

Report for: Cabinet Member for Planning and Corporate Services Signing
12 May 2021

Title: Confirmation of Article 4 Direction to remove permitted development rights for changes of use from office (class B1(a)) to residential (class C3) uses in prescribed areas until 31 July 2022

Report authorised by: David Joyce, Director of Housing, Regeneration & Planning

Lead Officer: Bryce Tudball, Planning Policy Team Manager

Ward(s) affected: All

Report for Key/

Non Key Decision: Key

1. Describe the issue under consideration

- 1.1 On 10 March 2020 Cabinet agreed to the making of a non-immediate Article 4 Direction to remove permitted development rights in certain parts of the Borough which allow change of use from office (Use Class B1a) to residential (Use Class C3). Under permitted development rights, only a narrow 'Prior Approval' process is followed rather than the usual planning permission requirements.
- 1.2 The relevant direction was made on 16 April 2020 in respect of land within defined Growth Areas, Metropolitan and District Centres. The Direction was non-immediate and the specified that it would come into force, subject to confirmation by the council, in June 2021 to give a year's grace period so that compensation was not payable. A consultation on the Article 4 Direction ran for 6 weeks from 26 June 2020 to 7 August 2020 and a total of 9 responses were received.
- 1.3 Having regard to the consultation responses it is recommended that the Article 4 Direction made on 16 April 2020 is confirmed. Confirmation will mean that the Direction takes effect from 26 June 2021 and planning permission is required for such changes of use. As set out in the report the Direction will only have effect until 31 July 2022. This is due to changes which the Government has made to the Use Classes Order since the direction was made, and transitional arrangements that it has legislated for in relation to existing Article 4 Directions in place as at 31 July 2021.

2. Cabinet Member Introduction

- 2.1 The introduction of the Prior Approval mechanism in an attempt to bolster housing delivery by the Government has led to the loss of valued office space and jobs, undermined a Plan Led approach to managing development, and resulted in many poorly designed, unsuitable residential homes being created in Haringey. These developments make no contribution to affordable housing provision, and frequently do not meet basic space and amenity standards. It is therefore evident that this council needs to remove these permitted development rights through this Article 4 Direction.

3. Recommendations

- 3.1. That the Cabinet Member for Planning and Corporate Services:

- A) Notes the regulatory requirements for the confirming of a new Article 4 Direction, as prescribed by The Town and Country Planning (General Permitted Development) (England) Order 2015;
- B) Agrees to confirm the Article 4 Direction removing permitted development rights for office (B1a) to residential (C3) changes of use within Growth Areas, and Metropolitan and District Centres as identified on the Haringey adopted Policies Map made on 16 April 2020 (as set out at Appendix 1) and due to come into effect on 26 June 2021;
- C) Notes that the Article 4 Direction will only have effect from 26 June 2021 to 31 July 2022 due to recent changes to The Town and Country Planning (General Permitted Development) (England) Order 2015.

4. Reasons for decision

- 4.1 The council's employment planning policies are based on robust evidence which establishes a need to protect employment uses to ensure vitality and viability of the borough's economy. The permitted development rights undermine the operation of these policies and impact negatively on the provision of employment space and jobs.
- 4.2 The confirming of a new Article 4 Direction to restrict offices being converted to homes without Planning Permission in key areas of the Borough will result in some significant benefits. This includes the ability to properly assess any proposals against the council's Development Plan with regards to employment and town centre priorities, the quantum and demand for office floorspace, and any impact on key business sectors to ensure any proposal doesn't harm the local economy. It will also enable the council to utilise a Plan Led approach underpinned by robust evidence to come to decisions on such proposals.

5. Alternative Options Considered

- 5.1 The alternative options available to the council are:
- to not confirm the Article 4 Direction:
 - or to make a new Article 4 Direction of differing geographical scope.
- 5.2 The option not to confirm the Direction has been discounted due to the harm the permitted development right is having as outlined in this report.
- 5.3 The option of making a new Article 4 Direction of differing scope has been discounted. There is no procedure in the legislation for modifying made Directions therefore the council could not amend the boundaries of the proposed areas or introduce further use classes without making a new Article 4 Direction, consulting on it, and then confirming the Direction. It is considered that the current geographical scope of the Direction is robustly evidenced and justified.
- 5.4 The recommended option of confirming the Direction will remove permitted development rights for changes of use from office (class B1(a)) to residential (class C3) uses in prescribed areas until 31 July 2022 thereby protecting the borough from the harms this permitted development right could potentially cause over this period.

6. Background

Permitted Development Rights

- 6.1. The Government provides a national grant of planning permission which allows certain building works and changes of use to be carried out without having to make a planning application. These are called 'permitted development rights'.
- 6.2. The Town and County Planning (General Permitted Development) (England) Order 2015, in particular article 3, is the principal order in this regard, setting out the classes of development for which a grant of planning permission is automatically given, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights.

