



**Cabinet**  
19<sup>th</sup> July 2021

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

**Article 4 Directions - Removing Permitted Development Rights**

<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 or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	<p>Seven (Addendum added 16/07/21) Addendum to original report</p> <p>Appendix 1 - Permitted Development for buildings that include non-dwelling uses</p> <p>Appendix 2 - Boundaries of Article 4 for SIL and LSIS to remove permitted development right for Class MA commercial, business and service uses to dwelling houses and Class ZA demolition of buildings and construction of new dwelling houses in their place</p> <p>Appendix 3 - Boundary of Article 4 for Class MA commercial, business and service uses to dwellinghouses and Class ZA demolition of buildings and construction of new dwelling houses in their place for all draft Local Plan site allocations</p> <p>Appendix 4 - Boundary of Article 4 to remove permitted development right Class MA commercial, business and service uses to dwellinghousesat ground floor level and Class MA for use class E(g)(i) offices to dwellinghouseson</p>

	<p>non-ground floors for all town centres as identified in the draft</p> <p>Appendix 5 - Boundary of Article 4 for remainder of the borough to remove permitted development right Class MA for change of use of office, research and development and light industrial to dwelling houses</p> <p>Appendix 6:- (Addendum) Overview Map of Town Centres Primary Shopping Areas as shown in draft Brent Local Plan 2021</p>
<b>Background Papers:</b>	<p><a href="#">Article 4 Direction: Office, Light Industrial and Storage or Distribution Centre to Residential Cabinet 24<sup>th</sup> July 2017</a></p> <p><a href="#">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</a></p>
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## 1.0 Purpose of the Report

- 1.1 This report provides an update on some recent changes to the planning system, some implications and some options open to the Council to restrict the new permitted development (PD) rights. It recommends that a number of non-immediate Article 4 directions for Cabinet approval. It seeks approval for the delegation of consideration of representations received and the decision on whether to confirm the Article 4 directions to the Strategic Director of Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning.

## 2.0 Recommendations

- 2.1 That Cabinet note the changes to the planning system and the options for Article 4 Directions available.
- 2.2 That Cabinet approve the making of Article 4 Directions removing the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permitted development rights for:
- A) Class MA commercial, business and service uses to dwelling houses and Class ZA demolition of buildings and construction of new dwellings in their place for all Strategic Industrial Locations and Locally Significant Industrial Sites designations within the draft Brent Local Plan as set out in Appendix 2;
  - B) Class MA commercial, business and service uses to dwellinghouses and Class ZA demolition of buildings and construction of new dwellinghouses in their place for all draft Local Plan site allocations as set out in Appendix 3.

- C) Class MA commercial, business and service uses to dwelling houses at ground floor level for all designated town centres and Class MA for use class E(g)(i) offices on non-ground floors as identified in the draft Brent Local Plan as set out in Appendix 4.
- D) Class MA for office, research and development and light industrial (Use Class E (g)) in the remainder of the borough outside areas covered by a), b) and c) recommended above as set out in Appendix 5.

2.3 That Cabinet approves the delegation of consideration of representations received and the decision on whether to confirm the Article 4 directions to the Strategic Director of Regeneration and Environment in association with the Cabinet Member for Regeneration, Property and Planning.

### 3.0 Detail

3.1 The most significant of the recent changes to the planning system are to the Use Classes Order (which enables activities to change to other uses within the same Class) and to PD rights through the General Development Permitted Order (which allows some development without the express consent of the planning authority) (GDPO).

#### Changes to the Use Classes Order

3.2 In July 2020, changes effectively combined six existing use classes and incorporated many uses within two others into one new use - Class E – as set out in Table 1. Moving between uses within class E is not defined as development.

