

Report for: **Cabinet 10 March 2020**

Making Non-Immediate Article 4 Direction for Office (B1a) to Residential (C3) Changes of Use

Report

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

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

Ward(s) affected: All

Report for Key decision

1. Describe the issue under consideration

- 1.1 In 2013 the Government introduced changes to Permitted Development rights, which included Prior Approval 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.
- 1.2 However, as a result 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.
- 1.3 The report therefore recommends the making of a non-immediate Article 4 Direction for growth areas and town centres in the Borough to remove permitted development rights for Office (B1a) to Residential (C3). It will reinstate the need for the Council to grant planning permission for such proposals in the areas in which the Article 4 Direction would apply, and thus reinstate the primacy of the Local Plan in shaping future development in the Borough.
- 1.4 The proposed Article 4 Direction will apply to the areas of Haringey identified as Growth Areas and Metropolitan and District Centres on the adopted Policies Map which includes Wood Green and Tottenham. In order to avoid any

potential claims for compensation, it is proposed that the Article 4 Direction is non-immediate and would come into force 12 months after being made. The Article 4 Direction will require confirmation after consideration of consultation responses.

- 1.5 If the making of the non-immediate Article 4 Direction is approved by Cabinet, public consultation will take place and the Direction will then require confirmation after consideration of consultation responses. This report also seeks to delegate the subsequent decision to confirm the Article 4 Direction to the Director for Housing, Regeneration & Planning.
- 1.6 The proposed new Article 4 Direction is published at Appendix A and the map of areas covered in Appendix B.

2. Cabinet Member Introduction

- 2.1 The introduction of this 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 Cabinet:
 - A) Notes the regulatory requirements for the making of a new Article 4 Direction, as prescribed by The Town and Country Planning (General Permitted Development) (England) Order 2015;
 - B) Notes the comments and recommendations of Regulatory Committee of 2 March 2020 regarding this proposed Article 4 Direction;
 - C) Adopts the justification herein provided to support the making of an Article 4 Direction to remove Office (B1a) to Residential (C3) Permitted Development Rights within Growth Areas, and Metropolitan and District Centres;
 - D) Approves the making of a non-immediate 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 as set out in Appendices A and B.

- E) Authorises the Director for Housing, Regeneration & Planning to carry out the necessary publicity, notification, consultation and subsequent decision on whether to confirm the Direction, as prescribed by 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 making and 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 do nothing; to introduce a Borough wide Article 4 Direction; or, to extend the proposed coverage of the Article 4 Direction to designated Employment Land. The Council could also make the Article 4 Direction immediate rather than non-immediate.
- 5.2 The do-nothing approach has been discounted due to the harm the Permitted Development right is having as outlined in this report.
- 5.3 The Council's evidence indicates that within designated Employment areas, much of the employment floorspace is in other B class uses rather than B1(a) Offices, including B2 general industry and B8 storage and distribution¹. To justify an Article 4 Direction the Council needs to adequately demonstrate the need for such a Direction to be issued including evidence of the harm it is

¹ There is already an Article 4 Direction for change of use from B8 storage and distribution to C3 residential uses for certain areas: www.haringey.gov.uk/planning-and-building-control/planning/planning-policy/article-4-direction-change-use-warehouses-residential-use

causing. If this is not demonstrated, the Secretary of State may intervene and direct the Council to not confirm the Article 4 Direction. In 2013, the Council sought from the Government an exemption from the permitted development rights / prior approval for Office to Residential, and was unsuccessful as the Secretary of State found the justification lacking. Therefore the proposed approach of limiting the Article 4 Direction to Growth Areas and Metropolitan and District Centres where there are still valuable clusters of Office floorspace should negate this risk, and is the most appropriate course of action given the evidence and the limited amount of office floorspace outside of these locations. For the same reason, a Borough wide Article 4 Direction is also discounted.

