

Decision Maker: RENEWAL, RECREATION AND HOUSING PORTFOLIO
HOLDER

**FOR PRE-DECISION SCRUTINY AT THE RENEWAL,
RECREATION AND HOUSING POLICY DEVELOPMENT AND
SCRUTINY COMMITTEE AND DEVELOPMENT CONTROL
COMMITTEE**

Date: DCC: 9 March 2022
RRH PDS: 16 March 2022

Decision Type: Non-Urgent Non-Executive Key

Title: CONFIRMATION OF SIX ARTICLE 4 DIRECTIONS TO REMOVE
PERMITTED DEVELOPMENT RIGHTS FOR USE CLASS E TO
RESIDENTIAL USE

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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: Bromley Town; Plaistow and Sundridge; Cray Valley West; Orpington

1. Reason for report

- 1.1. This report recommends that the Council confirms six non-immediate Article 4 Direction to withdraw permitted development (PD) rights which allow premises in Use Class E to change to residential use. These Directions apply to three Business Improvement Areas and three Office Clusters as set out in the Bromley Local Plan. The Directions will replace existing Directions which remove office to residential PD rights in these areas; these existing Directions will lapse on 31 July 2022.
- 1.2. In line with the requirements of legislation, representations on the proposed Directions were sought. The Council must take into account any representations made before it confirms the Article 4 Directions. No representations were received on the six proposed Directions. If confirmed, the Directions would come into force on 27 July 2022.

2. RECOMMENDATION(S)

For Development Control Committee members

- 2.1. That Members endorse the confirmation of six non-immediate Article 4 Directions to withdraw Part 3, Class MA PD rights in Bromley's Business Improvement Areas and Office Clusters, as designated in the Bromley Local Plan and shown at Appendix 1. These PD rights are currently granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").**
- 2.2. That Members note the matter will be considered by the Renewal, Recreation and Housing Policy Development and Scrutiny Committee for pre-decision scrutiny.**

For Renewal, Recreation and Housing Policy Development and Scrutiny Committee members

- 2.3. That Members endorse the confirmation of six non-immediate Article 4 Directions to withdraw Part 3, Class MA PD rights in Bromley's Business Improvement Areas and Office Clusters, as designated in the Bromley Local Plan and shown at Appendix 1. These PD rights are currently granted by the GPDO.**
- 2.4. That Members note that the Portfolio Holder for Renewal, Recreation and Housing will be asked to confirm the six non-immediate Directions covering the areas shown on the maps at Appendix 1, to come into force on 27 July 2022.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: No impact
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Regeneration
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Financial

1. Cost of proposal: Costs associated with publicising the confirmation will be met from the Planning Policy and Strategy budget.
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.568m
 5. Source of funding: Existing Revenue Budget for 2021/22
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Personnel

1. Number of staff (current and additional): 10fte
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Article 4 and Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015
 2. Call-in: Applicable: Further Details – Portfolio Decision
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

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

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A.

3. COMMENTARY

Background

- 3.1. In May 2021, Development Control Committee¹ (DCC) considered a report recommending that 46 non-immediate Article 4 Directions were made to withdraw Part 3, Class MA PD rights in a number of designated retail, service, office and industrial areas set out in the Bromley Local Plan. DCC endorsed the proposed directions².
- 3.2. The Renewal, Recreation and Housing Policy Development and Scrutiny Committee (RRHPDS) considered the proposed Directions on 16 June 2021³. RRHPDS resolved that the Portfolio Holder be recommended to authorise the making of the 46 non-immediate directions as endorsed by DCC⁴.
- 3.3. Six directions were proposed for the three Business Improvement Areas in Bromley Town Centre and three designated office clusters in the Local Plan. These areas were already covered by Part 3, Class O directions, which removed office to residential PD rights, but the introduction of Part 3, Class MA PD rights meant that these existing directions would lapse by 31 July 2022. Therefore, this necessitated new directions to be in place before the existing directions lapsed.
- 3.4. The remaining 40 directions have yet to be confirmed; any confirmation of these directions will be for a future Portfolio Holder decision, following reports to DCC and RRHPDS.
- 3.5. Article 4 Directions allow authorities to withdraw the PD rights that would otherwise apply by virtue of the GPDO. Details of the Article 4 Direction process and relevant legislation and guidance is set out in paragraphs 3.13 to 3.20 of the May 2021 DCC report⁵.
- 3.6. It is noted that the NPPF was amended in July 2021, which introduced a new requirement for Directions; this requires Directions which relate to a change from non-residential use to residential use to be limited to situations where an Article 4 Direction is necessary to avoid wholly unacceptable adverse impacts. Directions should apply to the smallest geographical area possible. The PPG notes that the potential harm that a Direction is intended to address should be clearly identified. For the proposed Directions, justification to address the NPPF requirements is discussed below.

