


<p style="text-align: center;">Individual Mayoral Decision</p> <p style="text-align: center;">August 2021</p>	
<p>Report of: Anne Sutcliffe, Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>Article 4 Direction – E-class to Residential (C3)</p>	

Lead Member	Councillor Eve McQuillan, Lead Member for Planning and Social Inclusion
Originating Officer(s)	Steven Heywood, Plan Making Team Marissa Ryan-Hernandez, Strategic Planning Manager
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	General Exception Notice published 29 July 2021
Reason for Key Decision	Impact on Wards
Strategic Plan Priority / Outcome	A Great Place to Live

EXECUTIVE SUMMARY

Article 4 directions remove permitted development rights (the ability to undertake certain forms of development without a full planning application) where there is a local need or justification for doing so. In August of 2021 a new permitted development right came into force allowing for changes of use from Class E – which includes retail, professional services, restaurant, office, light industrial, commercial gyms and some community (primarily GP surgeries and nurseries) uses to class C3 residential use without the need for planning permission.

The changes include a Prior Approval process whereby Local Planning Authorities can consider a limited range of matters, including the size and quality of the new housing being proposed. However, the principle of the change of use cannot be assessed. The considerations allowed in the prior approvals process do not sufficiently address the potential economic and social impacts of the permitted development right in designated town centres, preferred office locations and industrial locations.

Tower Hamlets introduced an Article 4 direction in 2018, which came into force in 2019 to remove permitted development rights for changes of use from Office

(formerly B1) to Residential (C3) in the Central Activities Zone (CAZ), North Isle of Dogs (NIOD), the Preferred Office Locations in the City Fringe and Mile End neighbourhood centre. LBTH introduced another Article 4 direction in 2020 (coming into force in 2021) to remove permitted development rights for change of use from shops, professional and financial, services and restaurants (formerly class A) to residential in all designated town centres.

The new permitted development right supersedes both existing permitted development rights (Office to residential and A-class uses to residential), linked to changes in the Town and Country Planning Use Classes Order. Existing Article 4 designations restricting these rights will no longer apply. Article 4 directions restricting changes of use from former A-class uses to C3 residential will cease effect on 1st August 2021. Article 4 directions restricting changes of use from Office uses to residential will cease effect on 1st August 2022.

Article 4 directions can be implemented with immediate effect, meaning that they take effect from the date that the direction is made by the LPA. In these cases, the Local Authority is required to pay compensation to any landowners or other stakeholders who have a planning application refused for a development that would have been allowed under the permitted development right. Given the potential cost of paying compensation, a non-immediate Article 4 direction is recommended. This will take effect 12 months after the direction is made by the Council.

The Mayor of London has encouraged Article 4 directions covering E-class uses to residential to be brought forward. Article 4 directions do not mean that a certain type of development cannot take place, merely that proposals are properly considered through the development management process with a full planning application required. As such, this report seeks approval to make an Article 4 direction and to commence a period of statutory public consultation. The Article 4 direction will be presented back to Cabinet for permission to confirm, cancel or modify the Article 4 direction once representations have been received.

RECOMMENDATION

The Mayor is recommended to:

1. Agree the making of a non-immediate Article 4 direction removing permitted development rights from E-class uses to residential (C3) within the areas shown on the map attached as Appendix 1 (all designated Preferred Office Locations, Local Employment Locations, Strategic Industrial Locations, Local Industrial Locations and all town centres);
2. Note that following the making of an Article 4 Direction, statutory invitation of representations will be carried out on the Article 4 direction (Appendix 2); and
3. Agree that should re-consultation be required due to amendments from the Secretary of State, or following consideration of representations received during the period of statutory consultation, that such further consultation

may be undertaken with the authority of the Corporate Director, Place due to the urgent need to have the Article 4 direction confirmed.