Article 4 Directions: Regulatory Requirements and Relevant Guidance

- 6.3. Local planning authorities have the power to withdraw specified permitted development rights across a defined area (a general Direction) or in respect of a particular development (a specific Direction). This is done by issuing an 'Article 4' Direction under article 4(1) of The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO 2015').
- 6.4. As set out in article 4(1) GPDO 2015, a local planning authority may make a Direction withdrawing the permitted development rights granted in GPDO 2015,

including in relation to a geographical area, if it is satisfied that it is expedient to do so.

- 6.5. In accordance with the National Planning Policy Framework (paragraph 53), the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the well-being of the area. The potential harm that the Direction is intended to address should be clearly identified.
- 6.6. Further guidance is provided within the Government's Planning Practice Guidance 'When is permission required?', which similarly states that the use of Article 4 Directions should be limited to situations where the making of a Direction is necessary to protect local amenity or the well-being of the area, and that the potential harm that the Direction is intended to address should be clearly identified (paragraph 38). There must also be justification for the purpose and extent of the Article 4 Direction (paragraph 37).
- 6.7. The Direction must state which permitted development rights are being removed and in which area(s). The consequence of making an Article 4 Direction is that within the area(s) specified in the Direction a planning application must be submitted for the works listed in the Direction even though they normally would be permitted development. The procedures which must be followed in making, confirming or cancelling any Article 4 Direction are set out in Schedule 3 of the GPDO 2015. There is no separate procedure in the legislation for modifying an Article 4 Direction.

Office (B1a) to Residential (C3) Permitted Development Right

- 6.8. In 2013 the Government introduced a permitted development right to allow offices (use class B1a) to change use to residential (use class C3) without a full planning permission. The intent of this was to introduce greater flexibility and speed to achieve an increase in the delivery of new homes.
- 6.9. Class O of Schedule 2 Part 3 of the GPDO 2015 allows specifically for the change of use from office (use class B1a) to residential (use class C3) without the need for planning permission but subject to the Prior Approval process, whereby the works allowed by permitted development cannot be carried out without first applying to the council. Under the Prior Approval process, the council can only consider the following limited grounds:
 - Contaminated land,
 - Flood risk,
 - Noise from adjacent commercial uses, and
 - Transport impacts

- 6.10. This is a very narrow range of criteria which does not include other important considerations that the council would normally examine by way of a planning application, particularly space standards, living standards, quality, design, affordable housing, loss of employment, etc.
- 6.11. There is widespread evidence that these changes have led to significant negative impacts through the loss of employment floorspace to the detriment of the office market. The opportunity to secure affordable homes is also lost on these sites. The introduction of these permitted development rights has also hindered the council's plan led approach to development in Haringey as set out in the Local Plan. Without intervention to restrict these Prior Approvals from office to residential by the council, these negative impacts are likely to continue.

Making of Article 4 Direction on non-immediate basis

- 6.12. On 10 March 2020 Cabinet agreed the making on an Article 4 Direction on a non-immediate basis to remove permitted development rights allowing for the change of use from offices (B1a) to residential (C3) in the areas of Haringey identified as Growth Areas and Metropolitan and District Centres on the adopted Policies Map (which includes Wood Green and Tottenham). The District Centres are:

- Bruce Grove
- Crouch End,
- Finsbury Park
- Green Lanes
- Muswell Hill
- Tottenham Hale; and
- West Green Road & Seven Sisters

- 6.13. The effect of making non-immediate Directions was that the permitted development right is only withdrawn upon confirmation of the Directions by the council following local consultation for at least 21 days. The council is required to specify the date on which it is proposed that non-immediate Directions will come into force, which must be at least 28 days but no longer than 2 years after the end of the consultation period.

- 6.14. The council made the Article 4 Direction on 16 April 2020 (see Appendix 1). Due to a pause on consultation introduced by the council due to the Covid-19 pandemic and restrictions associated with the first lockdown the council did not begin consultation on the made Direction until June 2020. The Article 4 Direction therefore specified that the made Direction would take effect in June 2021, subject to confirmation by the council. Section 108 of the Town and Country Planning Act 1990 (as amended) sets out that local planning authorities may be liable to pay compensation to those whose permitted development rights have

been withdrawn, unless notice of the withdrawal has been published in the prescribed manner not less than 12 months or more than the prescribed period before the withdrawal. For that reason, the made Direction was non-immediate.

