



**Cabinet**  
14 October 2019

**Report from the Strategic Director  
of Regeneration and Environment**

**Article 4 Directions to Remove Permitted Development Rights for Changes of Use from Office and Light Industrial to Residential and also from Residential to Houses in Multiple Occupation**

<b>Wards Affected:</b>	All, excluding parts of Harlesden, Kensal Green, Stonebridge and Tokyngton where Old Oak and Park Royal Development Corporation is the Local Planning Authority
<b>Key Decision:</b>	Yes
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	Four Appendix 1 Boundaries of Existing Article 4 Directions Appendix 2 Area of LB Brent as Planning Authority Appendix 3 HMOs Locations in Brent Appendix 4 HMOs count in Brent by ward
<b>Background Papers:</b>	None
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## 1.0 Purpose of the Report

- 1.1 The purpose of the report is to seek Cabinet approval to proceed with non-immediate Article 4 Directions. Once set will seek to remove permitted development rights for change of use from offices and light industrial to residential. This will apply to areas not already covered by Article 4s the Council previously introduced, which became effective on 10<sup>th</sup> August 2018. The other will also seek to remove the permitted development rights between residential dwellings and houses in multiple occupation. This will apply to the whole borough where the Council is local planning authority.

## **2.0 Recommendations**

- 2.1 Cabinet approves the issuing of a non-immediate Article 4 Direction removing permitted development rights for change of use from Office (B1(a)) and Light Industrial (B1(c)) to residential (C3) for the remainder of the borough not covered by existing Article 4 Directions to remove these permitted development rights.
- 2.2 Cabinet approves the issuing of a non-immediate Article 4 Direction removing permitted development rights for change of use from Residential (C3) to Houses in Multiple Occupation (C4).
- 2.3 Cabinet delegate authority to the Strategic Director for Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning to consider consultation responses and the decision on whether to confirm the Article 4 Directions.

## **3.0 Detail**

### **Background**

- 3.1 Not all development needs planning permission. Government more recently has sought to reduce occasions when planning permission is required. Historically this generally had been for changes of use and minor residential development. Different uses are categorised according to the Use Classes Order 1987 (as amended). Since 2010 there has been a more substantial amount of change to permitted development rights. Some potentially very significant developments no longer require planning permission. Government's intention currently appears to be for further changes to widen the scope of permitted development.
- 3.2 Since 6<sup>th</sup> April 2010 properties where between three and six people are living together in two or more households sharing basic amenities such as the kitchen and the bathroom have been categorised as use class C4. Since this date a change of use between residential dwelling houses use class C3 (a dwelling occupied by people living together as a single household) and C4 has been permitted development. Vice-versa is also permitted development.
- 3.3 In 2013 Government started to introduce increased flexibility in relation to changes of use to residential. One of these changes was the introduction of permitted development rights for office (use class B1(a)) as identified in the Use Classes Order 1987 (as amended) to C3. This was initially for a period of 3 years. Through amendments made in 2016 however, this is now permanent.
- 3.4 In 2016 light industrial (B1(c)) to residential dwelling houses (C3) was introduced to commence from 1<sup>st</sup> October 2017 also for a temporary period of 3 years. Government has not yet consulted on whether this temporary period will be extended.
- 3.5 The council as local planning authority does not need to be informed of the change of use between C3 and C4 and vice-versa. A prior approval process is required for office and light industrial to residential and is slightly different for each. For offices, it does not deal with the principle of the development but is

limited to a few technical requirements, which most proposals can meet. This addresses:

- a) transport and highways impacts of the development;
- b) contamination risks on the site;
- c) flooding risks on the site; and
- d) the impacts of noise from commercial premises on the intended occupiers of the development.

- 3.6 For B1(c) the tests do pay greater attention to wider potential economic impacts. In addition to the above, prior approval is required if the change of use is likely to have an adverse impact on the sustainability of a wider employment area/industrial estate. The Council can refuse a prior approval where it considers the change of use would otherwise have an adverse impact on the functioning of wider strategic business locations. For individual properties not in employment/ industrial areas, refusal invariably is not possible in relation to this test.
- 3.7 More recently the lack of control on the quality of dwellings being created through prior approvals has been subject to extensive lobbying to Government. The former Secretary of State James Brokenshire MP stated his intention to initiate a review of office to residential. This was before a recent legal ruling highlighting a council's inability to refuse a prior approval of light industrial to residential where no windows would be provided for 5 of the new dwellings created. It is not clear if the review will include light industrial to residential and when these findings will be published.