1. REASONS FOR THE DECISIONS

- 1.1 Permitted development for a change of use from offices (use class B1(a) at the time) to residential (use class C3) was introduced in May 2013. The Council objected to this form of permitted development and in common with other inner-London boroughs was subsequently successful in gaining an exemption from the Permitted Development right which covered the west of the borough (City Fringe) and the north of the Isle of Dogs. The areas of exemption covered most of the borough's designated office/employment locations which include areas of global economic significance (Canary Wharf) and a significant amount of office space (such as Aldgate). An unmanaged loss of office space in those locations could have a negative impact on the borough's supply of office floorspace, jobs and the ability to meet future office and employment growth projections as set by the London Plan.
- 1.2 Those exemptions expired in 2019, and LBTH introduced an Article 4 direction at that time to remove the permitted development right for Office to Residential from those areas that had previously been covered by the exemption in addition to other areas deemed important for Tower Hamlets's local office market – Whitechapel District Centre, Mile End Neighbourhood Centre.
- 1.3 In 2014, the government introduced permitted development rights for the change of use of several town centre uses (retail, professional services, hot food take-aways, betting offices and pay-day loan shops) to residential (Class C3). Following an assessment of the impacts of that permitted development right on town centres, LBTH introduced an Article 4 direction removing that permitted development right in all designated town centres. This Article 4 direction came into effect in January 2021.
- 1.4 There are two types of Article 4 direction – 'immediate' and 'non-immediate'. An immediate Article 4 direction takes effect either immediately following its issue, or at a time within one year of being issued. A 'non-immediate' Article 4 direction takes effect at least one year after being issued, but no later than two years after issue. The main difference is that if the Article 4 takes effect less than one year from issue, compensation is payable to affected landowners. After one year, there is no compensation. While an immediate Article 4 direction would ensure that there was no negative impact on LBTH's town centres, offices and industrial sites, the unpredictability and potential scale of the compensation that would be required mean that an immediate Article 4 direction is not recommended.
- 1.5 This Article 4 direction is supported by a justification report, attached as Appendix 2. This report may be subject to minor updates or amendments as necessary. The attached report is itself underpinned by national and regional guidance, the London Plan's (2021) evidence base and the Council's Local

Plan evidence base on employment and town centres (Employment Land Review (2016) (“ELR”), Preferred Office Location Study (2017) and Town Centre Retail Capacity Study (2016)). The Mayor of London is supportive of Article 4 directions being made covering the strategic office locations – the CAZ and NIOD; the GLA has issued a Strategic Evidence Base paper that provides justification for Article 4 directions in these locations and in town centres, other office locations and industrial sites.

- 1.6 Officers do not consider an Article 4 direction covering the whole borough to be appropriate given the relevant guidance and the evidence. The National Planning Policy Framework (the NPPF) provides guidance regarding the making of Article 4 directions, including an expectation that it will cover the smallest geographic area possible. The ELR advocates a “targeted” approach to focus on locations such as the Central Activities Zone/City Fringe, designated employment locations and town centres. A previous attempt in Islington to implement a borough-wide Article 4 was refused by the Secretary of State on the basis of it being applied “disproportionately” with insufficient evidence to justify the approach. A less comprehensive boundary was subsequently agreed. Officers therefore consider the proposed boundary of this Article 4 to be proportionate, protecting the borough’s town centres and its existing supply of office and industrial floorspace where it is most important and viable while according with the spirit of the permitted development to help meet housing targets elsewhere.
- 1.7 There are statutory requirements that must be addressed to comply with legislation, in particular a period of formal public consultation before the Article 4 is confirmed (adopted) by Council. When introduced with sufficient notice (the Article 4 direction taking effect at least one year after making) the Council would not need to pay compensation to any landowners disadvantaged by the Article 4 direction.
- 1.8 If following public consultation there is a need to re-consult (in the experience of other authorities this is primarily as a result of direction by the Secretary of State), this could add a delay to the programme, which could place town centres and employment sites at greater risk. Therefore it is proposed that any modifications arising and permission to re-consult are agreed through the delegated authority of the Corporate Director for Place.

2. ALTERNATIVE OPTIONS

ALTERNATIVE OPTION A: NO ARTICLE 4 DIRECTION IS ISSUED

- 2.1 The Council could decide not to introduce this Article 4 direction. This option is not recommended, as without the ability to effectively assess proposals for change of use from E-class uses through the planning system it is likely the vitality and viability of the borough’s town centres would be significantly undermined through the loss of smaller shops and other businesses; it is also likely that the supply of office and industrial floorspace and the success and viability of key employment locations would be undermined. The importance of town centres and strategic office locations has been demonstrated by the

successful introductions of Article 4 directions restricting the previous permitted development rights. The loss of town centre uses, offices and industrial uses would compromise the borough's ability to meet employment projections and maximise jobs for local people. It could result in residents being unable to access their day-to-day needs easily and conveniently. It would reduce the space available to new entrepreneurs and increase the cost of that space, introducing barriers to starting new businesses. It would also mean that the Council would not be able to manage the location, tenure mix or quality of new housing being produced through permitted development.

