



**Delegated Decision
Strategic Director Regeneration
and Environment in consultation
with Cabinet Member for
Regeneration, Property and
Planning
13 July 2020**

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

Article 4 direction to remove permitted development rights for changes of use from office and light industrial to residential

Wards Affected:	All, excluding parts of Harlesden, Kensal Green, Stonebridge and Tokyngton where Old Oak and Park Royal Development Corporation is the Local Planning Authority
Key Decision:	Yes
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	2 Appendix A – Article 4 Direction Consultation – B1a and B1c to C3 Rest of the Borough October – December 2019 Appendix 2 – Article 4 Direction
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Paul Lewin Team Leader, Planning Policy paul.lewin@brent.gov.uk

1.0 Purpose of the Report

- 1.1 The purpose of the report is to consider the representations received in relation to the making of a non-immediate Article 4 direction to remove permitted development rights for changes of use from office and light industrial to residential. This direction will apply to areas not already covered by Article 4s the Council previously introduced, which became effective on

10th August 2018. This will apply to the whole borough where the Council is local planning authority. The report seeks confirmation of the direction.

2.0 Recommendations

- 2.1 That the Strategic Director of Regeneration and Environment and Cabinet Member for Regeneration, Property and Planning consider the representations received and responses as set out in Appendix A
- 2.2 That the Strategic Director of Regeneration and Environment and Cabinet Member for Regeneration, Property and Planning approve the confirmation of the Article 4 direction to remove permitted development rights for changes of use from office and light industrial to residential as set out in Appendix B

3.0 Detail

Background

- 3.1 Cabinet on 14th October 2019 considered a paper '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'. This included:
 - a) *Background*. It set out recent government changes reducing the need for planning permission, through use of permitted development and prior approvals for office and light industrial to residential development.
 - b) *Article 4 Directions*. It identified a local planning authority's ability to remove permitted development rights where justified and the process for doing so including consultation and matters such as potential compensation payments to property owners. It also contained information on two existing directions the Council had confirmed, requiring planning permission for change of use of office and a range of industrial uses to residential in Alperton and Wembley Growth Areas and Strategic Industrial Sites and Locally Significant Industrial Sites.
 - c) *Case for Additional Office and Light Industrial Article 4 for the rest of the borough*. This identified the adverse impact that permitted development rights were having in terms of reducing available premises for office and light industrial occupiers. It considered the current permitted development rights would prejudice the proper planning of the borough to meet Brent's and London's economic needs.
 - d) *Conclusion*. This recommended a non-immediate Article 4 to require planning permission for change of use from office and light industrial to residential in areas of the borough not already covered by the existing Article 4s.

- 3.2 Cabinet approved 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. If confirmed the Article 4 direction would commence from 1st November 2020.
- 3.3 In addition, Cabinet delegated 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.

Consultation Process

- 3.4 The Council consulted for 6 weeks from 24 October 2019 to 5 December 2019. This was longer than the statutory minimum of 21 days. It placed a public notice in the Brent and Kilburn Times and at sites across the borough, with the orders being available in the Council's libraries. It advertised the consultation on its website and sent notifications to statutory consultees and those on the Local Plan consultation list. The direction was available to view in the Brent libraries.

Response from the Secretary of State

- 3.5 The Secretary of State responded on the 24 October 2019 indicating he was considering whether there was cause for him to use his powers of intervention. He invited the Council to submit any further evidence it considered relevant to support and justify the making of the direction, in particular evidence about how it accords with the National Planning Policy Framework and Departmental guidance. The Council responded. There has been no further correspondence from the Secretary of State on this matter.

Representations

- 3.6 Eight representations were received, one neither for nor against (Highways England) and seven in support of the Article 4 including Mayor of London, Theatres' Trust and Brent Parks' Forum, with the remainder being residents. A fuller summary of the representations, together with officer responses is set out in Appendix A.
- 3.7 The Mayor supported the Article 4 for the role that it could play in assisting meeting London Plan priority office locations identified in the borough such as Kilburn Park and in retaining industrial capacity to support the borough's role in meeting draft London Plan policy E7 Industrial intensification, co-location and substitution.
- 3.8 The Theatres' Trust supported it for the role it could play in protecting industrial space to help the arts and creative industries for which there is a shortage of supply across London. Brent Parks' Forum considered that not

implementing the Article 4 would have long lasting negative impacts on economic growth in Brent.