#### **Article 4 Directions**

- 3.8 Local Planning Authorities have the ability through Article 4 (1) of the General Permitted Development Order (GPDO) 2015 to remove permitted development rights. This is where they can justify that their inability to otherwise control development would have a significant impact on amenity, or prejudice their proper planning of an area. As a backstop 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. They can amend or remove an Article 4 direction proposed by a Local Planning Authority. Where the Secretary of State has intervened previously it has generally been where a local planning authority was proposing a blanket approach to coverage of their area.
- 3.9 Section 107 of the Town and Country Planning Act 1990 provides for property owners to claim compensation. This includes in certain circumstances where ordinarily planning permission is not required but then is subsequently refused, 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.
- 3.10 Regulations set out limitations placed on Local Planning Authorities on changes of use permitted by the GPDO. Compensation is not payable on any subsequent planning application decision after a period of 1 year following initial notification of an intention to adopt an Article 4 direction. This means that in order to avoid claims for compensation the majority of Article 4 directions issued by local planning authorities are non-immediate.

- 3.11 Regulations set out the extent to which a Local Planning Authority has to consult on an Article 4 Direction. After it decides on its intention to adopt an Article 4 Direction, the Council has to consult for a minimum of 28 days with those likely to be affected and statutory consultees. In relation to the Article 4 directions being considered, public notices and some site notices across the borough, together with letters to those on the Local Plan consultation list will be used. Given the number of properties in the areas, it is not considered proportionate to serve an individual notice on each owner and occupier. Once it has considered the consultation responses the Council has a period of up to 2 years to confirm the Direction after its initial notification of intention to adopt.
- 3.12 In July 2017 Cabinet approved the implementation of two non-immediate Article 4 directions. These were to remove permitted development rights for office (B1(a)) in the Wembley Growth Area and office (B1(a)), light industrial (B1(c)) and storage and distribution warehousing (B8) in the Alperton Growth Area, and designated Strategic Industrial Locations and Locally Significant Industrial Sites. The boundaries of these Article 4 Directions are shown in Appendix 1. The significant loss of employment floorspace at that time was identified as prejudicing the proper planning of the borough with regards to its economic base. These Article 4 directions were confirmed and became effective from 11<sup>th</sup> August 2018.

**Consideration of an Article 4 for parts of the borough not currently subject to an Article 4 to remove change of use of office (B1(a)) and light industrial (B1(c)) to residential permitted development rights.**

- 3.13 The decision to limit Article 4 directions to the areas previously identified was essentially related to reducing the risk associated with the Secretary of State's potential response of not supporting a blanket borough wide designation. In the blanket scenario Government intervention could have resulted in the Article 4s not progressing in their entirety. Alternatively, they could have been significantly delayed whilst the boundaries were amended and re-consultation plus other processes associated with confirmation that would have otherwise been required.
- 3.14 As such the areas chosen were those where protection of the employment floorspace was prioritised in planning policy. The incremental incursion of residential development into what are essentially industrial estates was not only leading to loss of floorspace, inconsistent with London Plan and Local Plan policy, but also potentially impacting on the wider future performance of those locations to allow for businesses to meet their operational needs. In the case of Wembley Growth Area office, it was reducing the office stock in town centres, undermining vitality and viability, whilst pushing out existing businesses from premises that in some cases were fully let.
- 3.15 The essentially unfettered loss of office, light industrial and warehousing outside priority Growth Areas and designated protected industrial areas was undoubtedly impacting upon the economic capacity of the borough and had displaced active businesses, when the previous Article 4s were being considered by Cabinet. Nevertheless, at that time the Brent Local Plan allowed for a loss of non-designated employment land of approximately 11.5 hectares in the period to 2029. In 2017 there was still some capacity left within the 11.5 hectares for additional losses to occur.

