

Cabinet 19th July 2021: Addendum to Agenda Item 14 Article 4 Directions Removing Permitted Development Rights for Change of Use from Class E commercial, business and service uses to C3 dwelling houses and redevelopment of office, research and development and light industry to C3 dwelling houses

1.0 Purpose of the Report Addendum:

- 1.1 Since the Cabinet report was published there have been material changes in circumstances related to its recommendations to proceed with a series of Article 4 directions. Cabinet need to be aware of these before considering the recommendations of the original main report. On 1st July 2021 a written ministerial statement was issued to Parliament setting out changes to the national planning policy framework (NPPF) in respect of the use of Article 4 directions. In addition on 9th July 2021 an amendment to the Town and Country Planning (General Permitted Development Order) (England) 2015 (GPDO) was laid before Parliament. This made changes to amongst other things Part 3 (changes of use) of Schedule 2, Class M (certain uses to dwellinghouses).
- 1.2 Taking these changes into account Cabinet is requested to approve a revised recommendation 2.2 (c), in addition to the original report's recommendations 2.1 and 2.2 (a), (b) and (d).

2.0 Recommendation:

- 2.1 That Cabinet approve the amended recommendation for 2.2 (c) in the main report to:
 - (C) Class M certain uses to dwelling houses and 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.

3.0 Detail

3.1 Changes to the NPPF

- 3.2 As set out in Agenda Item 14 paragraph 3.14, draft amendments to the NPPF in relation to the use of Article 4 directions were published in January 2021. Government has now confirmed the changes through a Written Ministerial Statement issued on 1st July 2021. These will not be incorporated into the NPPF until later in the year. The Secretary of State however, has stated that ahead of that he wants local authorities and communities to take it into account now when they consider bringing in any new article 4 directions. Changes to NPPF paragraph 53 read:

“The use of Article 4 directions to remove national permitted development rights should:

- *where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)*
- *in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)*
- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.*

3.3 The positive is that it reduces the uncertainty created by the options. It is also much less restrictive than one of the two consultation options put forward of limiting Article 4s to those ‘necessary to protect an interest of national significance’. Nevertheless, the specific example of “*could include the loss of the essential core of a primary shopping area...but would be very unlikely to extend to the whole of a town centre*” would initially appear to make the Cabinet paper’s proposed town centre Article 4 inconsistent with emerging national policy. The extent of the primary shopping areas is shown in Appendix 6 attached to this addendum, whilst Appendix 4 of the original report shows the wider town centre boundaries. The largest differences are within Wembley, Harlesden and Kilburn High Road.

3.4 Taking account of this there are two options for Cabinet:

- a) Refocus the Article 4 on the primary shopping areas of town centres, or
- b) Pursue the recommended boundary of the draft Local Plan town centres.

3.5 Option a): Refocus on the primary shopping areas of town centres

3.6 This approach will be consistent with emerging national policy. The positive side of this is that it is likely to reduce the potential for a Secretary of State direction for the Council to amend or not confirm the direction.

3.7 The negatives are that it will undermine the policies in the Council’s emerging Local Plan, backed by an appropriate evidence base and subject to recent examination. The Council has already reconsidered town centre boundaries. This has taken account of local circumstances and national trends in town centre uses. In some cases boundaries have been reduced significantly.

3.8 The draft Local Plan Policy BE4 ‘Supporting Strong Centres’ recognises the challenges facing some centres. It allows for the managed loss of ground floor commercial units in town centres to residential uses stating: “Unviable secondary frontage on the periphery of town centres will be promoted for workspace, social infrastructure and residential uses”. The supporting text identifies: “the conversion of peripheral secondary frontage to residential development will be permitted where this will not impact on the vitality and viability of the town centre. Frontage will be considered peripheral at the outer edges of secondary frontages

which show high levels of vacancy, particularly within a wider centre that is appearing to struggle. Where contraction of the centre is desirable by release of secondary frontage, it shall be done in a controlled manner ensuring that the vitality and viability of existing viable adjacent premises is not undermined.”

