



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet Member for Business, Licensing and Planning
Date:	27th October 2021
Classification:	General Release
Title:	Making of Westminster's 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).
Wards Affected:	Abbey Road, Bayswater, Churchill, Church Street, Harrow Road, Hyde Park, Knightsbridge and Belgravia, Lancaster Gate, Little Venice, Maida Vale, Queen's Park, Regent's Park, and Westbourne.
City for All:	The making of the Article 4 Direction will support the delivery of a thriving economy, vibrant communities, and a cleaner and greener city. It will enable key town centres to continue to meet residents shopping, leisure and servicing needs, provide opportunities for local employment, reduce the need for car-based travel, and ensure new developments are required to meet climate change targets.
Key Decision:	Yes
Financial Summary:	The costs of preparing and advertising the making of the Article 4 Direction will be met within existing budgets.
Report of:	Executive Director of Innovation and Change

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks approval to make a non-immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) 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 2 to this report.
- 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 planning permission. These rights came into force on 1 August 2021, and consultation has already commenced on the proposed introduction on a new Article 4 Direction to protect the commercial role and function of the Central Activities Zone (CAZ) once the existing office to residential Article 4 Direction for that area expires.
- 1.3 In July 2021, the revised National Planning Policy Framework (NPPF) provided new wording on the use of Article 4 Directions. This new wording now makes clear 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 An assessment of the impact of the new permitted development rights on those parts of Westminster's town centre hierarchy that fall outside of the CAZ (and will therefore not be captured by a separate Direction), has now been completed, as set out in section 4 of this report. This provides justification for the introduction of a new non-immediate Article 4 Direction to cover the areas shown in Appendix 2. The areas covered provide a proportionate approach that responds to new national policy on the use of Article 4 Directions.
- 1.5 This is the first step in putting the Direction in place, a process that is set out in national legislation. Once made, the Direction will be subject to consultation and, subject to consideration of any representations made, it can be confirmed after a twelve-month period. From the date the Direction is formally confirmed, applications for planning permission will be required for these changes of use – meaning they will be subject to full consideration of all relevant policies in the Westminster City Plan, the London Plan, and relevant made neighbourhood plans.

2.0 RECOMMENDATION

- 2.1 That the Cabinet Member for Business, Licensing and Planning approves the making of a 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 2.

3.0 REASONS FOR DECISION

- 3.1 The making of the proposed Article 4 Direction will help enable the City Council to use its planning powers to secure an appropriate balance of uses in designated town centres that fall outside of the CAZ, to ensure they continue to offer a range of shops and services to local residents and provide employment opportunities. Securing the vitality and viability of these town centres is in accordance with the objectives of City for All, and the policies in the Westminster City Plan, particularly Policy 14 'Town Centres, High Streets and the CAZ'. It will also help ensure new developments meet a wide range of policy objectives including responding to the climate emergency, contributing towards the delivery of affordable housing, and supporting enhanced infrastructure provision.

4.0 BACKGROUND, INCLUDING POLICY CONTEXT

Permitted Development Rights

- 4.1 Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), some changes of use are deemed permitted development. This means that planning permission is only required if the Local Planning Authority has introduced an Article 4 Direction to remove these permitted development rights.
- 4.2 Successive reforms to the planning system have substantially increased the scope of permitted development rights. In September 2020, the Government amended the Use Classes Order with the aim of providing greater flexibility for the diversification of high streets and town centres. This introduced a new Class E (commercial, business and service uses) which captured a number of uses previously considered separately – including offices, retail, restaurants and cafes, gyms and health centres. As a result of this, uses within the new Class E are now considered interchangeable without the need for planning permission – as the change no longer constitutes development. On 31st March 2021, the Government then introduced The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021, which sets out that from 1st August 2021, a new permitted development right from Class E to Class C3 dwellinghouses exists, on the basis that this can help increase housing supply. A number of caveats have been included within this legislation, including:

- a size limit whereby the right only applies to sites that would result in the loss of no more than 1500sqm of class E floorspace;
- that existing Article 4 Directions (including our Article 4 protecting office floorspace in the CAZ), will continue to have effect until 31st July 2022;
- a vacancy test, meaning that the right only applies to premises that have been vacant for 3 months before the application;
- that the right does not apply to listed buildings; and
- that the building must have been in Class E use for at least 2 years before benefitting from the right.

