



City of Westminster

# Cabinet Member Report

<b>Decision Maker:</b>	Cabinet Member for Built Environment
<b>Date:</b>	27 June 2016
<b>Classification:</b>	For General Release
<b>Title:</b>	Confirmation of Westminster's Article 4 Direction for Basements
<b>Wards Affected:</b>	All
<b>City for All Summary</b>	This supports delivery of basements revision under Heritage.
<b>Key Decision:</b>	Yes
<b>Financial Summary:</b>	Financial impacts are limited to a small number of planning applications which will not pay a planning application fee.
<b>Report of:</b>	Director, Policy, Performance and Communications

## **1.0 EXECUTIVE SUMMARY**

- 1.1 This report seeks approval to confirm the non-immediate Article 4 Direction to suspend permitted development rights in respect of residential basement development. This follows previous notification and consultation by way of a Cabinet Member Decision Report dated 1<sup>st</sup> July 2015, press notices and advertisements. This report details consultation responses received and sets out how these have been taken into account in accordance with Schedule 3 sub-paragraph (9) of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 1.2 Appendix 1 contains the text of the Article 4 Direction for basement development covering the whole of the borough; Appendix 2 consists of copies of responses received following consultation on the making of this Direction; Appendix 3 is a copy of a letter received from the Secretary of State acknowledging the making of this Direction and Appendix 4 is the model text for the notice following confirmation of the Article 4 Direction, Appendix 5 sets out the locations for display of notices.

## **2.0 RECOMMENDATIONS**

- 2.1 That the Cabinet Member confirms a borough-wide, non-immediate Article 4 direction to remove permitted development rights granted by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the enlargement, improvement or other alteration of a dwellinghouse, by way of basement development, lightwells, or any other development below the dwellinghouse or its curtilage to come into effect on 31 July 2016.

## **3.0 REASONS FOR DECISION**

- 3.1 To ensure appropriate regulation of basement development within the dense urban form of the city.
- 3.2 With the introduction of the basement revision and its more restrictive requirements, there would be an incentive for some owners to construct basements using their permitted development rights rather than applying for planning permission under the new policy. Such development would not be subject to any of the requirements of the basements policy, or the Code of Construction Practice, which have been carefully drafted to mitigate harmful construction and other impacts on residents and on the residential character of the Borough. Basements are not limited to particular areas of the city, and therefore the risk of basements potentially being built using permitted development rights is also Borough-wide.

## **4.0 BACKGROUND, INCLUDING POLICY CONTEXT**

### **4.1 Article 4 Direction for Basements**

- 4.2 At present a basement extension to a dwelling house, beneath the footprint of the building, is by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 permitted development (PD). This means that planning permission is not required. A potential consequence of

the restrictions on the size of basement extensions, brought about by the emerging basements policy, and associated requirements for construction management, is a risk that more basements are constructed under PD, and that those basements constructed under PD rights are not managed in an appropriate way which mitigates harmful impacts.

- 4.10 An Article 4 Direction is a direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area. In this instance it is the right to extend a dwelling house by means of an additional basement, under Schedule 2, part 1 Class A that would be removed.
- 4.11 In order to make an article 4 direction the legal requirement is that the local planning authority is “satisfied that it is expedient that development should not be carried out unless permission is granted.” The potential amenity impacts arising from basement development in the context of Westminster’s constrained urban form will be similar whether a basement is constructed under permitted development or not, and as such the council’s evidence base for its Basement Revision to the City Plan also supports the Article 4 Direction.
- 4.12 In July 2015 the Cabinet Member for the Built Environment approved a ‘non-immediate’ Article 4 Direction in respect of residential basements across the City. Subsequently a period of public consultation took place between 31 July and 11 September 2015. The GPDO requires the council to take into account any representations received when confirming an Article 4 Direction. Representations are summarised below in section 6, below and reproduced in full in Appendix 2.

### **Notification and Consultation**

- 5.1 In accordance with the requirements of Schedule 3 of the GPDO notice was served locally by newspaper advertisement and site notices, with the Secretary of State notified. A period of six weeks was allowed for comments.
- 5.2 Five substantive responses were received; one objecting to, and four supporting the Article 4 Direction. In addition a letter was received from the Secretary of State, acknowledging the Article 4 Direction, and reminding the council to notify the Secretary of State upon confirmation of the Article 4 Direction, but not seeking to annul or amend the Direction in any way.
- 5.3 The Article 4 Direction was notified by the following means:
- Local Advertisement in the local Gazette newspaper
  - Notices displayed in two locations within each ward (see Appendix 5) for a period of at least six weeks.
  - Email notification to all Members
  - Email notification to the specific consultees, including those subject to the statutory duty to cooperate (Section 4 of the Town and Country Planning

(Local Planning)(England) Regulations 2012) and the 'specific consultation bodies' as defined in Section 2 of those Regulations

- The Mayor of London and the GLA family
- Email notification to all consultees registered on the LDF database (comprehensively reviewed in March 2013, and updated on an on-going basis, the database currently comprises about 400 consultees including members of the public, businesses and residents' groups)
- Internal consultees within the city council, including EMT and senior managers.

