

Decision Maker: **Development Control Committee**

Date: **8th October 2013**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **CHANGE OF USE FROM OFFICES TO RESIDENTIAL IN PARTS OF BROMLEY TOWN CENTRE – PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTION**

Contact Officer: Jim Kehoe, Chief Planner
Tel: 020 8313 4441 E-mail: jim.kehoe@bromley.gov.uk

Chief Officer: Marc Hume, Director of Regeneration & Transformation

Ward: Bromley Town

1. Reason for report

- 1.1 This report recommends that the Council makes a non-immediate Article 4 Direction to withdraw the permitted development right for change of use from office to residential. This Direction would apply to the Business Improvement Areas, as shown in the Area Action Plan and nearby areas within a short distance of Bromley North and South Station, Appendix One. It is recommended that the Direction would be made in the near future. It would then come into force at least 12 months thereafter, all subject to confirmation by the Executive (Portfolio Holder) and taking account of representations received. The risk of compensation being payable using the non-immediate Direction is low. The cost of compensation under the immediate Direction procedure could be prohibitive.
- 1.2 The area selected for the Direction is a prime area for offices and this is reflected in its AAP designation and in the analysis of DTZ in their 2012 report on employment and commerce in the Borough. It is expedient to restrict the change of use from offices to residential in this area in order to avoid harmful impacts upon economic development.

2. **RECOMMENDATION(S)**

- 2.1 That Members endorse the making of a 'non immediate' Article 4 Direction on the basis that it is expedient to restrict the Change of Use from Offices to Residential in parts of Bromley Town Centre in the terms described in the report.
- 2.2 That Members refer the matter to the R&R PDS Committee and the Portfolio Holder for Renewal and Recreation to authorise the making of the Direction.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment
-

Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: A small increase in planning applications, for which no fee is payable, is expected.
 3. Budget head/performance centre: Planning and Renewal
 4. Total current budget for this head: £2.618 m
 5. Source of funding: Existing Revenue Budget 2013/2014
-

Staff

1. Number of staff (current and additional): 64 ftes (excluding Building Control, Land Charges)
 2. If from existing staff resources, number of staff hours: 30
-

Legal

1. Legal Requirement: Non-Statutory - Government Guidance
 2. Call-in: Not Applicable: Further Details – Portfolio Decision
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): about 50 householders nearby, also the general public visiting the locality
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? An update will be provided.
2. Summary of Ward Councillors comments: An update will be provided.

3. COMMENTARY

3.1 Background

The Government has amended the General Permitted Development Order (GPDO) to grant new rights to change from office use to residential use. The amended General Permitted Development Order (GPDO) came into force on 30th May 2013 and for a three year period allows office use to change to residential use permanently, subject to a prior approval process.

On 9th May 2013 the Government announced that office-to-residential permitted development rights would not apply to any of the borough, despite the Council submitting an application for areas of Bromley Town Centre, Cray Valley, Biggin Hill and other designated Business Areas, to be exempted from the Government's proposal.

The proposed Article 4 Direction would apply to smaller areas, within Bromley Town Centre, which is a prime area for offices shown in the AAP (2010) as a Business Improvement Area and identified as such by the DTZ (2012) study.

Article 4 Directions allow authorities to withdraw the permitted development rights that would otherwise apply by virtue of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the 'GPDO'). An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority for that development.

The current position is that change from office to residential will not require planning permission. Applicants are required to complete a prior approval notification process which covers: significant transport and highway impacts, development in areas of high flood risk, and land contamination. There are three potential outcomes of this process. The Council could determine that prior approval is not required and therefore the development will be allowed to proceed. If the Council decides that prior approval is required, further information on the specific matters will be sought so a proper assessment of the impacts can be made and prior approval can then be given or refused. If prior approval is refused, the applicant could then appeal to the Planning Inspectorate. In most cases in Bromley, prior approval is likely to be required only on the grounds of transport and highways impacts.

Article 4 Directions can be made with immediate effect or to take effect following a period of notice. If that period is at least a year then normally no compensation is payable. This report recommends that the Council issues a non-immediate Article 4 Direction in order to reduce the Council's liability to compensate landowners affected by the removal of permitted development rights. This is discussed further below.

During a 12-month notice period, the office-to-residential permitted development rights would apply. Following this period, this change of use would require a planning application to be submitted to the Council.

The Secretary of State for Communities and Local Government has the power to revoke or modify Article 4 Directions at any time.

