

Report for: Cabinet – 10 September 2019

**Proposed revised Article 4 directions for the following
Conservation Areas: Noel Park, Peabody Cottages, Rookfield
Estate, Tower Gardens**

Report

authorised by: Dan Hawthorn, Director of Housing, Regeneration & Planning

Officer: Rob Krzyszowski, Head of Planning Policy, Transport & Infrastructure

Ward(s) affected: Muswell Hill, Noel Park, White Hart Lane

Report for Key/

Non Key Decision: Key

1. Describe the issue under consideration

- 1.1 The Council currently restricts permitted development rights in four of the borough's Conservation Areas (Noel Park, Peabody Cottages, Rookfield Estate and Tower Gardens) via Article 4 directions. Permitted development rights are set nationally and allow certain types of 'development' to take place without planning permission, but these rights can be restricted locally through 'Article 4 directions' so that planning permission is required. Article 4 directions do not mean that planning permission is automatically refused, it just means that planning permission is required and the normal process for determining applications in accordance with the development plan is followed.
- 1.2 Officers have reviewed the need to restrict permitted development rights in the four Conservation Areas and consider that this remains expedient and necessary in order to protect local amenity or the well-being of the area (as per Article 4(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), paragraph 53 of the National Planning Policy Framework and paragraph 38 of National Planning Practice Guidance: When is permission required?).
- 1.3 Each of the Article 4 directions is more than a decade old. The permitted development legislation has changed substantially and numerous times since the Article 4 directions were introduced and consequently the directions are now out of date in the context of existing legislation. It is therefore proposed to

revise the four existing Article 4 directions. This will make them easier to understand and operate and help ensure that the Council's planning objectives for the borough are achieved.

- 1.4 Further, the Conservation Area Appraisals / Management Plans (CAAMPs) for Tower Gardens and Noel Park (see below for further detail) have included recommendations for the review and, where appropriate, the extension of the scope of the existing Article 4 directions for each area due to issues of unsympathetic development.
- 1.5 There is no process under the legislation for modifying an existing Article 4 direction. Instead, if Cabinet is minded to adopt the Officers' recommendations, the current Article 4 directions will be cancelled and replaced by the new Article 4 directions. There are two types of directions: non-immediate directions and directions with immediate effect. It is proposed that the new directions will be non-immediate directions. The benefits and risks of this are outlined in the report.
- 1.6 The proposed new Article 4 directions are published at Appendix A. Their scope will be greater than the existing directions, having regard to: (i) the expansion of national permitted development rights and the need to protect the local amenity or well-being of the area in this context; and, (ii) the recommendations for the review and, if appropriate, the expansion of scope of the Article 4 directions in the CAAMPs for Tower Gardens and Noel Park. The defined area covered by three of the existing directions – Noel Park, Tower Gardens and Rookfield Estate - will also be expanded.

2. Cabinet Member Introduction

- 2.1 The Council currently restricts permitted development rights in four Conservation Areas via Article 4 directions. The proposed revision of the Article 4 directions will make them easier to understand and operate and help ensure that the Council's planning objectives for the borough are achieved. The Article 4 directions will be updated to accord with the relevant legislation currently in force; additional forms of development which have the potential to harm local amenity or the well-being of the area will be controlled; additional properties within the Conservation Areas that were not covered by the existing Article 4 directions will be covered by the new directions and thereby protected from those same potential harms; and, better clarity will be provided for residents and Council officers with regards to what forms of development require planning permission.

3. Recommendations

3.1. That Cabinet:

- A) Notes that following the clarifications set out in Section 12 the proposals were endorsed by Regulatory Committee for approval by Cabinet without any changes for consideration;
- B) Notes the regulatory requirements for the cancellation of existing Article 4 directions and the making of new Article 4 directions, as prescribed by the Town and Country Planning (General Permitted Development) (England) Order 2015;
- C) Approves the making of the new Article 4 directions for Noel Park, Peabody Cottages, Rookfield Estate and Tower Gardens outlined below on a non-immediate basis to withdraw permitted development rights in the respective Conservation Areas and to expand the geographical scope of the directions for Noel Park, Tower Gardens and Rookfield Estate as set out in Appendix A;
- D) Authorises the Director for Housing, Regeneration & Planning to approve the cancellation of the existing Article 4 directions for Noel Park, Peabody Cottages, Rookfield Estate and Tower Gardens at the same time as their replacements are confirmed; and,
- E) Authorises the Director for Housing, Regeneration & Planning to carry out the necessary publicity, notification, consultation and subsequent decision on whether to confirm the directions, as prescribed by the Town and Country Planning (General Permitted Development) (England) Order 2015, in that respect.

