

Community Wealth Building
Town Hall, Upper Street, N1 2UD

Report of: Executive Member for Finance, Planning and Performance

Meeting of: Executive

Date: 20 July 2023

Wards: Bunhill, Clerkenwell, St Peter's and Canalside, St Mary's and St James', Finsbury Park, Caledonian, Laycock, Barnsbury.

Subject: Confirmation of Article 4 Directions to withdraw Permitted Development right for Change of Use from Class E to Dwellinghouses (Class MA).

1. Synopsis

- 1.1 The council is committed to creating a more equal future for Islington where everyone who lives here is able to thrive. To support the achievement of this ambition, the council is committed to delivering an inclusive local economy. This means that the council will work to ensure that the economic wealth and opportunities that are generated in Islington remain in Islington and are distributed more fairly to local people and small and micro businesses. The council is also committed to ensuring that everyone has a safe place to call home and achieving Net Zero Carbon emissions in the borough by 2030.
- 1.2 In 2020 the Government introduced new permitted development rights. These rights enable landowners to change the use of a property from a broad range of commercial and community uses to a residential use without planning permission. The council is concerned about these rights because:
 - they have the potential to undermine the economic functioning of the borough's retail and employment areas and act to the detriment of micro and small businesses and local shops and services.

- they enable landowners to bypass the council's planning policies for example in respect of affordable housing, housing quality standards, and energy efficiency.

1.3 The imposition of these permitted development rights is therefore contrary to the council's ambition to deliver a more equal Islington because they undermine the council's ability to:

- support a more equal, diverse and inclusive economy; and
- deliver genuinely affordable, high quality and energy efficient homes for local people.

3.8 Provided that the relevant statutory and national planning policy requirements are met, the council is able to remove these rights through the introduction of Article 4 Directions. In August 2022 the council notified interested parties that it intends to introduce Article 4 Directions in the areas indicated in Appendix One of this report. These areas are: parts of the Central Activities Zone (CAZ) and its periphery including the Angel town Centre; the Vale Royal/ Brewery Road LSIS; and the two Specialist Shopping Areas at Camden Passage and Fonthill Road. Ten responses to the notification were received and are summarised below and in Appendix Two.

1.4 The Secretary of State for Levelling Up, Housing and Communities has wide ranging powers to require the modification or withdrawal of Article 4 Directions. The Secretary of State has been notified and has confirmed that they do not intend to intervene in respect of these Directions. Work is underway to protect further part of the borough including the

2. Recommendations

2.1 To authorise the confirmation of Article 4 Directions, which withdraw the permitted development right, which allows a change of use from Class E to Dwellinghouses. The Directions will come into force on or after 31 August 2023. The areas that the Directions cover are indicated on the plan at Appendix 1.

2.2 To note that the council is currently working on the introduction of a second phase of Article 4 Directions and that these Article 4 Directions will particularly focus on Islington's town centres and other local retail and employment areas.

3. Background

- 3.1 On 1 September 2020, an amendment to the planning Use Classes Order came into effect creating the new Use Class E (Commercial, Business and Services). This class incorporates the following uses:
- B1 (business).
 - A1 (shops).
 - A2 (financial and professional services).
 - A3 (restaurants and cafes).
 - Uses from the previous D1 and D2 use classes (indoor sport, recreation, fitness, medical, health, nursery, crèche and day centres).
- 3.2 Planning permission is not normally required for change of use within the same planning use class including within the E Use Class.
- 3.3 Following the introduction of the E Use Class, through a change to legislation¹ the Government introduced a further permitted development right known as Class MA. This right, which came into effect on 1 August 2021, permits most land or buildings in Use Class E to be converted to a residential use (Class C3) through the prior approval process. This means that planning permission for a change of from Class E to a residential use is not always needed and the council's planning policies cannot be applied to this form of development.
- 3.4 Permitted development rights can be withdrawn through the introduction of Article 4 Directions. The National Planning Policy Framework (NPPF) and Planning Policy Guidance (PPG) state that the use of Article 4 Directions should be limited to situations where they are necessary to avoid wholly unacceptable adverse impacts on an area, or to protect local amenity and / or the wellbeing of the area. The PPG notes that the potential harm that the Direction is intended to address should be clearly identified.
- 3.5 Planning officers gathered detailed, up-to-date, and comprehensive evidence (primary and secondary) to support a proposal for Article 4 Directions. This included evidence on commercial, residential, retail, leisure and hospitality uses down to an individual site or building level.
- 3.6 Based on the Council's evidence, the following would be the main impacts of uncontrolled Class MA on the proposed Article 4 Directions areas:

¹ The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

- Existing office users would be unable to expand, they may be forced to leave the area and new companies would be unable to locate there due to space being unavailable or unaffordable due to scarcity.
- Lack of space or higher cost of space would obstruct the emergence of specialist employment and retail clusters and the growth of those already in existence.
- The rich and diverse mix of retail, employment and hospitality uses which contributes to attractiveness of Islington and London would be eroded.
- Unrestricted Class MA would make it difficult to efficiently use scarce land and deliver development at scale. This would harm employment intensification and housing delivery.
- The council would lose its ability to secure high quality and genuinely affordable homes in this area where a change of use is considered to be acceptable.