ALTERNATIVE OPTION B: ARTICLE 4 DIRECTION IS ISSUED FOR THE WHOLE BOROUGH

- 2.2 The Council could decide to introduce an Article 4 direction for the whole borough. This option is not recommended. The existing Article 4 directions covering town centre uses and offices are limited to designated town centres and areas considered strategic to the provision of offices respectively. The relevant evidence demonstrates the need for the protection of those uses in those location (in addition to strategic and local industrial locations), but does not justify their protection across the borough. The government has recently published a new NPPF which includes new guidance on the making of Article 4 directions; it explicitly discourages whole-borough Article 4 directions and expects Article 4 directions to cover the smallest possible geographic areas. An attempt by London Borough of Islington to introduce a borough-wide Article 4 direction to remove the previous office to residential permitted development right was refused by the Secretary of State. There is an urgent need to have the Article 4 direction in place to reduce the risk to office, industrial and town centre uses. This could be compromised if the Council undertook the risky strategy of attempting a borough-wide Article 4, as this would require further and more extensive research which may not support the case, be more prone to challenge and could be more challenging to defend.

3. DETAILS OF REPORT

- 3.1 On 30th May 2013 the Town and Country Planning (General Permitted Development) Order 1995 was amended to enable permitted development – in other words a change of use without need for a full planning application – from offices (B1(a)) to residential (C3) via a process known as “Prior Approval”.
- 3.2 Two exemption areas were agreed within the borough. These were:
- The area of the borough to the west which is covered by the GLA's City Fringe Opportunity Area Planning Framework and the Central Activities Zone designation.
 - The area of the borough to the east which is covered by the Isle of Dogs Community Infrastructure Levy (CIL) charging schedule.
- 3.3 That exemption ceased on the 31st May 2019. In response, LBTH introduced an Article 4 direction to remove the permitted development right from the

areas that had previously been exempt. On the basis of the evidence contained in the Employment Land Review, LBTH included additional areas in the Article 4 direction:

- Whitechapel District Centre
- Mile End Neighbourhood Centre

- 3.4 These areas were included in order to ensure that the needs of local businesses continued to be served at a time when they were being priced out of the CAZ, areas of the City Fringe and the NIOD.
- 3.5 In 2014 the government introduced permitted development rights for several A-class uses (A1 Retail, A2 Professional Services, A5 Hot Food Take-away) and several sui generis town centres uses (betting shops, pay-day loan shops and laundrettes) to change to residential use. Following several years of observation into the impacts of this permitted development right on the borough's town centres, LBTH introduced an Article 4 direction to remove that permitted development right from all designated town centres. This Article 4 direction came into effect in January 2021.
- 3.6 In 2020, the government introduced a new planning use class – Class E – which incorporates the uses formerly contained within classes A1 (retail), A2 (financial/professional services, e.g. banks), A3 (restaurants), B1 (offices and light industrial), and parts of D1 (GP surgeries, nurseries) and D2 (gyms). Given that these uses are all now in the same use class, changes within Class E (e.g. from a nursery to a restaurant) are not considered development. As a result, these changes cannot be regulated in any way through the planning system, including through Article 4 directions.
- 3.7 In late 2020, the government indicated its intention to introduce a new permitted development right that would allow changes of use from any use within Class E to residential (C3) use. LBTH responded to the government's consultation on this proposal arguing that such a permitted development right would be detrimental to the LPA's ability to meet its objectives and plan effectively for its future. In 2021, the government indicated that it intended to introduce the new permitted development right in spite of strong objections from many stakeholders; however, it introduced a 'prior approval' process, under which LPAs would be permitted to consider a small number of matters, including the size of the proposed dwellings and their level of daylight and sunlight as part of the permitted development process. While these considerations are an improvement over existing permitted development rights, that allow for substandard dwellings, the new permitted development right still poses a threat to the borough's office and industrial locations and town centres, and its ability to collect planning obligations.
- 3.8 The legislation introducing the new permitted development right includes a clause rendering all existing Article 4 directions for changes of use from uses now within Class E to residential void on the 1st August 2021, with the exception of Article 4 directions restricting changes of use from office to residential, which will become void on the 1st August 2022.