4.3 Where the new right does apply, proposals will be subject to a prior approval application, where a very limited number of matters can be considered, namely:

- transport impacts of the proposal;
- contamination risks to the building;
- flooding risks to the building;
- impacts of noise from commercial premises on intended occupiers of the development;
- provision of adequate natural light to all habitable rooms;
- in conservation areas only – consideration of the impact of the loss of the ground floor Commercial, Business and Service use on the area’s character and sustainability;
- impact on intended occupiers of introducing residential use to an area important for industrial and waste uses; and
- impact of the loss of health centres and registered nurseries on the provision of such local services.

4.4 These matters provide a much narrower range of issues that can be considered than would be the case if a planning application was required, and all policies in the Development Plan (i.e. Westminster City Plan, London Plan, and any relevant made neighbourhood plans) apply.

Article 4 Directions

4.5 As referred to in paragraph 4.1 above, Article 4 Directions can be used to withdraw specified permitted development rights across a defined area. This power is set out in Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The legal requirement for setting such a Direction is that the local planning authority is *“satisfied that it is expedient that development should not be carried out unless permission is granted for it on an application.”*

4.6 On this basis, the City Council has already prepared and a non-immediate Article 4 Direction to protect the majority of the CAZ from the new permitted

development right. This is considered justified on the basis that the agglomeration of commercial uses within the CAZ are of vital importance to the national economy – as set out in the 23rd June 2021 Cabinet Member Report titled “*Making of Westminster’s Article 4 Direction for changes of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses).*”

4.7 In July 2021, after the Article 4 Direction for the CAZ was prepared, a revised National Planning Policy Framework (NPPF) was introduced, which included new wording on the use of Article 4 Directions. Paragraph 53 now states:

“The use of Article 4 directions to remove national permitted development rights should:

- *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 (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)*
- *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)*
- *in all cases, be based on robust evidence, and apply to the smallest geographical area possible.”*

4.8 This wording differs from draft wording the Government had previously consulted on and offers greater scope for the use of Article 4 Directions to protect the role of town centres - making specific reference to their shopping function, vitality and viability. It does however still indicate that Government will seek to limit the future use of Article 4 Directions, which is important to consider, as the Secretary of State has powers to cancel or modify any Article 4 Direction before and even after it is made.

4.9 Paragraph 038 (Reference ID: 13-038-20190722) of National Planning Practice Guidance provides supplementary guidance to the NPPF, and states that:

“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. The potential harm that the direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to:

- *a wide area (e.g. those covering the entire area of a local planning authority, National Park or Area of Outstanding National Beauty)*

- *agriculture and forestry development. Article 4 directions related to agriculture and forestry will need to demonstrate that permitted development rights pose a serious threat to areas or landscapes of exceptional beauty*
- *cases where prior approval powers are available to control permitted development*
- *leisure plots and uses*
- *the installation of microgeneration equipment”*

4.10 It is possible to make Article 4 Directions that have immediate effect, or which take effect after a period of a year (known as non-immediate directions). Immediate directions can render councils liable to pay developers compensation. This compensation can include the costs incurred in abortive works or expenses such as the planning application fee, professional fees (for architects etc) and, in cases where planning permission is refused “*any loss or damage directly attributable to the removal of the permitted development rights*”, including any loss of value to the property. The breadth of uses now captured under new Class E (commercial, business and service uses), the level of Class E floorspace within our town centres, and residential values within Westminster, means that an immediate Article 4 could make the City Council vulnerable to a high number of costly compensation claims – hence a non-immediate Direction is proposed.