5.4 In accordance with government guidance and legislation, the notification documents for the Article 4 Direction included:

- A description of the development and areas to which the direction relates i.e. to the enlargement, improvement or other alteration of a dwellinghouse by way of basement development, lightwells or any other development below the dwellinghouse or its curtilage, and across the entire area of the City of Westminster.
- A statement of the effect of the direction i.e. removing permitted development rights.
- Specifying that the direction is made under Article 4(1) of the GPDO
- Specifying a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the LPA – i.e between 31 July and 11 September.
- Giving details as to how the direction and accompanying maps can be viewed i.e. at the council's offices at 64 Victoria Street, and on the Council's website at: [www.westminster.gov.uk](http://www.westminster.gov.uk)

## 6. Summary of Representations

6.1 The council received four representations in support of the Article 4 Direction, one individual; the Soho Society; the Covent Garden Area Trust, who commented that tighter controls over development which could impact on the heritage, character and appearance of Covent Garden and the amenity of residents living in the area; and from Historic England who commented that it could be advantageous in the assessment and management of Westminster's archaeological resource.

6.2 Cranbrook Basements objected to the removal of permitted development rights as an unnecessary infringement of the house owner's right. Referencing the NPPF paragraph 200, which states:

"The use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities). Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so."

Cranbrook argued that they did not consider the local amenity and wellbeing of the area would be compromised throughout the entire borough. They further argued that because withdrawal of permitted development rights

means no planning application fee is payable, that this can be interpreted as meaning that the Council should bear the full costs of producing all of the documents that form the planning application, including the construction method statement, structural method statement etc.

## 7. Key Issues for consideration

7.1 Cranbrook's representation raises two points which require consideration:

Firstly, **whether the removal of permitted development right is necessary to avoid compromising the local amenity and wellbeing of the entire area.**

As part of the evidence base for the Basement Revision to Westminster's City Plan the council prepared detailed supporting information on the impacts of basement excavation and construction. This included:

- complaints received relating to basement construction sites;
- neighbour responses received to basement planning applications;
- a survey undertaken by the office of Karen Buck MP intended to understand and evaluate the effects on residents of basement developments, which particularly noted a high level of concern at disruption to traffic, noise disturbance, vibration and dust; and
- excerpts from resident association magazines highlighting local concerns and support for a new policy.

The document also mapped basement development, to determine how widespread the issue was. While some areas had a greater concentration of basement applications, applications have been permitted across the entire area of the City of Westminster. Because basement construction will impact on neighbours beyond the immediately adjoining 'party wall' neighbours, include construction traffic, noise and dust, and potential changes in drainage, the impacts especially when entirely outside the planning process are indeed felt to be highly detrimental to local amenity and wellbeing, and these impacts affect the entire borough.

The council's approach to basements is based on applying reasonable limits, and their inclusion within the emerging new Code of Construction Practice. The fact that the council cannot know how many applications are determined under 'PD' further underscores the argument for bringing them within the control and oversight of the council. Accordingly no change to the Article 4 Direction is proposed.

7.2 An alternative argument made by Cranbrook relates to **whether the council should pay for all costs associated with producing a basement planning application.** This appears to arise from confusion over the provisions of the GPDO associated with compensation for removal of permitted development rights, and payment of planning application fees. One effect of the suspension of PD rights is that applicants will not be required to pay a fee for the processing and determination of their planning application. This is a quite separate point from the question of payment by the council of compensation. On this point the GPDO is clear that so long as the council has complied with the process for a non-immediate Article 4 Direction, as set out in Schedule 3

of the GPDO, no compensation is payable. No change is proposed to the Article 4 Direction, which is proposed for confirmation.

## **8. Next Steps**

- 8.1 Once the Council has confirmed the Article 4 Direction, by this decision report, notification must be served by the council on those parties originally notified of the Order including the Secretary of State. Appendix 4 contains the model notification wording. The notice will also be displayed in the same locations as the original notification was displayed (as Appendix 5).

