



**Cabinet**  
24 July 2017

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

All Wards affected:  
All except parts of those wards in  
Tokyngton, Stonebridge, Harlesden,  
Kensal Green that fall within the Old  
Oak and Park Royal Development  
Corporation boundary

**Article 4 Direction: Office, Light Industrial and Storage or  
Distribution Centre to Residential**

**1.0 Summary**

- 1.1 Since 2010 Government has introduced a number of changes to town planning to introduce greater flexibility and speed of development delivery of new homes. This has included amendments to regulations to allow greater changes of use to residential dwellings through permitted development rights. There is now evidence that some of these changes have been prejudicial to the Council's proper planning of Brent as set out in policies in the development plan. Without potential intervention by the Council through means available to it to restrict this flexibility, they are likely to become increasingly so.
- 1.2 The report sets out the impact that the existing and proposed permitted development rights have had, or could have in the future. It proposes the making of an Article 4 Direction for parts of the Borough. This will remove permitted development rights for Office (B1(a)), Light Industrial (B1(b)) and Storage or Distribution Centre (B8) to Residential (C3). It will reinstate the need for an express grant of planning permission and as such in the areas in which the Article 4 would apply, reinstate the primacy of the development plan in shaping the future development of the Borough.
- 1.3 The Article 4s will apply to the areas of Brent which are identified as Growth Areas, Strategic Employment Locations and Locally Significant Industrial Sites. This can only be where the Council is still the local planning authority. Nevertheless, the approach of the Old Oak and Park Royal Development Corporation (OPDC) is similar to that proposed in this paper. OPDC has already adopted a non-immediate Article 4 direction to prevent change of use of offices and light industrial to residential in its Strategic Industrial Locations (including those in Brent where OPDC is planning authority).
- 1.4 In order to reduce the potential claims for compensation, it is proposed that the Article 4 direction is non-immediate. It is proposed to come into force 12 months

after consultation commences. The Article 4 will require confirmation after consideration of consultation responses. It is proposed that consideration of the responses and the subsequent decision whether to confirm is delegated to the Director of Regeneration and Environment in association with the Lead Member for Regeneration, Growth, Employment and Skills.

## **2.0 Recommendations**

- 2.1 Cabinet approve the issuing of an non-immediate Article 4 Direction removing permitted development rights for Office (B1(a)), Light Industrial (B1(b)) and Storage or Distribution Centre (B8) to Residential (C3) within Strategic Industrial Areas, Locally Significant Industrial Sites and the Alperton Growth Area
- 2.2 Cabinet approve the issuing of an non-immediate Article 4 Direction removing permitted development rights for Office (B1(a)) within the Wembley Growth Area
- 2.3 Cabinet delegate consideration of the consultation responses and the decision on whether to confirm the Article 4 direction to the the Director of Regeneration and Environment in association with the Lead Member for Regeneration, Growth, Employment and Skills.

## **3.0 Detail**

### **Background**

- 3.1 The need for additional homes nationally and in London in particular is recognised as a significant issue. More recently Government has through a number of different initiatives sought to increase the speed and amount of new dwellings built. This has included significant changes to the planning system, including to the General Permitted Development Order. The most recent revision of this was in 2016. The Order identifies where planning permission is and is not required for development.
- 3.2 In 2013 Government started to introduce increased flexibility in relation to changes of use to dwellinghouses. One of these changes was the introduction of permitted development rights for office (B1(a)) as identified in the Use Classes Order 1987 (as amended) to dwellinghouses (C3). This was initially for a period of 3 years. Through amendments made in 2016 however, this is now permanent . This change means that the express grant of planning permission is no longer required. Instead a prior approval process has to be submitted to the Council.
- 3.3 On 15<sup>th</sup> April 2015 Storage or Distribution Centre (B8) of less than 500 sq.m. to residential dwelling houses (C3) was introduced for a temporary period of 3 years. In 2016 light industrial (B1(c)) to residential dwelling houses (C3) was introduced to commence from 1<sup>st</sup> October 2017 also for a temporary period of 3 years.
- 3.4 The prior approval process is slightly different for all these types of development. For offices, it does not deal with the principle of the development but is limited to a few technical requirements, which most proposals can meet. This addresses:
  - a) transport and highways impacts of the development;
  - b) contamination risks on the site;
  - c) flooding risks on the site; and
  - d) the impacts of noise from commercial premises on the intended occupiers of the development.