- 3.16 Since the previous Cabinet decision to proceed with the Article 4 Directions for the selected areas there have been two significant changes. The first is that all the available capacity for release of employment land identified in Local Plan policy has now been passed. Any losses are now inconsistent with Local Plan aims to ensure the effective economic performance of the borough in relation to employment land supply. Policy DMP14 requires planning applications for non-employment uses associated on existing non-designated employment premises/ sites to be justified, seeking the maximum replacement employment possible on site including evidence of viability assessment. This requirement is by-passed through permitted development rights.
- 3.17 The second is that the draft London Plan now identifies Brent as a 'provide capacity' borough. This seeks the provision of a significant amount of additional business floorspace (according to the GLA equivalent to 43 hectares) in the period to 2041. The latest West London Employment Land Study 2019 identifies that in Brent 32% of the borough's business floorspace is in non-designated locations. This is a significant proportion that currently is subject to potential unfettered change of use through permitted development rights.
- 3.18 Since the introduction of the permitted development rights, for the remainder of the borough not subject to Article 4 Directions, a total of 54,708 sq.m. of business floorspace has had prior approval to turn into residential floorspace. This has increased significantly in the last 3 years, with 45,956 sq.m. still either under construction or extant. The likelihood of achieving an additional 43 hectares as identified by the GLA will be very challenging, particularly if the council can only effect such change in designated employment areas. Any further loss outside designated areas due to permitted development will make the achievement of additional floorspace, or possibly even maintaining current levels across the borough, much more difficult to achieve. As such, there is the reasonable prospect that the existing remaining permitted development rights will prejudice the proper planning of the borough to meet Brent's and London's economic needs.

### **Conclusion**

- 3.19 It is recommended that Cabinet approve the extension of the Article 4 to remove change of use of office (B1(a)) and light industrial (B1(c)) to residential (C3) permitted development rights for the remainder of the borough where the Council is Local Planning Authority as shown in Appendix 2. This will be through a non-immediate Article 4. This means if confirmed it will come into effect a year after initial making of the order occurs. Whilst the rights for B1(c) are currently temporary until the 30<sup>th</sup> September 2020, logistically it makes sense for the Council to make the order cover both B1(a) and B1(c) as there will be almost no additional work or cost involved if done simultaneously. The order can be confirmed and if the temporary period for B1(c) is not extended then obviously it will have no impact. This will not impact on the existing Article 4s shown in Appendix 1.
- 3.20 The alternative is to wait until Government identifies its intentions. If this extends the temporary period, or makes it permanent then at this time an Article 4 could be taken forward. The disadvantage of this approach is that it will require additional resource (staff, printing, transportation and advertising costs) as a separate process will have to be undertaken. It will also mean that there

will be a large delay (almost a year) compared to the B1(a) element in the Article 4 direction coming into effect. This is as, to reduce the risk of compensation payment, it would still be non-immediate.

### **Consideration of an Article 4 to remove change of use of residential (C3) to houses in multiple occupation permitted development rights across the borough.**

- 3.21 The number of private rented dwellings in the Borough is estimated to be 44,916. Of these Houses in Multiple Occupation (HMOs) comprise approximately 16,984 properties. The remaining 27,932 properties are rented out as dwellings occupied by one household. Both forms of private rented homes are now estimated to account for 37% of the Borough's housing stock. The number of private sector rented dwellings grew by 72% between the censuses. Such rises have essentially been at the expense of owner occupation which is becoming increasingly unaffordable to many.

#### **HMOs serving housing need**

- 3.22 Well maintained and managed HMOs undeniably can provide an important component of meeting housing need. This is predominantly for single people or couples. Indications are that needs for such accommodation will continue to rise, although probably at a much lower rate exhibited between the censuses. A factor that could increase needs is that Brent's younger population profile is impacted upon by housing benefit for under 35s being limited to that of a single room in a rented house. In addition, limitations in benefits for over 35s single person households against continuing increases in rent are likely to mean self-contained dwellings will become more unaffordable for many.
- 3.23 Against this background, the Homelessness Reduction Act 2017 additionally placed an increased statutory duty on the Council to address the housing needs of residents who are or are likely to have the potential to become homeless. Given their affordability and prevalence, HMOs do and will provide a valuable source of accommodation to allow the Council to meet its existing statutory homelessness duties. Lack of supply will necessitate subsidising tenants for larger properties, or housing them in more temporary accommodation until a satisfactory solution can be found.