Representations

- 3.7. Consultation on the Directions was undertaken from 27 July to 7 September 2021 (a period of six weeks). As detailed in the reports to DCC and RRHPDS in May and June 2021, the

¹ 'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR USE CLASS E TO RESIDENTIAL USE', Development Control Committee 20 May 2021, available from: <https://cds.bromley.gov.uk/documents/s50088962/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20USE%20CLASS%20E%20T.pdf>

² Minutes of the DCC meeting held at 7.30 pm on 20 May 2021, available from: <https://cds.bromley.gov.uk/documents/g6912/Public%20minutes%20Thursday%2020-May-2021%2019.30%20Development%20Control%20Committee.pdf?T=11>

³ 'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR USE CLASS E TO RESIDENTIAL USE', Renewal, Recreation and Housing Policy Development and Scrutiny Committee 16 June 2021, available from: <https://cds.bromley.gov.uk/documents/s50089456/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20USE%20CLASS%20E%20T.pdf>

⁴ Minutes of the RRHPDS meeting held at 7.00 pm on 16 June 2021, available from: <https://cds.bromley.gov.uk/documents/g7196/Public%20minutes%20Wednesday%2016-Jun-2021%2019.00%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20.pdf?T=11>

⁵ Op cit, footnote 1

consultation did not include serving notice on owners and occupiers of every part of land within the area to which the Direction relates, as this level of notification was considered impracticable. Notice was given by local advertisement and site notices in two locations within each of the areas, as per the other requirements of the GPDO. Details were also provided on the Council's website.

3.8. No representations were received.

Discussion and justification

- 3.9. Paragraphs 3.21 to 3.40 of the May 2021 DCC report⁶ set out the national, London and local planning policy context which is material to any decision of whether it is expedient to make an Article 4 Direction.
- 3.10. In terms of the justification for the proposed Directions, officers consider that the justification set out in paragraphs 3.41 to 3.62 of the May 2021 DCC report⁷ remains robust; paragraphs 3.43 to 3.51, which relate to office and industrial use, are particularly relevant given the office focus of the designations covering the six areas.
- 3.11. This justification is considered sufficient to address the updated NPPF requirements with regard to ensuring wholly unacceptable adverse impacts are avoided. The designated areas to be covered by the Directions are key areas for offices as set out in the adopted Local Plan. Further loss of space in these areas could reduce opportunities for fledgling businesses to secure space and could also mean that existing businesses looking to grow are not retained as they may be forced to look outside the borough for additional space. It also means that any potential agglomeration benefits are likely to be lost, which could have a significant impact on the local economy and affect local amenity and wellbeing.
- 3.12. Additional evidence published following the May 2021 DCC report serves to further strengthen the justification for the Directions.
- 3.13. In July 2021, the GLA published '**Strategic evidence to support London borough Article 4 Directions (commercial to residential)**'⁸; this document provides strategic evidence to support Class E commercial to residential Article 4 Directions by local planning authorities in London.
- 3.14. The Directions cover specific office designations within and in close proximity to Bromley's Metropolitan and Major Town Centres. The strategic evidence base document, in section 4.3, details the importance of Town Centre office locations, referencing the London Plan strategically significant town centre office locations which identify Bromley Town Centre as a centre with the capacity, demand and viability to accommodate new office development, generally as part of mixed-use developments including residential use. The evidence references a report from Knight Frank⁹ which recognises Bromley as an 'up and coming' centre with regards to 'innovation-led locations'¹⁰.
- 3.15. Offices and light industrial uses contribute to the range of uses in town centres and high streets alongside retail and leisure uses. Offices can make up a significant proportion of total commercial floorspace in town centres. The report recognises that there are emerging trends

⁶ Op cit, see footnote 1

⁷ Ibid

⁸ Available from:

https://www.london.gov.uk/sites/default/files/strategic_evidence_to_support_commercial_to_residential_article_4s_in_london_july_2021_final_report.pdf

⁹ Available from: https://content.knightfrank.com/resources/knightfrank.com/commercial/the-next-chapter-2021--the-m25-and-south-east-office-market-report.pdf?utm_source=knightfrank&utm_medium=sitecontent&utm_campaign=m25-offices

¹⁰ Ibid, defined as "Locations such as these benefit from the agglomeration and clustering of economies and a magnetism that attracts young, creative and entrepreneurial populations."

that could affect the nature of office working and the extent of remote working, but states that the extent of this and its impact on the need for office space has yet to emerge fully.