Mechanism to remove permitted development rights

- 3.9 In order to remove permitted development to respond to local circumstances, local authorities may bring forward what are termed 'Article 4' directions. Article 4 directions may be brought forward as 'non-immediate' to take effect 12 months from notice being issued to the relevant stakeholders or 'immediate' in which case for a one year period local authorities are liable to compensate landowners for the effects of the removal of the permitted development right. Compensation is the difference between the capital value of the property had permission been granted and the capital value of the property without planning permission. For example, if with planning permission a property is valued at £1,000,000 but without the value is £600,000, the Council would have to pay the landowner £400,000 if an application is submitted but refused. There is no reimbursement due for fees associated with attempting to obtain planning permission. Local Authorities do not have to pay any compensation if they introduce a non-immediate Article 4 direction, as landowners have 12 months to take advantage of the increase in value.
- 3.10 In most cases the local authority would need to make a decision on the urgency of the Article 4 direction; in other words assessing whether an immediate Article 4 direction is necessary due to the extent of loss (or potential loss) of employment space irrespective of compensation liabilities, or whether a non-immediate Article 4 direction to avoid compensation is more appropriate. The existing Article 4 direction removing office to residential permitted development rights will expire on 1st August 2022, therefore an immediate Article 4 direction is not necessary to protect office uses.
- 3.11 The Article 4 direction removing the A-class use (retail, services and restaurants) to residential permitted development right will expire on 1st August 2021, and an immediate Article 4 direction would be required to provide certainty that there would be no impact to town centres. In the period 2014 to 2018, following the introduction of permitted development rights for change of use from retail and other town centre uses to residential use, but prior to LBTH's Article 4 direction removing that right, the permitted development right was exercised only 15 times across the borough. While there is a clear case against any use of the permitted development right in a designated town centre; the scale of its use previously suggests that the risk to town centres of introducing a non-immediate Article 4 direction is relatively small. Further, given the unpredictability and potential scale of the compensation costs arising from an immediate Article 4, an immediate Article 4 direction is not recommended.

The need for an Article 4 direction

- 3.12 Given that three types of uses – offices, town centre uses, and light industrial uses – are covered by the permitted development rights and would be protected by this Article 4 direction, this report will address the need with respect to each of these types of uses separately.

- 3.13 A justification report is attached as Appendix 1 and provides additional evidence into the need for this Article 4 direction.

Office

- 3.14 The importance and significance of offices for providing jobs and fuelling economic growth and regeneration in the borough is recognised by the Council. Alongside economic growth strategies and programmes of support for local enterprise, the Council actively seeks to protect and improve such business land and floorspace through the planning process by protecting existing viable employment land and floorspace, designating key employment clusters and areas of employment activity and supporting new employment space in the most viable locations. This not only supports existing businesses, helping them to thrive, but also to encourage new enterprise and growth to provide job opportunities for local people.
- 3.15 Prior to introduction of permitted development rights, the provision of office floorspace in the borough could be fully managed through the planning system to ensure proper consideration of proposals which might result in the loss or reduction office floorspace. Since its introduction, the Council has been able to maintain sufficient floorspace to help meet future projected need only through the existing Article 4 direction. If it is allowed the expire, the Council will no longer be able to maintain a sufficient supply of floorspace to meet projected need.
- 3.16 Much employment space in the borough is office floorspace. Offices also make up the bulk of the borough's significant projected future employment growth as set out in the Greater London Authority's (GLA) London Plan and this is reflected by the recent 'Employment Land Review' (ELR) (2016) produced as evidence for the Council for the Local Plan (2020). The London Plan projection is for 125,000 new jobs by 2031.
- 3.17 The ELR identified a significant shortfall of 547,000sqm of office space to meet the London Plan projection. That means it is essential that there is no unmanaged loss of existing office floorspace; any loss through permitted development would further compound the existing deficit.
- 3.18 Furthermore, residential developments arising from permitted development from offices are not required by the legislation to provide the affordable housing, amenity space or child playspace that might be expected of proposals subject to full planning applications. Given the height and scale of many existing office buildings within the exemption areas, it is quite plausible that residential conversions would severely constrain the Council's ability to ensure appropriate living standards for the health and wellbeing of future residents.
- 3.19 New dwellings created through this permitted development right would also be exempt from the requirement to provide affordable housing and other planning obligations, threatening the borough's supply of the housing that meets its most pressing needs and its ability to provide necessary infrastructure.

