

CONFIRMATION OF ARTICLE 4 DIRECTION TO REMOVE PERMITTED DEVELOPMENT RIGHTS IN PARTS OF BOROUGH

Reporting Officer: Corporate Director of Place

Summary

1. On 26 July 2021, the Council utilised its powers under the Town and Country (General Permitted Development) Order 2015 (as amended) to make three non-immediate Article 4 directions, which proposed to remove the permitted development rights identified in Classes AA, AB and ZA of Part 20 of Schedule 2 of the same order in select parts of the borough.
2. Article 4 directions in relation to Classes AA and AB withdraw the permitted development right to construct new dwellinghouses immediately above the topmost storey on a detached or terraced building used for Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or Class B1(a) (offices) or as a betting office, pay day loan shop or laundrette. The Article 4 direction in relation to Class ZA withdraws the permitted development right to demolish buildings forming a purpose-built detached block of flats or comprising office B1(a), research and development falling within Class B1(b) or an industrial process falling in Class B1(c) in order to construct new dwellinghouses (Class C3).
3. On 20 September 2021, the Council utilised the same powers to make a non-immediate Article 4 direction proposing the removal of permitted development rights identified in Class MA of Part 3 of Schedule 2 in in select parts of the borough. This would remove the permitted development right allowing for the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to Class C3 (dwellinghouses).
4. These Article 4 directions were made in response to new permitted development rights proposed by the Government, to ensure the Council could control and protect the most important areas of economic activity with the Borough, including industrial areas and high streets. These permitted development rights would remain in place for the majority of the Borough. For further justification behind the original decisions to make the Article 4 directions in certain locations, please see the original Council Reports (Appendix 1 and 2). The directions and maps showing the Article 4 directions that need to be confirmed have been included as Appendices 3-6.
5. These Article 4 directions were made on a non-immediate basis, which required a 12-month notification period from when it is made until it can come into effect. This period is required to avoid the possibility of compensation claims being made against the Council. The procedure for implementing a non-immediate Article 4 direction includes a consultation, which has been undertaken. The responses to this consultation have been summarised and included as Appendices 7 and 8.
6. Council is now being asked to review these representations and confirm that they wish to implement the Article 4 direction. If confirmed. the Article 4 directions in relation to Classes AA, AB and ZA would come into force on 30 July 2022. The Article 4 direction in relation to Class MA would come into force on 24 September 2022.

RECOMMENDATIONS: That:

- a) **Following a review of all representations received, the Article 4 directions made on 26 July 2021 in relation to Classes AA, AB and ZA of Part 20 of the Schedule 2 of the Town and Country (General Permitted Development) Order 2015 (as amended), be confirmed.**
- b) **Following a review of all representations received, the Article 4 direction made on 20 September 2021 in relation to Class MA of Part 3 of Schedule 2 of the Town and Country (General Permitted Development) Order 2015 (as amended), be confirmed.**
- c) **The Planning Services Manager be instructed to complete the relevant procedures associated with confirming Article 4 directions as outlined in Schedule 3 of the Town and Country (General Permitted Development) Order 2015 (as amended), in order to ensure they come into force in line with recommendations 1 and 2.**
- d) **If the Secretary of State makes a direction to cancel or modify any of the aforementioned Article 4 directions, the Planning Services Manager be authorised to undertake all consequential amendments and procedures.**

Reasons for recommendation

7. Officers have reviewed the consultation responses and summarised these as Appendices 7 and 8.
8. In relation to Classes AA, AB and ZA, 11 consultation responses were submitted, of which 3 were no comments. 6 of the consultation responses were supportive of the Article 4 directions, comprising a mixture of individual residents, resident groups and public bodies (incl. Greater London Authority and Transport for London). 2 of the consultation responses were submitted by representatives of landowners who were unsupportive of the proposals, which included requests to have their land removed from the Article 4 direction. Responses from officers have been provided in the summary table to address the issues raised. It should be noted that the Council does not have the powers to modify the boundaries for the proposed Article 4 directions, only cancel the Article 4 directions completely. The Secretary of State retains powers to modify a proposed Article 4 direction. It is not considered that this representation presents new information that would warrant the Council cancelling the proposed Article 4 directions.
9. In relation to Classes MA, 2 consultation responses were submitted. The representations were submitted by a resident and a resident group. Both of the responses were supportive of the proposed Article 4 direction. It is therefore not considered that these representations present new information that would warrant the Council cancelling the proposed Article 4 directions.
10. Recommendation d) (above) has been included as the Secretary of State retains the ability to cancel or modify the Article 4 directions at any time before or after its confirmation. Subject to the Secretary of State undertaking this procedure in a lawful manner, there is no capacity for the local planning authority to appeal this decision. It should be noted that on 11 May 2022, representatives of the Department for Levelling Up, Housing and Communities contacted the local planning authority to request additional evidence to demonstrate that the national tests set out in Paragraph 53 of the NPPF (2021) has been

met. Officers met with these representatives on 26 May 2022 to clarify the extent of the Article 4 directions and the further evidence being sought. Officers provided the requested additional evidence on 15 June 2022.