- 3.16. The report states that the new PD rights, in the absence of targeted Article 4 Directions, could impact the adaptation of London's town centres and high streets to be (and remain) vibrant, successful locations for a range of business, culture, civic and community activities complemented by well-planned housing and mixed-use development.
- 3.17. The report recognises that, while town centres and high streets can benefit from additional homes in the area, this should be well planned and should not come forward at the expense of successful commercial and community uses. Residential uses have different characteristics to commercial, business and service uses. Once conversions to residential occur the inherent flexibility of high street premises in commercial and community uses is lost, undermining the ability of the high street to adapt to future circumstances. Too much erosion of commercial and community services via PD rights in town centres and high streets could also create dormitory areas where residents must travel further afield to get to shops and places of work, undermining efforts to support walking and cycling and the creation of a more sustainable city.
- 3.18. The strategic evidence base document also makes clear that Article 4 Directions can be a useful tool for ensuring that development capacity is optimised through site allocations, masterplans and town centre strategies, delivering better outcomes for housing delivery, housing quality and place-making.
- 3.19. A report by GLA Economics - **London's Economic Outlook: Spring 2021 - The GLA's medium-term planning projections (May 2021)**¹¹ - projects that London's real Gross Value Added (GVA) growth rate is forecast to be 5.4% this year due to the recovery from the COVID-19 crisis. This growth rate is expected to increase slightly to 6.9% in 2022 before moderating to 3.1% in 2023. London is forecast to see a fall in the number of workforce jobs in 2021 (-3.6% in annual terms) although this will recover in 2022 (2.9%) before accelerating in 2023 (4.2%). Similarly to GVA, London's household income and expenditure are both forecast to grow in all years of the forecast period. These projections demonstrate that there is likely to be significant demand for office floorspace to facilitate economic growth and accommodate the creation of new jobs.
- 3.20. A further report by GLA Economics - **Macroeconomic scenarios for London's economy post COVID-19 - Scenarios approach, storylines and projections to 2030 (August 2021)**¹² - outlines three core economic scenarios for London's economy post-COVID-19 - Scenario 1: Fast economic recovery (an optimistic but plausible scenario); Scenario 2: Gradual economic recovery and Scenario 3: Slow economic recovery. In all scenarios, London's economy is expected to recover to the pre-crisis level of output by the end of next year at the latest. Under the Gradual return to economic growth scenario, London's GVA reaches pre-crisis levels in Q4 of 2021. Employment recovery is projected to be significantly slower than output recovery, so that pre-crisis employment levels are not reached until Q1 of 2023 in the gradual economic recovery scenario and not before the end of the same year in the slower economic recovery scenario. As with the report noted above, these scenarios help to support the continued protection of office floorspace to facilitate economic growth and accommodate the creation of new jobs.

4. POLICY IMPLICATIONS

¹¹ Available from: <https://www.london.gov.uk/sites/default/files/leo-spring-2021-final.pdf>

¹² Available from: <https://data.london.gov.uk/download/macroeconomic-scenarios-for-london-s-economy-post-covid-19/4b44a3ba-bc7e-4cef-a443-fcd7636dbd98/Macro%20scenarios%20for%20London%20-%20Approach%20and%20long-term%20projections%20August%202021.pdf>