4. Reasons for decision

4.1. The cancellation of the existing Article 4 directions for Noel Park, Peabody Cottages, Rookfield Estate and Tower Gardens and their replacement with four new Article 4 directions will result in the following benefits:

- the Article 4 directions will be updated to accord with the relevant legislation currently in force;
- additional forms of development which have the potential to harm local amenity or the well-being of the area will be controlled;
- additional properties within the Conservation Areas that were not covered by the existing Article 4 directions will be covered by the new directions and thereby protected from those same potential harms; and,

- better clarity for residents and Council officers with regards to what forms of development require planning permission.

5. Alternative Options Considered

- 5.1 The alternative options available to the Council are: to cancel the current Article 4 directions and not replace them; to leave the existing Article 4 directions in place (i.e. the 'do nothing' option); or, to replace the existing Article 4 directions with immediate Article 4 directions.
- 5.2 The Council's evidence indicates that the existing Article 4 directions have, and continue to be, important tools for protecting the special interest and special qualities of the Noel Park, Peabody Cottages, Rookfield Estate and Tower Gardens Conservation Areas. The option of cancelling the current directions and not replacing them is dismissed for this reason.
- 5.3 The Council's evidence base has identified considerable harm in some of the Conservation Areas that are currently subject to Article 4 directions. In order to prevent unsympathetic alterations, the evidence recommends that the Council reviews the existing Article 4 directions and assess the extent to which they are effective. Officers have carried out a review and found that modifying the existing directions would generate significant benefits. In these circumstances, the 'do nothing' approach has been dismissed.
- 5.4 As set out in earlier sections, there is the possibility that the Council would be liable for compensation if immediate Article 4 directions are pursued, so this approach has been dismissed for this reason.

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'. The Town and County Planning (General Permitted Development) (England) Order 2015 (referred to as GPDO 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

- 6.2. Local planning authorities do however 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) Town and County Planning (General Permitted Development) (England) Order 2015 (see below for further detail). 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. Article 4 directions are made where the removal of permitted development rights is expedient and necessary to protect local amenity or the well-being of the area. They are most common in Conservation Areas.

Existing Article 4 Directions

- 6.3. The Council has made various Article 4 directions in order to remove certain permitted development rights. These can be viewed on the Council's website. Four of these directions apply to the following Conservation Areas within the borough: Noel Park; Peabody Cottages; Rookfield Estate; and, Tower Gardens. Key information in relation to these Conservation Areas is provided below:

Noel Park: This Article 4 direction was made in 1983. It applies to the majority of the Noel Park Conservation Area (as currently designated). It removed permitted development rights (which existed at the time) for development and works to the street elevations of dwellinghouses.

Peabody Cottages: This Article 4 direction was made in 2007. It applies to the whole of the Peabody Cottages Conservation Area (as currently designated). It removed permitted development rights (which existed at the time) for development and works to the street elevations of dwellinghouses. The stated reason for the direction was to safeguard the character and appearance of the street elevations and boundary treatment of each property and the Peabody Cottages Conservation Area in general against unsympathetic alterations.

Rookfield Estate: This Article 4 direction was made in 1978. It applies to the majority of the Rookfield Estate Conservation Area (as currently designated). It removed permitted development rights (which existed at the time) for development and works to dwellinghouses.

Tower Gardens: This Article 4 direction was made in 1981. It applies to the majority of the Tower Gardens Conservation Area (as currently designated). It removed permitted development rights (which existed at the time) for development and works to the front and side elevations of dwellinghouses.