Town Centre Uses

- 3.20 Use Class E includes most main town centre uses, including retail, professional services, restaurants, smaller community uses such as GP surgeries, and smaller recreation uses such as gyms. These uses form the backbone of most town centres, attracting a range of users and ensuring that local residents can access all of their day-to-day needs in a location that is convenient and easily accessible.
- 3.21 They support a wide range of employment opportunities for Tower Hamlets residents. Employment in town centre businesses is particularly valuable due to low barriers to entry, flexibility of hours and accessibility and proximity to workers' homes.
- 3.22 Town centres also support small businesses by providing flexible, low-cost business space. In Tower Hamlets, this function of town centres is particularly valuable for those from outside the UK, who can often rely on an existing customer base and wider community from their region of origin.
- 3.23 The provision of a diverse range of shops and services in town centres is also essential to ensuring that residents are able to access all of their day-to-day needs in locations that are convenient and accessible and that provide opportunities for linked trips. In the absence of these facilities, residents will be required to travel longer distances and will be more likely to travel by car if available, undermining LBTH's objectives regarding sustainable transport.
- 3.24 The Retail Capacity Study (2016) that forms part of the evidence base of the Local Plan demonstrates that there is capacity for retail growth in nearly all of the borough's town centres, and this is further reinforced by the relatively low vacancy rate. Tower Hamlets also has a significantly higher rate of independent businesses in its town centres (with the exception of Canary Wharf) than the national and London averages. This suggests that any loss of retail floorspace through permitted development would have the most significant impact on independent businesses. In many cases, these independent businesses play an essential role in supporting LBTH's diverse communities; particularly providing employment and entrepreneurial opportunities for new migrants who face barriers to other forms of employment.

Industrial Uses

- 3.25 LBTH has one Strategic Industrial Location (SIL) – Empson Street and five Local Industrial Locations (LILs). These sites provide space for a range of businesses, including a high proportion of creative businesses and many logistics businesses that provide critical services to the CAZ and London more widely.
- 3.26 While it is difficult to extrapolate trends from the vacancy rates of the sites themselves given the small number of sites and of units, the Local Plan

demonstrates that there is a significant under-supply of industrial floorspace relative to the need.

- 3.27 Given their floorspace needs, businesses that occupy industrial locations typically require units that have a relatively low per square metre cost; they cannot compete for space with other, less floorspace intensive uses. If permitted development were to take effect in industrial locations, it is likely that their current occupiers would be unable to pay rents competitive with residential use.
- 3.28 It is also necessary to ensure that industrial units remain available at relatively low cost to ensure that entrepreneurs do not face insurmountable barriers to starting businesses and accessing premises.

Timetable

- 3.29 Without the Council making an Article 4 direction to remove permitted development there is a risk that the employment function of many of the borough's key employment areas and town centres would be undermined and the ability to meet projected future growth would be constrained. Therefore, LBTH should ensure that this Article 4 is made as soon as practicable to ensure that impacts from the expiration of the existing Article 4 directions in August 2021 and August 2022 are as small as possible. Making the Article 4 by the 9th August 2021 (meaning that it comes into force August 2022) will ensure that there is only a period of several days between the expiration of the current Article 4 covering office to residential changes of use.
- 3.30 While the proposed timeline will allow the permitted development right to remain in force for town centre and industrial uses for a full year, on balance this is preferable to making an immediate Article 4 direction, which would give rise to compensation requirements.
- 3.31 In order to ensure that the Article 4 direction comes into force by August 2022 the following timescale is proposed:

Article 4 Direction Key Stages		
1	Approval of the making of the Article 4 Direction and permission to commence statutory public consultation	9 th August 2021
2	Notice of Article 4 Direction published	August 2021
3	Public consultation	August-October 2021
4	Confirmation of Article 4 Direction by the Mayor in Cabinet	November 2021
5	Article 4 Direction takes effect	August 2022

