



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Planning and Economic Development
Date:	25 November 2022
Classification:	General Release
Title:	Confirmation of Westminster's Non-Immediate Article 4 Direction for change of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses) outside of the Central Activities Zone (CAZ).
Wards Affected:	Abbey Road, Bayswater, Church Street, Harrow Road, Hyde Park, Knightsbridge and Belgravia, Lancaster Gate, Little Venice, Maida Vale, Queen's Park, Pimlico South, Regent's Park, and Westbourne.
Policy Context:	The Article 4 Direction will support the delivery of a thriving economy, vibrant communities, and a cleaner and greener city in line with the City Plan. It will enable key town centres to continue to meet residents shopping, leisure and servicing needs, provide opportunities for local employment, and reduce the need for car-based travel. It will also help ensure that where commercial space is converted to residential, this includes provision for new affordable housing, and high standards of design and energy efficiency as required by adopted policy.
Key Decision:	Yes
Financial Summary:	The costs of advertising the Article 4 Direction will be met within existing budgets.
Report of:	Executive Director of Innovation and Change

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval to 'confirm' (i.e. bring into force) the council's Non-Immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to remove permitted development rights for changes of use from Class E (commercial, business and service uses) to C3 (dwellinghouses) in the core shopping areas of the town centres shown in the map attached as Appendix 1 to this report. More detailed maps showing the areas of individual town centres covered by the Direction are also shown in Appendix 4.
- 1.2 The Direction is required because of a government decision to introduce new permitted development rights allowing the change of use of a wide range of commercial floorspace (including offices, retail, restaurants, cafes, health centres, creches and gyms) to residential use, without the need for full planning permission. Instead, a light touch Prior Approval process would operate restricting the time to determine (56 days) and therefore community consultation duration, the issues that could be considered in reaching a decision, less likelihood of transparent committee decisions due to time constraints as well as mechanisms to mitigate the impact of development (e.g in kind or financial contributions for affordable housing). Prior approvals default to a grant if the short decision-making time period is missed. These rights came into force on 1 August 2021. A separate Article 4 Direction to protect the commercial role and function of the Central Activities Zone (CAZ) was brought into force on 22 July 2022, when the Secretary of State modified the council's original proposal to reduce its geographic coverage.
- 1.3 Justification for the introduction of a new non-immediate Article 4 Direction to cover the areas shown in Appendix 1 is set out in the Cabinet Member Report of 27 October 2021, included in Appendix 2 to this report. The areas covered provide a proportionate approach that responds to wording in the National Planning Policy Framework (NPPF) that there is scope for the use of Article 4 Directions to prevent the loss of core shopping areas from town centres, where based on robust evidence and applied to the smallest geographical area possible.
- 1.4 Upon publishing the confirmation of the Direction, applications for planning permission will be required for change of use from Class E to residential within the core areas of designated town centres shown in Appendix 1 (also shown in more detail in Appendix 4). This will mean such proposals will be subject to full consideration of all relevant policies in the Westminster City Plan, the London Plan, and relevant made neighbourhood plans. A draft 'Public Notice' to formally notify stakeholders that the Direction has been brought into force is provided in Appendix 3.

- 1.5 It should be noted that while the council does not need the permission of the Secretary of State to confirm its Direction, the Secretary of State does have powers to cancel or modify any Article 4 Directions at any time. When the Secretary of State modified the separate Article 4 Direction for the CAZ in July 2022, confirmation was provided that the approach taken to this Direction for smaller centres outside of the CAZ was considered reasonable.

2. RECOMMENDATION

- 2.1 That the Cabinet Member approves the 'confirmation' of the Non-Immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to remove permitted development rights granted for the change of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses) within the areas shown in Appendix 1.

3. REASONS FOR DECISION

- 3.1 An Article 4 Direction enables the council to have a legal requirement for a full planning application. As outlined above, it is considered that a full planning permission approach compared to a permitted development prior approval approach, has the benefits of better public consultation, operation of the full suite of planning policies to create better places, better opportunities to negotiate community benefits and mitigation measures, and more transparent decision making. The Article 4 Direction provides the opportunity for the council to use its planning powers by applying the full suite of City Plan, London Plan, and made neighbourhood plan policies, including those which aim to secure an appropriate balance of uses in designated town centres that fall outside of the CAZ, to maximise their offer in providing a range of shops, services, and employment opportunities to local residents. It will also help ensure that where commercial space is converted to residential, this includes provision for much needed affordable housing, contributes towards supporting infrastructure, and high standards of design and energy efficiency are secured. Using such powers will help support the delivery of good growth in Westminster in accordance with the policies in the Westminster City Plan, the London Plan, and any relevant 'made' neighbourhood plans. It will also help ensure that local communities have a say when commercial floorspace in affected areas are proposed for conversion to residential use through the planning consultation procedures.