- 6.4. Each of the relevant Article 4 directions is over a decade old. In many cases they are difficult to understand because the legislation on permitted development rights has changed since they were made and the classes of development controlled in the directions no longer relate to the current GPDO 2015. In particular, there has been a general trend over time in favour of the expansion of permitted development rights in legislation to enable additional forms of development to take place without the need for planning permission. Consequently, there are a number of newer forms of permitted development which the existing Article 4 directions do not protect against. This includes, for example, rights regarding installation of solar equipment on domestic premises which have potential to cause significant harm to Conservation Areas.

Conservation Area Appraisals / Management Plans (CAAMPs)

- 6.5. In recent years the Council has prepared a series of Conservation Area Appraisals/ Management Plans (CAAMPs). The purpose of these combined documents is, broadly, to define the special interest of the Conservation Area and identify the issues which threaten its special qualities (the “Appraisal”) and provide guidelines to prevent harm and achieve enhancement (the “Management Plan”).
- 6.6. The Noel Park CAAMP was adopted in March 2016. In line with the recommendations of the CAAMP, Cabinet authorised an extension of the Conservation Area and the extension of the existing Article 4 direction to cover the expanded Conservation Area. The extension to the Conservation Area was implemented in 2016 but to date the original Article 4 direction has not been revised.
- 6.7. The Peabody Cottages CAAMP and Tower Gardens CAAMP were adopted by Cabinet on 9 July 2019.
- 6.8. There is no CAAMP for the Rookfield Estate at present. It is anticipated that a draft CAAMP will be prepared and consulted upon within the next 12 months.

7. Article 4 Directions: Regulatory Requirements and Relevant Guidance

- 7.1 The statutory powers and procedures for making an Article 4 direction are set out in the GPDO 2015 (as amended).
- 7.2 As set out in article 4(1) GDPO 2015, a local planning authority may make a direction withdrawing the permitted development rights granted in GDPO 2015, including in relation to a geographical area, if it is satisfied that it is expedient to do so.

- 7.3 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.
- 7.4 Further guidance is provided within the Government's Planning Practice Guidance, 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 purpose and extent of the Article 4 direction (paragraph 37).

8. Relevant considerations

Noel Park

- 8.1. The Noel Park CAAMP marks out the Conservation Area as one of the few examples of a planned Artisan estate within London, built at the height of Victorian philanthropy and benefitting from a picturesque architectural composition. It identifies that the estate has generally seen a decline in its quality. Many properties have been subject to changes which have affected their character detrimentally and thereby damaged the homogeneity of the townscape which is valued for its collective consistency and coherence. In 2016 the Conservation Area was extended but a recommendation to extend the existing Article 4 direction has not yet been implemented. The CAAMP recommends that the Article 4 direction is revised to include the addition to the Conservation Area and other parts of the Conservation Area which are not included within the geographical scope of the current Article 4 direction. The CAAMP identifies that streets which are not covered by the existing Article 4 direction (Hewitt Avenue, Russell Avenue, Maurice Avenue, Mark Road and Pelham Road) share the special character of the estate as a whole and suffer from the same pattern of incremental change as the estate as a whole. The extension of the geographical scope of the Article 4 direction to cover the entire Conservation Area would allow the Council to better manage and control change and is considered expedient and necessary to protect the special interest of the Conservation Area. Since the current Article 4 direction was made there have been numerous changes to the scope of permitted development rights. It is considered necessary to expand the permitted development right restrictions to account for this change and to prevent further harm to the Conservation Area through unsympathetic alterations. The CAAMP specifically noted that it would not be appropriate to install solar panels or other microgeneration equipment on facades or roof slopes that are visible from the street.

Peabody Cottages

- 8.2. The Peabody Cottages CAAMP was adopted by Cabinet in July 2019. It noted that the consistency and coherence provided by the repetition of simple elements and the co-ordinated street-frontage, together with its generally good state of preservation, positively contribute to the highly attractive character of the enclave. The built fabric of Peabody Cottages was found to be generally well maintained (aided by the current Article 4 direction), however a number of piecemeal additions to individual properties have been identified which have caused harm to the Conservation Area. The CAAMP recommended that detailed guidance on the management of the estate including the Article 4 direction should be issued and that the implementation of existing planning powers within the Conservation Area should be reviewed to ensure that these controls are effectively and consistently applied. Since the current Article 4 direction was made there have been numerous changes to the scope of permitted development rights. It is considered necessary to expand the permitted development right restrictions to account for this change and to prevent further harm to the Conservation Area through unsympathetic alterations. The CAAMP specifically noted that it would not be appropriate to install solar panels or other microgeneration equipment on facades or roof slopes that are visible from the street.