#### **HMOs potential adverse impacts**

- 3.24 Notwithstanding their importance in meeting housing needs, poor quality HMOs or an over-concentration of them have caused concern to local residents and Members and can have significant negative impacts. These include: transient populations; anti-social behaviour; noise and nuisance; and unmaintained properties and gardens from poor management leading to unsightly premises. This can impact the lives of their sometimes more vulnerable occupants and their surrounding neighbourhoods. Landlords due to incomes achieved are often better placed to acquire properties in terms of speed of transaction and price paid, thus through displacement undermine the ability of larger family households to meet their needs.
- 3.25 There are however mechanisms across a range of Council functions, including housing licensing, planning policy, planning enforcement, community safety and environmental health, along with actions of partners such as the police that

allow controls to reduce the prospect of many of these potentially negative aspects.

### **Housing licensing powers**

- 3.26 Nationally, stronger licensing powers were introduced in 2018. Within the borough HMOs are now required to be licensed. The licence covers a number of matters including: number of occupants related to amenity and space standards, minimum bedroom size standards, terms of residents' occupation, prevention and dealing with resident anti-social behaviour, property maintenance including external appearance/ areas, dealing with waste storage, repairs, pest controls and appropriate compliance with licence requirements. Councils are able to use national minimum standards or apply even tougher requirements to address specific local needs. Not having a licence can run the risk of prosecution with an unlimited fine, with the landlord having to pay tenants up to 12 months' rent. Non-compliance with granted licence conditions can result in a criminal conviction and a possible unlimited fine. The additional licensing scheme currently comes to an end on 31<sup>st</sup> December 2019. Its recommended renewal is subject to another Cabinet decision on this agenda.
- 3.27 Take up of additional licensing is however relatively low for a number of reasons. Principally it is likely to be lack of awareness of the need to have a licence both from tenants and landlords. In a minority of cases it is probably likely that landlords although aware of the need for licensing are seeking to evade the process. Across the borough 3241 HMOs are licensed (Jan 19) which is around 20% of the estimated number. This has increased by over 3000 since January 2015. The spatial distribution of individual licensed HMOs can be seen in Appendix 3 and the number in each ward in Appendix 4. In the eight wards where the Council has more recently introduced selective licensing, additional licensing of HMOs has increased. This is as a result of tenants and landlords becoming aware that any private rented property in one of these wards require a selective licence and as a result these properties being identified as HMOs. 1886 or 58% of the licensed HMOs are in the 8 selective licensing wards.

### **Planning enforcement powers**

- 3.28 A considerable number of planning enforcement complaints, and therefore of the team's workload, relate to HMOs. As planning permission is not required for a small HMO, the team's main focus is whether a change of use has taken place from a dwelling house to a HMO (planning permission not required) or to multiple self-contained flats (planning permission required). The latter are mainly carried out in the landlord's view, under permitted development rights thinking they are HMOs. In reality these function as self-contained dwellings and therefore should have required planning permission and comply with normal planning policies including space standards. An Article 4 Direction which would require planning permission would remove any uncertainty that planning permission is required and ensure that planning space standards are met.
- 3.29 In relation to a HMO Article 4 Direction there is a risk that one covering a whole borough may be viewed unfavourably by the Secretary of State. Having said this, the risk is probably low as the Secretary of State appears less willing to intervene in relation to HMO Article 4 Directions, than others. Barnet confirmed a borough wide one in 2016, Croydon has made a borough wide one in January

2019. 15 of 33 London Boroughs now have full or partial Article 4 Directions requiring planning permission for HMOs.

- 3.30 Should the Council seek to adopt an Article 4 Direction, planning applications for the change of use would need to be determined in accordance with planning policy. Taking account of the potential for an Article 4 to come into effect, the current draft Local Plan includes a policy that places a clear empirical measure as to what it regards as over-concentration (greater than 4 out of 11 properties – equivalent to 37%). If it gets through the Examination process and is adopted by the Council, this will provide a strong policy limit to justify refusal should an application breach the limit.

### **What are the advantages and disadvantages of undertaking the Article 4 Direction for Change of Use from Residential to HMO?**

- 3.31 An Article 4 Direction is just one of many tools at the Council's disposal to address HMO-related issues, in addition to housing licensing, planning enforcement, community safety and environmental health. Addressing the poorer aspects of HMOs requires a joined up approach from a range of services in the Council and potentially also external organisations, such as the police. Article 4 Directions can have a role in supporting improvements for tenants and neighbourhoods, albeit perhaps the controls might be more limited than might be perceived by the general public. Below sets out the pros and cons for taking forward an Article 4 Direction restricting the change of use from dwelling houses to HMOs.