**Table 1: Former Use Classes Now within Use Class E**

Use Class Until 31 <sup>st</sup> August 2020	New Use Class from 1 <sup>st</sup> September 2020
<b>A1 - Shops (part)</b> Shops, retail warehouses, post offices, ticket and travel agencies, sale of cold food for consumption off premises, hairdressers, funeral directors, hire shops, dry cleaners, internet cafes	<b>Class E (a)-(g)</b> Commercial, Business and Service Retail and shops Restaurants and Cafes Some financial and professional services Offices Indoor sports, fitness and recreation Nurseries and crèches Light industry Research and development facilities Health and medical facilities
<b>A2 -Financial and professional services</b> (Banks, building societies, estate and employment agencies, professional services (not health or medical services))	
<b>A3 – Food and drink</b> Restaurants and cafes	
<b>B1 – Business</b> <b>B1 a.</b> Office other than a use within Class A2 <b>B1 b.</b> Research and development of products or processes <b>B1 c.</b> For any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area)	

Use Class Until 31 <sup>st</sup> August 2020	New Use Class from 1 <sup>st</sup> September 2020
<b>D1 - Non-residential institutions (part)</b> Clinics, health centres, crèches, day nurseries, day centre	
<b>D2 – Assembly and leisure (part)</b> Gymnasiums, indoor recreations not involving motorised vehicles or firearms	

- 3.3 This flexibility brings opportunities to ensure occupation of premises, which could be helpful in reducing vacancies. It also however, impacts on how the Council can effectively plan to meet a wide range of land use needs in the right locations. Now any existing light industrial building or group of them of any size in any location can become either wholly retail, restaurant or leisure, or a mix of these uses. This is incompatible with national planning policy requiring a sequential approach to ‘main town centre’ uses, with ‘out of centre’ locations only being allowed if no town centre options exist. It is not yet clear how owners, developers and occupiers will respond to this new flexibility.

### Changes to PD Rights to Allow New Dwellings

- 3.4 Since 2013 the Government has introduced a number of PD rights, subject to some conditions and a need for prior approval in relation to specific criteria. The intent is to increase the number of homes.
- 3.5 The range of conditions and prior approval matters have got more numerous over time. Where relevant, these are set out in this paper.
- 3.6 These provisions cover:
- 3.7 **Change of use:** Commercial (eg offices/light industry) to residential, now with minimum size requirements, and retail, financial and professional services, hot-food takeaways, offices, betting shop, payday loan or launderette of up to 150 sqm to residential.
- 3.8 **Extensions:** up to two storeys on existing purpose built detached blocks of flats, detached, semi-detached and terraced properties, and for buildings in a mix of commercial (retail, financial and professional services, restaurants and cafes, offices, betting shop, payday loan or launderette) and residential use. These rights apply to properties built after 1<sup>st</sup> July 1948, which means the majority of the residential building stock of Brent is excluded. There will be some properties where it is likely to be attractive for developers (including the Council on its stock).
- 3.9 **Demolition and new build** of a building with a footprint of less than 1000 sqm within that footprint up to 2 storeys higher (up to a maximum 18 metres in height), if the building was in residential, office, research and development or light industrial use or any mix of those uses. The premises need to have been vacant for at least 6 months and be built before 1 January 1990. It also has a number of prior approval requirements and conditions.

- 3.10 Appendix 1 provides an overview of permitted development Classes for new dwellings where there is an existing use that is not a dwelling.

### **Use Class E permitted development rights**

- 3.11 From 21<sup>st</sup> April 2021 PD rights essentially allow all Class E uses to change to residential. This applies for premises up to 1,500 sqm in continuous E use for at least two years that have been vacant for at least 3 months. Some other conditions apply and prior approval matters need to be addressed. These however are limited in scope and focus on impacts on potential occupiers or neighbours of the development e.g. transport impacts/highways safety, contamination risks, flooding, noise from commercial premises on occupiers, adequate natural light in habitable rooms, impact on occupiers if located in an area important for heavy industry, waste management and storage and distribution, or where it would result in the loss of a nursery or health care facility for which there is a need.

### **Use Class E Office to residential permitted development where an Article 4 direction preventing such a change of use exists**

- 3.12 Brent has three Article 4 directions removing office and light industrial to residential PD rights in Wembley (office only) and Alperton Growth Areas, SIL and LSIS (office and light industrial), and then the rest of the borough for office and light industrial (where the Council is the planning authority).
- 3.13 The legislation for Class E sets out that where an existing Article 4 direction restricts such development, a change of use of offices to residential is prevented prior to 1<sup>st</sup> August 2022. This grace period theoretically allows time for authorities to introduce replacement non-immediate Article 4 directions. These require at least 12 months' notice to remove the potential for parties adversely affected through loss of PD rights to claim compensation. If approved by Cabinet and subsequently confirmed, it is likely that appropriate replacement non-immediate Article 4 directions could be effective from 1<sup>st</sup> August 2022.