## **9.0 FINANCIAL IMPLICATIONS**

- 9.1 As outlined in s7.2, the main financial implication arising from the Article 4 will be dealing with those (previously 'PD') planning applications for basement extensions without receiving a planning application fee. It is difficult to estimate how many such applications will be received, but on the basis of Certificate of Lawful Development received over the past three years this has typically involved at least thirty such applications in a year, (estimated loss of fee income around £5k per annum). However, following the confirmation of the Article 4 it is anticipated that fee-free applications would drop to near zero as applicants no longer have an incentive to keep their extension to within 'PD' limits in order to avoid planning permission fee. Instead many will seek to develop to the fullest extent possible, making the most of the potential additional floorspace, and value which this can generate, rather than seeking to avoid a planning application fee.

## **10.0 LEGAL IMPLICATIONS**

- 10.1 The rules for making and confirming of an Article 4 direction are set out in the Town and Country Planning (General Permitted Development) (England) Order, 2015. This legislation defines the classes of permitted development, exceptions to PD and outlines the process for making an article 4 Direction. The compensation arrangements are at sections 107-109 of the Town and Country Planning Act 1990.

## **11.0 BUSINESS PLAN IMPLICATIONS**

- 11.1 Confirmation of the Article 4 Direction will support delivery of the key City for All policy area of basements.

## **12.0 IMPACT ON THE ENVIRONMENT**

- 12.1 The Article 4 Direction makes an application for planning permission necessary for all residential basements, ensuring that all residential basements will be determined in line with the emerging new Basements Policy, which sets limits on depth and extent of excavation and introduces a range of additional controls and requirements aimed at mitigating the impact on the local environment, as well as producing more sustainable outcomes.

### **13.0 HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS**

- 13.1 The Article 4 Direction makes an application for planning permission necessary for all residential basements, ensuring that all residential basements will be determined in line with the emerging new Basements Policy, which sets limits on depth and extent of excavation and introduces a range of additional controls and requirements aimed at mitigating the impact on the local environment. This includes amenity impacts such as noise and dust which affects health and wellbeing, as well as bringing these within the scope of the new Code of Construction Practice, and requiring which includes health and safety considerations.

### **14.0 EQUALITIES IMPLICATIONS**

- 14.1 The confirmation of the Article 4 Direction will have a positive impact on equalities, as it assists the council in implementing its policy framework by extending the basements planning policy, (which has been subject to an integrated impact assessment), to all residential basements.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Nina Miles on 0207 641 1081 or email [nmiles@westminster.gov.uk](mailto:nmiles@westminster.gov.uk)**

### **BACKGROUND PAPERS**

- [Cabinet Member Decision report making Article 4 Direction in respect of Basements](#)
- [Supporting Information \(Regulation 19\) Publication Draft Basements Revision July 2015](#)

For completion by the **Cabinet Member for Built Environment**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: **Councillor Robert Davis, MBE, DL**

State nature of interest if any  
.....  
.....

*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled **Confirmation of Westminster’s Article 4 Direction for Basements** and reject any alternative options which are referred to but not recommended.

Signed .....

Cabinet Member for Built Environment

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:  
.....  
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.



Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

## Appendix 1

### THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015

#### CITY OF WESTMINSTER

#### NOTICE OF MAKING OF A DIRECTION UNDER ARTICLE 4(1) RELATING TO THE ENTIRE AREA OF THE CITY OF WESTMINSTER

**NOTICE IS GIVEN** by the City of Westminster, being the appropriate Local Planning Authority, that it has made a Direction under Article 4(1) of The Town And Country Planning (General Permitted Development) (England) Order 2015 (GPDO) .

**The Direction was made on** 22 July 2015 and applies to the entire area of the City of Westminster.

The Direction applies to the development described in the following Class of the GPDO :-

**Schedule 2 Part 1 Class A**, in so far as it relates to the enlargement, improvement or other alteration of a dwellinghouse by way of basement development, lightwells or any other development below the dwellinghouse or its curtilage.

The effect of the Direction is that the permission granted by Article 3 of the GPDO shall not apply to such development and such development shall not be carried out within that area unless planning permission is granted by the City of Westminster (the "Council").

A copy of the Direction and of the Plan defining the area to which it relates may be seen at the offices of the Council at Westminster City Hall, 64 Victoria Street, London SW1E 6QP during normal office hours or can be viewed on the Council's website at [www.westminster.gov.uk](http://www.westminster.gov.uk).