Requirements to produce an Article 4 direction

3.32 In order to make an Article 4 in accordance with Regulation (10) of the Town and Country Planning (General Permitted Development) (England) Order 2015 direction the following tasks must be completed:

- The change of use to be addressed by the Article 4 direction (in this case Class E to C3) to be clearly set out
- Identification of the geographical boundaries to which the Article 4 will apply, and for that information to be mapped and recorded and made available on the Council's website
- Compilation of robust and up-to-date evidence to support the Article 4 direction and the boundaries/properties to which it would apply, and for that information to inform a clear justification to be included with decision-making reports and be published alongside the Article 4 direction.
- Consideration of whether an immediate Article 4 direction is required, and if so for an assessment to be completed to identify the likely financial liability and risks to the Council from doing so (as noted in paragraph 2.2 in this case an immediate Article 4 direction is not recommended)
- Publication of a notice of the Article 4 direction including maps and supporting information on the Council's website at least one year before the Article 4 direction takes effect
- Invite representations from stakeholders for a period of at least three weeks, including publishing a Public Notice on the Council's website and in local press, displaying site notices at locations to be covered by the Article 4 direction, and for the Secretary of State to be informed in writing
- Confirmation of the Article 4 by the Mayor in Cabinet
- Publication of a notice on the Council's website when the Article 4 direction takes effect in August 2022

Inviting representations

3.33 The notice of the making of an Article 4 direction will be published following this decision (if approved). This is a statutory requirement and summarises the locations to which the Article 4 direction will apply, what type of development the Article 4 direction covers, where and how documents can be viewed and how representations can be made. The notice is attached as Appendix 4.

3.34 Inviting representations on Article 4 directions is guided by Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires that the LPA must accept representations for a period of at least 21 days (three weeks). While the statutory requirement is three weeks, LBTH's Statement of Community Involvement requires a minimum consultation period of six weeks on planning policy documents. An Article 4 direction is not, strictly speaking, a planning policy document, but a six week period for inviting representations is recommended for consistency.

3.35 A copy of the Article 4 direction will also be published as part of the invitation of representations, with a statement included making clear that it will only come into force if confirmed. The Article 4 direction is attached as Appendix 5.

- 3.36 Due to the nature of Article 4 directions, it is not considered that there is a need for any public events or 'drop-ins' as part of the invitation of representations.
- 3.37 Documents will be made available to view on the Council's website and at Idea Stores and libraries, and notices will be displayed in affected locations. Additionally, a public notice will be published in local press and persons registered to the Council's planning policy database will be notified.

Conclusions

- 3.38 There is justification and evidence for maintaining the existing exemption areas in the borough from office to residential permitted development by making an Article 4 direction to be made by 1st October 2021 and take effect from 1st October 2022.
- 3.39 In order to accord with the tight timescales to progress this Article 4 direction as set out in Appendix 1, it is essential that the Mayor in Cabinet supports the making of the Article 4 and the statutory public consultation which will commence on 2nd October 2021.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The Article 4 direction removes the permitted development right for Office to Residential developments. Within Tower Hamlets this will be applied to the major employment regions such as west of the borough (City Fringe), north of the Isle of Dogs, Whitechapel District Centre and Mile End Neighbourhood Centre. The direction is designed to protect this office space and employment opportunities it creates within the Borough.
- 4.2 There are resource implications from introducing the Article 4 direction as planning applications for developments that would otherwise have benefited from a fee are free of charge. The financial loss can be substantial where there is a large development. However, as there has previously been exemptions and an Article 4 directive in these areas, these losses have already been factored into the income budgets.
- 4.3 The Article 4 direction will however ensure that the Council can continue to collect planning obligations from new residential developments in these areas.
- 4.2 It is recommended that the Council introduces a non-immediate Article 4 direction to prevent the need to provide compensation to affected landowners. This compensation could be substantial and have a negative impact on the budget position if an immediate Article 4 directive were adopted.

5. LEGAL COMMENTS

- 5.1.1 This report seeks an Individual Mayoral decision by the Mayor to:

- 5.1.1.1 approve the making of a non-immediate Article 4 Direction removing permitted development rights from E-class uses to: residential (C3) within the areas shown on the map attached as Appendix 1;
- 5.1.1.2 note that following the making of the Article 4 Direction, a statutory public consultation will be carried out; and
- 5.1.1.3 agree that should re-consultation be required due to amendments from the Secretary of State, or following consideration of representations received during the period of statutory consultation, that such further consultation may be undertaken with the authority of the Corporate Director.

