
Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: 26 July 2022

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

Title: ARTICLE 4 DIRECTION UPDATE

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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: All Wards

1. Reason for report

- 1.1 This report provides an update on various Article 4 Directions recently made or confirmed by the Council. The Department of Levelling Up, Housing and Communities (DLUHC) wrote to the Council in May 2022 to note that they had reviewed Bromley's Class MA and Class ZA Article 4 Directions in accordance with new national policy, and that they were not convinced that they comply with this new policy. As a result, DLUHC have invited the Council to reconsider the Directions to ensure that the Article 4 directions are proposed only where they would have wholly unacceptable adverse impacts and apply to the smallest geographic areas possible.
- 1.2 Officers have considered this request and prepared an updated methodology to reduce the areas while ensuring that the rationale behind the Directions – to protect vitally important commercial space – still applies. This report seeks endorsement of this methodology, which officers would then implement to determine the modified areas; and subsequently request that the Secretary of State (SoS) for DLUHC formally modifies the Article 4 Directions on this basis.

2. RECOMMENDATION(S)

- 2.1 **That Development Control Committee endorse the proposed methodology for modifying the Part 3, Class MA and Part 20, Class ZA Article 4 Directions; and note that the Director of Housing, Planning, Property and Regeneration, in consultation with the Portfolio Holder for Recreation, Renewal and Housing, will be asked to agree the final amended areas prior to submitting these areas to the Department of Levelling Up, Housing and Communities for consideration.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: No Impact
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Transformation Policy

1. Policy Status: Not Applicable
 2. Making Bromley Even Better Priority (delete as appropriate):
(3) For people to make their homes in Bromley and for business, enterprise and the third sector to prosper.
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Financial

1. Cost of proposal: Costs associated with Article 4 Directions will be met from the Planning Policy and Strategy budget.
 2. Ongoing costs: Not Applicable:
 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 2022/23
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Personnel

1. Number of staff (current and additional): 10 FTE
 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: Not Applicable: No Executive decision
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Procurement

1. Summary of Procurement Implications: N/A
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Property

1. Summary of Property Implications: N/A
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: N/A - no direct implications
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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? N/A
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

- 3.1 The Council has recently made or confirmed the following Article 4 Directions:
- Part 3, Class MA: the Council has made 46 Directions¹ to withdraw Part 3, Class MA Permitted Development (PD) rights in a number of designated retail, service, office and industrial areas set out in the Bromley Local Plan. Six of these Directions have been confirmed².
 - Part 20, Class ZA: the Council has made and confirmed 18 Directions³ to withdraw Part 20, Class ZA PD rights in a number of designated employment areas set out in the Bromley Local Plan.
- 3.2 Following the making/confirmation of these Directions, correspondence was received from DLUHC noting that they have reviewed the Directions in accordance with the new National Planning Policy Framework (NPPF) policy introduced in July 2021, and were not convinced that the Directions comply with this new policy.
- 3.3 DLUHC noted that the evidence provided in relevant committee reports was helpful in providing the strategic context, and that Local Plan designations such as town and district centres or Strategic Industrial Locations provide a useful basis to begin consideration of Directions against the policy. However, they considered that the proposed Directions have failed to take a sufficiently targeted approach, which is necessary to ensure Article 4 Directions meet the NPPF test that they should apply only to the smallest geographic area possible.
- 3.4 In applying the smallest geographical area possible, DLUHC noted their expectation that a more detailed, granular assessment is undertaken of each area, rather than considering all similar policy allocations collectively, so that it is focused on individual buildings or streets, although it could extend to small areas or sub-areas, such as the core of a primary shopping area, an areas of regeneration, a specialist cluster or an area of special character. They consider that policy allocation alone is not sufficient justification and a more granular assessment is necessary and the boundary refined, if appropriate, to ensure each Article 4 Direction applies to the smallest geographical area possible.
- 3.5 It was noted that the Article 4 Direction areas should also exclude buildings/land where the PD right would not apply, either because the buildings/land do not fall into the relevant use class or the conditions applied to the PD right, for example within conservation areas, means that the PD right would not apply.