- 5.4 As set out below, there is the possibility that the Council would be liable for compensation if an immediate Article 4 Direction is pursued, which would be payable to property owners where permitted development rights such as these will have been removed and a subsequent application for permission is refused for that type of development, or conditions applied by the Local Planning Authority over and above those otherwise required. The compensation payable reflects the difference between development value in both scenarios and also additional costs associated with going through the planning process which are unquantifiable but could be many millions of pounds, so this approach has been discounted 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.
- 6.2. 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

6.3. As is set out below, 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.

Article 4 Directions

6.4. 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) of the GPDO (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. The Secretary of State, who has to be notified on confirmation of an Article 4 Direction, ultimately has the ability to intervene, where they see fit, and can amend or remove an Article 4 Direction proposed by a Local Planning Authority.

6.5. There are two types of Article 4 Direction – immediate and non-immediate. These are detailed from Paragraphs 10.2 onwards, but essentially if an Article 4 Direction is bought in immediately, there may be significant compensation liabilities.

6.6. The regulatory requirements and relevant guidance are explained below.

Impacts of Permitted Development Change Of Use Of Offices To Residential Use and expedience and necessity to protect local amenity and well-being of the area

6.7. The Prior Approval process nationally has assisted in meeting the Government's aspirations of increasing housing supply in terms of numbers of homes, however this has been at the expense of the loss of a significant quantum of office floorspace and the creation of many under-sized Residential units, especially in London.

6.8. As of January 2020, in Haringey, 500 homes have attained permission through 62 B1(a) Office to Residential prior approvals. 364 homes have been completed, whilst a further 19 are under-construction. This still leaves a further

117 homes which in theory could come forward. To date Haringey has lost 14,327 sqm of Office floorspace by this mechanism.

- 6.9. Haringey has received applications for prior approval on 86 sites in the last 4 years. Of these the Council refused 5 applications of which 4 were appealed. Of the 4 refused the Council has been successful in defending the refusal at appeal.

Loss of Office floorspace and opportunities for jobs

- 6.10. The Office floorspace that has both been lost, and has received Prior Approval to convert to residential amounts to 22,199 sq.m. which is a sizeable amount (for comparison River Park House is about 7,100sq.m and Alexandra House is 5,100sq.m) and they are some of the largest Offices buildings in the Borough. Employee floorspace requirements can vary tremendously depending on the type of business and the usability of the space. Assuming however, a generous 20 sq.m. per person to reflect the likely poorer quality of the stock lost, this would accommodate 1,109 full time employees. A modern office usually requires about 12sqm per employee.
- 6.11. Whilst earlier schemes might have been dealing with some vacant or obsolete stock, more recently this has changed and we now begun to see proposals to convert office space that is in use, the key example being Alexandra House, Wood Green. The Council has received another application to convert this building to residential. It should be noted that if granted, the proposed Article 4 Direction would not affect it given the 12 month period required before it would come into effect.
- 6.12. Notwithstanding the diminished availability of office stock, rents do not currently appear to be sufficiently high enough to encourage significant new office building activity in the Borough. There has not been any new office building of note in recent years. Haringey is not currently recognised by commercial office developers as a priority location for investment for large scale office development. If the losses are allowed to continue, it provides a significant risk to the proper planning of meeting Haringey's employment needs as it has the potential to further displace such activity out of the Borough, in particular the small and medium enterprise (SME's) type businesses who utilise some of the smaller, cheaper office space that is more prevalent in the town centres, notably above retail units.
- 6.13. Haringey's Employment Land Study (2015) produced by Atkins identified that from 2011 to 2031 there will be a demand for between 48,800 sq.m of B1a/b floorspace to 102,600 sq.m of floorspace². This equates to up to 8,540 full time

² Lower figure is a Trend-based scenario based on Haringey's historic employment growth levels between 1997 and 2013 and the higher figure based on Experian employment forecasts

equivalent (FTE) jobs, which would be an increase of 45%. In this context it demonstrates the ongoing demand for office floorspace, albeit floorspace that is affordable and suitable for small businesses, and where it is no longer fit for purpose, that it is not in the Borough's interest to allow this to go straight to residential uses, given the future demand for office floorspace. It therefore reinforces the need for a Plan Led approach whereby through a full planning permission, replacement office floorspace to meet local demand is secured. This does not preclude the potential for additional residential developments on these sites, but a Plan Led approach would help ensure the Borough can properly plan for and manage the supply of office floorspace, which this permitted development right is clearly hindering, given the losses to date of over 22,000 sq.m.