Justification for proposed Article 4 Direction

4.11 In order for any Article 4 Direction regarding permitted development rights from Class E to Class C3 dwellinghouses to comply with paragraph 53 of the NPPF and the supporting national planning practice guidance, it is essential that:

- it is only used to avoid wholly unacceptable adverse impacts, and that these impacts are clearly identified;
- it is supported by robust evidence; and
- it covers as small an area as possible, taking into account prior approval powers.

4.12 The evidence presented below responds to these requirements – focussing on how the new permitted development rights could harm the role and function of Westminster’s town centres beyond the CAZ, contrary to their designation through the City Plan and the recently adopted policies supporting this. It also sets out a proportionate approach to the use of Article 4 powers, informed by an up-to date assessment of all centres outside of the CAZ.

- a) *The role and function of Westminster’s town centres beyond the CAZ and risks posed by the new permitted development rights*

- 4.13 Westminster's town centres beyond the CAZ provide a focal point for surrounding residential neighbourhoods, with concentrations of Class E floorspace providing a range of shops and essential services, social infrastructure, cultural facilities, and employment opportunities. They generally experience lower levels of long-term vacancy than elsewhere in country; [the 2017/ 18 Town Centre Health Checks](#) found average vacancy levels of 9% - below the 12% national average at the time, and within optimum frictional vacancy rates of 5 – 10% to provide opportunities for new businesses to open. During this study, where vacancy levels rose above 12% for individual centres, this was found to be in areas subject to ongoing redevelopment proposals. The strength of Westminster's town centres is consistent with more recent [evidence produced by the GLA](#) to support boroughs putting forward the case for Article 4s for town centres. This indicates in paragraph 5.3.11 that London's centres have performed better than those nationally during the pandemic. In the second half of 2020 average shop vacancy rates across London stood at 10%, compared to 13% nationally.
- 4.14 The role of our town centres is evolving – increasingly moving away from a dominance of retail to a range of mutually supportive and flexible commercial uses. Recent revisions to the Use Classes Order, with the introduction of Class E, offer opportunities to facilitate this without the need for planning permission. While some businesses have suffered through the pandemic, the continued clustering of commercial spaces in town centres offers opportunities for new businesses to start up, innovate, provide new jobs, and adapt to the needs of surrounding communities. As a result of people spending more time at home during the pandemic, the importance of town centres to their surrounding residential catchments has also increased. The health of town centres is frequently identified as important to neighbourhood forums and amenity societies as neighbourhood plans come forward.
- 4.15 The introduction of piecemeal conversion of ground floor commercial premises to residential could result in fragmented high street frontages, weakening their sense of place and function as places to shop, visit, work and interact. This could then reduce footfall, having a negative impact on the viability of remaining businesses. Loss of such space would weaken the ability of town centres to adapt to future circumstances – as the flexibility offered by commercial premises to move to a variety of uses within Class E is lost. Any significant loss of commercial floorspace could also result in increased commercial rents for remaining premises as supply is constrained, adversely affecting the availability of space for small businesses and start-ups. These are all wholly unacceptable adverse impacts for the future of these centres.
- 4.16 While it is recognised that new homes in and around the edges of town centres can support their vitality and viability, this is best achieved in a planned and co-ordinated manner beyond core ground floor frontages. High residential values in Westminster means that conversion within existing parades could be attractive to a landlord even when it is in the middle of a successful parade and there is an appetite for its use for alternative Class E uses that provides an active frontage and attracts numerous visitors and employees throughout the day. The threat to wider town centre vitality and

viability that such conversion would result in is not outweighed by the small-scale increases in housing supply such proposals would yield. In small centres the loss of an individual ground floor premises in the middle of a parade, which could have wide reaching implications for the long term success of the centre as a whole, is only likely provide scope for one or two new, small homes.