- 3.5 For B1(c) and B8 the tests do pay greater attention to wider potential economic impacts. In addition to the above, prior approval is required if the change of use is likely to have an adverse impact on the sustainability a wider employment area/industrial estate. The Council can refuse a prior approval where it considers the change of use would otherwise have an adverse impact on the functioning of wider strategic business locations.

#### **Article 4 Directions**

- 3.6 Local Planning Authorities have the ability through Article 4 (1) of the General Permitted Development Order (GPDO) 2015 to remove permitted development rights. This is where they can justify that their inability to otherwise control development would have a significant impact on amenity, or prejudice their proper planning of an area. As a backstop the Secretary of State, who has to be notified on confirmation of an Article 4 direction, ultimately has the ability to intervene where they see fit. They can amend or remove an Article 4 direction proposed by a Local Planning Authority.
- 3.7 Historically most Article 4 Directions have been used to limit permitted development and protect the special character of conservation areas. This Council has confirmed a number of Article 4s over the last few decades. They apply within the majority of Brent's conservation areas, e.g. requiring planning permission for removing frontwalls and basement development.
- 3.8 The recent amendments to the GPDO, reducing the need for planning permission for a variety of development, has encouraged some Local Planning Authorities to start to take forward additional Article 4s where they feel they can be justified. Those seeking to require planning permission for office to residential development, particularly in London are on the increase. This has been for selected areas, rather than a blanket approach. The Secretary of State has previously intervened in and blocked some authorities attempts at a blanket approach.
- 3.9 Section 107 of the Town and Country Planning Act 1990 provides for property owners to claim compensation. This includes in certain circumstances where ordinarily planning permission is not required but then is subsequently refused, or conditions applied by the Local Planning Authority over and above those otherwise required. The compensation payable reflects the difference between development value in both scenarios and also additional costs associated with going through the planning process.
- 3.10 Regulations set out that in relation limitations placed by Local Planning Authorities on changes of use permitted by the GPDO. Compensation is not payable on any subsequent planning application decision after a period of 1 year following initial notification of an intention to adopt an Article 4 direction. This means that in order to avoid claims for compensation the majority of Article 4 directions issued by local planning authorities are non-immediate.
- 3.11 Regulations set out the extent to which a Local Planning Authority has to consult on an Article 4 Direction. After it decides on its intention to adopt an Article 4 Direction, the Council has to consult for a minimum of 28 days with those likely to be affected and statutory consultees. In this case it is proposed to issue a public notice and site notices within the areas proposed. Given the number of properties in the areas, it is not considered proportionate to serve an individual notice on each owner and

occupier. Once it has considered the consultation responses it has a period of up to 2 years to confirm the Direction after its initial notification of intention to adopt.

### **Impacts of Permitted Development Change Of Use Of Offices To Dwellinghouses**

- 3.12 In terms of numbers, the prior approval process nationally has, initially at least, undoubtedly assisted in meeting Government's aspirations of increasing housing supply. Government has been aware of many Council's concerns about the quality of residential development it has enabled, particularly in London. It circumvents the need to meet London Plan space and accessibility standards and also affordable housing or S106 contributions that would otherwise be required. Nevertheless, Government has made the initial 3 year 'experiment' permanent without any changes to address these issues.
- 3.13 In Brent the impact has the potential to be significant. 2049 dwellings have attained permission through 84 B1(a) prior approvals. The initial 3 year deadline should have acted as a catalyst for early delivery. In Brent however, to date this hasn't been reflected in build out rates. 339 dwellings have been completed, whilst a further 89 are under-construction. This still leaves a further 1621 dwellings which in theory could come forward (although this year's housing completion survey has not yet been fully completed).
- 3.14 The office floorspace that this displaces amounts to 81,700 sq.m. which is a very sizeable amount. Employee floorspace requirements can vary tremendously depending on the type of business and the usability of the space. Assuming however, a generous 20 sq.m. per person to reflect the likely poorer quality of the stock lost, this would accommodate 4085 full time employees.
- 3.15 Notwithstanding this potential significant loss of office space, the actual impact on job displacement in the initial stages of the prior approval regime would mostly likely have been limited. The majority of early approvals essentially would be removing older, principally vacant redundant office stock. Realistically this office floorspace was unlikely to be fully occupied, if at all. Some had in any case been allocated as potential residential sites in the Site Allocations and Wembley Area Action Plans.
- 3.16 There is evidence that the prior approval process for some schemes might only have been used as a mechanism to reduce overall affordable housing contributions. It potentially provides an increased benchmark land value in redevelopment schemes to be argued as a fall back position, rather than reflecting any genuine desire on the part of the developer to pursue such approvals.