- 6.14. Haringey's Workspace Viability Assessment (2014) analysis shows that there is a strong workspace concentration in Haringey Heartlands and Wood Green, and in Tottenham (in North Tottenham, Tottenham Hale and South Tottenham and along the high street) which coincides with the Borough's designated Growth Areas and Metropolitan and District centres. It is therefore important that these areas are the focus of the Article 4 Direction to protect these valued clusters of Office and businesses.
- 6.15. Further to this, evidence gathered as part of the emerging Wood Green Economy & Employment Space Study (EESS) (2020) drawing on data from the Office for National Statistics shows that there are over 9,000 jobs in Wood Green, with 36% of these in B1 Office jobs in various sectors contributing to the local economy. The study also highlights, based on data from Experian and Business Register and Employment Survey (BRES), that there is a future need for a mix of spaces, including an increase in the supply of good quality office floor space, and on-going need for workshops and light industrial. This highlights the importance of retaining office space, and adequately providing for new modern office floorspace through re-development, which can viably be done on existing employment sites. Where the existing use is residential, as is happening through prior approvals of office floorspace, the existing use value then becomes too high and will preclude future office development as a result, further harming the local economy and the vitality and viability of town centres in the Borough. It is therefore important that these locations are the ones where the Article 4 Direction is focused. Of note, within Wood Green Metropolitan Centre, the Office vacancy rate is just 0.10%³, which indicates a strong office demand, especially for the smaller Offices for SMEs who form the core of the local office market in Haringey and emphasises the need to protect his floorspace from inappropriate losses.
- 6.16. On a Borough wide basis, the employment growth in Professional Services, which typically require office accommodation, was 18% between 2013 and

³ Source: Office Costar Analytics, 2019

2018⁴. This is almost exclusively due to an increase in small and micro professional services businesses which take up smaller office buildings, often above shops in retail areas. As stated above it is therefore within these areas that the Article 4 Direction is proposed to be introduced.

- 6.17. In a London context a report by London Councils shows that as a result of this Prior Approval Permitted Development right approval was granted for at least 100,000 sq. m. of wholly occupied office floorspace between May 2013 and April 2015, and 834,000 sq. m. total office floorspace. This shows the problem of not just the loss of floorspace, but the loss of jobs and businesses. The report also highlights that in Outer London in particular, a critical mass of office accommodation is being lost, reducing the viability of economic centres and the availability of neighbourhood office accommodation. As set out in this report, it is therefore important that Haringey protects neighbourhood office accommodation within town centres.
- 6.18. There is also specific support for introducing an Article 4 Direction within the new London Plan expected to be adopted in Spring 2020, which states in Policy E1 parts E and F that “Existing viable office floorspace capacity in outer and inner London locations ... should be retained, supported by borough Article 4 Directions to remove permitted development rights where appropriate”, and “Boroughs should consult upon and introduce Article 4 Directions to ensure that... viable strategic and local office clusters (such as those in and around the CAZ, in town centres and other viable business locations are not undermined by office to residential permitted development rights”.

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.

⁴ Source: BRES: ONS, 2013-2018: UK Business Counts, 2019

7.4 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 purpose and extent of the Article 4 Direction (paragraph 37).

Implementation of new Directions

8.1 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

8.2 There are two types of 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. 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)).
- 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.
- 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 and after having given at least 12 months' prior notice of them coming into effect. (but no longer than 2 years after the end of the local consultation period).

Compensation

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

8.4 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.
- 8.5 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 but would likely be prohibitive.
- 8.6 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).
- 8.7 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.
- 8.8 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.
- 8.9 Regulation 2 sets out that development permitted by Class O of Schedule 2 Part 3 is prescribed.

- 8.10 'Prescribed manner' for the withdrawal of planning permission is defined as being in accordance with article 4 of the GPDO 2015 (regulation 3).
- 8.11 '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)).
- 8.12 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.
- 8.13 There is one compensation scenario in relation to the proposed new Direction.
- 8.14 In the case of development in Part 3 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.

Deciding which type of Direction to use

- 8.15 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 losses of office floorspace to residential without due consideration of the economic, amenity and well-being impacts, and therefore minimise these.
- 8.16 While there would be benefit to the Council of introducing the proposed new Direction on an immediate basis, having regard to the significant increased compensation risks associated with immediate Directions in relation to the class of permitted development sought to be withdrawn under the new Article 4 Direction, 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.