- 4.17 Given the important role and function of our town centres outside of the CAZ, it is vital that new permitted development do not compromise their ability to evolve and strengthen as part of the city's economic recovery. A new Article 4 Direction will help the City Council continue to support these centres vitality and viability, whilst supporting the provision of new homes in appropriate circumstances through the determination of planning applications. Doing so is entirely consistent with the recently adopted policy framework provided by the Development Plan (see below).

b) Policy context from the Development Plan

- 4.18 Policies in the Westminster City Plan (adopted April 2021) support the evolution of our town centres as a focal point for a range of commercial and mixed-use development that could be compromised by the new permitted development right.
- 4.19 Policy 1 (Westminster's spatial strategy) sets out the City Council's intentions of *"supporting town centres and high streets... to evolve as multifunctional commercial areas to shop, work and socialise."* It also clearly prioritises commercial led growth in designated town centres, stating growth will be primarily delivered through *"the intensification of the CAZ, the West End, and our town centre hierarchy with commercial-led and mixed-use development to provide significant growth in office, retail, and leisure floorspace, alongside new homes."*
- 4.20 Policy 14 (town centres, high streets and the CAZ) states *"the intensification of town centres, high streets and the CAZ to provide additional floorspace for main town centre uses is supported in principle, subject to impact on townscape and heritage."* It provides clear direction that town centres and high streets should *"enhance and diversify their offer as places to shop, work and spend leisure time"* – functions that are all reliant on the provision of Class E floorspace rather than residential. Within the town centre hierarchy, it requires *"uses that provide active frontages and serve visiting members of the public"* at ground floor – residential development would not satisfy this criterion.
- 4.21 Westminster's town centre hierarchy includes areas of varying scales and functions. Policy 14 highlights key policy objectives for the growth of different parts of Westminster's town centre hierarchy – with a clear focus on their commercial, rather than residential role. It states that: *"Major, District and Local Centres will provide a mix of commercial and community uses to meet*

residents' day to day shopping needs, provide local employment opportunities, and support opportunities for community interaction."

- 4.22 The London Plan (adopted March 2021) also prioritises commercial uses that largely fall under Class E within town centres beyond the CAZ. Policy SD6 (Town Centres and High Streets) states their vitality and viability should be supported by: *"strengthening the role of town centres as a main focus for Londoners' sense of place and local identity in the capital"* and *"ensuring town centres are the primary locations for commercial activity beyond the CAZ and important contributors to the local as well as London-wide economy."*

Paragraph 2.6.7 also makes clear that while there is a place for residential development in town centres, this should be *"outside the primary shopping area and primary and secondary shopping frontages where it can be demonstrated that they would not undermine local character and the diverse range of uses required to make a town centre vibrant and viable."* Policy SD9 (Town Centres: Local Partnerships and Implementation) also states that boroughs should: *"introduce targeted Article 4 Directions where appropriate and justified to remove permitted development rights for office, light industrial and retail to residential in order to sustain town centre vitality and viability and to maintain flexibility for more comprehensive approaches to town centre housing and mixed-use intensification."*

- 4.23 At both a local and regional level, the recently adopted policy framework provided by the Development Plan is therefore clear that commercial growth should be prioritised over residential growth in designated town centres. The new permitted development rights would clearly undermine these policies, resulting in wholly unacceptable adverse impacts on such centres role and function.

c) Areas covered by the proposed Direction

- 4.24 As set out in paragraph 4.7 above, wording in the NPPF makes clear that a proportionate approach to the use of Article 4 Directions, limited to areas where they are genuinely needed, should be taken, and that blanket provision across entire town centres without strong justification, should be avoided.