Tower Gardens

- 8.3. The Tower Gardens CAAMP was adopted by 2019. It sets out that Tower Gardens is widely recognised as an important pioneering housing estate as one of three seminal London County Council suburban cottage estates of the pre-First World War period. It noted that the area covered by the Article 4 direction currently retains much of its historic and architectural integrity although this is gradually being undermined by a number of significant and detrimental changes. It recommended that consideration should be given to reviewing and, where appropriate, extending the scope of the Article 4 direction in respect of works that are identified in the Appraisal as adversely affecting the character of the Conservation Area. Since the current Article 4 direction was made there have been numerous changes to the scope of permitted development rights. It is considered necessary to expand the permitted development right restrictions to account for this change and to prevent further harm to the Conservation Area. The CAAMP specifically noted that it would not be appropriate to install solar panels or other microgeneration equipment on facades or roof slopes that are visible from the street. Significantly, the CAAMP found that parts of the Conservation Area that are not within the Article 4 direction area have suffered more extensively from alterations. It recommended that consideration should be given to extending the Article 4 direction to include the entire Conservation Area, and, in particular, the south side of Gospatrick Road and Henningham

Road. The extension of the area covered by the Article 4 is considered necessary and expedient to limit harm to the overall Conservation Area.

Rookfield Estate

8.4 As noted in paragraph 5.8 there is no CAAMP for the Rookfield Estate at present. In advance of this being prepared officers have considered the need to retain an Article 4 direction restricting permitted development rights in the Conservation Area. It is considered that this is necessary to protect local amenity provided by the Conservation Area. Since the current Article 4 direction was made there have been numerous changes to the scope of permitted development rights. In the circumstances it is considered necessary to expand the restrictions in the Article 4 to account for the growth in permitted development rights which individually and cumulatively have potential to harm the Conservation Area. The existing Article 4 direction does not cover the entire Conservation Area. It is recommended that the area covered by the Article 4 is expanded to cover the entire Conservation Area. A consistent approach to restricting permitted development rights will ensure that different parts of the Conservation Area are not disproportionately affected by permitted development. As set out in paragraphs 9.10 to 9.13 of this report it is recommended that the Article 4 direction is implemented on a non-immediate basis. The consequence of this, as set out in paragraphs 10.1 and 10.2, is that before the direction is confirmed there will be a consultation period of at least 21 days and the Council will have the opportunity to consider any feedback related to the proposed scope of the new Article 4. It is expected that the Draft CAAMP will have been completed by this time and it will therefore be possible to take account of the findings in deciding whether to confirm the direction.

Expedient and necessary to protect local amenity or the well-being of the area

8.5 As set out in paragraphs 5.5 to 5.7 the Council has a comprehensive evidence base relating to three of the Conservation Areas that are subject to an existing Article 4 direction (Noel Park, Peabody Cottages and Tower Gardens), in particular the CAAMPs. In the first instance, this evidence supports the original rationale for making the directions which was to protect the special interest and special qualities of the respective Conservation Areas. There would be harm to the character of the Conservation Areas if permitted development rights were not controlled. As a minimum therefore the Council is justified in terms of retaining the current protections.

8.6 Having regard to the detailed findings of the CAAMPs there is substantial support for modifying the existing Article 4 directions in order to further secure local amenity. The evidence outlines clear amenity benefits can be achieved by extending the defined area of the Article 4 directions for Noel Park and Tower Gardens to cover the respective Conservation Areas in their entirety rather than

just their substantial part. The evidence also supports extending the range of permitted development rights which the Article 4 directions withdraw in order to enable the Council to better manage and control change.

