carried out under the GPDO, or where such planning permission is granted but subject to more restrictive conditions than those imposed by the GPDO.

- 4.3. Section 108(2A) of the Town and Country Planning Act 1990 provides that compensation is only payable if an application for planning permission for certain development formerly permitted by the GPDO 2015 is made within 12 months of the Article 4 direction taking effect. A claim for compensation must be made in writing and must be served within 12 months from the date of the decision in respect of which the claim is made.
- 4.4. Section 107 of the Town and Country Planning Act 1990 sets out that the claim for compensation can include abortive expenditure and other loss or damage directly attributable to the withdrawal of the permitted development right. This can include the difference in the value of the land if the development had been carried out and its value in its current state, as well as the cost of preparing the plans for the works.

## **5. Legal Implications**

- 5.1. All legal requirements have been met as described in this report.

## **6. Risk Implications**

### Regulatory Risk

- 6.1. There is no formal right of appeal against the making of an Article 4 Direction. There could be an application for judicial review if it were thought that the Council had not considered the merits of the direction properly. This is considered to be a low risk.

### Reputational Risk

- 6.2. If the direction was not confirmed, that the Council had failed to exercise its powers to protect a building which it considered to be important in the townscape.
- 6.3. If the direction was confirmed, that the Council had over-reacted to the anticipated demolition of a building that was less important in the townscape than the Council supposes.
- 6.4. Given the strength of local feeling demonstrated by the 60+ responses objecting to the demolition of the building which were received on the prior notification of demolition DC/23/2745/DEM it is considered that the risk of reputational damage is higher if the direction is not confirmed.

## **7. Options**

- 7.1. Either the Committee agrees to confirm the Article 4(1) direction. This would have the effect on continuing to require planning permission to be sought for any proposals to demolish Landguard Lodge.
- 7.2. Or, the Committee decides not to confirm the Article 4(1) direction. This would mean that after 27<sup>th</sup> March 2024 Landguard Lodge could be demolished without the need for planning permission.

## **8. Recommendations**

- 8.1. That the Article 4(1) direction served on Landguard Lodge, Manor Terrace, Felixstowe on 27<sup>th</sup> September 2023 is confirmed, in accordance with paragraphs 1(9) and (10) of the General Permitted Development Order 2015.

## **9. Reasons for Recommendations**

- 9.1. It is the view of officers that the proposed demolition of Landguard Lodge would be prejudicial to the proper planning of the Local Planning Authority's area and a threat to the amenities of the area and that this has been demonstrated by illustrating the local architectural and historical value of the building.

## **10. Conclusions/Next Steps**

- 10.1. If the Committee decides to confirm the Article 4(1) direction the relevant notices will be served. These notices include: individual service on the site owner, local advertisement and a site notice. A copy of the Article 4(1) direction will also be sent to the Secretary of State.
- 10.2. Once confirmed the Article 4(1) direction remains in place indefinitely unless it is cancelled by making a subsequent direction.
- 10.3. If a planning application were to be submitted for this site, its determination process route would have to follow the same process as for any other planning application. That is to say, it would be delegated to officers for determination unless it triggers one of the five potential referral routes to planning committee, which are:
- 1) be called in directly by the Head of Planning and Coastal Management or the Chairman/Vice Chairman of the Planning Committee,
  - 2) the applicant or landowner was East Suffolk Council
  - 3) the applicant or agent was an East Suffolk Councillor or East Suffolk Council Employee or close relative of either,
  - 4) The Referral Panel process is triggered and the Panel refer the item to Planning Committee (the panel would be triggered by the comments from the Town Council, Ward Members or a statutory consultee being different from the 'minded to' recommendation of officers).
  - 5) The 'call-in' process is triggered by comments from the town council and ward members, and the application is called in by a planning committee member during their consultation period.
- 10.4. Whether any such application is determined by officers or by the South Planning Committee, the existence of the Article 4(1) direction would be a consideration in its determination.

## Areas of consideration comments

### Section 151 Officer comments:

There are no financial impacts directly related to this recommendation. As per Section 4 of the report, a claim for compensation may arise should a subsequent planning application be refused. This cannot be determined at this time.

### Monitoring Officer comments:

No additional comments

### Equality, Diversity and Inclusion/EQIA:

No issues

### Safeguarding:

Not applicable

### Crime and Disorder:

Not applicable

### Corporate Services implications:

*(i.e., Legal, Finance, Procurement, Human Resources, Digital, Customer Services, Asset Management)*

Advice was sought from Jacqui Bullen, Planning Lead Lawyer on the legal and financial implications set out in this report.

### Residents and Businesses consultation/consideration:

See Appendix A

## Appendices:

<b>Appendix A</b>	Map of the land covered by the Article 4(1) direction
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<b>Appendix B</b>	Summary of representations received.
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## Background reference papers:

None.