- 4.25 In total, there are 32 centres within Westminster's town centre hierarchy, as defined in the recently adopted City Plan, that either fall outside of the CAZ or straddle its boundaries, and are therefore vulnerable to the new permitted development right. While the scale and catchment area of these centres vary, and this is reflected by their position in the town centre hierarchy, typically they are characterised by continuous ground floor commercial premises with active frontages along high streets and/ or around road junctions. Given the potential harm the new permitted development right could cause to the role and function of these centres, and how it would undermine the recently adopted policy framework for them (as set out in paragraphs 4.11 – 4.23

above), all have been subject to an assessment to determine if the targeted use of Article 4 powers is now necessary.

4.26 Assessment of these centres, and recommendations on the extent of Article 4 coverage now required has been based on a combination of:

- Goad 2021 retail data from Experian (where available) of existing ground floor land uses to identify where existing uses fall within Class E and are therefore vulnerable to the new right;
- Identification of where listed buildings exist – since these are not vulnerable to the new right;
- (For larger centres only), GPS mobility data for the week 12th – 18th July 2021 to help identify principal shopping streets where levels of ‘busyness’ are highest; and
- Site surveys and desk-based analysis to assess the extent of the core shopping area, and if there were any areas within the town centre boundary where conversion to residential could achieve the governments aims of consolidating and strengthening centres whilst boosting housing supply.

4.27 During this analysis, the following questions were used as prompts to determine if any areas within the town centre boundary could be excluded from any Article 4 Direction:

- *Do any of the following exist towards the boundaries of each town centre?*
 - *Non Class E uses*
 - *Listed buildings*
 - *Class E buildings over 1500sqm in size*
 - *Vacant units*
 - *Uses that do not provide an active frontage*
 - *Uses that do not positively contribute to the centres retail function – e.g. 100% office buildings, clusters of take-aways, betting shops and estate agents*
- *Is there a clear and obvious ‘core’ area to the centre with higher levels of footfall and concentrations of shops, restaurants, cafes, hairdressers etc, and/or essential services such as post offices and banks that should be protected?*
- *Is there a clear and obvious peripheral area in decline with poor quality physical environment, lower levels of footfall, vacancies, or non-continuous*

active frontages? NB where on the city boundary, consider the merits of a continuous frontage across administrative boundaries

- *Is there a clear physical and visual boundary (e.g. road junction, end of parade, distinct change in character) between ‘peripheral’ and ‘core’ areas of the centre?*

4.28 The key findings of this comprehensive assessment were that existing town centre boundaries from the recently adopted City Plan were largely coherent and tightly drawn around core retail areas where footfall is high, and an agglomeration of Class E uses provide continuous active frontages at ground floor level. Reflecting their role in serving surrounding residential neighbourhoods, ground floor land uses in these centres are predominantly related to their retail and servicing functions. They do not include significant concentrations of non-retail type uses commonly found on the periphery of core retail areas in larger town centres, such as large-scale offices or residential. Whilst assessments did highlight some vacancies in several centres, in many cases there was evidence that such units were in the process of being refurbished and re-opened. Furthermore, where individual vacancies were identified that were adjacent occupied commercial units on either side, they are considered to merit continued policy protection to avoid the creation of fragmented frontages, which would be detrimental to the health of the wider centre.

4.31 In most instances, assessment did however find some scope for areas to exclude from any Article 4 Direction, for the reasons set out below:

Centre	Recommendation for Article 4 Direction coverage
Queensway Major Centre	* Exclude former Whiteley’s department store, as a large listed building that permitted development rights do not apply to.
Harrow Rd District Centre	* Exclude Queens Park meeting hall – listed so permitted development rights do not apply. * Exclude 470 – 474 Harrow Road – uses do not provide active frontages or contribute to retail function of the centre. * Exclude 600 - 606 Harrow Road – includes uses with no active frontage and some isolated units fragmented from the retail core.
Church St/ Edgware District Centre	* Exclude council owned parts of masterplan sites A, B and C, as existing units in Class E uses will be replaced as part of comprehensive redevelopment proposals for the area.