#### Reasons for making an Article 4 Direction

- a) In the absence of an Article 4 Direction, there is no planning control over standards. The quality of some of the conversions, whether lawful or not, is extremely low. Some areas clearly have significant concentrations, or the potential for this to occur against a background of increased demand. Planning applications would allow assessment against relevant National and Local policies addressing issues such as overconcentration, control of parking, provision of sufficient space for waste, etc. Licensing standards do apply, however, regardless of whether planning permission is needed.
- b) HMOs reduce the stock of family homes without planning's ability to consider the impact on mixed and balanced communities. Brent's Strategic Housing Market Assessment identifies a significant need for 3 bed or larger properties (65% of new homes needed). New draft London Plan policies seek to preclude the Council from setting a borough minimum family housing (3+ bed) target. Current policy of a 25% requirement ensures that some family homes are built, whilst due to profitability developers in the majority of cases prefer to build nearly all 1 and 2 bedroom properties. With the policy in place, currently only around 24% of new homes are 3+ bed (many homes are delivered on sites of less than 10 dwellings where the policy does not apply) there will be a significant shortfall between supply and needs for Brent residents.
- c) The Planning Enforcement Team spends a lot of resources investigating and enforcing against conversions. It is anticipated that an Article 4 Direction would reduce the number of enforcement investigations for flat type HMO conversions.
- d) Anecdotal evidence from other London Boroughs with Article 4 Directions is that it has had an impact on reducing the number of conversions (lawful and unauthorised).



- e) Communities that benefit from Article 4s are very supportive of their implementation.
- f) To date no HMO Article 4 (some up to 9 years old) has been revoked by a local authority that has implemented it.
- g) On the basis of evidence of implemented Article 4s the Welsh Assembly decided to require planning permission for all HMO development.
- h) Notwithstanding the HMO licensing system, there are still many low quality conversions coming forward.
- i) Planning enforcement notices are a significant deterrent to poor landlords, as they are registered on local searches thus potentially affecting landlord's ability to raise finance.
- j) The need for planning permission can trigger an alert for HMO licensing.

Reasons for not making an Article 4 Direction:

- a) This type of accommodation meets a need in the market for low cost private rented sector housing, additional 'red tape' of requiring planning permission may put off investment in new stock thereby reducing the rate of increase in supply to meet needs.
- b) 'False' self-contained HMO conversion of self-contained rooms has mostly ceased – as the rules/regulations around Landlord and Tenant Act and Housing Benefit has meant it is far less attractive to landlords
- c) HMO Licensing (needed for more than 3 occupants anywhere in Brent) can consider room sizes and standards and its impacts, reducing rogue landlords likely to pursue poor HMO solutions. Licensing can also address issues such as anti-social behaviour, noise and nuisance, and unmaintained properties and gardens from poor management leading to unsightly premises.
- d) It may impact on the Council's ability to house some of the people on the waiting list or those in temporary accommodation, as a significant proportion are placed in these types of properties, potentially increasing costs where the Council has had success in reducing very expensive temporary accommodation budgets.
- e) An Article 4 Direction will generate planning applications which will require resources to determine. Many landlords may also seek to clarify that their existing HMO premises which benefitted from permitted development rights are lawful, through a Lawful Development Certificate. Administration of both processes will in most cases cost more than the fee received. It is difficult to give a precise estimate of the number of planning applications, but based on previous trends of estimated additional HMOs operating per year, around 240 per year seems reasonable. There could initially be a significant number of existing licensed HMOs seeking Lawful Development Certificates, as well as on-going ones associated with new HMO license applications.
- f) In terms of an assessment of a planning application, until licensed premises are in the majority, it could be hard to identify what is genuinely a HMO in adjacent properties when using a threshold figure set out in the draft Local Plan policy;
- g) Article 4 Direction would not apply retrospectively to existing properties which have already converted to a HMO. The size of the private rented sector and in particular the number of HMOs in Brent already will mean that an Article 4 Direction will only have a limited effect. Those already converted will still need significant levels of resources to undertake enforcement by both Housing and Planning (if less than 4 years old and potentially regarded as an unauthorised self-contained dwellings' conversion) on that current stock.
- h) Where planning permission would be refused, Planning Inspectors will consider the threshold policy but will also focus on potential harm in comparison to a dwelling occupied by an extended family and as such significant harm of an individual HMO is difficult to quantify/ prove.

