



Report

Date: 30th May 2023

To Members of the Planning Committee

THE MAKING OF AN IMMEDIATE ARTICLE 4 DIRECTION REMOVING PERMITTED DEVELOPMENT RIGHTS RELATED TO THE DEMOLITION OF BUILDINGS AT DONCASTER SHEFFIELD AIRPORT

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Cllr Nigel Ball	Finningley	Yes

EXECUTIVE SUMMARY

1. This Report provides an update on the proposal to make an immediate Article 4 Direction which would remove permitted development rights related to the demolition of buildings at Doncaster Sheffield Airport (“DSA”). Following the announcement and subsequent closure of DSA in 2022, City of Doncaster Council (“the Council”) has decided to take steps to explore all legal remedies to find a viable future for the airport. Many avenues have been and continue to be explored, including negotiating directly with the airport owner, attempting to find interested 3rd parties to purchase or be involved in operating the airport, and progressing with the preparatory stages of a compulsory purchase order. Whilst work is ongoing, it is imperative in the short term to ensure the airport is protected and that airport infrastructure, assets and buildings are left in place to ensure the airport can re-open in a timely and cost effective manner. As such, it has been recommended in a report, supported by a justification paper that Councillor Nigel Ball, as Cabinet Member for Public Health, Leisure, Culture and Planning, makes an immediate Article 4 Direction which removes permitted development rights related to the demolition of buildings at DSA within the area shown on the map in Appendix 1. Should the recommendations of the report be agreed, any proposal to demolish a building within this land will require a planning application to be submitted and the proposal to be assessed through the full planning process, which may include being decided by planning committee. Councillor Ball will make the decision on 19th May which post-dates this report, but pre-dates this planning committee. Full Council will be made aware of the decision, and a verbal update will be provided at planning committee on 30th May 2023 on the outcome.

EXEMPT REPORT

2. This report is not exempt.

RECOMMENDATIONS

3. Members of Planning Committee are asked to note the contents of this report.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. The Article 4 Direction is a planning tool available to the Council which can help to preserve the airport by ensuring that any proposals to demolish buildings in the defined area are subject to a planning application and assessment via the full planning process. This therefore opens up the possibility that, when the principle of development is assessed against the development plan and any other material considerations, applications for the demolition of buildings and infrastructure at the airport may be refused. This is a tool that can help to preserve the airport and its operational ability, which is essential given the local and regional desire to see the airport re-open in the future. An international airport brings benefits to the residents of Doncaster. There are direct benefits, such as ease of access to an international airport for foreign or (potentially) domestic air travel. There are also wider economic benefits in terms of Gross Value Added (GVA) generated from jobs and businesses directly or indirectly associated with the airport in both Doncaster, South Yorkshire and the UK. The airport allows for access to and from international markets for trade, businesses and tourism. It can also act as a driver to stimulate growth in higher value economic sectors which are lacking in Doncaster and can drive GVA up as well as stimulating growth in supply chains.
5. An initial consultation on the principle of making an Article 4 Direction was undertaken, which received 271 responses, the majority of which being from members of the public. Of these, 261 (96.3%) were supportive of the actions proposed, with just 4 (1.5%) opposed, and the remainder neutral. The current landowner responded to the consultation, querying the need for a Direction, pointing out the process to be undertaken and noting that it considers some (unidentified) buildings within DSA need to be demolished for health and safety reasons.

BACKGROUND

What is an Article 4 Direction?

6. An Article 4 Direction is a means by which certain development which would otherwise be permitted without needing to apply for planning permission (otherwise known as 'Permitted Development Rights') can be brought back within the full development control regime. By removing specific permitted development rights, a planning application would therefore be required to approve any proposal for demolition at DSA, and any application would be subject to the normal national and local policy considerations and key statutory consultation.
7. An Article 4 Direction is made pursuant to Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").
8. There are two potential options for making an Article 4 Direction: immediate or non – immediate effect. In this case, the recommendation is that the Council

make an immediate Article 4 Direction, meaning that it takes effect on the date it is served on the owners/occupiers of the land to which it relates, and lasts for up to six months. The Council will carry out further consultation once the Direction is in made, and then make a further decision on whether it should be confirmed within 6 months of the date on which it takes effect, as per the requirements set out in Schedule 3 of the GPDO.