### **Government consultation on Potential Changes to the Use of Article 4 Directions.**

- 3.14 In January 2021 draft amendments to the National Planning Policy Framework (NPPF), including on Article 4s, were published. Previously Article 4s could be introduced where an inability to otherwise control development would have a significant impact on amenity, or prejudice the proper planning of an area. The draft NPPF sets out that Article 4s should only apply to the smallest geographical area possible used where:
- a) essential to avoid wholly unacceptable adverse impacts, or
  - b) necessary to protect an interest of national significance.
- 3.15 The Secretary of State has previously intervened in Article 4s to limit their geographical extent, and Borough wide ones have been discouraged.
- 3.16 Of the two draft NPPF options, criterion a) could be applicable in terms of justification for the Council depending on the Secretary of State's interpretation. Final wording of the NPPF is expected in late summer. Further amendments

to existing permitted development rights are also proposed to reflect the introduction of Class E.

### **Locations where changes in permitted development rights that allow for new residential dwellings may prejudice the proper planning of an area**

- 3.17 Movement within use class E is not development and in most cases beyond Council control. Exceptions are where there are conditions on a development to limit it to a specific use or part of a use class e.g. to restrict a property to light industrial within SIL or LSIS. It is likely that where planning permission is required and where it can be justified, similar conditions will be applied in these areas. This will prevent loss of land prioritised for industrial development to a wider range of E uses in the future.
- 3.18 The Council does, through Article 4 directions, have scope to limit PD rights. Providing more homes is clearly a priority but this has to be balanced against other factors, such as the NPPF's requirement to positively plan for and meet the needs for main town centre and also a range of employment uses.
- 3.19 Taking account of the existing and proposed changes to PD rights, there are some key issues that might prejudice the proper planning of Brent. These are the potential harm caused through the:
- a) Loss of 'employment' floorspace when taking account of known limitations on the likely ability to meet current and predicted needs;
  - b) Incursions of residential within designated industrial locations, reducing their flexibility for a wide range of industrial uses, hours of operation for those industrial uses and the viability of those industrial areas;
  - c) Potential harm to the vitality and viability of town centres through the inappropriate incursion of dwellings into ground floor frontages.
  - d) Loss of individual retail units or those within local parades; and
  - e) Undermining of site specific allocations seeking comprehensive development that would provide replacement employment floorspace or larger increases in dwelling numbers.

### **Loss of office, research and development and light industrial floorspace**

- 3.20 The rationale for the current article 4 directions restricting PD rights for office and light industrial to residential are still considered relevant, perhaps even more so. Predicted significant loss of occupied office space through PD allowed prior to Article 4s coming into effect has occurred. The draft Local Plan encourages further office development particularly in Wembley and contains policies that prevent loss across the borough, unless it is unviable, or sufficient replacement floorspace is provided in association with developments. Local Plan viability assessment evidence 2020 and 2021 indicates that pure new build office developments are unlikely unless cross-subsidised as part of place making. There is limited likelihood of new space making up for potential future losses if PD rights proceed.
- 3.21 The loss of industrial floorspace and land over the last 20 years within Brent and London has been extensive, and far greater than planned. This, together

with increases in the need for storage and distribution means there is now a shortage of space in Brent and across west London. Vacancy rates are below 5%, lower than is considered minimum in terms of facilitating easy movement of firms between premises. The London Plan Industrial Development and Land Study (LIDLS) 2017 and the West London Employment Land Evidence 2018 study both indicate the need for additional industrial land within the borough. In the case of LIDLS, this equates to 46.3 hectares or around 300,000 sqm of floorspace in the period to 2041. Rents are increasing significantly, due to lack of stock but have not risen to a level where building new premises providing additional floorspace is occurring.