	<ul style="list-style-type: none"> * Exclude block bounded by Edgware Road and Bell Street (including Tube station) as falls within the CAZ and therefore covered by a separate Article 4 Direction. * Exclude units fronting Frampton Street which are peripheral to the core retail function and within an area of more residential character. * Exclude Cockpit Theatre as not Class E so not vulnerable to permitted development. * Exclude Lisson Grove Health Centre as prior approval process allows for consideration of impact on health provision locally.
St John's Wood District Centre	<ul style="list-style-type: none"> * Exclude 10 St Annes Terrace and 120 St Johns High Street – both listed so permitted development rights do not apply.
Maida Vale Local Centre	<ul style="list-style-type: none"> * Exclude tube station as listed, meaning permitted development rights do not apply.
Kilburn Park Road Local Centre	<ul style="list-style-type: none"> * Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.
Westbourne Park Rd Local Centre	<ul style="list-style-type: none"> * Exclude all units west of 83 Westbourne Park Road as they represent a series of isolated commercial units interspersed with residential and other uses, rather than a coherent and continuous active frontage with a core retail function.
Harrow Rd/ Bourne Terrace Local Centre	<ul style="list-style-type: none"> * Exclude units on Bourne Terrace that includes a cluster of vacancies, are in an otherwise residential area with low footfall, and are disconnected from the core frontage on Harrow Road.
Harrow Rd East Local Centre	<ul style="list-style-type: none"> * Exclude units adjacent Chippenham Mews as peripheral to core retail function of the centre, and includes some non-active frontages that don't contribute to the centres core retail function. * Exclude 75-76 Amberley Road – office uses that do not contribute to core retail function of centre.
Elgin Avenue/ Chippenham Local Centre	<ul style="list-style-type: none"> * Exclude entire centre – suffers from a high level of vacancies, fragmented frontages, non Class E uses, low footfall, and several units that already have prior approval for residential conversion. Proximity to other healthier centres can ensure adequate provision for surrounding residential neighbourhoods.

Shirland Rd/ Chippenham Local Centre	* Exclude 93 and 120 Chippenham Road to the southern boundary of the town centre – both are in sui generis use that do not benefit from permitted development rights.
Fernhead Rd Local Centre	* Exclude 81 Fernhead Road on the edge of the centre, which is in use for office purposes and therefore does not contribute to the retail function of the centre.
Kilburn Lane Local Centre	* Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.
Pimlico Road Local Centre	* Exclude Coleshill Flats and the Orange Public House as both are listed so permitted development rights do not apply.
Motcombe Street Local Centre	* Coverage only required for buildings units at 15-18 Lowndes Street and 1-11 Kinnerton Street, which help frame the centre. Remainder of centre comprises of listed buildings where permitted development rights do not apply, or in the case of 8 Lowndes Street, a unit that is isolated from the retail core.
Elizabeth Street	* Coverage only required for 46 – 48 Elizabeth Street, 35 -39 Elizabeth Street, and 141 – 147 Ebury Street. All other units either fall within the CAZ, are listed, or not in Class E use (i.e. The Thomas Cubitt Pub), meaning permitted development rights do not apply.
Ebury Bridge Road	* Exclude entire centre – only uses not captured by a separate CAZ Article 4 Direction are The Rising Sun Pub (not Class E) and the Belgravia Garage - where change of use to residential is considered unfeasible.
Porchester Road	* Exclude 44 – 64 Porchester Road as within the CAZ and therefore covered by a separate Article 4 Direction, and Porchester Hall – as listed so permitted development rights do not apply.
Lisson Grove	* Exclude units on East of Lisson Grove as within CAZ and therefore covered by a separate Article 4 Direction, and 57 – 59 Lisson Grove as Sunsnacks