11. It should be noted that the Council is not confirming the previously proposed non-immediate Article 4 directions in relation to Classes O and PA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order. The subsequent introduction of the Class MA permitted development by the Government meant that the ability to use these permitted development rights expired on 31st July 2021. Therefore, the need for the Article 4 directions has ceased.

Alternative options considered / risk management

12. The Council have the option of cancelling an Article 4 direction and not taking it forward. It should be noted that the Council does not have the powers to modify the boundaries for the proposed Article 4 directions, only cancel the Article 4 directions completely. It is not considered that the representations submitted presents new information that would warrant the Council cancelling the proposed Article 4 directions. It is also not considered that new information has arisen generally that would overturn the previously stated need for the directions, which is outlined in previous reports.

What will be the effect of the recommendations?

13. The recommendations will allow the Council to bring into force the previously agreed Article 4 directions following the 12-month notification period. The permitted development rights described will therefore be removed in select parts of the Borough and require the submission of a full planning application.
14. The recommendations also allow the Planning Services Manager to make necessary changes in the event that the Secretary of State intervenes in the Article 4 directions.

Consultation Carried Out or Required

15. A consultation was undertaken for the Article 4 direction in relation to Classes AA, AB and ZA between 30 September and 31 October 2020. A second consultation was undertaken with new directions, plans and notices between 29 July and 26 August 2021. The need for republication of the directions, plans and notices arose to ensure that they follow the procedure outlined within Schedule 3 of the Order. A summary of the representations and officer responses to both consultations are included as Appendix 7. It is not considered that the representations present new information that would warrant the Council cancelling the proposed Article 4 directions.
16. A consultation was undertaken for the Article 4 direction in relation to Class MA was carried out between 23 September and 21 October 2021. A summary of the representations and officer responses to both consultations are included as Appendix 8. It is not considered that the representation presents new information that would warrant the Council cancelling the proposed Article 4 directions.

Financial Implications

17. This report is seeking approval to make Article 4 Directions to restrict the scope of permitted development rights in specific strategic areas as outlined in Appendix 1. National policy prevents a blanket approach being applied and instead must focus on specific areas. In doing so, it is possible to retain commercial areas throughout the borough to drive economic development and strengthen business districts. There are limited direct costs associated with the recommendations to this report, an estimated £500 for public notices will be managed within existing Planning and Regeneration revenue budgets.
18. Wider financial implications to note which cannot be quantified at present:
 - The composition of the current tax base is likely to change in response to an increase of commercial to residential conversions, meaning a reduction in Business Rates and an increase in Council Tax. Although the Article 4 Direction aims to prevent such conversion in specific strategic areas, further analysis will be required to evaluate the impact on the tax base over time across the borough.
 - An increase in conversions will remove the applicability of the Section 106 Contribution (S106) and Community Infrastructure Levy (CIL) which will have some bearing on the maximisation of the income available to the Local Planning Authority. As there are fewer issues that can be considered with permitted development rights, there is no scope for planning obligations to be used to mitigate their harm. This includes external financial contributions for affordable housing, public open space, air quality, carbon emissions and construction training programmes. S106 and CIL are pivotal funding streams for infrastructure development within the borough, the cost of which will fall to the local taxpayer if these funding streams are reduced. The Article 4 Direction is therefore instrumental in retaining funding within the identified strategic areas and further analysis will be required to evaluate the impact across the rest of the borough.

Legal Implications

- 19 Under Article 4 of the General Permitted Development Order 2015 the Council or the Secretary of State may withdraw specified permitted development rights either in relation to specific sites or across the Borough. An Article 4 direction may only be made where it is limited to situations where it is necessary to avoid wholly unacceptable adverse impacts, be based on robust evidence and apply to the smallest geographical area possible. The potential harm that the Direction is intended to address should be clearly identified and the Council must show strong justification for the withdrawal of permitted development rights relating to cases where prior approval powers are available to control permitted development.
- 20 The right to compensation is detailed within the report.
- 21 Schedule 3 to the General Permitted Development Order 2015 (as amended) sets out the process that must be followed prior to making an Article 4 direction, including a minimum consultation period of 21 days and the placing of notices on affected sites for a 6-week period. In addition, the proposed direction must also be sent to the Secretary of State.
- 22 As the making of an Article 4 direction is a Non-Executive function under section 13 of the Local Government Act 2000, it is for the Full Council to decide whether to make any Article 4 directions.

Background Papers - Appendices – available on-line:

- Appendix 1: Council Report – 10th September 2020 – Proposing Article 4 directions in relation to Classes AA, AB and ZA of Part 20 of Schedule 2.
- Appendix 2: Council Report – 9th September 2021 – Proposing Article 4 directions in relation to Class MA of Part 3 of Schedule 2.
- Appendix 3: Article 4 Direction and Map – Class ZA
- Appendix 4: Article 4 Direction and Map – Class AA
- Appendix 5: Article 4 Direction and Map – Class AB
- Appendix 6: Article 4 Direction and Map – Class MA
- Appendix 7: Summary of Consultation Responses Classes AA, AB and ZA
- Appendix 8: Summary of Consultation Responses Classes MA