### **Prejudicial impact of the Office to residential permitted development rights on the Council's ability to plan for its area**

- 3.17 As identified the amount of floorspace that has been through the Prior Approval process is significant. Whilst earlier schemes might have been dealing with essentially largely vacant or obsolete stock, more recently this has changed. The change of use of fully occupied office to residential would appear to still provide sufficient returns for it to be a viable proposition. Were the development to require planning permission, policies in the Local Plan would necessitate the developer showing that such space is unviable for business use before it could be released for other uses.

- 3.18 The recent prior approval for York House Wembley shows the scale of business displacement which is occurring. In this case an essentially fully occupied office block of over 10,000 sq.m. accommodating approximately 100 small businesses will be replaced with 360 micro-flats. This not only creates an issue in where these businesses that are displaced will now move to against a background of limited availability of other stock, but also affects the place-making aspect of the Wembley Area Action Plan. The area will lose a significant element of its daytime activity/ local spend.
- 3.19 Notwithstanding the diminished availability of office stock, rents do not currently appear to be sufficiently high enough to encourage significant new office building activity in the Borough, although there are some granted/proposed in the Wembley Action Area. Apart from the Civic Centre, there has not been any new office building of note in recent years. Like most of outer London, Brent is not recognised by commercial office developers as a priority location for investment. There seems no prospect of speculative office building occurring to address the needs of smaller businesses. If the loss is allowed to continue unfettered, it provides a significant risk to the proper planning of meeting Brent's employment needs as it has the potential to further displace such activity out of the Borough.
- 3.20 In addition to this loss of stock, there is also evidence that office to residential prior approval activity is potentially undermining delivery of site allocations identified in the development plan. This has been both through delaying their redevelopment through the need to deal with additional property owners once conversion has taken place. It has also undermined the extent to which sites are being delivered in a well planned manner, encouraging an efficient use of land as envisaged in planning policy; thus diminishing overall housing delivery. An example of this is within Alperton where the Liberty Centre has been subject to a number of prior approvals in the middle of a site allocation that envisaged comprehensive redevelopment.
- 3.21 There have also been 11 office to residential prior approvals occurring within Strategic Industrial Locations (SIL) and Locally Significant Industrial Sites (LSIS). This is having two impacts. Firstly it is resulting in loss of employment land in priority employment locations, otherwise heavily protected in policy terms. Secondly the introduction of residential dwellings into employment areas appears to be undermining the future investment in employment uses in those areas. Similar adjacent properties are being brought forward for prior approval or the new residential use is being used by applicants to justify the inappropriateness of existing employment allocations or long term viability issues due to the presence of residential properties, e.g. Heather Park Road.
- 3.22 Brent's Employment Land Study 2016 identified the necessity to retain SIL and LSIS sites for business purposes. The redevelopment of former employment sites to residential and economic growth after the recession has resulted in a greatly increased need for employment land over the last 5 years compared to the preceding 5 years. As such there is a greater reliance on protecting the existing stock to meet needs. Brent's Development Management Policies Local Plan adopted in November 2016 identifies in Policy DMP14 that only 11.5 hectares of such employment land should be released to 2029. Current applications if approved would take Brent very close to this target. As such further future loss through prior approval activity in SIL and LSIS locations presents a significant risk to safeguarding longer term employment projects in some of the the principal locations for businesses in the borough.

- 3.23 In relation, to permitted development rights that allow B8 premises under 500 sq. metres to change to residential use, the level of activity in the Borough has to date been limited. Only one case has been permitted, which was not in SIL or LSIS designated employment areas. It is likely that potential applicants consider that the prospects of the Council granting a prior approval in designated employment locations is not very likely. Such proposals would obviously be more likely to be regarded as having an adverse impact on the sustainability of employment areas important for providing industrial services or storage or distribution services.
- 3.24 In relation to permitted development rights that allow B1(c) premises under 500 sq. metres to change to residential use the B1(c) premises this provision only starts on 1<sup>st</sup> October 2017, so obviously to date there has not been any prior approval applications. It could well be that as with B8 that potential applicants are unlikely to apply, as they will not consider prior approvals as being likely to be granted.