- 3.22 Providing more floorspace will therefore require intensification of existing land and premises. This is currently costly and is mostly unviable without support from residential development. Against this background, PD rights that result in the loss of research and development and light industrial floorspace will further prejudice the ability to achieve Local Plan targets to meet industrial needs.
- 3.23 The GDPO Class MA and Class ZA could result in existing employment accommodation being lost. Requiring a planning application enables an assessment of the quality of the existing employment floorspace and its viability for potential occupation. This is less likely to result in tenants in higher quality premises not having their leases renewed and space suitable for occupation from being lost. For sites where Class ZA redevelopment would otherwise occur, the Council will have the opportunity to test whether consistent with development plan policies that the maximum viable amount of employment floorspace is being re-provided.

#### **Inappropriate incursions of residential within designated industrial locations.**

- 3.24 The prior approval process for Class MA includes an assessment of 'impact on occupiers if located in an area important for heavy industry, waste management and storage and distribution'. However the conditions do not sufficiently cover the 'agent of change' principle, and fail to take account of the fact that many estates are designated on the basis that they can meet a range of occupier needs over a long period. What might contain a majority of light industrial uses currently should have the flexibility to be used for the whole range of industrial uses that might be inappropriate within a residential setting.
- 3.25 This is reflected in London Plan and Brent Local Plan policy. Even if the residential development can overcome impacts of adjacent uses e.g. noise, emissions, dust, etc, it could compromise the net developable area or volume of building that could be accommodated on an adjacent industrial site, compared to if light industrial use remained. The increased need for storage and distribution in particular is driving the need for additional industrial land within the borough. These can require 24 hour operation. In addition, due to lack of available industrial land, existing industrial areas will have to intensify floorspace capacity through larger buildings within plots.
- 3.26 For Class ZA the conditions are more robust on protecting existing businesses requiring assessment of "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". This could be used to protect the integrity of existing designated industrial areas for long term use for a wide range of

industrial uses where they are not suitable for co-location with residential. For areas where co-location has been identified as appropriate, the principle of residential within these areas has been considered appropriate, so it would be difficult to refuse on the basis of potential harm to adjacent employment uses. A key element of the co-location policies which justify residential in those locations is re-provision of industrial floorspace to ensure in the longer term that industrial needs are met. This is whichever is the higher of 0.65 plot ratio, or existing industrial floorspace is re-provided. This cannot be enforced through the PD right. So there is the risk that no replacement industrial floorspace will be delivered, which will be inconsistent with proper planning for meeting employment needs.

- 3.27 The GDPO Class MA could result in existing office and light industrial being replaced by residential dwellings in designated industrial areas. Requiring a planning application within the designated SIL and LSIS areas enables the Council to properly assess the potential effect on the area's long term functioning in meeting for business needs. For Class ZA, the same is also potentially true for designated SIL and LSIS areas identified for co-location. Identifying the wider category of all designated SIL and LSIS area might also be beneficial. It gives a strong indication that within those areas not identified for co-location, that the Council is unlikely to support planning applications for residential uses in SIL and LSIS.

#### **Potential harm to the vitality and viability of town centres through impact on frontages**

- 3.28 The main PD rights affecting ground floor frontages of town centres are Class M and MA. Class M currently has conditions that allow the consideration of "where the building is located in a key shopping area, on the sustainability of that shopping area". This to date has allowed the Council to refuse inappropriate loss of commercial ground floor units where it would fail this test. With the introduction of Class E government is proposing to modify Class M. It will allow hot food takeaways (A5) betting office, pay day loan shop or launderettes to change use to residential. It is proposed that this condition will still apply (although this could change).
- 3.29 Class MA has no such condition and could result in any ground floor commercial unit within any town centre becoming a dwelling. This is inconsistent with the Local Plan which seeks to protect the vitality and viability of town centres by maintaining commercial frontages. In recognition that some town centres are likely to contract, the Plan allows for loss of ground floor units, outside of primary shopping frontages and seeks to do this in a controlled manner to ensure a viable core remains.
- 3.30 Requiring applications for frontages within town centres will allow the Council to ensure that national and local plan policies on ensuring the vitality and viability of town centres are maintained. Where units and frontages are unviable for the range of class E uses, policy would allow for the flexibility to allow the release of those units to residential use.
- 3.31 The conversion of commercial ground floor units in our High Streets to residential, was raised as a concern by the Public Realm Scrutiny Committee because of the issues outlined above. The Committee requested that consideration is given to the introduction of an Article 4 Direction.