4. BACKGROUND, INCLUDING POLICY CONTEXT

- 4.1 Section 4 of the Cabinet Member Report of 27 October June 2021 (see Appendix 2) sets out the role of permitted development rights and Article 4 Directions, and justification for why a new Article 4 Direction is needed for selected areas of designated town centres that fall outside of the CAZ.
- 4.2 To summarise, the government have introduced a new permitted development right meaning that since 1 August 2021, planning permission has not been required for change of use of Class E (commercial, business and service uses) to residential, subject to certain caveats. Article 4 Directions are a power that local planning authorities can use to remove this right, where justified, and subject to agreement with the Secretary of State. The council therefore set out in October 2021 (see Appendix 2) its position that a new Article 4 Direction was needed to protect the important role a number of local high streets play in providing a range of shops and services to surrounding residential communities. A 'Non-Immediate Direction' was proposed to absolve the council of any risk of claims for financial compensation from affected landowners or developers. In terms of justification for the proposal, evidence was provided of:
- the role of these centres and the risks posed by permitted development rights (e.g. piecemeal ad-hoc conversions of premises in the centre of a parade breaking up continuous active frontages and reducing town centre vitality and viability);
 - the policy framework for these centres provided by the development plan; and
 - an assessment of which areas merited protection, having regard to the health of centres, mix of uses within them, if they contained obvious 'peripheral areas' where conversion to residential would not undermine their overall function, and caveats in legislation of where permitted development rights do not apply (e.g. to listed buildings or buildings over 1500sqm).
- 4.3 Having considered consultation responses to the proposal (see section 8 below), the council is now in a position to formally 'confirm' i.e. bring into force, the Article 4 Direction.

5. FINANCIAL IMPLICATIONS

- 5.1 The costs of publicising the Article 4 Direction will be met from the existing Policy and Projects budget within the Innovation and Change Directorate.
- 5.2 Once brought into force, change of use proposals from Class E uses to Class C3 residential within areas covered by the Direction that would otherwise have been deemed permitted development, will be subject to a planning application. The council will therefore be able to continue to collect planning application fees from such proposals (as opposed to lower charges

associated with prior approvals), and secure planning obligations such as section 106 contributions where necessary.

6. LEGAL IMPLICATIONS

- 6.1 The rules for making and confirming an Article 4 Direction are set out in the Town and Country Planning (General Permitted Development) (England) Order, 2015, and updates set out in The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021. Taken together this legislation defines the classes of permitted development, exceptions to permitted development, and outlines the process for making and confirming an Article 4 Direction. The compensation arrangements are set out in sections 107-109 of the Town and Country Planning Act 1990.
- 6.2 Confirming a 'Non-Immediate' Article 4 Direction, and thereby having served at least 12 months' notice on affected landowners, absolves the council of any risk of claims for financial compensation which may arise as a result of the loss of permitted development rights under the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 6.3 The Council has also considered its obligations under the European Convention of Human Rights contained in the Human Rights Act 1998. In particular, careful consideration has been given to the right for respect for private and family life of members of the public who will be impacted by proposed measures. This is a qualified right which means that in certain circumstances, the state can interfere with this right.

7. CARBON IMPACT

- 7.1 The council is committed to becoming a carbon neutral council by 2030 and a carbon neutral city by 2040. To achieve these ambitions, new homes need to deliver high levels of energy efficiency, that can only be secured through the determination of a planning application. Bringing the Article 4 Direction into force will therefore help the council achieve its ambitions, as it will ensure energy standards for new homes will apply to those secured through conversion of Class E floorspace.

8. CONSULTATION

- 8.1 Following the making of the Article 4 Direction, public consultation was carried out between 6 December 2021 – 17 January 2022 in accordance with the requirements of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015. At this time, the Direction was publicised through:
- Local Advertisement in the local Gazette newspaper;

- Public notices within each of the town centres affected by the proposal;
- Email notification to all Members;
- Email notification to all consultees registered on the City Plan database (which currently includes 500 consultees including statutory bodies such as the Mayor of London and neighbouring boroughs, members of the public, businesses (including landowners, developers, BIDs and the Westminster Property Association), neighbourhood forums and amenity societies;
- Email notification to the Secretary of State; and
- The council's website.

8.2 In total, 9 comments were received during the consultation period – all of which were either supportive or neutral. A summary of comments received, and the council's response to them, was subsequently published on the council's website, and is replicated below.

<u>Respondent</u>	<u>Summary</u>	<u>Council Response</u>
The Coal Authority	<ul style="list-style-type: none"> • No comments on the proposal 	<ul style="list-style-type: none"> • Noted
Environment Agency	<ul style="list-style-type: none"> • Support the proposed Direction 	<ul style="list-style-type: none"> • Support welcomed
Port of London Authority	<ul style="list-style-type: none"> • No objection to the proposed Direction 	<ul style="list-style-type: none"> • Noted
Natural England	<ul style="list-style-type: none"> • No comments on the proposal 	<ul style="list-style-type: none"> • Noted
TfL Planning	<ul style="list-style-type: none"> • Support the proposed Direction as protecting office space and town centre activities and considering residential conversions on a case-by-case basis supports policy T1 of the London Plan 	<ul style="list-style-type: none"> • Support welcomed
Theatres Trust	<ul style="list-style-type: none"> • Support the proposed Direction – the need and rationale for which is clearly set out and justified within the accompanying Cabinet Member Report 	<ul style="list-style-type: none"> • Support welcomed

