

	<p align="center">Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning 8 July 2022</p>
	<p align="center">Report from the Operational Director Regeneration Growth and Employment</p>
<p align="center">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.</p>	

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:	5 – Appendix 1 – Article 4 Directions Consultation Summary Appendix 2 – Strategic Industrial Location Appendix 3 – Site Allocations Appendix 4 – Town Centre Boundaries Appendix 5 – Remainder of the Borough
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 To consider the representations received and also feedback from representatives of the Secretary of State on four Article 4 directions that were made in July 2021. To proceed to confirm the Article 4 directions.

2.0 Recommendations

- 2.1 That the Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning consider the representations received and officer responses set out in Appendix 1.
- 2.2 That the Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning approve the confirmation 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 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 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 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 the Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning support continuing dialogue with DLUHC, provision of additional evidence material and potential boundary amendments to subsequently be issued by the Secretary of State that do not materially impact on the number of properties that would require planning permission when compared to the confirmed Article 4s.
- 2.4 That the Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration and Planning approve the cancellation from 1st August 2022 of the following confirmed Article 4 Directions:
- A) Wembley Growth Area Article 4 for Class O Use Class B1a Offices to Use Class C3 dwellinghouses;
 - B) Alperton Growth Area, Strategic Industrial Land and Locally Significant Industrial Sites Article 4 Direction for Class O Use Class B1a (offices), Class PA Use Class B1c (light industrial) and Class P Use Class B8 (storage or distribution centre) to C3 dwellinghouses
 - C) Remainder of the borough Article 4 Direction for Class O Use Class B1a (offices) and Class PA Use Class B1c (light industrial) to C3 dwellinghouses

3.0 Detail

- 3.1 Cabinet considered a report on 19th July 2021: [Article 4 Directions - Removing Permitted Development Rights](#). This was in response to a number of changes to permitted development rights that had, or were going to come into effect. National Planning Policy Framework (NPPF) paragraph 53 allows for the Council to be able to remove permitted development rights. It states Article 4s should:
- a) 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
 - b) 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)
 - c) in all cases, be based on robust evidence, and apply to the smallest geographical area possible.
- 3.2 Cabinet resolved to 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 Brent Local Plan;
 - 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;
 - 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 Brent Local Plan.
 - 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.
- 3.3 Cabinet also approved 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 and Planning.

Consultation

- 3.4 The Article 4 directions were 'made' on the 28th July 2021 to come into effect from 1st August 2022. Consultation on them and their associated supporting evidence base occurred between 5th August and 16th September 2021. The Council received representations from 14 respondents, including residents, the Mayor, other statutory consultees for example, Transport for London (TfL)

and Highways England (HE), as well as interest groups, neighbourhood forums and planning agents. More detail of the consultation responses is set out in Appendix 1, together with officer responses and recommended actions.

- 3.5 A short summary of the responses as they related to the Article 4s as a whole and also each one:

General

- 3.6 Some respondents supported the use of Article 4s as requiring planning permission would allow proper consideration of development impacts not able to be addressed through permitted development, including on transport (TfL and HE), canals (Canal & River Trust), water (Thames Water) as well as the amenity of occupants (resident and Advice for Renters). One resident wanted greater use of Article 4s to better address climate change, whilst Sudbury Town Residents' Association (STRA) wanted them for other permitted development (predominantly residential extensions) that can impact on a locality's character. STRA also had comments about the Council's HMO Article 4 (now confirmed) and the Local Plan's conformity with national policy and regulations.

Strategic Industrial Land and Locally Significant Industrial Sites

- 3.7 The Mayor supported the ability to ensure industrial and logistics capacity is not undermined and the use of targeted Article 4s to assist with this.

Local Plan Allocations

- 3.8 The Theatres' Trust supported the inclusion of allocations incorporating cultural facilities, whilst the Mayor supported the ability to ensure the most effective use of land consistent with the allocation policies.

Town Centres

- 3.9 The Theatres' Trust supported the ability to ensure the diversity of town centres, premises for activities associated with supporting cultural uses and also address 'agent of change' impacts on entertainment venues. Support was also received from the Mayor, STRA and Harlesden Neighbourhood Forum in better ensuring the vitality and viability of town centres. STRA wanted neighbourhood parades to be included. Valerie Scott consultants considered the Article 4 to be too extensive and therefore inconsistent with the NPPF.

Remainder of the borough

- 3.10 The Mayor supported the ability to ensure that industrial and logistics capacity is not undermined, as did STRA highlighting its role in protecting established small businesses. Valerie Scott Consultants considered the Article 4 to be too extensive and therefore inconsistent with the NPPF.