### **Loss of individual retail units or those in retail parades**

- 3.32 This issue is very similar to the town centre one, with the same PD rights potentially leading to loss. Freestanding individual retail units or small parades can meet residents' needs and provide for more sustainable 'walkable' and 'liveable' neighbourhoods, reducing the need to travel and be an integral part of place-making.
- 3.33 Class M has a condition which requires consideration of "adequate provision of services of the sort that may be provided in the building...but only where there is a reasonable prospect of the building being used for such services." This does not now apply to use class E due to the provisions of Class MA. Proposed Government changes currently identify that the condition would only apply to launderettes, whilst it would no longer apply for hot food takeaways, betting shops and pay day loan shops. The Local Plan has a policy that seeks to ensure that outside town centres a minimum range of provision of retail and service occurs. It allows its loss to residential if the unit is unviable with no prospect of an alternative commercial use and there is adequate alternative provision within 400 metres.
- 3.34 Requiring an application for retail units outside of town centres will enable the Council to ensure that minimum provision of retail type uses exists for communities. If the unit is unviable, or its loss would not result in less than minimum provision, the policy would allow for the flexibility to allow the release of those units to residential use.

### **Undermining of site specific allocations seeking comprehensive development that would provide larger increases in dwelling numbers**

- 3.35 Changes to PD rights, particularly those that allow change to residential can impact significantly on existing land and property values. As part of the process of delivering housing targets, the Council has allocated a significant number of sites for development. Most of these encourage comprehensive redevelopment to ensure a much more effective use of land, usually by substantially increasing floorspace. A lot of these allocations are on existing designated industrial sites, and elsewhere largely have an existing element of light industrial or commercial use, which the Council seeks some re-provision of to meet needs or for placemaking purposes.
- 3.36 Prior to the Council introducing the Article 4 Directions requiring planning permission for change of use of office and light industrial to residential, there was evidence of PD rights undermining comprehensive redevelopment of site allocations. An example is the Liberty Centre in Alperton where several differently owned offices changed use to residential on parts of the site. This has made it unviable for a developer to comprehensively redevelop the whole site. Thirty dwellings have been provided. In terms of net density of the allocation overall, this is much below what is being achieved on adjacent sites that are being comprehensively redeveloped. It has also resulted in below standard dwelling sizes, poor townscape, no private residential amenity space and has compromised delivery of a continuous public path along the northern side of the canal, which all other developments to date have delivered.

- 3.37 Requiring applications for Class MA PD on site allocations will allow the Council to ensure that policy compliant outputs of allocations are not undermined. This is also likely to be the case for Class ZA development as the Council will find it difficult to substantiate an in principle objection to residential within designated industrial areas that are allocated for co-location with residential development supporting re-provision of employment and commercial floorspace. Policy requirements do not allow development unless it is consistent with a comprehensive masterplan in these areas. Ultimately this is likely to result in more dwellings of a higher quality, including affordable homes being built and re-provision of non-residential floorspace than might otherwise be the case through permitted development.

**Should the Council pursue renewing existing Article 4 directions or adding new ones?**

- 3.38 For the reasons identified above, some PD rights are likely to be inconsistent with policies within the development plan. This Plan is up to date, recently tested at Examination and supported by an up to date evidence base. As such they may well prejudice the proper planning of Brent by the Council.
- 3.39 Nevertheless, it is clear that Government wants to pursue these changes. The draft NPPF's provisions indicate a much more stringent testing of proposed Article 4 directions, particularly those that seek to limit the creation of new dwellings. This brings increased risk of intervention by the Secretary of State, particularly if the national significance test is applied. This ultimately could lead to wasted Council resource. Unfortunately, certainty is reduced by the draft nature of many of the changes proposed.
- 3.40 To reduce risk, as has been recommended for previous Article 4 directions, it might be more appropriate to pursue a number of discrete Article 4s that target either a separate area or separate PD right, rather than pursuing a single Article 4 direction. Whilst simpler, the more extensive any Article 4 is in the scope of PD rights removed, or in its geographical coverage, the more likely it will be subject to direction to remove some or possibly all of its provisions.