	<ul style="list-style-type: none"> • Have concerns regarding the potentially negative impacts permitted development could have on theatres and other cultural facilities where neighbouring buildings are converted 	
St Johns Wood Society	<ul style="list-style-type: none"> • Strongly support the proposed Article 4 Direction to remove permitted development rights from the core retail areas within Abbey Road Ward and Regent's Park Ward as indicated on Map A of the consultation papers • St Johns Wood's shops, restaurants and other commercial premises play a vital role in meeting the needs of the local community and must be protected through the planning process • Planned improvements to St Johns Wood High Street (subject to a neighbourhood CIL bid) could be undermined by the permitted development rights 	<ul style="list-style-type: none"> • Support welcomed
Historic England	<ul style="list-style-type: none"> • Support the proposed Direction – which will allow suitable assessment of the contribution of commercial buildings to local character through the planning process • Supporting mixed uses will be of benefit to the sustainability, identity, and heritage significance of parts of Westminster 	<ul style="list-style-type: none"> • Support welcomed
Mayor of London	<ul style="list-style-type: none"> • The Mayor fully supports the proposed Direction • London Plan Policy SD9 supports targeted Article 4 Directions to remove PD rights where appropriate • The Mayor's strategic evidence published in July 2021 provides justification for the use of targeted Article 4 Directions to safeguard vibrant commercial areas including town centres and high streets 	<ul style="list-style-type: none"> • Support welcomed

- 8.3 When the Secretary of State modified the Article 4 Direction for the CAZ in July 2022, confirmation was also provided that the approach taken to the Article 4 Direction for town centres outside of the CAZ was considered reasonable.
- 8.4 In confirming the Direction, the council is required to take account of the above representations, and implement any modifications proposed by the Secretary of State. Officers have considered all comments received, and as they are all supportive or neutral, and the Secretary of State has not objected, concluded that no amendment to the boundaries originally proposed is justified.
- 8.5 Upon confirmation of the Article 4 Direction, in order to notify affected landowners, provide transparency, and meet the requirements of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015, the council will:
- Publish the Public Notice provided at Appendix 3 in the local Gazette newspaper, on the council website, and at least 2 venues within the area covered by the Direction;
 - Make copies of the Direction (Appendix 1) available for inspection at the council's main offices, and publish them on the councils website;
 - Email all Members, the Secretary of State, and all consultees registered on the City Plan database of the publication of these documents. (The City Plan database currently includes over 1500 consultees including statutory bodies such as the Mayor of London and neighbouring boroughs, members of the public, businesses (including landowners, developers, BIDs and the Westminster Property Association), neighbourhood forums and amenity societies.

9. IMPACT ON THE ENVIRONMENT

- 9.1 Confirming the Article 4 Direction will support the council's ability to use its planning powers to ensure that the change of use of Class E floorspace to residential in affected town centres fully consider their impact on the environment in accordance with City Plan, London Plan, and made neighbourhood plan policies, including policies that ensure high standards of energy efficiency.

10. HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS

- 10.1 Confirming the Article 4 Direction will support the council's ability to use its planning powers to ensure designated town centres continue to offer a range of opportunities for work and social interaction in accessible locations, and for residents to meet their day-to-day shopping and servicing needs, to

the benefit of their health and wellbeing. It will also help secure additional affordable housing where Class E floorspace is converted to residential – having a positive impact on the health and wellbeing of those who cannot afford a home on the open market.

11. EQUALITIES IMPLICATIONS

- 11.1 Under the Equalities Act 2010 the council has a “public sector equality duty.” It must therefore have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; and advance equality of opportunity and foster good relations between persons who share protected characteristics and those who do not.
- 11.2 Officers have considered the need for a formal equalities impact assessment for the Article 4 Direction. Their conclusion is that as the Direction will enable the council to ensure a wide range of shops and services remain in town centres outside of the CAZ, this will benefit residents, including those with protected characteristics, in meeting their day-to-day shopping and servicing needs, providing opportunities for social interaction, and potential job opportunities within commercial premises. This can all help reduce the need to travel, and can promote walking and cycling, which is positive for health and wellbeing. Securing new affordable housing through the conversion of Class E floorspace, which would not be possible without the Article 4 Direction, will also positively impact on those with protected characteristics that are in housing need. No negative impacts have been identified, and it has therefore been concluded that a full EQIA is not necessary.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Sean Walsh
swalsh2@westminster.gov.uk

APPENDICES

Appendix 1 - Draft Article 4 Direction

Appendix 2 - October 2021 Cabinet Member Report

Appendix 3 - Draft Public Notice

Appendix 4 - Detailed maps of areas covered

BACKGROUND PAPERS

None

Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 25 November 2022

NAME: Councillor Geoff Barraclough

Cabinet Member for Planning and Economic Development

State nature of interest if any

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(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 Non-Immediate Article 4 Direction for changes of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses) outside of the Central Activities Zone (CAZ)** and reject any alternative options which are referred to but not recommended.

Signed 

Cabinet Member for Planning and Economic Development

Date ...25 November 2022.....

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:
.....
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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, Director of Legal Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of 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.