- 3.11 The responses to these comments in Appendix 1 concludes no changes are required.

Secretary of State representation

- 3.12 After a considerable period post their initial consultation, a representative of the Secretary of State from the Department of Levelling Up, Housing and Communities (DLUHC) responded in May 2022. The response was essentially the same as that received by other outer London boroughs at the same time. In summary, it indicated that the Article 4s were considered to be inconsistent with the NPPF. In particular, this was in relation to not showing protection from *wholly* unacceptable impacts and also lack of evidence of the application of the Article 4s to the smallest geographical area possible. It was noted that premises that do not benefit from the permitted development should also be excluded. It also set out the need for a more granular assessment. Essentially this was seeking an additional justification on a building by building basis for inclusion.
- 3.13 A follow up meeting occurred with a wider range of representatives from DLUHC to further clarify the points and potential way forward. From the Council's perspective, whilst it was helpful to have the engagement, it also raised significant issues.
- 3.14 An issue for the Council was DLUHC's focus solely on the NPPF's content in relation to Article 4s, rather than its policies as a whole. This is important when taking account of the fact that there had been no changes to other parts of the NPPF related to town centres or industrial needs as a result of amendments to policy on Article 4s. In this context, the appropriateness of the Council's strategy in relation to these matters and the defined boundaries of identified town centres and industrial areas had very recently been found sound through the Local Plan examination. Notwithstanding the fact that the supporting evidence paper for the town centres Article 4 indicated that significant reductions in town centre boundaries had occurred in relation to some town centres in the Local Plan process, DLUHC considered that as the designations went beyond the core shopping area, they were inconsistent with the NPPF.
- 3.15 It was clear that DLUHC understood that local employment sites (LES) provide around 1/3rd of the borough's industrial floorspace stock dispersed across the borough, and that there is currently a shortage of capacity to meet needs. Nevertheless, it was suggested that some sites could in any case be regarded as potentially surplus to requirements, with priority for retention given to more obvious clusters.
- 3.16 For town centres, SIL and LSIS it was suggested buildings that for example that didn't have the E use class within them, or were outside the maximum floorspace thresholds allowed through permitted development should be considered for exclusion.
- 3.17 In relation to the LES point, this would be very difficult to do given the many hundreds of LES properties and defining what is an acceptable cluster size. It also indicates that the Council would consider some unjustified loss acceptable, which given the shortfall in provision is likely to result in wholly unacceptable impacts when taken against the London Plan and Local Plan strategy of seeking to meet business needs and policies BE1 and BE3. These

policies set out the strategy for protecting existing properties, or maximising viable re-provision to enable a better opportunity for sufficient industrial floorspace to meet the borough's needs which otherwise will not be met.

- 3.18 In relation to the use and floorspace thresholds, this would require a building by building, possibly floor by floor analysis. In terms of the size thresholds, particularly for change of use to residential, it does not take account of the fact that commercial units can often be sub-divided without the need for permission, to make them qualify. Drawing around individual properties across the whole borough will be very time consuming and in a way pointless, as non-qualifying buildings owners have no reason to feel aggrieved with the inclusion of their premises in the Article 4 as they don't benefit from the rights in any case.
- 3.19 In addition, because essentially as yet no Article 4s have been considered by the Secretary of State (SoS), DLUHC indicated that there was no clarity that any additional evidence base work, or possible suggested amendments to submitted Article 4s will in any case ultimately be successful. In the past there has been a wide variation in interpretation of appropriate areas for exclusion from permitted development rights based on evidence submitted by Local Planning Authorities to the SoS. This indicates the likely highly political nature of the decision making. For example for the initial office to residential permitted development rights in 2003, modest places with a small amount of office stock, such as Royal Tunbridge Wells, were elevated to protected status as well as the more understandable London Central Activities Zone, whilst many other areas submitted by local planning authorities across the country including regionally important city centres were excluded.
- 3.20 Given the other work priorities of Spatial Planning, particularly on Supplementary Planning Documents to support delivery of the Local Plan, e.g. masterplanning, sustainability, characterisation, design codes, etc. there is clearly a balance that needs to be struck in terms of a proportionate response. The Cabinet paper supporting the making of the Article 4s did indicate a high degree of risk in the Council pursuing the breadth of development rights and coverage of the borough that ultimately were taken forward.
- 3.21 Officers have indicated to DLUHC a willingness to submit further evidence and potentially review some of the boundaries. For example this could include suggesting removal of designated areas of open space from the rest of the borough Article 4. Although arguably materially it makes no difference to the outcomes, it significantly reduces the amount of the borough covered by that Article 4. In addition, there is some merit in removing site allocations that are not currently in Class E use too, or where there is a cross over between the site allocation boundary and SIL and LSIS, or town centre Article 4 boundaries. This simply wasn't possible prior to considering making the Article 4s, due to the short timescales that had to be adhered to. Again materially it will make no difference to the outcomes of the Article 4. For the town centres an easy process would be to remove single occupier 'big box' supermarkets from the town centre boundaries, such as Asda at Wembley Park. As these

premises are over 1000 sq.m they do not benefit from the permitted development rights.