9. For clarity, in the case of a non – immediate Article 4 Direction, the Direction does not take effect until it is confirmed at the end of a representation period following its making.

Why is an Article 4 Direction Required?

10. It is deemed necessary recommend that the Council take immediate action to make an Article 4 Direction in this case as the development (the potential demolition of buildings) would be prejudicial to the proper planning of the area. Based on the information received the Council believes that there is an imminent threat to this.
11. In a letter responding to the initial consultation on a proposed Article 4 Direction (without a decision having been made as to whether it ought to be made on an immediate or non-immediate basis) consultation solicitors acting for DSAL and various companies in the Peel Group made the Council aware, without providing specific details, that *“there are certain buildings within the area which are being inspected and surveyed by Peel and the initial indications are that some may require demolition on health and safety grounds”*. The Council has not previously been made aware of this and has requested further details. A further letter has been received from DSAL/Peel’s solicitors, reasserting this point but not providing the detail requested.
12. The Council is aware of alternative proposals for the site, recently produced by Peel, which do not include an operational airport. Whilst no formal planning application has yet been submitted for these proposals, it is clear that the operator has a desire to redevelop the site for other uses. In 2022 when the operator announced its intentions to close the airport, the Council received counsel’s advice about the prospects of the redevelopment of the site for alternate uses. That advice concluded categorically that any development within the airport operational area which does not include an operational airport would not be supported in policy terms and would be contrary to the development plan.
13. The Council is currently in negotiations with Peel about the prospect of acquiring a leasehold interest in the airport. It is also taking preparatory steps to promote and make a compulsory purchase order, in the event that attempts to acquire an interest in the airport by agreement are unsuccessful. The airport is deemed to be a crucial and irreplaceable piece of infrastructure for the City of Doncaster and the wider City Region. There is strong local political and public support for it to be retained and re-opened.
14. Clearly, any removal or demolition of buildings associated with the airport and its operational functionality affect the ability of the airport to re-open without delay. Demolition is expected to create additional and potentially significant costs to any future owner or operator which could significantly affect the viability

of re-opening the airport. These factors diminish the attractiveness of the airport to potential investors and reduce the perception that the site is itself an airport.

15. The airport brings quantifiable economic and social benefits to the City and wider Region. It is vital to the economic wellbeing of the area. With a new owner and operator in place, the Council believes, contrary to Peel's view, that there is a viable future for Doncaster Sheffield Airport. Were buildings to be demolished, and subsequently the airport not be able to re-open, its potential would not be realised, and the economic and social benefits that it can bring to the area would be lost.
16. It has been recommended that the Council should act immediately to protect the airport and its buildings from demolition. Although the Article 4 Direction would not prevent demolition outright, proposals for such works would need to be assessed through the planning process. The Council believes there is justification for making an immediate Direction, and further that the timescales associated with making a non-immediate Direction risk allowing buildings to be demolished in the intervening period between the making and confirmation of a Direction. As demolition of buildings is a permitted development right, without an Article 4 Direction in place the Council as local planning authority would be unable to prevent the principle of demolition of airport buildings. An Article 4 Direction allows greater scrutiny through the planning application process of what is being proposed and its potential impact.






What does this mean for planning committee?




17. Given the intense public interest in matters at DSA, it is highly likely that should a planning application be submitted which affects the airport or its operation, it would be ultimately decided by planning committee.
18. Should the Article 4 Direction be made, any proposals to demolish buildings, or proposals for alternate development which would result in the demolition of buildings at the airport (in the boundary defined in Appendix 1 to this report), will require planning permission. Under the GPDO, the oversight the Council has on applications for demolition are limited to the method of demolition and restoration. Should the Article 4 Direction be made, the oversight the Council, and consequently, planning committee has is vastly increased. Should an application come before planning committee which includes demolition of buildings at the airport, committee could elect to refuse it as this may, for example, be contrary to Policy 6 of the Local Plan (Doncaster Sheffield Airport), and its aims. Alternatively, committee could decide to approve an application involving demolition. Such matters cannot currently be considered for demolitions, due to the terms set out in the GPDO for matters related to the demolition of buildings. Crucially, if the Article 4 Direction is made, the Local Planning Authority and Planning Committee have greater oversight and increased scope to act on applications which include demolition at DSA.
19. It is important to note that these powers only apply to the demolition of buildings in the area edged in red in Appendix 1. Applications outside of this boundary must still be decided in accordance with the Local Plan and relevant local and national policy considerations, as would applications within the boundary that do not result in the demolition of buildings. Buildings within the boundary include the control tower, fire station, hangars, cargo and transit sheds,

navigational aids, the terminal and also the runway.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