**Change of use of office to residential**

- 3.41 Currently change of use of all office to residential PD rights have been removed across the borough. Whilst the reasons for how new PD rights will affect the proper planning of Brent have been set out, replicating whole borough coverage, either through one, or two article 4s as is currently the case, would appear to bring significant risk of intervention.
- 3.42 For offices, if the emerging NPPF for Article 4s criterion a) is taken, 'to avoid wholly arguably unacceptable adverse impacts', it is considered that there is a justifiable case to pursue removal of change of use from office to residential rights. This is based on the significant loss of the stock since 2013 and the evidence that existing office occupiers prior to the introduction of Article 4s were being displaced from offices, with little prospect of new space being built to meet needs. In terms of geographical scope, whilst it might be a risk to have full borough coverage, this is considered appropriate due to the scale of the issue. It is however considered that at least two separate Article 4s would reduce the impact of a Secretary of State direction that could ultimately adversely affect outcomes for the whole borough.

- 3.43 If the test changes to criterion b) 'protect an interest of national significance', it is unlikely that any Article 4 for office to residential will pass without Secretary of State direction. Whilst arguably Brent provides office stock that allows companies to contribute to London's national and international role as a world city, it is at best secondary and in most scenarios, a tertiary location for those businesses not tied to any specific location.

#### **Change of use of research and development and light industrial to residential**

- 3.44 Similar to office if the draft NPPF criterion a) test is applied, it is considered that there is a justifiable case for removing change of use from research and development and light industrial to residential. This is based on the need for additional industrial floorspace within the borough as set out in the London Plan and Local Plan evidence base and policies. Whilst it might be a risk to have full borough coverage, this is considered appropriate at least to test. It is however considered that at least two separate Article 4s would reduce the likelihood of Secretary of State intervention that could ultimately adversely affect outcomes for the whole borough.
- 3.45 If criterion b) is used, to 'protect an interest of national significance', it is inconclusive if any Article 4 will pass without Secretary of State direction. The Greater London Authority (GLA) is concerned about the potential constraints on industrial supply, recognising that achieving increases to meet London's needs is challenging and that potential loss of existing stock, plus the potential for compromising designated industrial areas through residential incursions, is a significant threat. The GLA is looking to compile evidence that will support Boroughs who are seeking to justify Article 4s, on the basis of potential harm to London's ability to meet its industrial needs. Brent and West London is identified as a major constituent of providing for additional needs. As such, it could be argued that preservation of its stock is of national significance due to the contribution it makes to London meeting its needs. Although around 35% of Brent's industrial floorspace is outside designated industrial land, in this higher test scenario, an Article 4 that focussed on designated SIL and LSIS would be the more appropriate in addressing London's needs.

#### **Redevelopment of office, research and development and light industrial to residential**

- 3.46 If the draft NPPF criterion a) test is applied, it is considered that there is a justifiable case to pursue removal of Class ZA allowing redevelopment, based on the need for additional floorspace for these uses as set out in the London Plan and Local Plan evidence base and policies. In terms of scope, full borough coverage would be high risk. Early indications are that this provision is likely to have limited take up. On this basis it is considered most justifiable to focus on designated industrial areas and potentially also site allocations but in a separate Article 4.
- 3.47 If the test changes to criterion b) 'protect an interest of national significance' it is unlikely that these Article 4s would pass.

#### **Town centre frontages**

- 3.48 If the draft NPPF criterion a) test is applied, it is considered that there is a justifiable case for removing change of use from Class E to residential at least at ground floor level in primary and secondary frontages of town centres. This is based on the need to protect the vitality and viability of town centres through retention of commercial frontage cores as set out in Local Plan evidence base and policies. Whilst the inclusion of secondary frontages is a risk, it is considered appropriate to ensure the likelihood of a sensible and planned contraction of less successful town centres towards a smaller, vibrant core, rather than an alternative of staccato where commercial is interspersed with residential. Broken frontages could reduce the flexibility of the use of the remaining commercial units (particularly for a range of commercial leisure uses which will become increasingly important for town centres) which ultimately could further hasten the decline of centres.
- 3.49 If the test changes to criterion b) 'protect an interest of national significance', it is unlikely to pass.