- 4.1. The Class E to residential PD rights could have significant adverse impacts on local amenity resulting from the loss of retail and employment areas designated in the Local Plan. If the proposed Article 4 Directions are not put in place, this could undermine elements of the Development Plan. The PD right has the potential to fundamentally alter the face of high streets and local economies across the country, with the likely loss of a significant amount of economic and retail floorspace. This would undermine the ability of local authorities to deliver on economic growth aspirations set out in the adopted Local Plan and other strategies.
- 4.2. The proposed Directions will restrict housing supply to a degree, but this is likely to be of limited impact in terms of restricting the amount of new residential units created, and hence the effect on the Council's ability to meet housing targets is considered to be limited. The Council currently do not have a five-year housing land supply but there are a number of allocated and non-allocated 'developable' sites which could come forward in the short to medium term to address the current undersupply. The potentially significant impacts on local amenity and wellbeing, identified in this report, would outweigh this potentially limited impact on housing supply, in terms of the deciding whether it is expedient to pursue Article 4 Directions in the areas proposed.
- 4.3. It is recognised that the amendments to Class E will allow many units in the proposed Article 4 Direction areas to change to another use within Class E. However, the resulting unit would remain in commercial use which will naturally be more in-keeping with the function of the areas, and will be more likely to address Local Plan objectives in terms of economic growth and provision of important services.
- 4.4. The quality of the housing created must also be considered alongside any impact on housing supply. The creation of new housing is not just a numbers game; it is essential that new housing is fit for purpose in order to ensure sustainable development, for example ensuring appropriate sustainable design measures to mitigate climate change. PD rights have become synonymous with poor quality, small homes. As Article 4 Directions would require planning permission to be secured for such developments in the future, this will ensure delivery of higher quality residential units and assist with the delivery of sustainable development in the borough. It is recognised that minimum space standards will be required for new housing developed through PD rights, but, important as these standards are, this will not guarantee the development of high quality housing; only full application of Development Plan policy can do this.
- 4.5. Prior approval permissions have often been used as a 'fallback' position, whereby developers secure prior approval permission and then subsequently apply for full planning permission for a more comprehensive development on the same site, noting that if this permission was not granted then there is an extant prior approval that can be delivered. Fallback positions can be material considerations in the determination of planning applications although the weight given would depend on whether the applicant has secured the prior approval permission; it is not enough to just highlight that prior approval permission could be sought, as there is no guarantee prior approval will be granted. Where prior approval permission has been granted, an applicant would also need to demonstrate that there is a realistic intention to implement the prior approval, for the fallback to be given weight. It is noted that development granted through the PD rights must be completed within three years of the date of grant of prior approval, which will factor into any consideration of the weight given to a fallback position.
- 4.6. The PPG notes that it is important for local planning authorities to monitor any Article 4 Directions regularly to make certain that the original reasons the Directions were made remain valid.
- 4.7. The areas proposed have been carefully considered and relate specifically to certain designations in the Local Plan. This balances the desire to protect important retail and economic uses with the need to ensure that the Directions are as focused as possible.

5. FINANCIAL IMPLICATIONS

- 5.1. This report recommends six non-immediate Article 4 Directions are confirmed to come into force on 27 July 2022. As a 12-month notice period to be given prior to the Directions coming into effect, compensation liability is removed.
- 5.2. Costs associated with confirming the Article 4 Directions will be met by Planning Policy and Strategy and the Council's legal services department.

6. LEGAL IMPLICATIONS

- 6.1. Article 4 (1) of the GPDO allows local Planning authorities to withdraw certain PD Rights. The procedure for putting in place an Article 4 Direction is set out in Schedule 3 of the GPDO. The Council's legal services department will be responsible for confirming the Directions, in line with the statutory requirements set out in the GPDO.
- 6.2. There is a requirement to give notice of confirmation to owners and occupiers of every part of land within the areas to which the Directions relate, unless the local planning authority considers that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable. Cumulatively, the proposed Directions encompass several thousand properties (which includes instances where there are numerous properties within a single building). This level of notification is considered to be impracticable, hence individual notice will not be given (which is consistent with the approach taken as part of the notification process when the Directions were first made). Notice will be given by local advertisement and site notice, as per the other requirements of the GPDO.
- 6.3. The GPDO requires notice of the proposed Directions to be given as soon as practicable after the Directions have been confirmed.

<p>Non-Applicable Sections:</p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf</p> <p>London Plan (adopted 2 March 2021), available from: https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf</p> <p>National Planning Policy Framework (July 2021) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf</p> <p>National Planning Practice Guidance - https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment</p> <p>The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)</p> <p>Development Control Committee report, 20 May 2021, PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR USE CLASS E TO RESIDENTIAL USE -</p>

	https://cds.bromley.gov.uk/documents/s50088962/PROPOSED%20NON-IMMEDIATE%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20USE%20CLASS%20E%20T.pdf
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