- 3.9 Residents focused on the need for space for small businesses, entrepreneurship, and job opportunities for local residents. They identified the need for the Council to have more control over how the borough is developed.
- 3.10 None of the representations raised fundamental concerns that the Council needs to address with the Article 4 directions.

Next steps

- 3.11 The Council has up to 2 years after making an Article 4 direction to confirm it. Prior to a decision to confirm, it must consider the representations received. On the basis of the representations received the options available to the Council are to:
 - a) Not proceed with the confirmation.
 - b) Proceed with the confirmation.
- 3.12 Not proceeding with the confirmation is not recommended. The Council considered that it was appropriate to make the Article 4 direction as the existing permitted development rights are leading to a significant loss of employment floorspace. This was identified as prejudicing the proper planning of the borough with regards to its economic base, and ensuring a supply of land/premises to meet the needs of businesses expanding or locating within the borough. The representations received have not identified any fundamental issues which challenge the merit of the Article 4, either in the permitted development rights it removes, or the geographical extent of its coverage. On this basis, it is recommended to proceed with the confirmation with the Article 4 direction as shown in Appendix B, coming into effect on 1st November 2020.
- 3.13 On confirmation of the direction, the Council will as soon as is practicable have to give notice of the date of confirmation and the date on which it comes into force. It will have to publicise this in the same manner as occurred in the making of the direction. The Council must also send a copy of the confirmed direction to the Secretary of State. The Secretary of State has the power to modify the direction at any time. Although possible, this is considered unlikely. The Secretary of State did not respond indicating any concerns with the made direction and the Council has considered the representations made, which raise no significant concerns.

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 17th 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.

- 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 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 will be consistent with the regulations.
- 5.2 The Council may be liable to pay compensation to those whose permitted development rights have been withdrawn if the Council refuses planning permission for development that would have been permitted development if it were not for an article 4 direction, or grant planning permission subject to more limiting conditions than the England or Wales GPDO would normally allow, as a result of an article 4 direction being in place.
- 5.3 Compensation can be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 5.4 Claims must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the England or Wales GPDO). Compensation is only payable in respect of planning applications made within 12 months of the date an article 4 direction takes effect.
- 5.5 The Council can avoid compensation liability on withdrawal of the permitted development rights by publicising their intention to make an article 4 direction at least one year, and not more than two years, ahead of the article 4 direction taking effect.
- 5.6 The [Town and Country Planning Act 1990 \(TCPA 1990\)](#), s 108 provides that no compensation arises where adequate notice has been given of the removal of planning permission granted under a development order, local development order or neighbourhood development order. Where planning permission granted by a development order, a local development order or a neighbourhood development order is withdrawn, land owners may have a right to compensation under [TCPA 1990, s 108](#).

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.
- 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, from a range of groups particularly where local jobs are required. Many local businesses such as food, textiles etc are from BAME communities. Providing a range of affordable local space would be seen as beneficial in this regard.
- 6.3 There may be a marginal reduction in the amount of housing that comes forward from this source although some would still come forward via planning applications. Some groups (e.g. disabled people) are adversely affected due to the dwellings in most cases not meeting planning standards e.g. 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 On sites where planning permission will now be required and is granted, in most cases this will require the Council’s minimum affordable housing amounts and tenures to be provided that meets the borough’s needs. Such homes will have a greater proportion that are genuinely affordable. Homes will meet the necessary development plan standards, including mobility standards for those with a disability. In addition it is likely that the maximum amount of replacement workspace will also be sought, thus providing premises for local employment opportunities. Overall, it is considered that the Article 4 direction will have positive impacts for black and minority ethnic groups and the disabled compared to it not being confirmed. This is due to the increased likelihood of retained employment for Brent residents and where homes are acceptable, better quality living conditions and more genuinely affordable homes.

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 was publicised in the members’ bulletin, this will also occur when the order is confirmed.

7.2 In terms of awareness raising for the consultation, a public notice was placed in the local press. There was 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. The documents were made available in libraries and on the council's website. There were some public notices placed across the borough. These methods will be replicated in the confirmation of the direction.

Report sign off:

Amar Dave

Strategic Director of Regeneration and Environment.

Related Documents

[London Borough of Brent Cabinet Paper 14th October 2019: 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](#)