### **Neighbourhood parades/ isolated retail/commercial units**

- 3.50 Whilst these units perform an important function arguably in the context of proposed changes to NPPF, it is considered that the risk of Secretary of State direction to remove any proposed Article 4 direction is high.

### **Conclusions and recommended approach**

- 3.51 The range of new PD rights along with Use Class E have created the scope for considerable change and uncertainty, compounded by the as yet unknown longer term impacts of the pandemic on business needs and town centres. Whilst potentially bringing some positives in terms of increased flexibility and the provision of new homes, the changes create risks to delivering London Plan and Brent Local Plan policies and desired outcomes. This is in particular in providing sufficient floorspace and suitable locations to meet a wide range of business needs, protecting the vitality and viability of town centre frontages and local place-making/ sustainable neighbourhoods.
- 3.52 The draft NPPF policy on Article 4 directions makes it difficult to be sure of the likely outcome. Article 4s that are extensive in their scope and geographical coverage are unlikely to be able to progress due to Secretary of State directions. This may still be the case if Article 4s are limited and the 'national significance' test is brought in. On the other hand, limiting Article 4s to those of 'national significance', or not undertaking them at all for fear of falling foul of emerging NPPF changes that may not materialise is likely to undermine London and Local Plan policies and a more sustainable Brent.
- 3.53 Taking account of the analysis above it is recommended that non-immediate Article 4 directions are pursued for the respective areas as identified in the draft Brent Local Plan, as set out in the recommendations above.
- 3.54 The separation of the Article 4s allows for reduction of risk from potential Secretary of State directions that are often associated with larger Article 4s.
- 3.55 For non-immediate Article 4s, post their initial making, at least 12 months will have to pass before coming into effect. This allows the Council to not be subject

to compensation claims for adverse financial impact to owners or developers of properties as a result of the Article 4.

- 3.56 The consultation process is set out in GDPO. For each Article 4 the Council must place a notice in a local paper and a minimum of two notices in each of the Article 4 areas. Individual notices to each owner/occupier is not required where their number makes this impracticable, which is considered to be the case here. The Council will have to rely on general advertisement, notifying those on the Local Plan consultee database and through the Council's economic development and town centre management functions.
- 3.57 A minimum of 21 days is required for the consultation and the Article 4 direction cannot be confirmed less than 28 days after the consultation notices are issued. It has to advertise confirmation and when the Article 4 direction will come into effect, and notify the Secretary of State on making and confirming the Article 4. The Secretary of State can intervene at any time, including after the direction comes into effect to modify or revoke its contents. The Council cannot modify an Article 4 without making a new one with its associated processes.
- 3.58 To reduce Cabinet business, it is recommended that Cabinet delegate the decision on whether to confirm the Article 4s to the Strategic Director of Regeneration and Environment in association with the Lead Member after considering representations received. If approved the Council has to publicise the confirmation through the same means as when it made the order.

#### **4.0 Financial Implications**

- 4.1 The Fee Regulations now allow for fees to be charged for planning application resulting from PD rights being removed through an Article 4 direction. The cost of the implementation of the Article 4 directions will be met from existing planning budgets.

#### **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 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 PD rights involving Class E to dwellings 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 The likelihood of a reduction in the amount of housing that comes forward is considered to be limited, if at all. Permitted development has the potential to undermine wider site allocations that deliver considerably more and better quality homes. The Council has positive policies that promote new homes and is realistic in balancing issues such as re-providing employment floorspace in redevelopments, or maintaining retail frontages.
- 6.4 Notwithstanding changes that now require new dwellings provided through permitted development to have minimum sizes and ensure natural light to all rooms, there is no guarantee they have all the attributes typically associated with those delivered through planning permission. This is to the detriment of occupiers, the majority of who in Brent will be from ethnic minority backgrounds. It will also reduce potential for those who with a mobility impairment to have accessible homes and those with a disability to have housing that can easily be adapted for wheelchair use.

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

- 7.1 The consultation will be publicised in the members' bulletin. The statutory consultation process is set out above. In addition, there will be a press release and awareness raising through the website.

**Report sign off:**

***Alan Lunt***

Strategic Director of Regeneration  
and Environment.