	café represents an isolated unit that does not form part of the centres retail core.
Moscow Road	* Exclude Phoenix Pub as not Class E and isolated from core retail parade.
Ledbury Road	* Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.
Leinster Terrace	* Exclude Leinster Arms – listed and not Class E so permitted development rights do not apply.
Craven Road/ Craven Terrace	* Exclude 1a – 3 Craven Terrace, 29 – 45 Craven Road, and 36 – 46 Craven Road, and 46 Gloucester Terrace – all listed so permitted development rights do not apply.
Connaught Street	* Coverage only required for 59 Connaught Street, 48 Kendal Street, and Conniston Court. Class E uses in the remainder of the centre are all listed and therefore permitted development rights do not apply, with the exception of 50 Connaught Street, which does not provide a traditional shop front and is isolated from the core retail area.
Shirland Road Junction	* Exclude 125 – 131 Shirland Road – includes a number of vacancies and uses providing no active frontage.
Lauderdale Road/ Castellain Road	* Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.
Formosa Street	* Exclude entire centre – as all buildings are listed permitted development rights do not apply.
Abbey Road/ Boundary Road	* Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.

Blenheim Terrace	* Exclude 24 – 26 Blenheim Terrace – not in E class use and separated from core retail frontage by Blenheim Passage.
Nugent Terrace	* Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.
Clifton Road	* Include entire centre – provides a coherent and tightly drawn boundary of ground floor Class E uses in shop type premises.
Charlbert Street	* Exclude 37 St John’s Wood Terrace – as listed permitted development rights do not apply. * Exclude Lyndhurst Club – not Class E and provides no active frontage so does not contribute to the core retail function of the centre.

4.32 For ease of reference, Appendix 4 sets out how the proposed boundary for the Article 4 Direction differs from the town centre boundary established through the City Plan, where relevant.

Proposed Article 4 Direction

4.33 As can be seen from the data and policy analysis in paragraphs 4.11 – 4.32 above, there is clear justification for the introduction of a new Article 4 Direction for targeted areas of a number of town centres beyond the CAZ. Doing so would help address the harm the proposed right would cause to the role and function of these centres, which are vitally important to surrounding residential communities. The areas proposed are based on up-to-date evidence and limited to the smallest geographical area necessary to avoid wholly unacceptable adverse impacts on these centres. A new Article 4 Direction for the areas identified is therefore entirely consistent with paragraph 53 of the NPPF, and accompanying planning practice guidance.

4.34 Introducing the proposed Article 4 Direction will also not rule out future residential growth in the areas affected, but instead ensure that where such proposals do come forward, they are subject to full consideration against all relevant planning policies in the recently adopted Westminster City Plan and London Plan. Conversion of premises within the areas covered by the Direction, such as on upper floors, may in fact be supported through the determination of a planning application in accordance with newly adopted City

Plan policies, which are more flexible in this respect than the policies they replaced.

- 4.35 The Direction will also not impede future housing growth - Westminster has a strong track record of high levels of housing delivery and the housing growth targets in the City Plan and London Plan can be met without relying on additional supply through the prior approval process. The City Council has a 5-year housing land supply, a high level of planning permissions in the development pipeline, and the future Site Allocations Plan will also provide further clarity of where high levels of housing growth can be achieved in a planned manner.
- 4.36 The proposed Article 4 Direction is provided as Appendix 1 to this report. Appendix 2 provides the boundary of the area where it would apply.

5.0 CITY FOR ALL

- 5.1 The making of the Article 4 Direction will support the delivery of a thriving economy and vibrant communities. Retaining planning controls over the change of use of commercial premises within town centres outside of the CAZ will help ensure they continue to provide a range of shops, services, social and employment opportunities for surrounding residential communities. It will also help secure a cleaner and greener city, by ensuring that climate change targets in the City Plan can be applied to a greater number of development proposals, through the determination of a planning application.