20. The immediate Article 4 Direction is considered to impact on Doncaster Council's Great 8 priorities in the following ways:

Great 8 Priority	Positive Overall	Mix of Positive & Negative	Negative overall - Trade-offs to consider	Neutral or No implications
 Tackling Climate Change			✓	
<p>Comments: Airports are a significant contributor to global carbon emissions with a negative overall impact on climate change. However, the reopening of DSA, which the Article 4 Direction ultimately will help support, and development of the surrounding area will result in significant job creation and associated economic opportunities. The emerging SYAC vision has a focus on the development of low carbon aviation and the drive to Jet Zero.</p>				
 Developing the skills to thrive in life and in work	✓			
<p>Comments: Reopening DSA and delivering the associated economic development opportunities would support our plans to improve skills levels and continue the trajectory of upskilling residents of Doncaster. The Article 4 Direction can help maintain the airport with a view to re-opening and taking advantage of these opportunities.</p>				
 Making Doncaster the best place to do business and create good jobs	✓			
<p>Comments: The presence of a successful international airport coupled with Doncaster's city status and existing economic assets will be a significant benefit in attracting new inward investment opportunities and foreign direct investment. The Article 4 Direction can help maintain the airport with a view to re-opening and realising its economic potential for the City.</p>				
 Building opportunities for healthier, happier and longer lives for all	✓			
<p>Comments: The presence of successful international airport will provide significant opportunities for Doncaster and the wider regions communities to access jobs and prosperity – thereby improving wider health and well-being of the area</p>				
 Creating safer, stronger,				✓

greener and cleaner communities where everyone belongs				
Comments: no direct impact				
 Nurturing a child and family-friendly borough				✓
Comments: no direct impact				
 Building Transport and digital connections fit for the future	✓			
Comments: although aviation has to adapt to greener practices, their role in delivering access to and from international markets is recognised and will continue to be important in the future. The preservation of the airport which the Article 4 Direction supports ensures that Doncaster continues to have the ability to forge direct international connections in the future.				
 Promoting the borough and its cultural, sporting, and heritage opportunities	✓			
Comments: Since the 1940's Doncaster has had a strong aviation presence. Retaining the aviation operation at DSA continues this rich heritage link to Doncaster and provides international access to local and regional cultural and sporting opportunities.				
Fair & Inclusive	✓			
Comments: DSA and the supply chain opportunities associated with South Yorkshire Airport City will provide wide ranging workforce opportunities that will be particularly valuable as we seek to grow a fair and inclusive economy.				

RISKS AND ASSUMPTIONS

21. The making of an immediate Article 4 Direction is permitted under Schedule 3 of the GPDO. The NPPF states that Article 4 Directions should be limited to situations where it is necessary to protect local amenity or the well-being of an area, be based on robust evidence and apply to the smallest geographical area possible. A further test is applied when making an immediate Article 4 Direction that the development presents an immediate threat to the local amenity or prejudices the proper planning of an area.

LEGAL IMPLICATIONS [SC 5.5.23]

22. An Article 4 Direction may be made with immediate effect under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“GPDO”) by the Local Planning Authority (“LPA”) to restrict certain permitted development rights where they consider the rights in question are prejudicial to the proper planning of the area or constitute a threat to local amenity. The decision maker should be satisfied that it is expedient in the circumstances to make the direction, and regard must be had to the accompanying justification paper in appendix 2. Where this immediate process is used, the Article 4 direction takes effect on the date the notice is served on occupiers or owners of the affected land and is in force for an initial period of up to 6 months.