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 'CONFIRMATION OF SIX ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR USE CLASS E TO RESIDENTIAL USE', Development Control Committee 9 March 2022, available from:

<https://cds.bromley.gov.uk/documents/s50096921/CONFIRMATION%20OF%20SIX%20ARTICLE%204%20DIRECTION%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20USE%20CLASS%20E%20TO%20R.pdf>

³ 'CONFIRMATION OF ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR OFFICE TO RESIDENTIAL DEMOLITION IN BROMLEY'S DESIGNATED OFFICE AND INDUSTRIAL AREAS', Development Control Committee 11 January 2022, available from:

<https://cds.bromley.gov.uk/documents/s50094441/CONFIRMATION%20OF%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20OFFICE%20TO%20RESIDENTIAL.pdf>

- 3.6 DLUHC also emphasised that local authorities should only propose Article 4 Directions where there is clear evidence that the PD right would have wholly unacceptable adverse impacts. For example, this might be to undermine a significant, specific commercial interest or commercial cluster, where the PD right would undermine an important catalyst for economic growth, such as a significant regeneration project, or where the loss of commercial activity would result in unacceptable harm to local vitality and the loss of key services. The degree to which there is likely to be a long-term adverse impact should be carefully considered alongside the scale of that impact on the wider area.
- 3.7 DLUHC have consequently invited the Council to reconsider the proposed Article 4 Directions. Additional evidence was requested to demonstrate that the Council have considered the application of the Article 4 Directions to individual streets or smaller areas; and taken consideration of the safeguards that apply to the Class MA and Class ZA PD rights, to ensure that the Article 4 Directions are proposed only where they would have wholly unacceptable adverse impacts and apply to the smallest geographic areas possible.
- 3.8 Officers met with DLUHC officers following the receipt of the correspondence, to clarify the comments and DLUHC's expectations. DLUHC officers, disappointingly, were unable to give details of specific concerns; they made a number of references to evidence not being granular enough but could not support this by way of reference to detailed concerns relating to any of the individual Direction areas. DLUHC instead just reverted back to generic quoting of the NPPF wording and noted that the Council should be satisfied that there is appropriate justification. DLUHC did not give a specific deadline for submission of additional information but indicated they would expect submission of further justification by early Autumn 2022.
- 3.9 In terms of the powers available to modify or cancel Directions, the SoS for DLUHC can modify or cancel Directions at any time; whereas the Council can only cancel Directions and remake them with amended boundaries, meaning that the clock would start again on the one-year notice period required to remove compensation liability. DLUHC officers did raise the possibility of the Directions being cancelled if additional evidence is not considered to justify the Directions in line with the NPPF policy. However, they also indicated that the SoS may be amenable to modifying the Directions if suitable amendments can be agreed.

Proposed methodology to amend Article 4 Direction areas

- 3.10 Taking into account the importance of protecting key economic areas and the comments made by DLUHC, officers have devised a methodology to modify the Article 4 Direction areas previously agreed by the Council. The methodology seeks to address concerns raised by DLUHC, in terms of whether the areas are the smallest geographical possible, and only retaining areas where the Direction is necessary to avoid wholly unacceptable adverse impacts.
- 3.11 For both the Class MA and Class ZA Directions, the first stage of the methodology would be the removal of roads, access around buildings, public realm, open spaces, etc. This is likely to reduce the areas significantly, although it is noted that PD rights would not be applicable in these areas anyway. Small scale commercial units situated in open spaces and parks will be removed from the direction areas, as it is considered that these small-scale uses are unlikely to utilise PD rights.
- 3.12 The tables below set out the specific methodologies for the Class MA and Class ZA Direction modifications, based on consideration of criteria in the Town and Country Planning (General

Permitted Development) (England) Order 2015 (as amended) (“the GPDO”). It is important to highlight upfront that much of the criteria in the GPDO relies on a subjective assessment, which makes it difficult to determine what level of protection would apply in future as it would be dependent on case-by-case information submitted at the time. Therefore, officers have exercised caution in relying too heavily on these subjective criteria. The tables set out how the individual criterions have been considered.

- 3.13 As a general point, officers fundamentally disagree with DLUHC on the relevance of Local Plan designations in determining Article 4 Direction areas. DLUHC consider them to merely be a starting point for determining Directions, but if this was the case then it would fatally undermine Local Plans across the country, and indeed the entire plan-led system. A Local Plan is a document underpinned by comprehensive evidence which has been subject to rigorous independent examination. It sets out local policies on a range of topics, reflecting the priorities of the Council. It is an end point rather than a starting point, and this view has informed the proposed methodology and consideration of wholly unacceptable adverse impacts, i.e. the PD rights are considered to have a wholly unacceptable adverse impact on various Local Plan designations, hence it is considered there is sufficient evidence to justify protection of these areas.
- 3.14 It is also important to note the lack of clarity given by DLUHC in terms of how granular evidence should be. Officers sought specific details about DLUHC’s concerns, but they were unable to provide this information. Therefore, it is considered that the methodology proposed balances granularity with mitigating concerns about wholly unacceptable impacts.
- 3.15 For both sets of Directions, any building with an extant planning permission or Prior Approval to change use away from a commercial use relevant for the respective PD rights will be removed from the revised areas. It is considered that an extant permission suggests a reasonable prospect that the uses will be lost anyway, hence the impact of the PD right will be negligible.
- 3.16 For the Part 3, Class MA areas, large scale shopping centres such as the Glades and the Walnuts will be removed from the revised designations. Although PD rights technically apply to these areas, it is considered that there is very little chance of prior approval for residential conversion coming forward in these locations, given the layout of the units and the fact that their location within a shopping centre would likely make residential use impractical.