### **Proposed Way Forward**

- 3.25 For SIL and LSIS (see Appendix 1 for boundaries) it is suggested that a non-immediate Article 4 direction is taken forward to deal with removing permitted development rights (subject to prior approval) for B1(a), B1(c) and B8 to residential. It is accepted that there has been little activity in terms of applications for B8 and there will also probably be little activity in relation to the B1(c) which has yet to commence due to the Council being able to refuse a prior approval due to its potential impact on the sustainability of employment areas. Nevertheless, whilst the B1(a) order is being made, it makes sense to provide clarity on B1(c) and B8 to give an indication that the Council gives weight to the employment allocations to stop potential wasted effort on the part of potential prior approval applicants.
- 3.26 In relation to the Growth Areas, Wembley has had the greatest level of activity of B1(a) to residential and still has numerous premises in office use that could change. It is therefore proposed that this area is subject to a non-immediate Article 4 for B1(a) to residential. The Alperton Growth Area has a mixture of employment types on allocated and non-allocated sites, it is recommended that for this area the same B1(a), B1(c) and B8 to residential non-immediate Article 4 Direction is applied. (See Appendix 1 for the Wembley and Alperton Growth Area boundaries).
- 3.27 The use of the Article 4 does not automatically mean that planning permission for what was previously permitted development will be refused. The Council still has to go through the same processes for determining a planning application, providing sound reasons for its decisions. It will however allow the Council to take account of the policies of the development plan, which for B1(a) to residential in particular is currently not taking place.
- 3.28 There is a risk in proposing a non-immediate Article 4 that it flushes out any potential developments who would otherwise lose the ability to use the prior approval process in the year in which notice has been given. This could exacerbate the issue of loss of premises to residential. Proposing an immediate Article 4 would overcome this issue. It would however leave the Council open to compensation claims, so is not considered an appropriate risk for the Council to take.

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

- 3.29 The process of adopting a non-immediate Article 4 Direction is set out in paragraph 3.11. To reduce Cabinet's workload it is proposed that Cabinet delegate

consideration of the consultation responses and the decision on whether to confirm the Article 4 direction to the Director of Regeneration and Environment in association with the Lead Member for Regeneration, Growth, Employment and Skills.

## **Conclusions**

- 3.30 Changes to permitted development rights for offices to residential has resulted in a significant number of prior approval applications. Approvals so far if implemented will result in the loss of 81,700 sq. metres of office floorspace. Whilst initially this floorspace lost would predominantly have been of mostly vacant, redundant space, more recently fully occupied premises are subject to proposals. It is not clear where the firms located in these premises will relocate to and they could well be displaced out of Brent. This, together with some approvals undermining wider outputs of allocations in Growth Areas has been and will continue to have the potential to become prejudicial to the Council's ability to properly plan for its area.
- 3.31 As such it is recommended that a non-immediate Article 4 is pursued to limit the opportunity for prior approval applications for B1(a), B1(c) and B8 to residential in SIL and LSIS where Brent remains the local planning authority and in the Alperton Growth Area, whilst a non-immediate Article 4 is for B1(a) to residential is pursued in the Wembley Growth Area.

## **4.0 Financial Implications**

- 4.1 Where Article 4 directions result in a planning application needing to be submitted, the Council cannot charge an application fee. It is not considered that this will have significant financial implications for the planning division in terms of lost income, as prior approvals in any case have a lower fee than would ordinarily be attained through planning applications.
- 4.2 The cost of the implementation of the Article 4 direction will be met from existing planning budgets. Costs will be low, limited to a notice in the local press and production of site notices which will have to be displayed in the area affected.

## **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 paper identifies the process for taking forward the Article 4 which will be consistent with the regulations.

## **6.0 Diversity 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), B1(c) and B8 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 therefore less likely to be able to travel to find work. Whilst it might reduce the amount of housing that comes forward, the majority of the housing that is delivered through this source is market housing which does not meet London Plan space and mobility standards.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 None arising specifically from this report.

### **Background Papers**

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