Schedule 3 of the GPDO sets out the procedure which must be followed when an immediate Article 4 Direction is made. Accordingly, once the direction is made the LPA must give notice by local advertisement, by site display and by serving the notice on the owner and occupier of every part of the land to which the direction relates. A minimum 21 day period for representations must be specified when notice of the direction is given and the LPA must take representations into account when deciding whether or not to confirm the direction before the end of the six month period. If the direction is not confirmed by this date, it will expire and have no further effect.

National Planning Policy Guidance (“NPPG”) states that where an immediate direction is made: *“in all cases the local planning authority must have already begun the consultation processes towards the making of a non-immediate article 4 direction”*. An initial consultation on proposals for the making of a direction was carried out between 5th-26th April, and the consultation responses have been taken into account when making the recommendation in this report.

There are very limited grounds available to interested parties affected by an immediate direction, if made, to claim compensation under sections 107-108 of the Town and Country Planning Act 1990 as amended (“TCPA”). The TCPA restricts those grounds to circumstances in which planning permission has been refused for development which but for the Direction would have been permitted, or planning permission is granted subject to more onerous conditions than those imposed by the GDPO, and abortive expenditure has been incurred as a result of the removal of the permitted development rights or other losses or damage which have been sustained and which are directly attributable to the removal of those rights. Claims must be made within 12 months beginning with the date the direction comes into force.

There is no right of appeal against the decision of an LPA to make an Article 4 Direction but that decision can be subject to challenge by way of judicial review, in line with usual public law considerations.

A separate decision making process will be required should the LPA decide to confirm the order within the six month period.

FINANCIAL IMPLICATIONS [MS 05/05/2023]

23. The full justification and rationale document describes some financial benefits

that can be brought about by the making of the Article 4 Direction, if the site is to be used as an airport in the future. In particular, it provides comparative costs of rebuilding the airport if it were to be demolished compared with the costs of upgrading the current buildings if demolition is prevented.

The known financial implications to the Council of making a Direction are limited to advertisement costs and internal resources to undertake the statutory notification and consultation procedure. However, there are limited grounds available to interested parties affected by an immediate direction, if made, to claim compensation under sections 107-108 of the Town and Country Planning Act 1990. Legal advice received suggests that the compensation is limited to circumstances whereby planning permission has either been refused for development that would be allowed under permitted development rights, or has been granted subject to conditions that are more onerous than those in the GDPO AND abortive costs or other loss or damage that can be directly attributed to the withdrawal of the Permitted Development rights can be demonstrated. E.g. if a contractor has been engaged to demolish certain buildings before the Direction takes effect and the contract requires abortive costs to be paid if the work does not go ahead. It is not expected to extend to any loss incurred as a result of having to run, repair or maintain the buildings for longer than expected as a result of any decision to not permit demolition on the site. Any claims must be made within 12 months beginning with the date the direction comes into force.

On 12 April 2023 Cabinet noted a request to South Yorkshire Mayoral Combined Authority (SYMCA) for £6.25m of grant and approved an alternative funding plan should the SYMCA bid be unsuccessful. Any compensation costs could be met from the grant or alternative funding plan in the first instance and if they can't be contained within that additional funding will need to be identified.

HUMAN RESOURCES IMPLICATIONS [DK DATE: 04/05/2023]

24. There are no direct HR Imps in relation to this EDR, but if in future staff are affected or additional specialist resources are required then further consultation will need to take place with HR.

TECHNOLOGY IMPLICATIONS [PW 03/05/23]

25. There are no technology implications in relation to this report.

HEALTH IMPLICATIONS [CH 05/05/23]

26. There are no health implications in relation to this report.

EQUALITY IMPLICATIONS [CH 05/05/23]

27. There are no equality implications in relation to this report.

CONSULTATION

28. A comprehensive public consultation was undertaken about the potential making of an Article 4 Direction. It is evident from the 271 responses that 96% consultees are in favour of the action / recommendations.