Part 3, Class MA methodology

GPDO requirement in order to utilise PD rights	Comment
Building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval	Three months is a very short period of time to demonstrate that a building cannot be let; there may various reasons why a building may be vacant for such a period, such as normal market churn. Therefore, we do not consider it appropriate to remove buildings that have been vacant for such a short period. However, buildings which have clearly been vacant for a longer period (one year +) will be removed from the Directions.

GPDO requirement in order to utilise PD rights	Comment
	Data from Estates Gazette, Rightmove and Zoopla will be used to determine any vacancies. Data suggests that Bromley has a low vacancy rate across these designated areas.
Building falls within Use Class E or former Use Classes A1-A3, B1, D1a (medical/health), D1b (day nursery), D2e (assembly and leisure), for a continuous period of at least 2 years prior to the date of the application for prior approval	<p>Any building that is currently not within these Use Classes, or that has clearly not been in these Use Classes for the prescribed continuous period, will be excluded. Identification of Use Classes will be informed by Experian GOAD data as a starting point, supplemented by internal survey data and Valuation Office data. Google Street View data and site survey information will be used where available.</p> <p>This criterion operates on a rolling basis, with no cut-off date as is present for other PD rights. Therefore, it would not be appropriate to exclude Use Class E units on the basis that they currently (at the time of the assessment) have not been continuously occupied for two years. Excluding such units would mean that they may then become eligible to use PD rights in the near future, which individually or cumulatively could have wholly unacceptable impacts on retail and employment provision in the borough.</p>
Cumulative floor space of the existing building changing use under Class MA 1,500 square metres or less.	Class MA allows up to 1,500 sqm of floorspace to be converted, with no maximum size. Therefore, any building may be partially converted under Class MA. There are prior approval considerations relating to the impacts of noise from commercial premises on the intended occupiers of the development, but this could not be adequately assessed as part of this assessment. Therefore, we do not propose excluding buildings purely on the basis of floorspace quantum.
Building is not statutorily listed.	Listed Buildings will be removed from the areas.
Prior approval that applies where a building is in a conservation area and the development involves the change of use of all or part of the ground floor; in such cases, the impact of that change of use on the character or sustainability of the conservation area should be assessed.	Assessment against this prior approval category would be entirely dependent on the details of each specific case. Moreover, it relates to scheme design not land use, therefore it could not be assumed that the criterion would provide a basis for protecting specific uses if locations within conservation areas were removed from the direction areas.

GPDO requirement in order to utilise PD rights	Comment
Prior approval considering the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses	Several of the proposed directions cover industrial areas. Assessment against this prior approval category would be entirely dependent on the details of each specific case, such as the siting of the proposed residential uses and what (if any) design measures are proposed to mitigate impacts. It could not be assumed that the criterion would provide a basis for protecting loss of employment uses in these areas, if the areas were removed from the directions.

Part 20, Class ZA methodology

GPDO requirement in order to utilise PD rights	Comment
Building is single detached building in former Use Class B1a, B1b or B1c on 12 March 2020.	Using information from internal site monitoring, planning history and Valuation Office data, all buildings that are in non-B1/B1b/B1c use will be removed from the revised areas.
Building not in a conservation area	Any part of the areas within a conservation area will be removed.
Building is not statutorily listed.	Listed Buildings will be removed from the areas.
Building was constructed on or before 31 December 1989;	While it can sometimes be difficult to determine the age of a building, planning history data can be useful and will be used to inform this assessment, alongside any other relevant sources of information. In most cases, buildings within the Direction areas are likely to be older than the December 1989 constraint, but where there is clear information that a building was constructed from 1 January 1990 onwards, these will be removed.
Building footprint is 1,000sqm or less	Valuation Office rateable floorspace data and information from the Council's GIS system will be used to determine any buildings with a footprint greater than 1,000sqm; these will be removed from the direction areas. The GPDO does not specify whether the floorspace is measured on a GIA or GEA basis, therefore we will assume GEA as this is greater.
The height of the highest part of the roof of the old building above ground level (not including plant, radio masts and antennae) is no greater than 18 metres at any point.	The London Buildings Stock Model ⁴ is a useful mapping resource produced by the GLA, which gives an indication of building heights. This resource will be used to give an initial indication of any buildings over 18m and cross-checked with Google Street View or site survey data