- 8.7 As set out in paragraph 7.4 it is also considered necessary and expedient to revise the Article 4 for the Rookfield Estate and to expand its geographical scope. Before being confirmed there will be a consultation period in respect to all the directions.

9. Proposed new directions

- 9.1 It is proposed to replace the existing Article 4 directions for Noel Park, Peabody Cottages, Rookfield Estate and Tower Gardens with four new Article 4 directions. The proposed new directions can be found at Appendix A.
- 9.2 The proposed new directions all restrict the same suite of permitted development rights. The restrictions are proposed to apply to street elevations only. Restrictions will therefore affect the front elevations of dwellings and side elevations where the side elevation fronts a highway. The types of development which will be controlled as result of the new directions include alterations to front walls, porches, windows and chimneys and the installation of satellite dishes and solar equipment. Many of these are already under the Council's control due to the existing directions but new types of development will be brought under the Council's control including installation of solar panels.
- 9.3 The proposed new directions will not apply to rear elevations of dwellings. Properties will therefore retain permitted development rights relating to rear extensions.
- 9.4 The proposed new directions would remove permitted development rights for solar equipment on street elevations. The opportunity will remain however for solar equipment to be installed on the rear of properties.
- 9.5 The existing directions restrict certain types of development to the front of properties which can deliver improved environmental efficiency, for example, replacement windows, external wall insulation and external heating and cooling systems. The proposed new directions retain these restrictions in order to protect the amenity of the respective Conservation Areas. The proposed new directions do not remove any permitted development rights relating to the rear of properties thereby ensuring a full range of improvements can continue to be made to the energy efficiency consistent with the Council's carbon reduction commitments. The proposed new directions would not remove any permitted development rights relating to electric vehicle charging infrastructure.

- 9.6 It is noted that the condition of some front gardens (including loss of boundary hedges) has caused detriment to Tower Gardens Conservation Area in particular. The important contribution that landscaping, planting and green space makes to the special character of the Conservation Areas is noted, however works to hedges (as well as other gardening and planting works) are not classed as development and therefore cannot be controlled via an Article 4 direction or any other form of planning control.
- 9.7 The table on the following page sets out the proposed restrictions in tabular form:

			Current PD Rights removed	PD rights to be removed through new Article 4 directions – street elevations only													
Conservation Area	Geographical scope of current A4	Geographical scope of proposed A4	Development within the curtilage of a dwelling (street elevations only except for Rookfield)	Sundry Minor Operations (street elevations only except for Rookfield)	GPDO 2015 Part 1 - Development within the curtilage of a dwellinghouse								GPDO 2015 Part 2 - Minor alterations			GPDO Part 11 - Heritage and demolition	GPDO Part 14 - Renewable Energy
					Class A Enlargement, improvement or other alteration	Class B Additions etc to the roof of a dwelling	Class C Other alterations to the roof of a dwelling	Class D Porches	Class E Buildings etc incidental to the enjoyment of a dwelling	Class F Hard surfaces incidental to the enjoyment of a dwelling	Class G Chimneys, flues etc on a dwelling	Class H Microwave antenna on a dwelling	Class A Gates, fences, walls etc	Class B Means of access to a highway	Class C Exterior painting	Class C Demolition of gates, fences, walls etc	Class A Installation or alteration etc of solar equipment on domestic premises
Noel Park	Majority of CA	Entire CA	Yes under GDO 1977 to 1981	Yes under GDO 1977 to 1981	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Peabody Cottages	Entire CA	Entire CA	Yes under GPDO 1995	Yes under GPDO 1995	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rookfield	Majority of CA	Entire CA	Yes under GDO 1977	Yes under GDO 1977	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tower Gardens	Majority of CA	Entire CA	Yes under GDO 1977 to 1981	Yes under GDO 1977 to 1981	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

10 Implementation of new directions

10.1 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. There is no separate procedure in the legislation for modifying existing Article 4 directions. Instead, the existing directions will be cancelled and replaced with the new directions.