- i) The majority of HMOs are still unlicensed, despite the threat of substantial penalties for non-compliance, so many unscrupulous landlords may not be more willing to comply with the regulatory requirement to obtain planning permission either, regardless of an Article 4 Direction.
- j) An area-specific Article 4 Direction could have the unintended consequence of encouraging HMOs outside of the restricted area, leading to further concentrations more widely across the Borough.
- k) A non-immediate Article 4 Direction could have the unintended consequence of encouraging a rush of HMOs in the 1-year grace period before it takes effect.

### **Conclusion**

- 3.32 On balance it is considered that an Article 4 direction should be pursued. The current lack of control for change of use from residential to HMOs is and will continue to have significant impact on amenity of neighbourhoods and individual neighbouring residents. This is particularly the case where it results in poorer quality accommodation that does not adequately address its occupants' needs or results in an over-concentration of this type of accommodation. It is also likely to prejudice the proper planning of Brent in respect of providing mixed and balanced communities and retaining/ providing sufficient numbers of homes for family needs. The market is not substantively addressing family needs in new developments.
- 3.33 Clearly HMOs provide for a significant variety of housing needs. As such in moving forward the emerging policy in the Local Plan strikes a balance which still allows for new HMOs, whilst limiting their concentration to just under 40% of any area. This will better protect the amenity of existing neighbourhoods. The draft Brent policy also seeks to ensure that HMOs are guided towards places that have better access to public transport and local facilities, as well as ensuring the standard of accommodation is acceptable with suitable management practices in place.
- 3.34 The HMO Licensing proposal also on this Cabinet agenda if approved will also apply to the entire borough. HMO powers under the Housing Act are different to those found under the Town and Country Planning Act. For example, licensing powers would not be able to address potential over-concentration of HMOs, whilst planning policy can, and planning would not deal with ensuring the proper management, use and occupation of the house concerned, and its condition and contents, whilst licensing can. The HMO Licensing and HMO Article 4 Direction proposals will assist in a complementary and co-ordinated approach between the Housing and Planning functions in regulating HMOs in the borough, for which clear policies will be developed.
- 3.35 As such it is recommended that Cabinet approve taking forward a borough wide non-immediate Article 4 direction to remove the permitted development rights of the change of use of residential (C3) to houses in multiple occupation (C4). The area that this will cover is shown in Appendix 2.

### **Change of Use from HMO (C4) to residential (C3)**

- 3.36 Change of use from HMO (C4) to residential (C3) is also permitted development. Whilst considering the recommendation to take forward an Article 4 for removing C3 to C4 permitted development rights, it is prudent to also review the issue of C4 to C3.

- 3.37 As identified HMOs meet a housing need. The large scale loss of HMOs has the potential to undermine the ability of housing needs to be met in the borough. The Local Plan has a policy that seeks to protect against the loss of this type of housing where the need exists for the accommodation. In some inner London boroughs the value of family homes (usually for the very wealthy) is at such a premium that it exceeds the values of HMO accommodation and can lead to its displacement. Evidence indicates that this is not the case within Brent and there is no significant threat to C4 accommodation supply from the permitted development right currently. If this changes then the situation can be reviewed. Nevertheless, currently it is considered that there is no justification for removing this permitted development right.

#### **Confirmation of the Article 4 Directions.**

- 3.38 The process of adopting a non-immediate Article 4 Direction is set out in paragraph 3.11. To reduce Cabinet's workload it is proposed that Cabinet delegate consideration of the consultation responses and the decision on whether to confirm the Article 4 directions to the Director of Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning.

#### **4.0 Financial Implications**

- 4.1 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 from 17<sup>th</sup> January 2018 allowed for the charging of fees for planning application resulting from permitted development rights being removed through an Article 4 direction. For B1(a) and B1(c) to residential the majority of planning applications will generate fees that cover the cost of their processing. For changes of use of C3 to C4 the fee is currently unlikely to cover the cost of determining the planning application. The impact of this however needs to be weighed up against the cost of planning enforcement investigating complaints raised in relation to changes of use from residential to HMOs. It is considered that the impact on the planning service as a whole could be cost-neutral.
- 4.2 The cost of the implementation of the Article 4 directions will be met from existing planning budgets. Costs will be relatively low, limited to notices in the local press and production of site notices which will have to be displayed in the area affected, plus some minor printing for consultation materials to be placed in libraries.