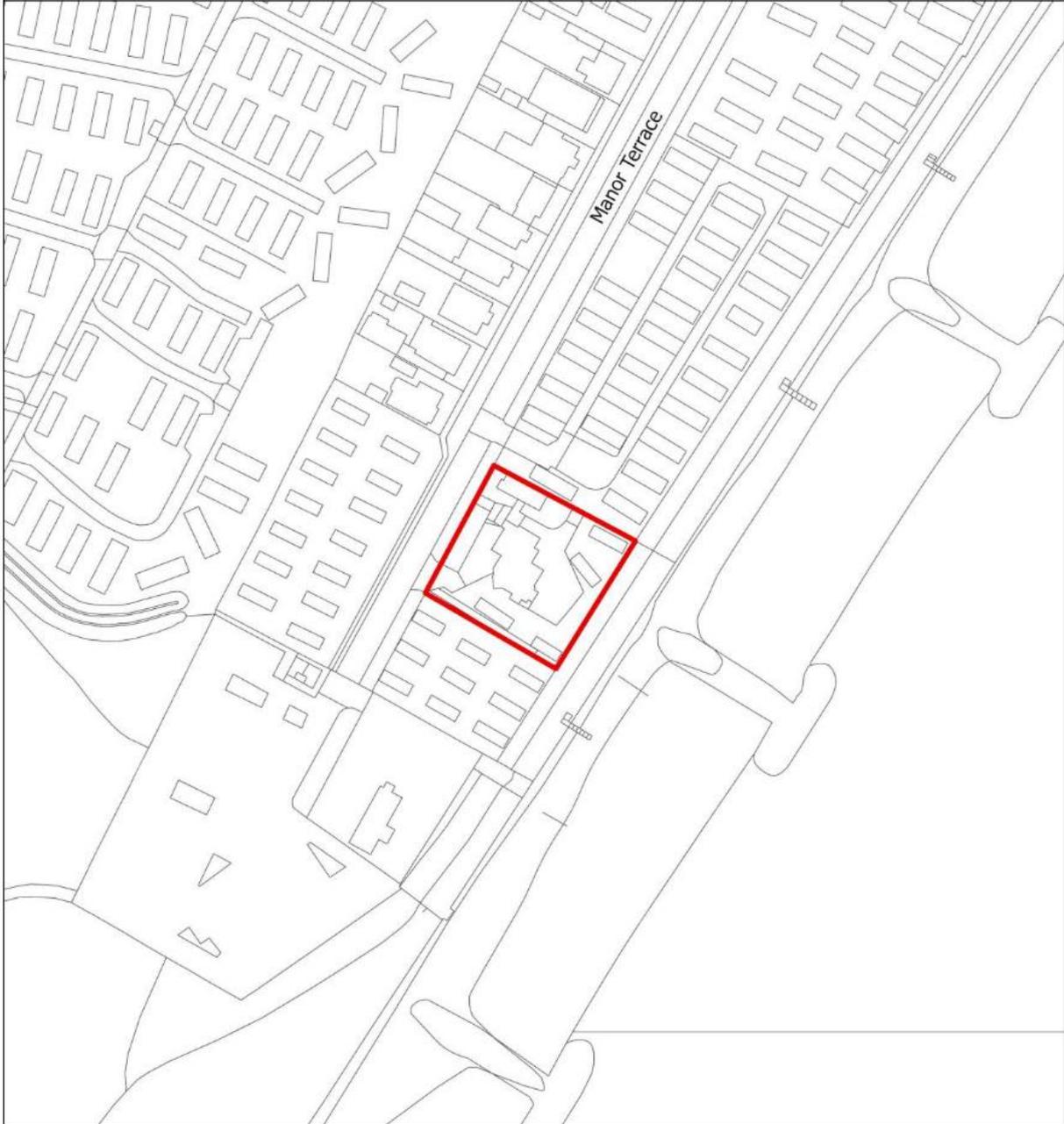
**Appendix A: Map of the land covered by the Article 4(1) direction**

Landguard Lodge, Manor Terrace, Felixstowe, IP11 2EL

Article 4 (1)



22 September 2023



## Appendix B: Summary of representations received

Representation	Contents
Felixstowe Town Council's Planning and Environment Committee	It was RESOLVED that the following representation by made in respect of this action: Committee are fully supportive of the Article 4 Direction and would strongly request that this be made permanent. We recognise the iconic nature of this architecturally significant building and would wish to see it preserved. We fully concur with the comments submitted by both the Felixstowe Society and the Suffolk Preservation Society and further recognise the strength of public opinion that the proposed demolition provoked. We note that this building is an internationally recognised landmark.
Suffolk Preservation Society	The Society requested that their letter objecting to the demolition of the building dated 27 <sup>th</sup> September 2023 should be taken as their response to the consultation. The letter summarised the historic interest of the building and the Society's strong objection to its demolition.
Mrs E Ashdown – Felixstowe resident	As a resident of Felixstowe who frequently walks on the Landguard peninsula I think it would be a dreadful shame to lose this historic building from the area. Landguard Lodge is as much a tourist attraction as the Fort and many visitors past and present know it as an iconic building in Felixstowe. As such it should remain where it is.
While only three representations were received in response to the public consultation on the Article 4(1) direction, further evidence of the public objection to the demolition of Landguard Lodge can be viewed in the 60+ public responses to the prior notification of demolition DC/23/2745/DEM which can be viewed on the public access planning system <a href="http://eastsuffolk.gov.uk">Simple Search (eastsuffolk.gov.uk)</a>	