10.2 There are two types of directions: immediate directions; and, non-immediate directions.

10.2.1 Immediate directions can only be used in the specific circumstances set out in paragraph 2(1), Schedule 3 GPDO 2015. When a direction is proposed in respect of a conservation area and seeks to restrict a specific list of permitted development rights (set out in paragraph 2(3)), an immediate direction can be used if the local planning authority considers the direction should have immediate effect (paragraph 2(1)(b)). The list of permitted development rights does not include Classes B of Part 1 or Part 2, Schedule 2 GPDO 2015, which are proposed to be included in the new Article 4 directions. Immediate directions could only be used to withdraw these proposed development rights if the local planning authority consider they would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area (paragraph 2(1)(a)).

10.2.2 The effect of an immediate direction is that the permitted development rights are withdrawn with immediate effect but must be confirmed by the local planning authority following local consultation within six months. In order to implement an immediate direction, the local planning authority must have already begun the consultation processes towards making a non-immediate article 4 direction.

10.2.3 There are no specific circumstances limiting the use of non-immediate directions. 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 for at least 21 days. The Council can specify the date on which it is proposed that the direction will come into force, which must be at least 28 days but no longer than 2 years after the end of the local consultation period.

Compensation

10.3 A further difference between immediate and non-immediate directions is the potential compensation liability attached to them.

10.4 Section 108 of the Town and Country Planning Act 1990 (as amended) (referred to as TCPA 1990) sets out that local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:

- refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction withdrawing the permitted development right; or
- grant planning permission subject to more limiting conditions than the GPDO 2015 would normally allow, as a result of an Article 4 direction being in place.

10.5 Where the legislation does provide that compensation may be claimed, section 107 of the TCPA 1990 sets out that this may only be for (a) abortive expenditure or (b) other loss or damage directly attributable to the withdrawal of permitted development rights. A key head of potential compensation under (b) is depreciation of the value of an interest in land. This might, for instance, comprise the difference between the capital value of the property had permission been granted by the GPDO 2015 and the capital value of the property without planning permission following the Article 4 direction coming into force. Interest may also be payable on any compensation awarded. It is impossible to give an estimate as to the possible quantum of any compensation claim as this would depend entirely on the circumstances of the proposed development etc.

10.6 Section 108 of the TCPA states that entitlement to compensation will only arise if the planning application refused/granted subject to more limiting conditions is made within 12 months of the Article 4 directions coming into effect (s.108(2A)). Any claim for compensation must then be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO).

10.7 Section 108(3B) of the TCPA sets out that the compensation provisions do not apply if certain conditions are met. These conditions, as set out in section 108(3C), include that:

- The planning permission is granted for development of a prescribed description;
- The planning permission is withdrawn in the prescribed manner; and,
- Notice of the withdrawal was published in the prescribed manner not less than 12 months or more than the prescribed period before the withdrawal.

10.8 The Town and Country Planning (Compensation) (England) Regulations 2015 (as amended) elaborate on what is meant in the TCPA by 'prescribed

development' and 'prescribed manner' for (i) withdrawal of the planning permission and (ii) notice of the withdrawal.

10.8.1 Regulation 2 sets out that development permitted by Part 1 (development within the curtilage of a dwellinghouse) of Schedule 2 of the GPDO 2015 is prescribed and that development permitted by Class D and E of Part 2 (minor operations) of Schedule 2 and Part 14 (installation of renewable energy equipment) of Schedule 2 is also prescribed. Development that is not listed is not prescribed including Classes A, B and C of Part 2 (minor operations) of Schedule 2 of the GPDO 2015 and Class C of Part 11 (heritage and demolition) of Schedule 2 of the GPDO 2015.

10.8.2 'Prescribed manner' for the withdrawal of planning permission is defined as being in accordance with article 4 of the GPDO 2015 (regulation 3).

10.8.3 'Prescribed manner' for notice of the withdrawal is in the manner described in paragraphs 1(1) to (5) of Schedule 3 GPDO 2015 (regulation 4(2)(a)).

10.8.4 The 'prescribed period' is two years (regulation 4(3)(a)). Notice must therefore be given not less than 12 months before the Article 4 direction takes effect and not more than the prescribed period of 2 years.