Proposed Way Forward

- 8.17 For Growth Areas and Metropolitan and District Centres (see Appendix B for boundaries) it is proposed that a non- immediate Article 4 Direction is taken forward to remove permitted development rights (subject to prior approval) for B1(a) Office, to C3 Residential. The Growth Areas are Wood Green, Northumberland Park, and Tottenham Hale and the Metropolitan Centre is Wood Green.

8.18 The District Centres are:

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

8.19 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.

8.20 There is a risk in proposing a non-immediate Article 4 Direction that there may be an increase in prior approval applications from potential developers who would otherwise lose the ability to use the prior approval process once the required year's notice is up and the Direction confirmed and implemented. This could exacerbate the issue of loss of premises to Residential. Proposing an immediate Article 4 Direction would overcome this issue. It would however leave the Council open to compensation claims, so is not considered an appropriate risk for the Council to take as further detail at Paragraph 10.3.

Other Impacts

Space and accessibility standards, quality design, living conditions

8.21 When the Government consulted on these changes to Permitted Development rights the Council expressed concerns about the quality of Residential development it would lead to and the fact it circumvents the need to meet London Plan space and accessibility standards. The London Plan mandates that the smallest one bedroom one person flat should be at least 37sq.m. Despite these concerns being expressed by Haringey and Councils across the country, the Government made the initial 3-year period permanent without any changes to address these issues. It is only in mid-2019 that the Government acknowledged the issues with regards to space standards and lack of amenity as a result, and pledged to make changes⁵. To date, these changes have not materialised.

⁵ <https://www.bbc.co.uk/news/uk-politics-48770638>

8.22 Indeed, there have been past prior approvals where 'studio apartments' at just 13sq.m have been developed, such as at 72 Willoughby Lane, N17 where 15 studio apartments were delivered on just 243 sq.m. of Office floorspace.

Comprehensive place-making

8.23 It is acknowledged that some of the Offices lost will have been from older, poorer quality stock. This however poses an additional problem in that the Local Plan acknowledges this, and thus allocates and allows for the redevelopment of such office floorspace and the introduction of new uses such as Residential. However, this is planned for and the resulting redevelopment will be of higher architectural quality, would meet decent amenity and space standards, could provide affordable housing, and through the Plan Led approach may require some re-provision of Office floorspace but of a new, modern and fit for purpose nature.

8.24 This is demonstrated by adopted Local Plan policy and DM Policy which requires any application for redevelopment of employment sites within highly accessible or otherwise sustainable locations which would include town centres and growth areas, to provide a mixed-use, employment-led development to help facilitate the renewal and regeneration (including intensification) of existing employment land and floorspace.

8.25 The opportunity therefore to secure comprehensive redevelopment on these sites with all the benefits that goes with this (including securing affordable housing and other contributions) is lost. This lost opportunity can also extend to the quantum of development on site, whereby through comprehensive redevelopment the Council, through a Plan Led approach, may have accepted more Residential units on the site to help towards the Borough's housing target, and thus the rationale for the implementation of the Prior Approval Permitted Development rights is not even robust, in that it may frustrate the delivery of more, better quality and more affordable homes through lost opportunities.

Affordable housing and contributions

8.26 Schemes built under Permitted Development rights are not required to provide affordable housing or Section 106 contributions that would otherwise be sought.

8.27 There is also evidence that the prior approval process for some schemes might only have been used as a mechanism to reduce overall affordable housing contributions. It potentially provides an increased benchmark land value in redevelopment schemes to be argued as a fall-back position, rather than reflecting any genuine desire on the part of the developer to pursue such approvals.

8.28 Figures collated by London boroughs⁶ indicate that prior approval has been granted for the conversion of at least 7,000 new dwellings in schemes of 10 units or more. Had this number of homes been approved through the planning system, they would typically be expected to support the delivery of as many as 1,000 new affordable homes, or equivalent Section 106 developer contributions on other sites. Across England, analysis from the Local Government Association published in January 2020 estimates that 13,540 affordable homes have been lost that would otherwise have been delivered⁷.