**Representations may be made concerning the aforementioned Article 4 Direction between 31 July and 11 September 2015.** If you wish to make representations, the Council would prefer to receive your representations by email sent to [planningpolicy@westminster.gov.uk](mailto:planningpolicy@westminster.gov.uk). Alternatively, you may wish to send representations by post addressed to the Policy and Strategy, 19<sup>th</sup> Floor, City Hall, 64 Victoria Street, London SW1E 6QP. Whether using email or post please put the following reference on your representation namely: **'Representation for the Non- immediate Article 4- Basement Direction'**. Any representation must be received by the Council **by 11 September** and should include your name, postal address and, if desired, an e-mail address.

**It is proposed that the Direction will come into force on 31 July 2016**, subject to the consideration of any representations received during the consultation period and the Direction being confirmed by the Council.

Dated this 31st day of July 2015

**Tasnim Shawkat**

Director of Law

Tri Borough Legal Services

Westminster City Council

City Hall

64 Victoria Street

London SW1E 6QP

## Appendix 2 - Responses Received

## **Appendix 3 – Acknowledgement from Secretary of State**

**Appendix 4 – Model text for notice of confirmation of Article**

**THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED  
DEVELOPMENT) (ENGLAND) ORDER 2015**

**CITY OF WESTMINSTER**

**NOTICE OF CONFIRMATION OF A NON-IMMEDIATE ARTICLE 4 DIRECTION  
UNDER ARTICLE 4(1) RELATING TO THE ENTIRE AREA OF THE CITY OF  
WESTMINSTER IN RELATION TO BASEMENT DEVELOPMENT**

**NOTICE IS GIVEN** by the City of Westminster, being the appropriate Local Planning Authority, that it has confirmed a Direction under Article 4(1) of The Town And Country Planning (General Permitted Development) (England) Order 2015 (GPDO) .

**The Direction was made on** 22 July 2015 and confirmed xx 2016 and applies to the entire area of the City of Westminster.

The Direction applies to the development described in the following Class of the GPDO :-

**Schedule 2 Part 1 Class A**, in so far as it relates to the enlargement, improvement or other alteration of a dwellinghouse by way of basement development, lightwells or any other development below the dwellinghouse or its curtilage.

The effect of the Direction is that the permission granted by Article 3 of the GPDO shall not apply to such development and such development shall not be carried out within that area unless planning permission is granted by the City of Westminster (the "Council").

A copy of the Direction and of the Plan defining the area to which it relates may be seen at the offices of the Council at Westminster City Hall, 64 Victoria Street, London SW1E 6QP during normal office hours or can be viewed on the Council's website at [www.westminster.gov.uk](http://www.westminster.gov.uk).

**The Direction will come into force on .**

Dated

Signed

## **Appendix 5 – List of locations for display of notices**

Queens Park Library, 666 Harrow Road  
Queens Park Primary School, Droop Street  
Maida Vale Tube Station, Elgin Avenue  
Outside 1a Lauderdale Parade, Lauderdale Road  
Outside St John's Wood Tube, Acacia Road NW8  
Outside 42 Carlton Hill, NW8  
126 Chippenham Road W9  
480 Harrow Road W9  
60 Great Western Road W11  
24 Blomfield Villas W2  
Warwick Avenue Tube, 42 Warwick Avenue W9  
93 Warrington Crescent W9  
6 Grove End Road, NW8  
Outside Baker Street Station, NW1  
Royal Oak Tube Station, Porchester Road, W2  
40 Sutherland Place, W2  
Bayswater Tube Station, Queensway, W2  
127 Bayswater Road, W2  
Hilton London Paddington 146 Praed Street W2  
Lancaster Gate Station, Bayswater Road, W2  
Edgware Road Station (Bakerloo), 306 Edgware Road, W2  
49 Lisson Grove, NW1  
Marylebone Station, 12 Melcombe Place NW1  
Marble Arch Station, Oxford Street W1  
Regent's Park Station, Marylebone Road, NW1  
79 Marylebone High Street, W1  
Oxford Circus Station Oxford Street, W1  
Green Park Station, Piccadilly W1  
Hyde Park Corner Station, Knightsbridge, SW1  
Westminster Station, Bridge Street, SW1  
Charing Cross Station, Strand, SW1  
Victoria Station, Buckingham Palace Road, SW1  
47 Belgrave Road, SW1  
74 Rochester Row, SW1  
7 John Islip Street SW1  
Pimlico Academy, Lupus Street  
Pimlico Station, Lupus Street  
87 Lupus Street, SW1  
St Barnabas Primary School, Pimlico Road, SW1