- 3.7 In preparing the Directions, officers considered a wide range of studies, commissioned evidence and carried out a site-by-site mapping of the Central Activities Zone and the other Direction areas. The studies referred to included Local Plan evidence such as the Employment Land Study (2016), Review of B-Use Premises and Permitted Development Rights (2016), Retail and Leisure Study (2017), GLA studies such as the London Office Policy Review (2017) and consultant research such as “Remixing Central London” by the Centre for London. The council also commissioned a study from University College London entitled “Understanding permitted development for commercial-to-residential change of use in Islington” (2022). This indicated very low levels of vacant commercial premises in Islington.
- 3.8 Map-based surveys and site visits were used to gather evidence about all the areas in the scope of the Directions. These fine-grained site-by-site investigations helped officers build up a detailed knowledge of employment clusters and communities in the affected areas. They assessed this information against the strategic objectives for the Central Activities Zone (CAZ) and its periphery, the Vale Royal/ Brewery Road LSIS and the two Specialist Shopping Areas at Camden Passage and Fonthill Road.
- 3.9 In assessing the evidence, officers identified sites where the change of Class E uses to residential would result in wholly unacceptable adverse impacts. Because Class MA could impact heavily on specialist employment clusters and communities in the CAZ, the proposed Article 4 Directions are mostly located in this area and its periphery.
- 3.10 The sites where Class MA criteria would be insufficient to protect key Class E uses have been included in the Directions. In most cases, these are individual sites. However in the densest employment locations, such as the south of the Borough,

entire blocks are included. The proposals do not however involve a blanket Article 4 Direction coverage of the CAZ.

- 3.11 Sites and blocks are therefore only subject to Directions where their inclusion is justified by robust evidence and they meet the strict NPPF and PPG tests.
- 3.12 The Council has therefore prepared detailed evidence setting out the wholly unacceptable adverse impacts that would result from the uncontrolled introduction of Class MA in the areas subject to the Directions. This rigorous mapping exercise has ensured that the Directions cover the smallest possible geographical area.
- 3.13 The Directions are therefore considered to be fully in accordance with the NPPF and PPG.
- 3.14 This supporting evidence was summarised and assessed in a delegated report which was signed by the Director of Community Wealth Building in August 2022. The notification of the proposed Article 4 Directions was subsequently consulted on as required by legislation.

Compensation and Non - Immediate Directions

- 3.15 It should be noted that compensation to landowners may be payable if the following procedure is not followed (as set out in section 108 of the Town and Country Planning Act) i.e.:
- The withdrawn permitted development right is of a prescribed description as set out in the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended).
 - The permitted development right is withdrawn in the prescribed manner.
 - Notice of withdrawal is given in the prescribed manner i.e. not less than 12 months and no more than two years before it takes effect.
- 3.16 On 23 August 2022 the council provided notification about the proposed introduction of Article 4 Directions covering the following areas:
- Central Activities Zone (CAZ) and CAZ Fringe in Kings Cross Area;
 - Vale Royal/Brewery Road Locally Significant Industrial Site;
 - Fonthill Road Specialist Shopping Area; and
 - Camden Passage Specialist Shopping Areas.

3.17 These Directions were non-immediate and will not come into force until the expiry of a year following the making of the Directions i.e. 31 August 2023. This will remove the council's liability to compensate landowners.

Consultation

3.18 As required by the statutory procedures, the council consulted on the proposed Article 4 Directions from 23rd September until 4th of November 2022. This was in the form of:

- Site Notices (165 locations);
- Informing those on the council's planning policy consultation list; and
- Notices published in the Islington Gazette and the Evening Standard.

3.20 Ten responses were received to the public consultation. These were from individuals, local groups and organisations such as the GLA and Natural England. These responses are summarised as follows:

- Five responses in support of the proposals.
- One response expressing no comment.
- One response stating the A4D was not comprehensive enough and the time-period for adoption was too long.
- One response asked questions about a specific site and if the council's decision on sites was final.
- Two objections were received:
 1. One described the A4D as an unnecessary control on the flexible use of buildings that will reduce the supply of housing.
 2. One objection argued site-specific reasons for why a building should be excluded from the A4D. This objection also raised general concerns about the council's evidence, changes in the London office market that have resulted in less demand for secondary space and the potential contribution of vacant secondary offices in accessible locations to housing supply, with limited carbon footprint.