- 3.22 On a without prejudice basis, DLUHC has indicated such changes are likely to be viewed positively. This could help them be more supportive of the Article 4s overall. Any suggested further amendments to those identified above will be subject to discussion with at least the Strategic Director and Cabinet member.

Next stages

- 3.23 Article 4s are subject to consultation by the Local Planning Authority when they are initially 'made'. Nevertheless, the Council is not allowed to subsequently simply amend the same Article 4 before it is confirmed if consultation indicates such changes are appropriate. It has to restart, making a new Article 4 with its associated consultation.
- 3.24 The SoS however has a wider range of powers. If necessary, they can direct that an Article 4 is modified, or revoked at any time. Due to the short timescale before 1st August 2022 when the Article 4s were planned to come into effect it and also to save the Council the administrative processes of making new directions, it has been agreed with DLHUC that the Council should if it wishes to do so, confirm the directions as they are.
- 3.25 This will also allow the Council and DLHUC greater time to hopefully come to a position where the evidence submitted is considered sufficient to allow greater DLUHC support for the Article 4s or any proposed modifications to boundaries. Following the conclusion of this work the SoS can formally consider the confirmed directions. The SoS can either then, leave them as they are, modify or revoke all or parts.

Conclusions and recommended actions

- 3.26 The responses to the consultation overwhelmingly indicated support for the made Article 4 directions. DLUHC's response has not been as positive and indicates a need for additional work by the Council to result in no, or limited SoS intervention.
- 3.27 Realistically, currently there is a large gap between their expectations of the level of additional evidence needed and the likely reduction of Article 4 boundaries required, and that which the Council think is appropriate in terms of resource and also in relation to boundaries to ensure Local Plan policy objectives are met.
- 3.28 This is further complicated by the limited number of Article 4s considered by the SoS. As such, there is no clear steer on what is a likely to be a highly discretionary judgement on the weight to be applied to NPPF policy and the ability for local planning authorities to satisfactorily deliver outcomes consistent with a newly adopted development plan.

- 3.29 In addition, no weight appears to have been attached to the extent to which Councils have met the Housing Delivery Test or can show a 5 year housing supply, or have an up to date plan. In Brent's case it appears to be being treated in the same manner as a Council that has a history of poor housing delivery and an out of date Plan, and no reasonable prospect of either being addressed soon.
- 3.30 Officers consider there is merit in at least trying to make some conciliatory moves to provide additional evidence and possibly suggest changes to A4 boundaries, as set out paragraph 3.21 albeit ultimately this may result in little change in terms of SoS decisions.
- 3.31 There are essentially 4 options that the Council can pursue:
- a) Do not confirm the Article 4 directions;
 - b) Confirm the Article 4 Directions, but provide no additional evidence nor suggest potential amendments;
 - c) Confirm the Article 4 Directions along with continued engagement with DLUHC to make them more supportive of the Article 4s than initially which may include additional evidence base or non-material reductions in geographical coverage; or
 - d) Significantly reduce the geographical extent of the Article 4s, for example to include only the primary shopping area of town centres and for SIL, LSIS and LES the properties more likely to be subject to permitted development.

Option A: Do not confirm

- 3.32 This would essentially mean that from 1st August 2022 all Class MA and Class ZA permitted development rights would come into effect, resulting in development inconsistent with the Local Plan. Realistically this will result in the loss of at least some LES, some SIL and LSIS premises and loss of class E commercial uses on ground floors of town centres and office on upper floors. It could compromise some site allocations in terms of achieving policy compliant development, in particular in not providing for the most effective use of land. As such this is not recommended.

Option B: confirm the Article 4 Directions, but provide no additional evidence or suggest potential amendments

- 3.33 This would be consistent with the majority of the formal consultation responses, if not the response from DLUHC. Confirming the Article 4s would mean that planning permission from 1st August 2022 would be required for all development which would have its permitted development rights removed. This does not mean that the Council would ultimately refuse planning permission, but it will likely ensure greater compliance with the development plan balanced against any other material considerations, resulting in better outcomes for Brent.

