

Decision Maker: **DEVELOPMENT CONTROL COMMITTEE**

**R&R PORTFOLIO HOLDER FOR PRE-DECISION SCRUTINY BY
THE R&R PDS COMMITTEE**

Date: **9 June 2015**
 24 June 2015

Decision Type: Non-Urgent Executive Non-Key

Title: **CONFIRMATION OF PROPOSED ARTICLE 4 DIRECTIONS
BROMLEY TOWN CENTRE**

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Chief Officer: Chief Planner

Ward: Bromley Town;

1. This report asks Members to consider the confirmation of the proposed Article 4 Directions for three areas of Bromley Town Centre shown on the attached map on the basis that it is expedient to do so to avoid harmful impacts upon the local economy. These were advertised as three separate non –immediate Article 4 Directions in July last year, with the intention that they should not come into effect before 31st July 2015. The responses to the consultation should be taken into account.
 2. The effect of the Directions would be that a change of use from Office (Use Class B1(a) to Residential (Use Class C3) will require planning permission removing the ‘permitted development rights’ under Schedule 2 of the GPDO 2015.
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3. RECOMMENDATION(S)

- 3.1 That Development Control Committee endorses the confirmation of the Directions on the basis that it is expedient to restrict the change of use from offices to residential in parts of Bromley Town Centre as set out in the report.**
- 3.2 That members refer the matter to the R&R PDS Committee and that the Portfolio Holder for Renewal and Recreation:**

3.2 a) Confirms the Article 4 Direction to remove the Permitted Development of Class J (now O) to come into effect on 1st August 2015 for the Bromley North Area as shown on the attached map.

3.2 b) Confirms the Article 4 Direction to remove the Permitted Development of Class J (now O) to come into effect on 1st August 2015 for the London Road area as shown on the attached map.

3.2c) Confirms the Article 4 Direction to remove the Permitted Development of Class J (now O) to come into effect on 1st August 2015 for the Bromley South Area as shown on the attached map.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Vibrant, Thriving Town Centres
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Financial

1. Cost of proposal: Estimated Cost None expected.
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Planning
 4. Total current budget for this head: £2.144m
 5. Source of funding: Existing revenue budget 2015/16
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Staff

1. Number of staff (current and additional): 65.22 FTEs
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance None:
Further Details
 2. Call-in: Applicable Not Applicable: Further Details
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes No Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 It is the General Permitted Development Order 2015 which provides the mechanism, known as an “Article 4 Direction”, which enables local planning authorities, in certain circumstances, to withdraw permitted development rights. The non-immediate” Direction route used which entails the local planning authority giving 12 months’ notice of the intention to confirm an Article 4 removes the potential of liability for compensation for these Directions.
- 3.2 The procedure for making and confirming a Direction and giving notice is prescribed by planning legislation. Of significant importance is the power of the Secretary of State for Communities and Local Government, having been notified of the Direction, to cancel or modify the Article 4 Direction. Likewise, the local planning authority can at any time cancel its own Direction.
- 3.3 In 30 May 2013 the government introduced a new permitted development right through Class J, Part 3 of Schedule 2 to the GPDO 1995, i.e. the right to change (permanently) from Class B1(a) office use to C3 residential use. The permitted development right was introduced for a period of 3 years but may be extended. Following the publication of a new version of the Order (the Town and Country Planning (General Permitted Development) Order 2015) this is now Class O, Part 3 of Schedule 2 to the new Order. The content of this Part has not altered from the previous (amended) version of the Order
- 3.4 Following reports to Development Control Committee (DCC) in October 2013 and the R&R PDS in January 2014 the Portfolio Holder for Renewal and Recreation agreed the making of non-immediate Article 4 Directions for three areas within Bromley Town Centre. These are shown on maps in Appendix 1 and comprise Bromley South, Bromley North West and Bromley North East. These areas cover a small proportion of the town centre The non-immediate Article 4 confirmed that it would not come into effect prior to 31st July 2015.
- 3.5 This report seeks authority to confirm the Article 4 Directions which would, on coming into effect, require a formal planning application to be determined for any such office to residential change of use.
- 3.6 The Council undertook consultation on the proposed Article 4 Directions with notices in the local press, information on the Council’s website, publicity in the Council’s business e-bulletin circulated to approximately 3,000 businesses, and via the Bromley Economic Partnership.
- 3.7 Site notices were placed in each of the areas between 22nd and 27th May and letters sent out 28th May 2014 to all known offices in the areas. Consultation ran until 31st July 2014, exceeding the six week statutory period.
- 3.8 The Council notified the Secretary of State for Local Communities and Government. Subsequently the Council was contacted by the National Planning Casework Unit of the Department for Communities and Local Government (DCLG), who provided an opportunity for the Council to submit further evidence to support and justify the making of the Directions, with particular reference made to how they accord with the National Planning Policy Framework and associated guidance. The additional material submitted to DCLG by the Council is included as Appendix 1 of the report.
- 3.9 Unfortunately no response from DCLG has been received, despite officers having followed this up on many occasions. It is hoped that a response will be received by the time of the meetings, and an update will be provided. Should no response have been received the decision would have to be subject to no negative comments being received from the Secretary of State.