3.19 A further summary of the representations is contained in Appendix 2 together with detailed responses from planning officers.

3.20 The Secretary of State has wide ranging powers to revoke or amend these Directions if they do not comply with national planning policy or guidance. In this instance the Secretary of State has been properly and consulted and has decided that they will not intervene in this instance.

- 3.21 The council is in the process of gathering evidence and developing a second tranche of Class MA A4 Direction for other parts of the Borough such as town centres and local shopping areas.

4. Implications

4.1 Financial Implications

- 4.1.1 If a local planning authority makes an A4D, it may be liable to pay compensation to those whose permitted development rights have been withdrawn in the event that planning permission is refused for such development. However, no compensation is payable if the correct procedure is followed, as set out in section 108 of the Town and Country Planning Act.
- 4.1.2 The costs associated with publishing and consulting on the A4D is estimated to be £30,000. The costs were funded within the existing budget of Planning and Development for 2022-3.

4.2 Legal Implications

- 4.2.1 An A4D removes the specified permitted right and means that an express grant of planning permission will be required for the change of use. If the non-immediate procedure is followed then the A4D would, if confirmed, come into force one year from the date of the publication of the notice, so that the council would not be liable to pay compensation should planning permission be refused or granted subject to conditions.
- 4.2.2 Legal Services advised on the form of the notice and linked procedures which are specified in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The Secretary of State has extensive powers to withdraw or modify the geographic coverage of the Direction at any time. The council has power to cancel the Direction by subsequent Direction.
- 4.2.2 If confirmed by Executive, the A4D will be publicised via local advertisement and site notices. The GPDO requires the local planning authority to serve notice on the owner and occupier of every part of the land within the area or site to which the A4D relates, unless they consider that individual service on that owner or occupier is impracticable because it is difficult to identify or locate that person; or the number of owners or occupiers within the area to which the A4D relates makes individual service impracticable. In this case, it is considered that it would be impracticable for the council to identify and individually notify all parties potentially

affected by the proposed A4Ds.

4.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030

4.3.1 The A4D is likely to have a positive environmental impact as, by re-introducing the need for planning permission for certain proposals, they will allow relevant planning policies to be applied – in particular the existing Core Strategy, Development Management Policies and Finsbury Local Plan, which set out policies relating to sustainability of residential development, which is due to be replaced by the new Local Plan in the new future. Rather than the light-touch prior approval process, developers would need to comply fully with the Council's sustainability policies to secure planning permission. This would help the Council achieve its target of net zero carbon by 2030 and other policies to protect the local and global environment.

4.4 Equalities Impact Assessment

4.4.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

4.4.2 An Equalities Impact screening exercise was carried out with input from the Council's Fairness and Equality Team. Restricting this PD right was found to potentially impact on a wide range of people and organisations in the Borough including residents, businesses and community groups. However, no negative impacts were identified in the screening exercise and a neutral impact was identified for all groups of people. The screening assessment did not identify a negative impact in relation to any of the groups with protected characteristics. The Directions would allow the Council to assess applications against its policies and avoid negative impacts, and a full Equalities Impact Assessment Report is not required in relation to this proposal.

5. Conclusion and reasons for recommendations

- 5.1 The Class MA prior approval process is light touch in nature and in the absence of Article 4 Directions the council would have minimal control of changes of use from Class E to residential. As a result, significant amounts of viable, attractive commercial and community floorspace would potentially be at risk of being lost.
- 5.2 The proposed Article 4 Directions are limited to situations where it is necessary to avoid wholly unacceptable adverse impacts and to protect local amenity and the well-being of the area. The Article 4 Directions cover the smallest geographical area possible and, are based on robust evidence. As a result, the making of the proposed Directions is fully in accordance with paragraph 53 of the NPPF.
- 5.3 The proposed Article 4 Directions would enable the council to assess proposals for change of use from Class E to residential against adopted planning policies in four important employment and retail locations in the borough. The confirmation of the Directions is therefore supportive of the council's ambition to create a more equal borough, enable an inclusive economy, provide good quality genuinely affordable homes and reduce carbon emissions.

Appendices:

- Appendix 1 – Article 4 Directions to be confirmed
- Appendix 2 – Consultation Statement

Background papers:

None.

Final report clearance:

Authorised by:

Executive Member for Finance, Planning and Performance

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