


Cabinet 1 August 2022	 TOWER HAMLETS
Report of: Ann Sutcliffe, Corporate Director Place	Classification: Unrestricted
Confirmation of Article 4 Direction – Class E to Residential (C3)	

Lead Member	Councillor Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding
Originating Officer(s)	Marissa Ryan-Hernandez (Strategic Planning Manager), Marc Acton Fillion (Plan Making Officer)
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Significant impact on communities living or working in two or more wards
Forward Plan Notice Published	11 January 2022
Strategic Plan Priority / Outcome	This decision will support one or more of the Corporate Priorities as set out in the Strategic Plan 2022-26 which is anticipated to be approved at this meeting

Executive Summary

An Article 4 direction is a legal tool used by local authorities to remove specific permitted development rights either in defined parts of the borough or borough-wide. Permitted development rights allow building owners to carry out specific changes or extensions that would normally require planning permission without going through the full planning process. The types of development that qualify for permitted development rights are established by the Government in the General Permitted Development Order.

In this case, the permitted development right that the council is seeking to restrict would allow all buildings or units in Use Class E – which includes most commercial uses, including shops, restaurants, cafes, banks, offices and light industrial spaces – to change to residential without going through the full planning process.

On 18th August 2021 the Mayor (through an Individual Mayoral Decision) made an Article 4 direction to remove permitted this development right. The Government expects Article 4 directions to cover as limited a geographic area as possible. Given that the council has strong evidence regarding the importance of retail, offices and industrial spaces in the areas designated for those uses in the Local Plan, this direction covers all designated town centres and neighbourhood parades, key concentrations of office and economic activity such as around the City Fringe and

the north of the Isle of Dogs, and designated industrial locations and seeks to maintain the function and viability of the areas covered. The direction is supported by a justification report (attached as Appendix 2) and has been informed by the detailed and robust evidence base on town centres, offices, industrial and employment land which has supported production of the Council's Local Plan.

This is a non-immediate Article 4, meaning that it comes into force 12 months after it is made. The Mayor decided not to Make an immediate Article 4 direction because immediate Article 4 directions require councils to pay compensation to all landowners whose permitted development rights are restricted if they apply for planning permission for development that would have been allowed by the permitted development right for the first 12 months that the Article 4 direction is in place.

This report recommends that the Mayor Confirm the Article 4 Direction as it was originally Made. This is the final statutory requirement for the Article 4 direction to take effect.

A period of public consultation on the Article 4 direction and the boundaries to which it applies has now been undertaken, having run between 2nd September and 13th October 2021. It should be noted that, while the Secretary of State has been informed of the direction, they have not yet provided a response. The Secretary of State may order the Article 4 direction to be cancelled or amended at any point (even after it has come into effect).

All statutory requirements for the Making and Confirmation of the Article 4 direction have been met. As such, this report seeks approval to confirm the Article 4 direction and for it to take effect on 18th August 2022.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Confirm the Article 4 direction made on 18th August 2021 which removes permitted development rights from Class E uses to residential (C3) within the areas shown on the map attached as Appendix 1;

Note that if confirmed, the Article 4 Direction will come into effect on 18th August 2022.

2. Note the Equalities Impact Assessment checklist attached as Appendix 3.

1 REASONS FOR THE DECISIONS

- 1.1 Permitted development between offices (use class B1(a) at the time) and 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 successful in gaining an exemption 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 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 In August 2021, the government introduced a new permitted development right allowing changes of use from all Class E uses (which includes retail, restaurants/cafes, offices and light industrial uses, among others) to residential. This new permitted development right immediately cancelled LBTH's existing Article 4 direction restricting changes of use from town centre uses to residential. The legislation made allowances for Article 4 directions restricting changes from office use to residential to remain in force for one year following the introduction of the new permitted development right, meaning that LBTH's office to residential Article 4 direction will remain in force until 1st August 2022.
- 1.5 In response to the new permitted development right, LBTH made a non-immediate Article 4 direction on 18th August 2021 restricting changes of use from all Class E uses to residential in specific designated areas of the borough. If confirmed through this decision, that Article 4 direction will come into effect on 18th August 2022.
- 1.6 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 was not recommended.

- 1.7 This Article 4 direction is supported by a justification report, attached as Appendix 2. 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.
- 1.8 A borough-wide Article 4 direction was not considered appropriate due to the Council not having evidence to justify one. 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.
- 1.9 To make and confirm Article 4 directions there are statutory requirements that must be addressed to comply with legislation (outlined in paragraph 3.15), such as completing a period of formal public consultation. This was carried out between 2nd September and 13th October 2021, and details of the consultation are set out in paragraphs 5.2 and 5.3. The Article 4 direction has been prepared in accordance with all statutory requirements.

2 ALTERNATIVE OPTIONS

ALTERNATIVE OPTION A: NO ARTICLE 4 DIRECTION IS ISSUED

- 2.1 The Council could decide to cancel this Article 4 direction. This option is not recommended, as without the ability to effectively assess proposals for change of use from Class E uses through the planning system it is likely the borough's supply of office, industrial and retail floorspace and the success and viability of town centres and key employment locations would be undermined. The importance of those areas has been justified in the Justification Report (Appendix 2). The loss of offices would compromise the borough's ability to meet employment projections and maximise jobs for local people. It would also mean that the Council would not be able to manage the location, size, tenure mix or quality of new housing being produced through this form of permitted development.