3.2 Expediency

The Council may, if it is satisfied that it is expedient, make an Article 4 Direction that development described in any Part, Class or paragraph of Schedule 2 to the GPDO should not be carried out unless permission is granted for it on application. Among the factors to be considered by the Council when determining whether it is satisfied that it is expedient, is relevant government guidance.

Government guidance on the use of Article 4 Directions is set out in the replacement Appendix D to Circular 9/1995, last updated in June 2012.

It states that local planning authorities should consider making Article 4 Directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.

Paragraph 2.2 of Appendix D to the Circular states that *“in deciding whether an article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.”*

Paragraph 2.4 of Appendix D of the Circular, states:

“There should be a particularly strong justification for the withdrawal of permitted development rights relating to:

- *Cases where prior approval powers are available to control permitted development”*

As the conditions which apply to Class J development require prior approval a particularly strong justification is required in this case.

Permitted development rights for office to residential, could harm the proper planning of the area as well as local amenity. The harm can be broken down into the following categories, with some impacts being harmful both in terms of proper planning of the area, as well as to the amenity:

Economic impacts:

- Loss of office space
- Job losses
- Loss of capacity to develop additional office space and accommodate future job growth
- Dilution of Bromley Town Centre’s role within London including its role as a Metropolitan Centre

Amenity impacts:

- Impact on surrounding offices if ‘critical mass’ of business floorspace is lost

Although the government rejected the Council’s application for exemption its criteria showed that Bromley Town Centre did have the strongest case within the Borough.

An Article 4 Direction can be made if the Council is satisfied that it is expedient that development should not be carried out unless planning permission is granted on application. In determining whether it is expedient the Council should have regard to material considerations including the advice given in Appendix D to Circular 09/95. As noted the advice given by the Government is that local authorities should only consider making Article 4 Directions in exceptional circumstances. Taking into account all of the above, it is considered that such exceptional circumstances exist in this case.

3.3 Compensation

Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the PD rights that an Article 4 Direction withdraws, if they:

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

Compensation may be claimed for *abortive expenditure* or other loss or damage *directly* attributable to the withdrawal of PD rights.

‘Abortive expenditure’ includes works carried out under the PD rights before they were removed, as well as the preparation of plans for the purposes of any work. The amounts involved under this may be modest but could accumulate over time and become burdensome.

Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right. It is considered that the Council’s potential liability for compensation would be prohibitive as residential value is significantly higher than offices per m² and there is a large office floorspace in the proposed Direction area.

However, it is unlikely that compensation is payable if the following procedure is followed.

- Notice of withdrawal is given in the prescribed manner including:

not less than 12 months before it takes effect;

Therefore, it is unlikely that compensation is payable if notice is given that the rights will be withdrawn a year later. This is considered to represent the most expedient decision for the Council to take. During the first twelve months, permitted development for change of use from B1 to residential uses would exist, and landowners might take advantage of these rights. However, if the Council were to remove these rights with immediate effect, any refusal of planning permission could result in a prohibitive burden of compensation liability.

4. POLICY IMPLICATIONS

4.1 The proposal supports the AAP policies for offices and Business Improvement Areas.

5. FINANCIAL IMPLICATIONS

5.1 Advice on compensation is set out above. The proposed route for implementation by way of a 12 month non-immediate Article 4 Direction will ensure that compensation claims are avoided. Costs associated with publishing and consulting on the Article 4 Directions will be met from the approved budget.

5.2 If an immediate Article 4 Direction is made, the Council would be exposed to potentially substantial compensation which is considered prohibitive.

5.3 Any applications for planning permission which would have previously been permitted, prior to an Article 4 Direction removing permitted development rights, are entitled to apply for planning permission without paying the usual planning application fees. The Article 4 Direction is therefore likely to lead to an increase in the number of planning applications for which planning

application fees will not be applicable. However, this is not expected to generate many additional applications.

5.4 By issuing a 12 month non-immediate Direction under Article 4, it is unlikely that any compensation claims will be payable.

6. LEGAL IMPLICATIONS

6.1 Article 4 (1) of the GPDO 1995 (amended) allows local Planning Authorities to withdraw certain Permitted Development Rights.

Non-Applicable Sections:	Personnel Implications
Background Documents: (Access via Contact Officer)	Replacement Appendix D to Department of the Environment Circular 9/95: General Development Consolidation Order 1995. DCLG June 2012 L.B. Bromley Retail, Office, Industry and Leisure Study DTZ (2012)