5.2 The Mayor is authorised to make this decision individually by virtue of :

5.2.1 section 9D of the Local Government Act 2000 which states that all functions of an authority are executive functions unless they are specified as not in either the 2000 Act or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Whilst some planning functions cannot be the responsibility of the Executive, the making of an Article 4 direction is not such a specified function and it is therefore an Executive decision; and

5.2.2 Part B, chapter 18, paragraph 5 of the Council's Constitution, which states that all executive functions of the Council are vested in the Mayor.

5.3 This proposed key decision is being made in compliance with section 18 of Part B of the Council Constitution (Urgency – General Exception). The report has been published on the website for five clear days before the proposed decision is to be made.

5.4 The Town and Country Planning (General Permitted Development etc)(England) (Amendment) (No 2) Order 2021 ('GPDO 2021') came into effect on 1st August 2021. The GPDO 2021 amends the Town and Country Planning (General Permitted Development Order) 2015 ('GPDO 2015') bringing it into line with the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which substantially amends the Town and Country Planning (Use Classes) Order 1987 ("the Use Classes Order") by introducing new use Classes E (commercial, business and service), F.1 (learning and non-residential institutions) and F.2 (local community), which subsumed some existing use classes. Many of the classes of permission in Schedule 2 to the GPDO 2015 are defined by reference to classes of uses specified in the Use Classes Order. The new 'Class MA' permitted development right in the GPDO 2015 allows changes of use from a use falling within Class E to Class C3 (residential). This means that provided the limited requirements and conditions of Class MA are satisfied, it will be possible to make a change of use from a Class E use to a Class C3 use without the need to apply to the local planning authority for planning permission. This permitted development right has become available from 1 August 2021.

5.5 There are some limitations on the application of the new Class MA permitted development right, for example:

- prior approval needs to be applied for in advance in relation to a range of matters;
- the building needs to have been vacant for a continuous period of at least 3 months immediately prior to the prior approval application;
- the building needs to have been in one of various specific types of use (corresponding to certain of the pre 1 September 2020 use classes) for at least 2 years before the prior approval application; and
- the cumulative floor space of the existing building changing use needs to be 1,500 square metres or less.

5.6 When considering applications for prior approval, the local planning authority can only assess specific matters such as impact on residential amenity, transport and the local environment including the conservation area status. The local planning authority cannot apply the full range of development plan policies, such as those relating to protection of employment generating land, quality of new housing or delivery of affordable housing, in the way that it would if considering an application in the usual manner by assessing it on its merits and compliance with adopted planning policies and other material considerations.

5.7 The only mechanism available to local authorities to remove permitted development rights where they otherwise apply is through a direction under Article 4 of the GPDO as has is the case in the present matter. An Article 4 direction removes a specified permitted development right in a defined area. Proposed development that would otherwise be automatically permitted then requires planning permission to proceed. This enables the local authority to determine the merits of the proposed development via a planning application, having regard to its development plan policies and any other material considerations.

5.8 The detailed procedure for the making of a non-immediate Article 4 direction is contained in paragraphs 1(1) to 1(18) of Schedule 3 of the GPDO. This provides that as soon as practicable after the direction is made, the LPA are required to give notice by local advertisement. Site notices must also be erected within the areas to which the direction relates and notice must be served on relevant owners and occupiers (unless an exception applies). A minimum statutory period of 21 days must be given for any representations to be made. In line with current practice the public consultation will run for a 6 week period. Subject to confirmation, the direction can come into force any time after 28 days have elapsed from the date of notice being given, but the direction must come into force within 2 years. The Council must also send a copy of the direction and the notice to the Secretary of State on the same day as the notice of the direction is first published by local advertisement. It should be noted that the Secretary of State has power to make a direction cancelling or modifying such a direction made under article 4 by a local planning authority at any time before or after its confirmation.

5.9 In deciding whether to confirm a direction, the local planning authority must take into account any representations received during the consultation period.