10.9 There are two compensation scenarios in relation to the proposed new directions.

10.9.1 Firstly, in the case of development in Part 1 of Schedule 2 of the GPDO 2015, if the Article 4 directions are implemented with immediate effect, the Council will be potentially liable for compensation for a 12 month period as a result of any refusal of permission or granting of permission subject to more onerous conditions. However, if the directions are implemented as non-immediate effect directions and are specified not to come into force until 12 months later, the Council would not be liable for compensation for these types of development.

10.9.2 Secondly, in the case of development in Classes A, B and C of Part 2 of the GPDO 2015 and Class C of Part 11 of the GDPO 2015 the Council will always be liable for compensation for a 12 month period as a result of any refusal of permission or granting of permission subject to more onerous conditions. In this case there is no benefit to non-immediate directions giving 12 months' notice before the direction takes effect.

Deciding which type of direction to use

- 10.10 The benefit of implementing the proposed new directions as immediate directions would be that their increased protections would take immediate effect. This would help prevent further unsympathetic alterations from taking place in the Conservation Areas and therefore minimise amenity and well-being impacts.
- 10.11 However, as stated above, the implementation of the new directions on a non-immediate basis (i.e. giving at least 12 months' prior notice of them coming into effect) would greatly reduce the risk to the Council of having to pay compensation. There would be no liability for compensation in respect of Part 1 Schedule 2 GPDO 2015 classes of development or Class D and E of Part 2 (minor operations) of Schedule 2 and Part 14 (installation of renewable energy equipment) of Schedule 2, although compensation could still be payable in respect of other classes proposed to be restricted.
- 10.12 If the Council were to implement the proposed new directions on a non-immediate basis it would nevertheless retain the existing Article 4 directions until such date as it confirms and implements the new directions.
- 10.13 While there would be benefit to the Council of introducing the proposed new directions on an immediate basis in terms of securing the amenity and well-being of the Conservation Areas, having regard to the extent of the existing Article 4 protections and the need to weigh this benefit against the increased compensation risks associated with immediate directions in relation to the majority of the classes of permitted development sought to be withdrawn under the new Article 4 directions, and the uncertain nature of these risks in terms of potential financial liability, it is recommended that the Article 4 directions be implemented on a non-immediate basis. It is proposed to give 12 months' prior notice of them coming into effect thereby minimising compensation risks to the greatest possible extent.

11 Next steps

- 11.1 Notice of the non-immediate directions must be published in the manner prescribed in Schedule 3 of the GPDO 2015. For each direction the Council must: publish a notice in the local paper; erect at least two site display notices within the areas the direction relates for at least 6 weeks; where practicable, serve notice on the landowner and occupier of every part of the land within the area to which the direction relates; and send a copy of the direction to the Secretary of State. Given the number of properties in the areas, it is considered impracticable and disproportionate to serve an individual notice on each owner and occupier. The Council must allow a period of at least 21 days within which representations to the direction can be made. However, consistent with the guidelines in the Council's Statement of Community Involvement, the period for

representations will be extended to at least 6 weeks. Through the consultation, the Council will ask consultees to comment on whether they support the Article 4 direction and will also seek views on the boundary of areas within which the Article 4 direction is to apply.

- 11.2 The direction, once made, cannot come into force unless confirmed by Council. In deciding whether to confirm a direction the Council is required to take account of any representations made during the period of consultation. Any material changes made to the direction as a result of the consultation will require re-consultation.
- 11.3 Once the direction is formally confirmed, a planning application must be submitted for works which were formerly permitted development. This will allow the Council to be involved in a formal decision-making process, enabling a case-by-case judgement based on the Council's development plan to be made as to whether, on its own or cumulatively, the proposal would harm the amenity or well-being of the local area.
- 11.4 The Council will register the Article 4 directions as a Local Land Charge on affected properties on the date on which the directions are confirmed, even if it is specified that the directions will take effect at a later date. The Council will not need to re-register them on the date they take effect.