National and regional evidence

8.29 There is also widespread evidence and support on a national and regional level to justify the introduction of targeted Article 4 Directions from various independent and reputable bodies, including the Town and Country Planning Association which, in an updated report (Raynsford Review 'One Year On') published in January 2020 found that the rights generated particularly poor outcomes, especially on the quality and amenity value of the units created⁸.

8.30 This conclusion is also supported by the Royal Town Planning Institute, who in an open letter⁹ to the Secretary of State signed by 15 other organisations including Shelter, said both housing affordability and quality are being jeopardised by this Permitted Development Right and called on the government to focus on delivering homes through the local planning process.

8.31 A report by the Royal Institute of Chartered Surveyors (RICS) in May 2018 also concluded that Permitted Development residential quality was significantly worse than schemes which required planning permission, even though it clearly is still possible to deliver viable Office-to-Residential schemes through the more stringent full planning permission process¹⁰. This report also highlighted the fact that there is a negative impact on local infrastructure due to their unplanned nature and the fact that developer contributions towards new infrastructure to support new development are avoided, and thus the amenity of new and existing populations are negatively impacted. Therefore it is clear there is a strong amenity case to be made to withdrawing these rights in a targeted manner where the bulk of Haringey's remaining Office stock is located.

9 Next steps

⁶ <https://www.londoncouncils.gov.uk/our-key-themes/housing-and-planning/permitted-development-rights/impact-permitted-development-rights>

⁷ <https://www.local.gov.uk/lga-over-13500-affordable-homes-lost-through-office-conversions>

⁸ <https://www.tcpa.org.uk/the-raynsford-review-of-planning-one-year-on>

⁹ <https://www.rtpi.org.uk/briefing-room/news-releases/2019/january/rtpi-signs-open-letter-on-permitted-development-rights/>

¹⁰ <https://www.rics.org/uk/news-insight/research/research-reports/assessing-the-impacts-of-extending-permitted-development-rights-to-office-to-residential-change-of-use-in-england/>

9.1 Notice of the non-immediate Direction must be published in the manner prescribed in Schedule 3 of the GPDO 2015. The Council must: publish a notice in the local newspaper; 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.

9.2 The Direction, once made, cannot come into force unless confirmed by the 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. We intend to make the A4D by 1st May 2020 and it take effect by 1st May 2021, subject to consultation.

9.3 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 undertake its normal decision-making process, enabling a case-by-case judgement based on the Council's development plan to be made as to the acceptability of the proposed change of use.

9.4 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.

10 Regulatory Committee comments

10.1 The report was considered by Regulatory Committee on 2 March 2020 which is after the Cabinet report papers are finalised. Regulatory Committee's comments on the report will be reported separately to the Cabinet.

11 Contribution to strategic outcomes

11.1 The proposal to introduce 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.

- 11.2 This action will also benefit the Economy Priority by helping to protect valued office space and jobs and employment, and securing replacement office floorspace through redevelopment, which 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 proposed to be included within the Article 4 area.

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

Finance

- 12.1 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 consulting on the Direction to be covered within existing planning budgets.
- 12.2 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 eliminate the risk to the Council of having to pay compensation.
- 12.3 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 Direction will generate a significant number of applications and therefore have minimal impact on income.

Procurement

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

Legal

- 12.5 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.
- 12.6 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.
- 12.7 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.
- 12.8 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 ‘When is permission required?’, which also requires that there must also be justification for purpose and extent of the Article 4 Direction (paragraph 37).
- 12.9 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.
- 12.10 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.
- 12.11 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.

12.12 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

12.13 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.

12.14 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.

12.15 The proposed decision is to remove 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 polices map. Future such proposals would need a full planning permission to change use.

12.16 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.

12.17 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.

12.18 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 consider these before deciding whether to confirm the proposals. The Council will take measures to ensure that the consultation process is inclusive in accordance with the Council's Statement of Community Involvement. An Equalities Impact Assessment will be undertaken if unforeseen and/or significant equalities issues are identified in the course of the consultation.

13 Use of Appendices

Appendix 1: Draft Non-Immediate Article 4 Direction

Appendix 2: Maps of areas covered by Draft Non-Immediate Article 4 Direction

Appendix 3: Office and Employment Evidence Summary

14 Local Government (Access to Information) Act 1985

None