ALTERNATIVE OPTION B: ARTICLE 4 DIRECTION IS MODIFIED

2.2 The Council could decide to propose significantly amended boundaries for the Article 4 direction, or seek to extend it to cover the whole borough. This option is not recommended. The Article 4 direction covers all designated town centres, office locations and industrial locations. The Justification Report (Appendix 2) provides a strong justification for the inclusion of these locations and is based on the Local Plan evidence base and evidence provided by the GLA. The evidence does not justify an Article 4 direction covering the entire borough but it does recommend the “targeted” approach being proposed. A recent attempt by London Borough of Islington to introduce a borough-wide Article 4 direction was refused by the Secretary of State on the basis of it being unjustified. There is an urgent need to have the Article 4 direction in place by August 2022 in order to protect offices from the permitted development right. This key deadline 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. A further statutory public consultation would also be required, creating additional delay.

3 DETAILS OF THE 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 two additional areas in the Article 4 direction.

3.4 In 2014 the government introduced a permitted development right 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 load shops and laundrettes) to change to residential use (C3). 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.

- 3.5 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). As part of the introduction of the new use class, the relevant legislation also introduced the principle that changes of use within Class E would not be considered development and could therefore not be regulated by local planning authorities in any way (including through Article 4 directions).
- 3.6 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.
- 3.7 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

- 3.8 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.

- 3.9 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 was not necessary to protect office uses. 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. However, given the unpredictability and potential scale of the compensation costs arising from an immediate Article 4, an immediate Article 4 direction was not recommended.

The need for an Article 4 direction

- 3.10 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.
- 3.11 A justification report is attached as Appendix 2 and provides additional evidence into the need for this Article 4 direction.

Office

- 3.12 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.
- 3.13 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 ability of the Council to maintain sufficient floorspace to help meet future projected need has been undermined.
- 3.14 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.

- 3.15 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.
- 3.16 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 provide sufficient affordable housing to meet identified need and to ensure appropriate living standards for the health and wellbeing of future residents.

Town Centre Uses

- 3.17 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.
- 3.18 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.
- 3.19 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.
- 3.20 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.
- 3.21 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.

Industrial Uses

- 3.22 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.
- 3.23 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.
- 3.24 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.
- 3.25 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

- 3.26 The Mayor-in-cabinet must confirm the Article 4 direction in order for it to come into force. If confirmed it will come into force on the 18th August 2022. If it is not confirmed, it could result in a delay that introduces risk to the borough's office supply and increases the risk to town centre and industrial uses.

Requirements to produce an Article 4 direction

- 3.27 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 was 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 on 1st October 2022

Resource implications

- 3.28 There are clear benefits from introducing this Article 4 direction in terms of protecting town centres, office locations and industrial sites and also ensuring the quality of any residential development that may come forward.

Conclusion

- 3.29 There is clear and robust justification for the introduction of the Article 4 direction, which was previously considered as part of the Making. Following statutory public consultation there has been no objection to the direction and seven representations which support it. It is now recommended that the Article 4 direction is confirmed so that it will take effect from 18th August 2022.

4 EQUALITIES IMPLICATIONS

- 4.1 Equalities implications have been screened as part of the Equalities Impact Assessment Checklist (Appendix 3). This decision does not give rise to any significant negative equalities impacts. It is likely to give rise to positive equalities impacts by ensuring that new residential development is assessed through the planning process with regard to the Local Plan, which was subject to an Equalities Impact Assessment.

5 OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,

- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

Public consultation

- 5.2 Public consultation on Article 4 directions is guided by Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires that consultation must take place for a period of at least 21 days (three weeks); the Council undertook consultation over an extended period of six weeks between 2nd September and 13th October 2021. In support of the consultation, a public notice was published in local press (East London Advertiser) and on the Council's website, an e-mail was sent to persons registered on the Council's planning policy contact list and site notices were displayed in prominent locations throughout the areas covered by the direction. The Secretary of State was also informed in writing.
- 5.3 Following the period of statutory consultation a total of nine representations were received. Seven of these responses were in support of the Article 4 direction, including responses from the GLA, TfL, Historic England and Thames Water. Two of the responses had no comments on the Article 4 direction. There were no responses objecting to the Article 4 direction.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 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.
- 6.2 The Article 4 direction will however ensure that the Council can continue to receive planning obligations from new residential developments in these areas.
- 6.3 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.

7 COMMENTS OF LEGAL SERVICES

- 7.1 This report seeks Cabinet approval to:
- approve the confirmation 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;

- note that if confirmed, the Article 4 Direction will come into effect on 18th August 2022; and
- note the Equalities Impact Assessment checklist attached as Appendix 3..

7.2 Cabinet is authorised to make this decision by virtue of :

- 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;
- The Executive is also authorised to consider the proposed recommendations in this report by virtue of the Article 4 Direction comprising a 'Key Decision' as defined in Section 3 of the Council's Constitution. Paragraph 6 of Section 3 of the Constitution defines 'Key Decision' as an executive decision which is likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions. As stated above in this report, this Article 4 Direction if implemented will have a significant effect on the wards that lie within its boundary as without it and the ability it confers to effectively assess proposals for change of use from Class E uses through the planning system, it is likely the borough's supply of office, industrial and retail floorspace and the success and viability of town centres and key employment locations would be undermined.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

- 7.8 In deciding whether to confirm a direction, the local planning authority must take into account any representations received during the consultation period. The public consultation carried out on this Article 4 Direction is listed in section 5 of this report.
- 7.9 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.
- 7.10 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.
- 7.11 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. An equalities screening analysis has been carried out as detailed in section 4 of this report which concludes that the proposed Article 4 direction will positively impact people with protected characteristics.

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 – Article 4 Direction
- Appendix 5 – Confirmation Notice (to be published 18th August 2022)
- Appendix 6 – Notice of the Article 4 taking effect (to be published 18th August 2022)

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

- NONE

Officer contact details for documents: N/A