- 3.10 Only one objection was received within the Bromley North West area on behalf of the Cystic Fibrosis Foundation, and none from the other two areas. Several enquiries were made seeking clarification of the extent of the areas affected and the implications of the Article 4 Directions. These were not followed by written representation.
- 3.11 Representations were made with regard to the Article 4 Directions to not remove any Prior Approvals for change of use from office to residential given prior to the commencement of the Article 4 Direction. This would have been a consideration for the Council, however, the GPDO amendments in March 2015 mean that an Article 4 Direction cannot prevent the carrying out of development which has Prior Approval before the date the Article 4 Direction comes into force. Therefore these representations are not relevant to the Portfolio Holder's considerations.

Table 1 Summary of responses received to consultation

Respondent	Address	Comment	Proposed Area	Officer Comment
Suburban Studios	11 London Road	Seeking amendment to proposed Article 4 to exclude Prior Approvals	Bromley North West	2015 GPDO amendments address this concern
Cystic Fibrosis Trust	11 London Road	Objection to proposal	Bromley North West	Cystic Fibrosis Trust have moved out of the borough and no longer have an interest in this property
TP Bennett	Crosby House, Elmfield Road	Seeking amendment to proposed Article 4 to exclude Prior Approvals	Bromley South	2015 GPDO amendments address this concern

- 3.12 The Planning Policy Team have monitored the impact of the new permitted development rights Table 2 shows the total amount of office floorspace with Prior Approval to change from office to residential use in Bromley Town Centre (BTC). Floorspace and units approved for PD do not include floorspace and units of PD applications that have been implemented post January 2015.
- 3.13 BTC accounts for approximately 43% of all office floorspace in PD applications that have been approved, 17% of which have been implemented. Of this, there is an equal split in the tenancy of floorspace; 49% is currently occupied, whilst 51% remains vacant. Within the Town Centre, the majority of the floorspace approved for PD has not been implemented. The GPDO requires that these need to be complete by the end of May 2016 for the Prior Approval to be valid.
- 3.14 However, these figures are disproportionate. Of all PD applications in BTC, just under half fell within proposed Article 4 Direction boundaries. Of these, the majority of floorspace approved for PD is currently occupied, with an average vacancy rate of only 1%. As there is a significantly high occupancy rate in these areas, it is important to reduce the risk of an adverse

impact on buildings within these boundaries as to safeguard a good supply of quality office space in the Town Centre.

Table 2 Summary of Prior Approvals granted and implemented June 2013 – January 2015

	Total (Sqm)	Vacant (Sqm)	PD Approved (Sqm)	Vacant Approved (Sqm)	Approved Units	PD Implemented (Sqm)	Implemented Units
Bromley Town Centre	226,242	31,799	15,450	7,897	258	2,308	38
Article 4 Direction Areas:							
Bromley North-East	13,479	2,464	781	0	9	580	11
Bromley South	48,074	2,686	4,689	185	96	0	0
Bromley North-West	9,826	1,334	1,271	0	25	0	0
Rest of Borough	124,967	27,088	21,527	11,280	255	1,838	39

Compensation

- 3.15 Local planning authorities are in principle 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:
- 3.16 Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction;
- 3.17 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
- 3.18 However, it is unlikely that compensation is payable in this instance as 12 months' notice of withdrawal of the Permitted Development Rights was given.

4. POLICY IMPLICATIONS

- 4.1 The Article 4 Directions are in line with the UDP policies to protect offices, the BTCAAP policies and the emerging Local Plan policies as set out in the Draft Policies and Designations stage of the Local Plan.

5. FINANCIAL IMPLICATIONS

- 5.1 Advice on compensation is set out above. In summary, because the Council issued a 12 month non-immediate Directions under Article 4, it is unlikely that any compensation claims will be payable.
- 5.2 Any applicants 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.

6. LEGAL IMPLICATIONS

- 6.1 Government guidance now confirms that “Whereas before April 2010 the Secretary of State confirmed certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultations”. The Secretary of State does, however retain the power to make a direction modifying or cancelling most Article 4 directions at any point.
- 6.2 There has been no substantive comment from the Secretary of State despite their having been notified in accordance with the legislative requirements, and a number of reminders pressing for comment. The main issue which concerned some consultees, namely the position of existing Prior Approvals, has now been addressed by the new GPDO.
- 6.3 If members decide to confirm the Direction whilst still awaiting final comments from the Secretary of State, they should be aware that the Secretary of state has the ability to modify or cancel it at a future date.

Appendices

Map showing Article 4 Direction Areas

Further Information provided to the Secretary of State 2014

Non-Applicable Sections:	Personnel Implications
Background Documents: (Access via Contact Officer)	Town and Country Planning (General Permitted Development) Order 2015 DRR 13/055 Development Control Committee 9/4/13 'Proposed Permitted Development Rights for change of use from Commercial to Residential – Response to Government request for exemptions DRR13/124 DCC 8/10/13 'Change of use from offices to residential in parts of Bromley Town Centre – Proposed Non-Immediate Article 4 Direction. DRR 14/013 R&R Portfolio Holder for pre-decision Scrutiny by the R&R PDS Committee