Consultation on the made Article 4 Direction

- 6.15. A consultation on the made Article 4 Direction ran for 6 weeks from 26 June 2020 to 7 August 2020. The council notified consultees in accordance with the requirements of the GPDO 2015 and the council's Statement of Community Involvement (2017). Affected owners were notified by way of site notices in the affected areas, a public notice was placed in the Tottenham Independent and details were made available on the council's webpages. A notification letter was sent to the Secretary of State.
- 6.16. Nine representations were received in total during the consultation period and no other representations have been received since it ended. Three of the responses received were 'no comment' from Transport for London, Highways England and Natural England. The other six were all supportive of the proposed Article 4 Direction. Two of these responses suggested that the Article 4 Direction be extended further, to include parts of Highgate Village and properties just outside of Crouch End District Centre. One response requested Article 4 Directions were also made for changes of use from retail to residential. The council cannot however amend the boundaries of the proposed area or introduce further use classes without making a new Article 4 Direction, consulting on it, and then confirming the Direction. It is considered that the geographical scope of the made Direction is robustly evidenced and justified.
- 6.17. The Secretary of State was notified of the making of the Article 4 Direction but no comments were received apart from a request for additional information, which the council then provided.

Changes to Planning Legislation since Direction was made

- 6.18. In the period since the Article 4 Direction was made there have been important changes to planning legislation relevant to the Direction. On 1 September 2020 the Government made major changes to the Town and Country Planning (Use Classes) Order 1987 (as amended), the legal instrument which puts uses of land and buildings into various categories known as 'Use Classes'. Offices were formerly in Use Class (B1a) (as referred to by the made Direction) but have now been moved into a new Use Class E (Commercial, Business and Service).
- 6.19. Having regard to the change in Use Classes, the Government launched a consultation in December 2020 setting out proposed changes to permitted development rights. The key proposal was to establish a new permitted development right from Class E (Commercial, Business and Service) to Class C3

(Residential). Class E broadly encompasses a lot of the uses previously included within Classes A, B and D, many of which already had permitted development rights to change to residential uses.

- 6.20. The council issued a robust objection to the consultation on the proposed new permitted development right as it would severely impact on the borough's designated and undesignated Town Centres, Shopping Parades and Employment Land. However despite this, and objections from many other councils and other stakeholders, the Government announced in March 2021 that it would be legislating to bring forward the right from 1 August 2021 at which point it will replace the current rights for change of use from office to residential , and from retail etc to residential.
- 6.21. One of the requests which the council made in its consultation response was that the Government put in place clear and suitable arrangements to ensure that existing made and confirmed Article 4 Directions can still be applied to the respective new permitted development rights. The Government did not fully take on board these points, instead announcing it will legislate for limited transitional arrangements such that where there is an existing Article 4 Direction in place on 31 July 2021 in respect of the change of use from offices to residential (under Class O) it will continue to have effect on equivalent development in respect of offices (now within the Commercial Business and Service use Class E) until 31 July 2022.
- 6.22. The consequence of this is that provided the council confirms the Article 4 Direction by 31 July 2021 it will still be able to take effect, however it will only have effect until 31 July 2022. If the council wishes to secure equivalent protections for office uses after that date it will need to implement a new Article 4 Direction. There is considerable uncertainty as to whether this would be supported by the Secretary of State. It should be noted that the Government launched a consultation in January 2021 on changes to the National Planning Policy Framework which would make it more difficult for councils to introduce Article 4 Directions, particularly where these seek to remove permitted development rights allowing changes of use to residential. The council strongly objected to this proposal in its consultation response as this would prevent local authorities from introducing Article 4 Directions where there are severe adverse impacts.

Recommendation for confirmation of Article 4 Direction

- 6.23. Despite the fact that the Direction will only have effect for just over one year, it is considered that it would still deliver considerable benefits during that time in terms of preventing loss of employment floorspace to the detriment of the office market and the borough's places more generally.

- 6.24. Having regard to the representations from the consultation which all expressed support for the Direction it is therefore recommended that Cabinet should confirm the Article 4 Direction made on 16 April 2020 which will then take effect from 26 June 2021 until 31 July 2022.

7 Next steps

- 7.1 Once the Direction comes into effect, a planning application must be submitted for development which was formerly permitted development.
- 7.2 The use of the Article 4 Direction does not automatically mean that planning permission for what was previously permitted development will be refused. The council still has to go through the normal processes for determining a planning application, providing sound reasons for its decisions. It will however allow the council to take account of the policies of the development plan, which for B1(a) office to C3 residential is currently not able to take place.
- 7.3 The council will register the Article 4 Direction as a Local Land Charge on affected properties on the date on which the Direction is confirmed. In line with the requirement of Schedule 3 of the GPDO to give notice of the confirmation of Directions, the Planning Policy Team will:
- Publish a local advertisement.
 - Erect site notices at no fewer than two locations within the area to which the Direction relates and by notifying owner/occupiers of the land within the area or site to which the Direction relates.
 - Send copies of the Directions as confirmed to the Secretary of State.