⁴ Available here: <https://maps.london.gov.uk/lbsm-map/public.html>

GPDO requirement in order to utilise PD rights	Comment
	where available. Any buildings over 18m in height will be removed from the direction areas.
Building has been vacant for a continuous period of at least 6 months immediately prior to the date of the application for prior approval	<p>Six months is not a sufficient period of time to demonstrate that a building cannot be let; there may various reasons why a building may be vacant for such a period, such as normal market churn. Therefore, we do not consider it appropriate to remove buildings that have been vacant for such a short period. However, buildings which have clearly been vacant for a longer period (one year +) will be removed from the Directions.</p> <p>Data from Estates Gazette, Rightmove and Zoopla will be used to determine any vacancies. Data suggests that Bromley has a low vacancy rate across these designated sites.</p>
Prior approval considering the impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses;	Assessment against these prior approval categories would be entirely dependent on the details of each specific case, such as the siting of the proposed residential uses and what (if any) design measures are proposed to mitigate impacts. It could not be assumed that the criterion would provide a basis for protecting loss of employment uses in these areas, if the areas were removed from the directions.
Prior approval considering the impact on business and new residents of the development's introduction of, or increase in, residential use in the area in which the development is to take place;	
Prior approval considering the impact of the development on heritage and archaeology.	This prior approval category is very broad and does not provide a strong basis for removing buildings from the direction area, even where they include or are adjacent to a heritage asset or are located in an archaeological area. Assessment would be entirely dependent on the details of each specific case.

Next steps

3.17 Officers will apply the methodology outlined above to the existing Class MA and Class ZA directions. A narrative will accompany the proposed modifications, to set out what changes have been made and why, and to emphasise the importance of the areas that remain. This will also include detailed maps of the amended areas. Following this exercise, officers will finalise the amended areas in discussion with the Director of Housing, Planning, Property and Regeneration and the Portfolio Holder for Recreation, Renewal and Housing, before submitting proposed modifications to DLUHC. As noted above, DLUHC did not specify a deadline for submission of further information, but officers will aim to complete this work and submit proposed modifications by early Autumn 2022.

4. POLICY IMPLICATIONS

- 4.1 The committee reports relating to the making/confirmation of the Class MA and Class ZA directions⁵ set out a range of policy implications, acknowledging that the Directions would impact on housing supply but also that they would undermine the ability of the LPA to deliver on economic growth aspirations set out in the adopted Local Plan and other strategies. The areas proposed were carefully considered, balancing the desire to protect important retail and economic uses with the need to ensure that the Directions are as focused as possible.
- 4.2 Reducing the areas means that the impact on housing supply could be lessened, but as noted in the main body of this report, there is concern that the PD rights will have a wholly unacceptable impact on economic and retail areas in the Borough, hence this is of paramount consideration when determining potential modifications.

5. FINANCIAL IMPLICATIONS

- 5.1 Costs associated with work to modify the Article 4 Directions will be met from the Planning Policy and Strategy budget.

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 GPDO also sets out powers which allow the SoS to cancel or modify a Direction at any time before or after its confirmation.
- 6.2 The criteria for justifying Article 4 Directions is set out in national planning policy (the NPPF and PPG) rather than legislation, i.e. in the GPDO.

<p>Non-Applicable Sections:</p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL/PROCUREMENT/PROPERTY IMPLICATIONS</p> <p>CARBON REDUCTION AND SOCIAL VALUE</p> <p>CUSTOMER IMPACT</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>Bromley Local Plan 2019, available from: https://www.bromley.gov.uk/downloads/file/51/bromley-local-plan</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), available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf</p> <p>Planning Practice Guidance, When is permission required? available from: https://www.gov.uk/guidance/when-is-permission-required</p> <p>The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)</p> <p>'PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE</p>

⁵ Op cit, see footnotes 1, 2 and 3.

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>

'CONFIRMATION OF SIX ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR USE CLASS E TO RESIDENTIAL USE', Development Control Committee 9 March 2022, available from:
<https://cds.bromley.gov.uk/documents/s50096921/CONFIRMATION%20OF%20SIX%20ARTICLE%204%20DIRECTIONS%20TO%20REMOVE%20PERMITTED%20DEVELOPMENT%20RIGHTS%20FOR%20USE%20CLASS%20E%20TO%20R.pdf>

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