- 3.34 Not doing any additional work to address points raised by DLUCH however is likely to create a real risk of SoS directions to modify or at its extreme possibly revoke parts of all of the Article 4s.
- 3.35 The confirmation of the Article 4s is considered appropriate, nevertheless not providing any additional evidence or not potentially suggesting boundary amendments is not considered appropriate.

Option C: confirm the Article 4 Directions along with continued engagement with DLUHC to provide additional evidence and suggest potential amendments

- 3.36 Confirming the Article 4 would bring the same benefits as identified in paragraph 3.33. Continued engagement with DLUCH to provide additional evidence and suggest potential minor amendments as set out Paragraph 3.21 has the potential to give greater certainty of some success. This could possibly result in DLUCH support when they present the Article 4s to the SoS. At its best, this could result in the SoS either agreeing with the confirmed Article 4s as is, or alternatively some directions to modify consistent with boundaries proposed by the Council. These could reduce the geographic coverage, but not result in any less coverage of properties that might otherwise be able to benefit from permitted development rights. At its worst, it could be abortive work as the SoS may in any case direct to revoke the Article 4s or amend their boundaries to a much greater extent than proposed by the Council.
- 3.37 On balance, this is considered to be the best option. It retains the Council's position of seeking to protect as fully as possible outcomes consistent with its development plan strategy recently found sound at examination. In terms of resource, it is a fair compromise that ensures the commitment made in the Council's Local Development Scheme to producing a number of Supplementary Planning Documents is maintained to agreed timescales.

Option D: confirm the Article 4 Directions along with continued engagement with DLUHC to provide additional evidence and suggest significant boundary amendments

- 3.38 Confirming the Article 4 would bring the same benefits as identified in paragraph 3.33. Continued engagement with DLUCH to provide additional evidence and suggest potential major boundary amendments has the potential to give greater certainty of some success. This is likely to lead to greater support from DLUCH when they present the Article 4s to the SoS. At its best, this could result in the SoS agreeing with the proposed amended boundaries proposed by the Council. Nevertheless, there is still a risk of directions to modify boundaries beyond those proposed, or revoke some or all of the Article 4s.
- 3.39 To significantly amend the boundaries is realistically likely to require significant staff resource to be compliant with DLUCH advice of a property's inclusion needing to be justified by undertaking individual building

assessments. Clarification of the risk that the property is likely to come forward for permitted development will require engagement with property owners (who are under no obligation to disclose their plans) and a finer grain of site specific financial viability assessment than occurred for the Local Plan. For this scale of work, procuring advice from independent external viability consultants would be very expensive (tens of thousands). Showing the NPPF test of 'wholly unacceptable' outcomes for individual properties, is also likely to be very difficult, due to the small size sizes of most SIL, LSIS, LES or Class E properties, as well as the relatively low floorspace thresholds to which permitted development rights apply.

- 3.40 On balance, given the uncertainty of the SoS decision making process, this option is not recommended as an appropriate course of action. The resource commitment it would require is not favourable compared to other committed work over which the Council can better predict positive planning outcomes.

Recommended option

- 3.41 For the reasons set out, Option C is recommended.

Cancelling existing Article 4 Directions

- 3.42 There are a number of Article 4 directions that the Council has confirmed that are either now obsolete, or which will become obsolete from 1st August 2022 as a result of changes in the General Permitted Development Order 2015. These Article 4s unless revoked, will continue to be identified in property searches. Their inclusion in searches often creates requests for additional information from conveyancing solicitors on their content and status. To remove them from searches and the Council's website, it is recommended that they are formally revoked from 1st August 2022. These are the following Article 4s:

- A) Wembley Growth Area Article 4 for Class O Use Class B1a Offices to Use Class C3 dwellinghouses;
- B) Alperton Growth Area, Strategic Industrial Land and Locally Significant Industrial Sites Article 4 Direction for Class O Use Class B1a (offices), Class PA Use Class B1c (light industrial) and Class P Use Class B8 (storage or distribution centre) to C3 dwellinghouses
- C) Remainder of the borough Article 4 Direction for Class O Use Class B1a (offices) and Class PA Use Class B1c (light industrial) to C3 dwellinghouses

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. For the last year this would have generated an additional £17,278 compared to fees received from prior approval applications. The cost of the implementation of the Article 4 directions will be met from existing planning budgets. The additional officer time required to respond to DLUCH requests for more evidence and suggested boundary changes consistent with the recommendation 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, as will the process for revoking the obsolete Article 4s.

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:

Alice Lester

Operational Director Regeneration
Growth and Employment