12 Regulatory Committee comments

- 12.1 The proposals which are the subject of this report were considered by Regulatory Committee on 1 July 2019. Following the clarifications set out below the proposals were endorsed by Regulatory Committee for approval by Cabinet without any changes for consideration:
- After being advised that the Planning Policy team are in the process of updating Conservation Area Appraisals and Management Plans (CAAMPs) for all of the borough's conservation areas, Regulatory Committee asked officers if additional Article 4 directions were in the pipeline. Officers advised that there may be new Article 4 Directions prepared as a result of the recommendations of the new and updated CAAMPs. It was explained that where a new Article 4 Direction was recommended in the CAAMP an on-balance decision would need to be made about whether to prepare one.
 - Officers clarified that where an Article 4 Direction is in place it is necessary to apply for planning permission for works which would usually be covered under permitted development rights. However, it was explained that this does not mean that planning permission would necessarily be refused.
 - Officers clarified that as part of the consultation on the proposed new directions information would be made available on the Council's website and there would be engagement with the local Conservation Area Advisory Committees (CAACs).

13 Contribution to strategic outcomes

- 13.1 The proposal to revise the existing Article 4 directions will support the 'Place' priority of the Borough Plan 2019-23. The replacement of the existing directions will support the Council to preserve valued elements of Haringey's historic environment which contribute to the borough being an attractive place.

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

Finance

- 14.1 The recommendations in this report do not require any additional budget requirements as the existing staff resource is being utilised to prepare the revised Article 4 directions. There will be minor costs involved in consulting residents on the revised directions to be covered within existing planning budgets.
- 14.2 Under Section 108 of the Town and Country Planning Act 1990 it is possible to claim compensation from the authority if planning permission is refused, or is granted subject to onerous conditions, following a planning application that was only required as a result of an Article 4 direction. There is not a budget for successful compensation claims in existing budgets. However, as stated above, the implementation of the new directions on a non-immediate basis (i.e. giving at least 12 months' prior notice of them coming into effect) would greatly reduce the risk to the Council of having to pay compensation.
- 14.3 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 directions will generate a significant number of applications.

Procurement

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

Legal

- 14.5 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.

- 14.6 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.
- 14.7 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.
- 14.8 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, which also requires that there must also be justification for purpose and extent of the Article 4 direction (paragraph 37).
- 14.9 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.
- 14.10 There are two types of Article 4 directions: immediate directions and non-immediate directions. Immediate directions can only be used in the specific circumstances set out in paragraph 2(1), Schedule 3 GPDO 2015. The effect of an immediate direction is that the permitted development rights are withdrawn with immediate effect subject to confirmation by the local planning authority following local consultation. 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.
- 14.11 Section 108 of the Town and Country Planning Act 1990 (as amended) (the “TCPA 1990”) states that local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they: (i) refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction withdrawing the permitted development right; or, (ii) grant planning permission subject to more limiting conditions than the GPDO 2015 would normally allow, as a result of an Article 4 direction being in place. Section 107 of the TCPA 1990 states that compensation may be sought only be for (a) abortive expenditure or (b) other loss or damage directly attributable to the withdrawal of permitted development rights. Interest may also be payable on any compensation awarded.

14.12 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

14.13 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.

14.13 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.

14.14 The proposals in this report will involve minor changes to permitted development rights in four of the borough's conservation areas. Officers have completed the Council's Equalities Impact Assessment screening tool. This indicated that a full Equalities Impact Assessment is not required. The proposal has potential to impact upon groups that share the protected characteristics, particularly because the residents of the wards that will be primarily affected are more likely to share various protected characteristics relative to the populations of London or the UK. However, such impacts are likely to be of a minor nature and they are not considered to be disproportionate. Nevertheless, public consultation is required on the proposals before they can be confirmed. This will provide the opportunity for any unforeseen equalities issues to be raised and the Council will have chance to consider these before deciding whether to confirm the proposals. The Council will take measures to ensure that the consultation process is inclusive in order to enable all residents who share the protected characteristics to participate.

15 Use of Appendices

15.1 Appendix A: Proposed new Article 4 directions

Appendix B: Maps of areas covered by proposed new Article 4 directions

Appendix C: Existing Article 4 directions (<https://www.haringey.gov.uk/planning-and-building-control/planning/planning-policy/design-and-conservation/conservation-areas/development-conservation-areas#article-4-directions>)

Appendix D: Conservation Area Appraisals / Management Plans

16 Local Government (Access to Information) Act 1985

16.1 None