- 5.10 Section 108 of the Town and Country Planning Act makes provision for compensation to be payable where an application for planning permission (that would formally have been permitted development) is refused or is granted subject to conditions different from those in the GDPO. However, so long as 12 months' notice is given before the Article 4 direction takes effect as is the case in the present matter, no compensation will be payable.
- 5.11 Attention is drawn to a Written Ministerial Statement (WMS) by Robert Jenrick issued on 1 July 2021 and in particular the observations therein regarding the targeted application of proposed Article 4 directions to the smallest geographical areas possible to achieve its aim and would have the effect of restricting the exercise of Class MA permitted development rights. The WMS also emphasises the need for robust evidence to support of the making of a direction. The WMS will inform the revision of the National Planning Policy Framework later this year.
- 5.12 When considering the recommendations in this report, regard must be given to the public sector equalities duty to eliminate unlawful conduct under the Equality Act 2010. The duty is set out at Section 149 of the 2010 Act. It requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimization and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. As noted in the One Tower Hamlets section below, an equalities screening analysis has been carried out and concludes that the proposed Article 4 direction will positively impact people with protected characteristics. The equalities analysis should be updated after the consultation period and before a decision is taken whether or not to confirm the direction

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 An Equalities Assessment has been prepared and is included as Appendix 3. Officers will continue to work with the Council's Equalities team to ensure actions are undertaken to mitigate the likely impacts on the equality profile of those affected by the Article 4.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Article 4 direction will enable the Council to continue to ensure that employment land and jobs are protected where they are viable and meet a need, to the benefit of the wider community. The development of sites following the policies and guidance contained within the new Local Plan will generate Section 106 and Community Infrastructure Levy (CIL) contributions where relevant. This may include the delivery of new affordable housing, local enterprise and employment opportunities, public realm enhancements and infrastructure. This is not necessarily the case for homes delivered through Prior Approval from offices.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The Article 4 direction would not directly have any environmental implications as it simply removes permitted development rights from buildings that are already in place. However, a result of the permitted development right is that conversion to residential use can take place without addressing policy requirements ordinarily required of new development which include promoting greater energy efficiency. As such, the removal of permitted development which will result in full planning applications having to be submitted rather than Prior Approvals which should lead to higher quality residential developments where change of use is determined to be appropriate.
- 8.2 Fundamentally, the Article 4 direction would also result in more sustainable development as the permitted development right is considered detrimental to the balance of land uses in areas that are suitable for employment use and provide significant numbers of jobs.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 A Project Initiation Document (PID) was drafted in 2021 which considered and addressed the risks associated with the Article 4 direction. The primary risk associated with the Article 4 direction is that it is not confirmed by 1st October 2021 in order to take effect from 1st October 2022.
- 9.2 If the deadline is missed, the Council then has a further decision to make. Either the Article 4 direction is to take effect with less than one year's notice in which case the Council would be liable to compensate any affected landowners should they submit an application for change of use in the period until the one year's notice is achieved. The financial liability to the Council could be considerable. Alternatively, the Council could allow the full one year notice period which risks opportunistic landowners bringing forward sites for conversion under Prior Approval before the Article 4 takes effect thus undermining the supply of employment land and the viability of key employment areas.
- 9.3 These risks can be mitigated by the proposed timetable being met and the recommendation to re-consult if necessary without obtaining the permission of the Mayor in Cabinet being agreed.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The Article 4 direction would not directly have any implications on crime and disorder reduction, but the removal of permitted development rights would result in the need to submit full planning applications which should accord with the Council's Local Plan. This means that policies which seek to ensure the design of developments minimises opportunities for crime and creates a safer and more secure environment are addressed.

11. SAFEGUARDING IMPLICATIONS

- 11.1 The Article 4 direction is not considered to give rise to any safeguarding implications.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1 – Map of Article 4 boundaries
- Appendix 2 – Justification for Article 4 Direction
- Appendix 3 – Equality Analysis Quality Assurance Checklist
- Appendix 4 – Notice of the making of the Article 4 direction
- Appendix 5 – Article 4 Direction

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- LBTH Local Plan (2020)
- Employment Land Review (2016)
- Retail Capacity Study (2016)
- Preferred Office Location Boundary Study (2017)
- London Plan (2021)
- Strategic Evidence to Support Article 4 Directions (2021)
- Central Activities Zone SPG (2016)
- City Fringe Opportunity Area Planning Framework (2015)

Officer contact details for documents:

N/A