BACKGROUND PAPERS

29. A full justification paper setting out the reasons for the recommended immediate Article 4 Direction can be view here:

[ISSUE DETAILS - ARTICLE 4 DIRECTION REMOVING PERMITTED DEVELOPMENT RIGHTS LINKED TO THE DEMOLITION OF BUILDINGS AT DONCASTER SHEFFIELD AIRPORT. - MODERN COUNCIL \(MODERNGOV.CO.UK\)](https://www.modern.gov.uk/issue-details-article-4-direction-removing-permitted-development-rights-linked-to-the-demolition-of-buildings-at-doncaster-sheffield-airport.-modern-council)

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

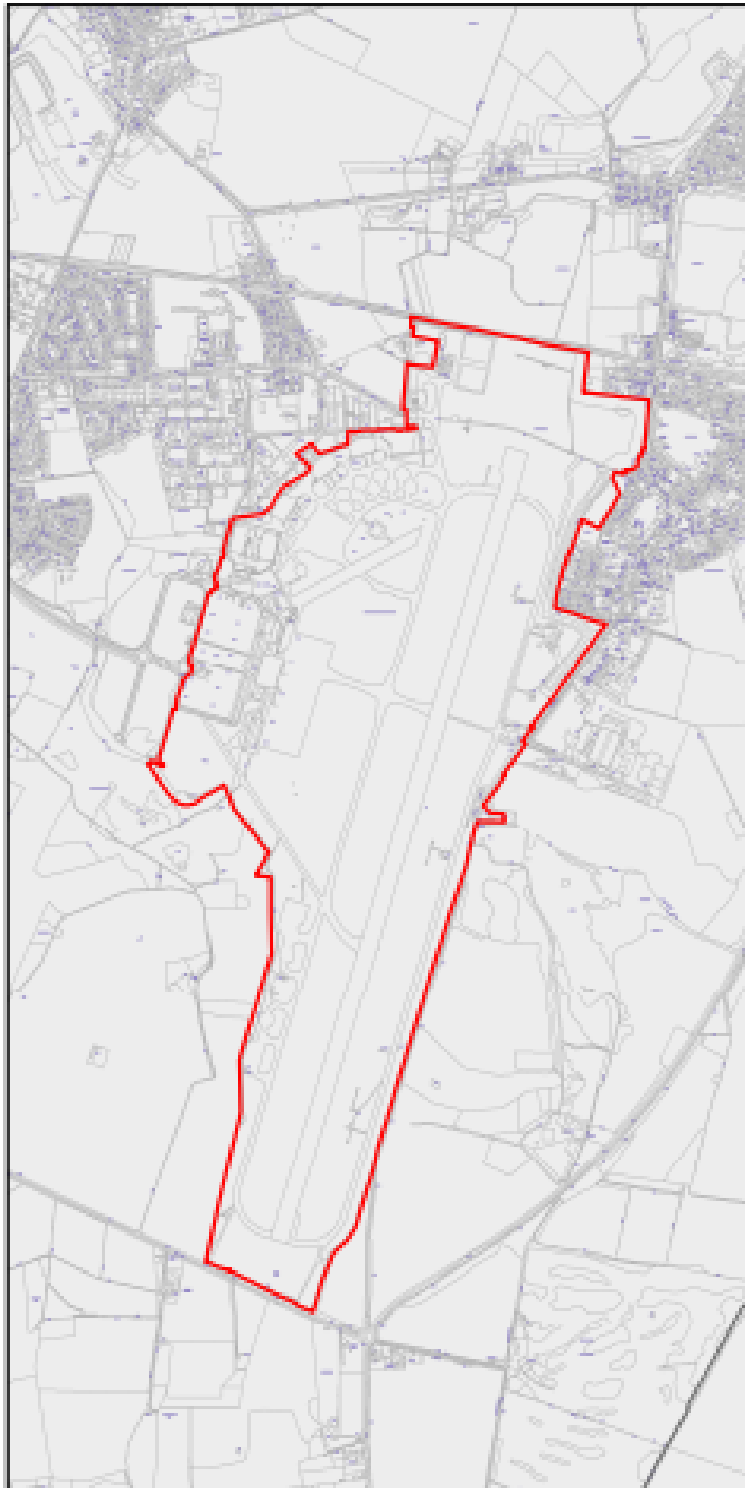
None

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Appendix 1 – Order Map



Key :

 Airport Article 4 Boundary

Title : Airport Article 4 Boundary

Completed By :
edhar000

Reference :
Airport Boundary March 23

Date :
07/04/2023

Scale :
1:20,000

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