- 3.9 Taking the above into account, and used in conjunction with other measures such as Town Centre Actions Plans drawn up by the respective town centre managers and local businesses the Council has a clear plan how it will deal with planned contraction of centres where necessary. A focus solely on the primary shopping area could lead to inappropriate loss of ground floor commercial premises to residential. This reduces opportunities to meet other needs, e.g. for local employment space. It also has the potential to undermine town centre vitality and viability by providing dead frontage and compromising the flexibility of use/attractiveness of adjacent premises to commercial occupiers.
- 3.10 Where the Council has used significant adverse impact on vitality and viability of the centre as a reason for refusing prior approval (as is still the case until 1st August in Class M), it has a 100% success rate at appeal. The Council has exceeded its 3 year housing delivery test (120%) and has positively allocated more than enough sites in the emerging Local Plan to more than meet the London Plan minimum housing target. As such, the prioritisation of housing at the expense of undermining of a balanced approach to meeting wider town centre NPPF and housing needs as set out in the Local Plan and neighbourhood plans that also incorporate town centres is not necessary. Local circumstances in Brent are such that the standard application of a national policy is not considered appropriate in this case.
- 3.11 Option b) Pursue the recommended boundary of the draft Local Plan town centres.**
- 3.12 The negative is the potential for direction from the Secretary of State. Notwithstanding the change to the NPPF, the threat of potential direction might be more limited than it appears. The Council has complied with what is a justifiable boundary taking account of local circumstances. This is consistent with the revised NPPF *‘based on robust evidence, and apply to the smallest geographical area possible’*.
- 3.13 It is clear that a wide range of Article 4s are going to be pursued by local authorities. This also reflects the experience of London, where for example neighbours to Brent, such as Kensington and Chelsea (whole borough Article 4) and Camden (all town centres and neighbourhood parades) propose Article 4s with greater scope than the primary shopping area set out in the NPPF and the town centres only being recommended for Brent. In this context, Brent’s approach should be considered a balanced one.
- 3.14 Taking account of the above, it is recommended option b) is pursued.

3.15 Further changes to the GPDO

3.16 Paragraph 3.28 of Agenda 14 original report identifies that Government was proposing to modify GPDO Class M. As proposed this would have still allowed the Council to via a prior approval condition (M2 (1) (d)) consider the impact of a change of use to residential “where the building is located in a key shopping area, on the sustainability of that shopping area”. Prior approval could be refused if the Council considered it would cause harm.

3.17 On 9th July the amended GPDO was issued. This will come into effect on 1st August 2021. The most significant change in relation to the matters covered by this Cabinet report is that for Class M ‘Certain uses to dwellinghouses’, is that the prior approval condition has been removed. This clearly goes beyond what was consulted upon. It means that any launderette, betting office, payday loan shop; hot food takeaway or mix of dwelling house with any one of these uses can turn into residential in any location in the borough.

3.18 There are two reasonable options for the Council:

- a) do nothing or
- b) add Class M to the removal of permitted development rights for ground floor uses in town centres, consistent with the same area of coverage that Cabinet approve for Class MA.

3.19 Option a) do nothing

3.20 This would clearly lead to perverse outcomes if the Council were to not address this matter through an Article 4, whilst taking forward one for Class MA. It would create the potential for some units to change to residential, whilst their neighbours would be subject to planning permission.

3.21 Option b) add Class M to the removal of permitted development rights for ground floor uses in town centres, consistent with the same area of coverage that Cabinet approve for Class MA.

3.22 This would ensure consistency with the Council’s approach to remove permitted development rights Class MA for town centres. It is therefore recommended that Class M at ground floor level is also subject to inclusion within the Article 4 direction town centre boundaries identified in Appendix 4 of the main report.

Addendum sign off:

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and Environment.