6.0 FINANCIAL IMPLICATIONS

- 6.1 The costs of making, advertising, consultation and confirmation of the proposed Article 4 Direction will be met from existing budgets. Public consultation will as far as possible be carried out electronically, minimising print and other costs.
- 6.2 As a non-immediate Article 4 Direction is proposed, landowners looking to take advantage of the new permitted development right will have 12 months' notice of the City Council's intentions. This absolves the City Council of any risk of claims for financial compensation from landowners, under the terms of the Town and Country Planning Act 1990.
- 6.3 The introduction of an Article 4 Direction will ensure change of use proposals within the centres affected remain subject to a planning application. The City 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.

7.0 LEGAL IMPLICATIONS

7.1 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 an Article 4 Direction. The compensation arrangements are set out in sections 107-109 of the Town and Country Planning Act 1990.

8.0 STAFFING IMPLICATIONS

8.1 None. The introduction of an Article 4 Direction will simply ensure that proposals that would have previously been determined through a planning application, will again be required to do so once the Direction comes into force.

9.0 CONSULTATION

9.1 If this report is approved notice will be given in accordance with the requirements of Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015. Rather than the minimum 21 days set out in legislation, a six-week period will be allowed to maximise the opportunity for interested parties to comment. A copy of the formal notice required to meet government guidance and legislation is attached as Appendix 3 to this report.

9.2 It is proposed to publicise the Article 4 Direction 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 City Council's website.

10.0 EQUALITIES IMPLICATIONS

10.1 Under the Equalities Act 2010 the Council has a "*public sector equality duty*". This means that in taking decisions and carrying out its functions it must have

due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act:

- to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to;
- foster good relations between persons who share a relevant protected characteristic and those who do not share it.

10.2 The City Council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "*having due regard*" to the need to promote equality of opportunity involves in particular having regard to:

- the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic;
- take steps to meet the needs of persons sharing a protected characteristic that are connected with it;
- take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and
- encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

10.3 The courts have held that "*due regard*" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.

10.4 Officers have considered the need for a formal equalities impact assessment of the proposed confirmation of the proposed Article 4 Direction. Their conclusion is that as the Direction will enable the council to ensure a wide range of shops and services 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. No negative impacts have been identified, and it has therefore been concluded that a full EIA is not necessary.

11.0 BUSINESS PLAN IMPLICATIONS

11.1 The making of the Article 4 Direction will support the City Council's ability to use its planning powers to ensure development secures good growth – that which works for all residents and businesses, now and into the future – delivering opportunities and an improving quality of life for Westminster's people while minimising any negative impacts.

12.0 IMPACT ON THE ENVIRONMENT

12.1 The making of the Article 4 Direction will support the City Council's ability to use its planning powers to ensure that new developments fully consider their impact on the environment in accordance with City Plan policies, including ensuring high standards of energy efficiency. Ensuring town centres remain a focal point for shops and services can also reduce the need for residents to travel to meet their day-to-day needs, which will have a positive impact on the environment.

13.0 HEALTH, WELLBEING IMPACT ASSESSMENT INCLUDING HEALTH AND SAFETY IMPLICATIONS

13.1 The making of the Article 4 Direction will support the City Council's ability to use its planning powers to ensure town centres outside of the CAZ continue to offer a range of shops, services, and opportunities for work and social interaction in accessible locations, to the benefit of residents' health and wellbeing.

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

APPENDICES

Appendix 1 – Draft Article 4 Direction

Appendix 2 – Maps A and B (Maps of area covered by Article 4 Direction)

Appendix 3 – Article 4 Notice

Appendix 4 – Maps of town centre boundaries and areas proposed for coverage by Article 4 Direction

BACKGROUND PAPERS

None

Cabinet Member for Business, Licensing and Planning: Councillor Matthew Green

Declaration of Interest

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

Signed: _____ Date: _____

NAME: _____

Cabinet Member for Business, Licensing and Planning

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 **Making of Westminster’s Article 4 Direction for changes of use from Class E (commercial, business and service uses) to Class C3 (dwellinghouses)** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Business, Licensing and Planning

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, 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.