#### **5.0 Legal Implications**

- 5.1 The process for Article 4 Directions is set out in Schedule 3 of the General Permitted Development Order 2015. The process for taking forward the Article 4 which will be consistent with the regulations.

#### **6.0 Equality Implications**

- 6.1 The Equality Act 2010 introduced a new public sector equality duty under section 149. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and

maternity, race, religion or belief, sex and sexual orientation. The Council must, in exercising its functions, have “due regard” to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  2. Advance equality of opportunity between people who share a protected characteristic and those who do not.
  3. Foster good relations between people who share a protected characteristic and those who do not.
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- 6.2 The removal of permitted development rights for B1(a) and B1(c) will allow the Council to properly assess whether any proposed loss of employment space is acceptable. The protection of employment space allows for the potential for local jobs which will assist Brent residents, who have a higher representation from black and minority ethnic groups, in lower paid jobs and are therefore less likely to be able to travel to find work.
  - 6.3 Whilst it might reduce the amount of housing that comes forward from this source, the majority of the housing that is delivered is low cost (albeit much is let to people on benefits). It is occupied disproportionately by the economically disadvantaged including the young and black and minority ethnic groups. These groups are adversely affected due to the dwellings in most cases being of inferior quality through not meeting London Plan space and mobility standards or many other policy requirements associated with residential development (such as limiting single aspect dwellings, enhanced energy performance, minimum amenity space standards, play space standards, provision of recognised affordable housing tenures, etc.).
  - 6.4 For the removal of permitted development rights to C4 HMOs, the results are mixed. Again, due to their lower cost HMOs are more likely to be occupied by the economically disadvantaged which proportionately are more likely to comprise the young and black and minority ethnic groups. As such a reduction in the number of HMOs coming forward might adversely impact on these groups in meeting some of their housing needs. In some cases, this will mean that they remain in temporary accommodation. Realistically however it is considered that supply numbers are unlikely to be significantly adversely affected in the medium term as landlords will seek to provide HMOs in a policy compliant manner in locations which avoid an over-concentration.
  - 6.5 In the longer term supply could be restricted by policy if the 37% threshold is met across the borough. This could adversely affect the protected characteristics identified. On the other hand, the need for planning permission will provide extra scrutiny of HMO accommodation and will raise its quality, which should improve the standard of accommodation provided for the protected characteristics identified.
  - 6.6 The threshold will in time limit the loss of family accommodation. This will be a positive for black and minority ethnic groups in meeting their needs as these groups comprise the majority of Brent households and have larger average household sizes for which larger accommodation is required.

## **7.0 Consultation with Ward Members and Stakeholders**

- 7.1 There has been a Labour group meeting where the Cabinet member has made members aware of the proposed Article 4 Directions. The consultation will be publicised in the members' bulletin. With regards to the proposal for removal of permitted development rights for residential to houses in multiple occupation, there has been considerable dialogue with council services addressing housing needs, private sector housing and planning enforcement.
- 7.2 In terms of awareness raising for the consultation a public notice will be placed in the local press. There will also be a press release and awareness raising through the council's website, plus letters sent to statutory consultees and those on the Council's local plan consultation database. Registered private sector residential landlords will also be made aware. The documents will be made available in libraries and on the council's website. There will be some public notices placed across the borough. Members will be made aware through the members' bulletin. The statutory consultation period is a minimum 21 days. If possible it is intended to publicise the consultation at the same time as publication of the Local Plan and as such the consultation period may be 6 weeks to coincide with that of the Local Plan.

#### Related Documents

[Article 4 Direction: Office, Light Industrial and Storage or Distribution Centre to Residential Cabinet 24<sup>th</sup> July 2017](#)  
[Brent Development Management Policies 2016](#)  
[Draft London Plan July 2019](#)  
[West London Employment Land Study 2019](#)

**Report sign off:**

**Amar Dave**

Strategic Director of Regeneration  
and Environment.