8 Contribution to strategic outcomes

- 8.1 The proposal to confirm an Article 4 Direction will support the Place Priority of the Borough Plan 2019-23 by ensuring decent homes are built, not substandard ones lacking in space and amenity, that will lead to people having better health outcomes and feeling secure and safe in their homes. It will also support the Housing Priority in ensuring a decent standard of homes and living conditions is delivered through quality housing and will enable an increase in affordable housing to be sought from any office to residential scheme that is deemed acceptable.
- 8.2 This action will also benefit the Economy Priority by helping to protect valued office space, jobs and employment, and securing replacement office floorspace through redevelopment. This will help with outcomes relating to growing the local economy and supporting thriving businesses, and delivering regeneration with social and economic renewal at its heart, focused on Tottenham and Wood Green, which coincides with the Growth Areas included within the Article 4 area.

9 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 9.1 The recommendations in this report do not require any additional budget requirements as the existing staff resource is being utilised to prepare the Article 4 Direction. There will be minor costs involved in confirming the Direction to be covered within existing planning budgets.
- 9.2 Where Article 4 Directions result in a planning application needing to be submitted, the council has been able to charge an application fee since The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 took effect. It is not expected the Article 4 Direction will generate a significant number of applications and will therefore have minimal impact on income.

Procurement

- 9.3 There are no procurement implications arising from this report.

Legal

- 9.4 The Assistant Director of Corporate Governance has reviewed and noted this report. The relevant legal issues/requirements have been set out in full in the report above and are also summarised in brief below.
- 9.5 The statutory powers and procedures for making an Article 4 Direction are set out in The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (the "GPDO 2015"). The decision on whether to make or withdraw Article 4 Directions is in an executive function pursuant to Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 9.6 As set out in article 4(1) GPDO 2015, a local planning authority may make a Direction withdrawing the permitted development rights granted in GPDO 2015, including in relation to a geographical area, if it is satisfied that it is expedient to do so.
- 9.7 In accordance with the National Planning Policy Framework (paragraph 53), the use of Article 4 Directions should be limited to situations where this is necessary to protect local amenity or the well-being of the area. The potential harm that the Direction is intended to address should be clearly identified. Further guidance is provided within the Government's Planning Practice Guidance 'When is

permission required?', which also requires that there must also be justification for purpose and extent of the Article 4 Direction (paragraph 37).

9.8 The procedures which must be followed in making, modifying or cancelling any Article 4 Direction are set out in Schedule 3 of the GPDO 2015.

9.9 The effect of a non-immediate Direction is that permitted development rights are only withdrawn upon confirmation of the Direction by the local planning authority following local consultation, which will be the 26 June 2021, one year post consultation commencement.

9.10 Having reviewed the report in draft, the Assistant Director of Corporate Governance is content that all relevant legal issues and/or requirements have been considered.

Equality

9.11 The council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share those protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

9.12 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.13 The proposed decision is to confirm the removal of permitted development rights in certain areas of the Borough which allow offices (B1a) to change use to residential (C3) by way of prior approval. This withdrawal of permitted development rights would apply in Growth Areas, Metropolitan and District Centres as designated on Haringey's Local Plan adopted policies map. Future such proposals would need a full planning permission to change use.

9.14 Office to residential conversions are associated with a number of significant negative impacts on groups who share the protected characteristics, including but not limited to inaccessibility for individuals with disabilities; inadequate space for families with young children; and insufficient amenities for occupants who are more likely to be on low incomes, young, and/or from BAME communities.

- 9.15 The proposal has potential to positively impact upon all groups that share the protected characteristics by ensuring that within the areas specified in this report any office to residential conversion is subject to proper scrutiny by way of a full planning application. This will help to ensure that housing in Haringey meets space and accessibility standards and that sufficient levels of amenity are provided. It will also help to ensure that employment floorspace is protected, enabling positive economic outcomes for residents who share the protected characteristics. Residents with disabilities, those from BAME communities, carers of young children, and younger residents are likely to benefit most from the proposed decision.
- 9.16 Public consultation is required on the proposals before they can be confirmed. This has provided the opportunity for any unforeseen negative equalities issues to be raised, which has not been forthcoming.

10 Use of Appendices

Appendix 1: Summary of Consultation Responses on made Article 4 Direction

11 Local Government (Access to Information) Act 1985

Report to Cabinet, 10 March 2020, Making of non-immediate Article 4 Direction to remove permitted development rights for changes of use from office (class B1(a)) to residential (class C3) uses in prescribed areas

Link:

https://www.minutes.haringey.gov.uk/documents/s115077/Article%204_final.pdf